ARTICLES

ON "COMMON GOOD": BETWEEN TRADITION
AND CONTEMPORARY SOCIAL CONTEXTS[*]

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Summary: Premises 1. *Bonum commune*: some preliminary conceptual distinctions 1.1 *Bonum* 1.2. *Commune* 2. *Bonum commune* and law: a philosophical-legal survey 3. Changes and challenges 4. Conclusions: unity, institution and relation

Premises

In this contribution I will try to put forward some ideas in order to establish a connection, at least in an ideal and broad manner, between tradition and contemporary scenarios. In fact, whether there is a category bounding past and present, this is certainly represented by the idea of *bonum commune* ("common good") although, as I will try to point out, it is to be partially reconsidered.

I don't want to consider the recent and rich debate about the "common good" in detail,[1] but my aim is rather to outline some aspects of the question.

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[1]   Some references: Francesco Botturi – Angelo Campodonico (a cura di): *Bene comune. Fondamenti e pratiche*. Milano, Vita e Pensiero, 2014.; Carole Bonanni – François Lépineux – Julia Roloff (eds.): *Social Responsibility, Entrepreneurship and the Common Good: International and Interdisciplinary Perspectives*. New York, Palgrave Macmillan, 2012.; John Lauritz Larson: *The Market Revolution in America: Liberty, Ambition and the Eclipse of the Common Good*. Cambridge et al., Cambridge University Press, 2010.; Margaret S. Archer – Pier Paolo Donati (eds.): *Pursuing the Common Good: How Solidarity and Subsidiarity Can Work Together: the Proceedings of the 14th Plenary Session, 2-6 May 2008*. Vatican City, The Pontifical Academy of Social Sciences, 2008.; Amitai Etzioni: *The Common Good*. Cambridge MA, Polity, 2004.; Bruce Cronin: *Institutions for the Common Good: International Protection regimes in International Society*. Cambridge, Cambridge University Press, 2003.; Richard A. Epstein: *Principles for a Free Society: Reconciling Individual Liberty With the*

My argumentation can be divided in four points: a) the first one is dedicated to some preliminary conceptual and lexical distinctions; b) secondly I propose a brief philosophical survey about the legal levels of *bonum commune*; c) thirdly I take into account some contemporary sociological–cultural changes and mutations directly or indirectly related to the definition of *bonum commune*; d) finally I suggest some conclusions concerning the anthropological dimension implied by the concept of "common good".

To summarize, my main thesis is the following one.

From a theoretical, anthropological and legal point of view, western tradition has elaborated from the notion of *bonum commune* a very important *cognitive and formal* category grounded in an anthropological dimension. Rooted in the past cultural models, it could be still useful (as far as it can be deeply reconsidered) in order to understand the sociological and theoretical contemporary scenarios, especially in the light of the recent crisis of liberalism and within the debate liberalism/ communitarianism.

1. *Bonum commune*: some preliminary conceptual distinctions

As is well known, within the western philosophical tradition we can observe at least up to Modernity a long and constant elaboration of the notion of *bonum commune*.[2] It represents a very articulated conceptual model, which encompasses both a philosophical–political dimension and a strict legal meaning.

In order to better understand some aspects of this very complex cultural process we have to pay attention, in a distinct manner, to the two main terms/categories theoretically implied by the expression *bonum commune*: *bonum* and *commune*.

1.1. *Bonum*

With regards to the concept (or the term, the category) of *bonum*, I will just focus on two aspects.

On the one hand, starting from some references to the western philosophical-legal tradition we have to point out a) the philosophical *substratum* underlying this notion: in other words, the only theoretical horizon within which we can discuss the notion of *bonum*. On the other hand, it is necessary to highlight b) the difference between the concept of *bonum* and other philosophical perspectives or conceptual models.

a) Apart from its different historical meanings, and its cultural and peculiar identifications, the notion of *bonum* immediately implies a *philosophical (and, then,*

        Common Good. Reading MA, Pereus Books, 1998.; Mark A. Lutz: *Economics for the Common Good: Two Centuries of Social Economic Thought in the Humanistic Tradition*. London–New York, Routledge, 1999.; Guido Gonella: *La nozione di bene comune*. Milano, Giuffrè, 1959.

2   See the references quoted in the previous footnote.

legal) qualification. For this point it is sufficient to consider two classical references offered by our philosophical–legal tradition: Aristotle and Thomas.

Aristotle's position represents a sort of milestone in the western conceptualization of "common good".

As is well known, in the opening lines of *Politics* the Greek philosopher immediately identifies *bonum* (ἀγαθός) with, and within, a "collective" or "political" dimension and, more precisely, with the fundamental Greek model of κοινωνία (meant as πόλις–κοινωνία)[3]:

> "We observe that every state (πόλις) is a certain sort of association (κοινωνία), and that every association (κοινωνία) is formed for some good (ἀγαθός) purpose; for in all their action all men aim at what they think good. Clearly, then, while all associations aim at some good, the association which is the most sovereign of all and embraces all the others aims highest, i.e. at the most sovereign of all goods. This is the association called the state, the association which takes the form of a state."[4]

More in depth, the argumentation elaborated by the Stagirite (between historical reference and theorization), lies on four pivotal ideas: "man", "nature" "community" and "good". Along these lines, we can trace the following *logical* sequence which is rooted in the substantial equation among the above mentioned elements: "man" (ἄνθρωπος), that is somehow logically subtended in the quoted passage, is placed *by nature* (a concept implied by the verb "observe"[5]) into community.

This latter is *immediately* identified in its turn with the "political" dimension, the *polis* as a community, and, *hence*, it is decisive in order to elaborate a "good" (or better: what seems and what looks like "good"). In other words: Aristotle establishes the conceptual pair "κοινωνία (common)–ἀγαθός (good)".

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[3] For these themes let me also quote two of my works: *Occidente e figure comunitarie* I *Un ordine inquieto:* κοινωνία *e comunità "radicata". Profili filosofico-giuridici*. Napoli, Jovene, 2013; *Aristotle on Justice and Law: Koinonia, Justice and Politeia*, relation presented to the XXVIth World Congress of Philosophy of Law and Social Philosophy, *Human Rights, Rule of Law and the Contemporary Social Challenges in Complex Societies*, Belo Horizonte (Brazil), 21–26 July, 2013 (forthcoming).

[4] ARISTOTLE: *Politics*, I, 1, 1252a 1–7 (quoted from ARISTOTLE: *Politics*. New York, Oxford University Press, 1995–1997. I., 1). Here is the Greek text: Ἐπειδὴ πᾶσαν πόλιν ὁρῶμεν κοινωνίαν τινὰ οὖσαν καὶ πᾶσαν κοινωνίαν ἀγαθοῦ τινος ἕνεκεν συνεστηκυῖαν (τοῦ γὰρ εἶναι δοκοῦντος ἀγαθοῦ χάριν πάντα πράττουσι πάντες), δῆλον ὡς πᾶσαι μὲν ἀγαθοῦ τινος στοχάζονται, μάλιστα δὲ καὶ τοῦ κυριωτάτου πάντων ἡ πασῶν κυριωτάτη καὶ πάσας περιέχουσα τὰς ἄλλας. αὕτη δ᾽ ἐστὶν ἡ καλουμένη πόλις καὶ ἡ κοινωνία ἡ πολιτική.

[5] With regards to the Aristotelian concept of "nature" (considered in relation to the notion of "being") see ARISTOTLE: *Metaphysics*, V, 4, 1014b 16; 1015a 21; V, 7, 1017a 7-1017b 9. For the twofold level of the Aristotelian argumentation, that is to say the empirical-historical-pragmatic approach and the theoretical one, see Charles H. MACILWAIN: *The Growth of Political Thought in the West: from the Greeks to the end of the Middle Ages*. New York, Mac Millan, 1932. 63. (with particular reference to the notion of *koinonia*).

So, what we should notice is the emergence of a theoretical (or better philosophical–legal) circle "good–πόλις (politics)–community (κοινωνία)", that is to say that the Aristotelian "good" (ἀγαθός) has *necessarily and immediately* a political (i.e. communitarian) implication: the "good" (ἀγαθός) is to be considered *as such as a political obligation*. Furthermore, and more precisely, in this perspective the concept of "good" has no substantive/ethical contents: it is only the explication of the dimension of the sense underlying the associated life.

In order to better understand the theoretical relation "ἀγαθός–politics" we can briefly consider especially the Aristotelian notion of φιλία and its structural relation with the pair πόλις–κοινωνία.

Φιλία is the typical "relational good" elaborated by Aristotle: "[Friendship] is a virtue or implies virtue, and is besides most necessary with a view to living".[6] For this reason it is not simply an economic utility or commodity, because it is a "good" which develops *only within the relation (or reciprocity)*: in some way, φιλία and relation are the same thing. This is the reason why φιλία has structurally an institutional dimension and a direct political articulation: in fact, it represents the "common" relational space wherein the political community develops.[7]

Hence we can grasp why φιλία has an immediate *institutional* dimension and why φιλία immediately *identifies* a political dimension: in fact, φιλία is the theoretical as well as the sociological basis for political obligation. Unlike the modern perspective, friendship does not relate only to the "personal dimension", but directly involves the political community. In some way φιλία *creates* the community: the Aristotelian πόλις–κοινωνία is based on some relevant articulations of φιλία like, in particular, the crucial notion of ὁμόνοια,[8] by which Aristotle underlines the decisive role played by the mutual acknowledgments among the members of πόλις–κοινωνία. From a political–institutional point of view, ὁμόνοια represents also the structural condition for the elaboration of the models of πολιτεία:[9] it is the basement for the processes of *formalization* and *institutionalization* of the anthropological relation. This sequence does not imply a direct superimposition between communitarian relation and law

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[6]   Aʀɪsᴛᴏᴛʟᴇ: *The Nicomachean Ethics,* VIII, 1, 1155a 3–5 (quoted from Aʀɪsᴛᴏᴛʟᴇ: *The Nicomachean Ethics.* New York, Oxford University Press, 2009. 142.; but you should see the entire books VIII and IX: *ibidem* 142–182.).

[7]   For the mutual relation "community-φιλία" Aʀɪsᴛᴏᴛʟᴇ: *The Nicomachean Ethics,* VIII, 9 [Aʀɪsᴛᴏᴛʟᴇ (2009) op. cit. 153–159.].

[8]   Aʀɪsᴛᴏᴛʟᴇ: *The Nicomachean Ethics,* IX, 6, 1167a 22–1167b 9 [Aʀɪsᴛᴏᴛʟᴇ (2009) op. cit. 171–172.].

[9]   For these conceptual relations Aʀɪsᴛᴏᴛʟᴇ: *Politics* III, 9, 1280b 30–1281a 11; III, 11, 1282b 8–13;III, 13, 1283b 42–1284a 3; IV, 11, 1295a 25–1296a 19; V, 7, 1307a 5–11;V, 9, 1309a 33–39;V, 9, 1309b 10–21 [Aʀɪsᴛᴏᴛʟᴇ (1995–1997) op. cit. II. 30–31.; 37–38.; 45.; 95–98.; III. 15. and 20–21.]; Aʀɪsᴛᴏᴛʟᴇ: *The Nicomachean Ethics,* IX, 6, 1167a 22–1167b 16 [Aʀɪsᴛᴏᴛʟᴇ (2009) op. cit. 171–172.]. See also W.L. Nᴇᴡᴍᴀɴ: *The Politics of Aristotle.* Oxford, Clarendon Press, 1950. (1887), I. 208. and ff.; Roberto Rᴀᴅɪᴄᴇ (ed.): *Aristoteles.* Biblia, Milano, 2005. II, s.v.: πόλις (918–919) and πολιτεία (919–920). About this aspect MᴀᴄIʟᴡᴀɪɴ (1932) op. cit. 73–74. and 77.; more widely Charles H. MᴀᴄIʟᴡᴀɪɴ: *Constitutionalism. Ancient and Modern.* New York, Cornell University Press, 1940.

(νόμος): the "common good", meant as the sense of community, represents the conceptual framework for the legal conceptualization.

The relation community–common good, according to the cognitive and formal acceptance previously remarked, also underlines the notion of justice. The Aristotelian model of justice is not to be understood in a substantive meaning: in particular, the distinction νόμικον δίκαιον – φύσικον δίκαιον allows the Stagirite to maintain the space between the communitarian horizon, wherein the elaboration of justice developed, and its necessary legal articulation.[10]

Furthermore, it is not by chance that a complex and theoretical discussion about the notion of "good" appears in *Nichomachean Ethics*.[11] Hence, in the light of the close relation "ethics–politics" notoriously theorized by Aristotle,[12] the discussion concerning the notion of ἀγαθός, logically implied by the moral discourse, has a direct reflex on politics.

Beyond the pair φιλία–κοινωνία, and the reflection concerning the idea of justice, we should also discuss other fundamental aspects of the complex Aristotelian position, which is strictly related to the concrete and historical–sociological articulation of the nexus "ἀγαθός–political dimension (πολιτεία–κοινωνία)". In fact, the Stagirite's concept of "common good" implies many paramount conceptual pairs (in particular: "κοινωνία–λόγος", "κοινωνία–οἰκονομία" "κοινωνία–δίκη", "κοινωνία–εὐδαιμονία" and "κοινωνία–παιδεία"[13]) which highlight the various dimensions of the nexus "*bonum commune* (collective sense)–political dimension".

Here I cannot analyze in greater detail these articulations. Anyway the point is that *all* these dimensions are necessary articulations of the "common good": in other words, this latter is represented by the reciprocal relation which, starting from

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10   Aristotle: *The Nicomachean Ethics,* V, 7, 1134b 24–1135a 6 [Aristotle (2009) op. cit. 91–93.]. For this point Liesbeth Huppes-Cluysenaer – Nuno M. M. S. Coelho (eds.): *Aristotle and the Philosophy of Law: Theory, Practice and Justice.* Dordrecht et al., Springer, 2013.; Fred D. Miller: *Nature, Justice, and Rights in Aristotle's Politics.* New York, Oxford University Press, 1995.; Gianfranceso Zanetti: *La nozione di giustizia in Aristotele.* Bologna, il Mulino, 1993.

11   See, for instance, Aristotle: *The Nicomachean Ethics,* I, 1, 1094 a 1–18 and ff. [Aristotle (2009) op. cit. 3.].

12   Aristotle: *The Nicomachean Ethics,* I, 1,1094a 1–18; I, 2, 1094a 18-1094b 11 [Aristotle (2009) op. cit. 3–4.].

13   With regards to these dimensions see, for instance, the following references: a) for the pair "κοινωνία–λόγος" Aristotle: *Politics,* I, 2, 1253a 7–18 [Aristotle (1995–1997) op. cit. I. 3] and, broadly, *De Interpretatione;* b) for the pair "κοινωνία–οἰκονομία" Aristotle: *Politics* I, 8 [Aristotle (1995–1997) op. cit. I. 10–12.] and Aristotle: *The Nicomachean Ethics,* V, 5 [Aristotle (2009) op. cit. 88–91.]; c) for the pair "κοινωνία–δίκη" Aristotle: *Politics* III, 9, 1280b 6–13; III, 13 1283b 42 [Aristotle (1995–1997) op. cit. II. 29. and 45.]; Aristotle: *The Nicomachean Ethics,* II, 6, 1106a 14–24; V, 1, 1129a 32–1129b 19; V, 5, 1134a 27–1134b 18; VI, 11, 1143 a 19–1143b 16 [Aristotle (2009) op. cit. 29., 81., 90–91. and 113–114.]; d) for the pair "κοινωνία–εὐδαιμονία" Aristotle: *The Nicomachean Ethics,* I, 4, 1095a 14–20; I, 7, 1097a 30–1097b 11 [Aristotle (2009) op. cit. 4. and 10–11.]; e) for the pair "κοινωνία–παιδεία" Aristotle: *Politics,* VIII (in particular VIII, 1, 1337a 11–22) [Aristotle (1995-1997) op. cit. 35.]. For a critical survey concerning these relations Bombelli (2013) op. cit. notably 275 and ff.

different perspectives, develops on every level of community. But I will return later on the notion of community and on the relation "common good–community".

Apart from other decisive rethinking of the classical notion of *koinonia* (with particular reference to the rich notion of *civitas* in Augustine[14]), from a theoretical point of view the thomistic position represents another milestone for many reasons related to the Aristotelian perspective.[15] In fact, the Aquinas also establishes a close conceptual nexus between *"bonum commune–communitas"* (i.e. *civitas*). Here we can only consider some aspects of his argumentation with reference to relevant passages proposed in *Summa Theologiae*, I–II (*quaestiones* 90–92).

As is well known, and unlike Aristotle, in q. 90 Aquinas expressly and immediately establishes by the logical circle *"lex–bonum commune–communitas"* the conceptual relation between *bonum commune*, rooted within the *communitas*, and law (or also: between communitarian anthropology and legal dimension).

So, for instance, in the *quaestio* 90, entitled *De essentia legis*, Aquinas plainly states:

> "[C]um omnis pars ordinetur ad totum sicut imperfectum ad perfectum; unus autem homo est pars communitatis perfectae, necesse est quod lex proprie respiciat ordinem ad felicitatem communem. […] Unde oportet quod, cum lex maxime dicatur secundum ordinem ad bonum commune, quodcumque aliud praeceptum de particulari opere non habeat rationem legis nisi secundum ordinem ad bonum commune. Et ideo omnis lex ad bonum commune ordinatur."[16]

In addition:

> "[Lex]proprie, primo et principaliter respicit ordinem ad bonum commune."[17]

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[14]   For instance: "Aliud civitas non est quam concors hominum multitudo" (*De Civitate Dei*, I, 15; see also Ep. 155,3,9; PL., XXXIII, 670); "Civitas nihil aliud est quam hominum multitudo aliquo societatis vinculo coligata" (*De Civitate Dei*, XV, 8); "Quid enim est respublica nisi res populi? Res ergo communis, res utique civitatis. Quid est autem civitatis nisi multudo hominum in quoddam vinculum redacta concordiae?" (Ep. 138, 2, 10; PL., XXXIII, 529).

[15]   Jaime Vélez Sáenz: *The Doctrine of the Common Good of Civil Society in the Works of St. Thomas Aquinas*. Edwards Brothers, Ann Arbor, 1951. According to the author, "the question of the common good of civil society was never developed or discussed in a systematic manner by Saint Thomas, but the theses which he expounded in relation to it, while treating other subjects, can be summarized in a doctrinal body, which could be regarded as the «theory of the common good» of Saint Thomas" (III: see also 1–2., for a synthesis and the crucial role played by the notion of *communitas perfecta* and its thomistic references, and 92–94.). With regards to the relation Aristotle-Thomas Aquinas see the chapter 1 *The Specificity of the Common Good of Political Society* (pp. 3–33.), especially 5 and 23 for the theoretical pairs *polis-civitas* and *politeia-ordo relationis*.

[16]   Q. 90, a. 2 (I quote from S. Tommaso d'Aquino: *La Somma Teologica*. Bologna, Edizioni Studio Domenicano, 1985. vol. 12.)

[17]   Q. 90, a.3 (D'Aquino (1985) op. cit. 37.).

And furthermore:

> "[Lex] nihil est aliud quam quaedam rationis ordinatio ad bonum commune, ab eo qui curam communitatis habet, promulgata."[18]

Hence the consequent legal articulation of the nexus *"bonum commune–communitas"* and, notably, the clarification of its theological horizon:

> "[N[ihil est aliud lex quam quoddam dictamen practicae rationis in principe qui gubernat aliquam communitatem perfectam.[...] Manifestum est autem, supposito quod mundus divina providentia regatur, ut in *Primo* [q. 22, aa. 1,2] habitum est, quod tota communitas universi gubernatur ratione divina."[19]

And again on this conceptual passage:

> "Si enim intentio ferentis legem tendat in rerum bonum, quod est bonum commune secundum iustitiam divinam regulatum, sequitur quod per legem homines fiant boni simpliciter."[20]

As just observed, on a historical and theoretical level Thomas' look represented a relevant model of *bonum commune* playing a crucial role in the medieval period. I will just focus on two elements: the theological horizon and the circle "*bonum commune* – community (*civitas*) – politics".

Firstly, once again we have to notice the close conceptual nexus *bonum commune-communitas* (i.e. *civitas*). Although the category *communitas–civitas* represents a peculiar philosophical–legal notion, according to the classical and Aristotelian concept of *koinonia*, the relation *bonum commune–communitas* is reshaped by Thomas within the new theological horizon. In other words, the political community, including its decisive legal and institutional articulations, is founded on the horizon (*ordo*) represented by a sort of divine *bonum commune* guaranteeing the entire reality, because "tota communitas universi gubernatur ratione divina". Though placed on two distinct levels, *bonum commune* and theological legitimization are strictly related and the first one installs its theoretical structure in a theological perspective.

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[18]   Q. 90, a. 4 (D'Aquino (1985) op. cit. 41.). See also the familiar metaphor used by Aquinas: "[S]icut homo est pars domus, ita domus est pars civitatis, civitas autem est communitas perfecta. [...] Et ideo sicut bonum unius hominis non est ultimus finis, sed ordinatur ad commune bonum; ita etiam et bonum unius domus ordinatur ad bonum unius civitatis, quae est communitas perfecta. Unde ille qui gubernat aliquam familiam, potest quidem facere aliqua praecepta vel statuta; non tamen quae proprie habeant rationem legis": Q. 90, a. 3 (D'Aquino (1985) op. cit. 39.). For the relation "lex-order" *(bonum commune)* Paolo Grossi: *L'ordine giuridico medievale.* Roma–Bari, Laterza, 1995. 139–142.

[19]   Q. 91, a. 1 (D'Aquino (1985) op. cit. 43.).

[20]   Q. 92, a. 1 (D'Aquino (1985) op. cit. 65.).

Secondly, Thomas also traces, similarly to the Greeks, a theoretical circle "*bonum commune*–community (*civitas*)–politics". In other words, sixteen centuries after Aristotle the western philosophical–legal tradition cannot renounce to set up a conceptual link between "common good" and politics. This implies that the political, and legal, dimensions are not the mere combination of social–pragmatic relations: on the contrary, politics and law are thinkable only starting from a *conceptual/cognitive perspective*: no "common good", no politics.[21]

This is the decisive point.

The concept of *bonum*, along the lines of the different but similar models elaborated by Aristotle, Thomas and so on, seems to be a *cognitive* qualification. In other words: somehow a *cognitive* dimension *is always implied* into the qualification or conceptualization of world and society. Furthermore we should notice that this qualification is not to be understood (at least primarily) in an ontological way, that is to say the conceptual profile traditionally underlined. Contrarily, it reflects an *anthropological–cognitive* view: the point is that human beings necessarily *qualify* things and actions *as good* (or, also and better, *more and less* "good").

b) This *cognitive* approach should not be confused with other theoretical perspectives. More precisely, the concept of *bonum* (similarly to many other value qualifications: "just", "beauty" and so on) should not be identified with other legitimate, but radically different, conceptual horizons. In particular, we have to distinguish accurately what we have called "anthropological–cognitive view" from the sociological outlook, the analytical (positivist) position and the mentalist approach.

Firstly the sociological point of view should be well distinguished from philosophy or, using my lexicon, from cognitive anthropology. On a methodological level the difference between the two theoretical perspectives is clear: sociology pursues only *statistical* generalizations, whereas cognitive anthropology takes into account *value* qualifications. Or similarly: sociology considers "facts", the anthropological-philosophical approach elaborates *qualifications*. That's the reason why sociological research, necessarily based on *quantifications*, is insufficient and unable to understand the horizon of meaning implied by the concept of *bonum*.

But, in order to understand the inescapable theoretical horizon implied by the notion of *bonum*, the analytical (i.e. linguistic) perspective should be refused too. In fact, the notion of *bonum* seems not to be reduced to the linguistic level or to a mere *Sprachspiel*, according to the "linguistic game" proposed by Ludwig Wittgenstein:[22] once again, the conceptualization of *bonum* implies a *cognitive* qualification and not merely a linguistic game or also, in a different perspective, the description of a *Sachverhalt* (according to the so-called "first" Wittgenstein). In other words, *bonum*

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[21]   Vᴇ́ʟᴇᴢ Sᴀ́ᴇɴᴢ (1951) op. cit. chapter 2 (*The Content of the Common Good*, 34–66., including the relevant reference to the *De Regimine Principum*) and chapter 3 (*The Primacy of Common Good over Private Good*, 67–91.). Furthermore, see also, for instance, Franco Tᴏᴅᴇsᴄᴀɴ: Bene comune e beatitudine: da Tommaso d'Aquino a Hobbes. In: Bᴏᴛᴛᴜʀɪ–Cᴀᴍᴘᴏᴅᴏɴɪᴄᴏ (2014) op. cit. 3–19.

[22]   Ludwig Wɪᴛᴛɢᴇɴsᴛᴇɪɴ: *Ricerche filosofiche*. Torino, Einaudi, 1999. (Oxford, 1953) 13.

is not only a correspondence between a linguistic proposition and reality, but rather a *qualification* of the world.

Finally, there is also a great distance between the anthropological-cognitive approach and the mentalist perspective.[23]

Mentalism stresses the "mental factor" underlying the social and legal qualifications, including complex categories as the notion of *bonum*. In a very simple manner, the mentalist approach attributes a crucial role to the psychological state of the epistemic agent (individual or collective one): according to this outlook the meaning of *bonum* is to be understood as a sort of *fiction* (or *construal*) of the speaker's mental activity. In other words, it is the "product" of a mental (and individual) representation, somehow shared within a social context but not necessarily neither primarily related to an *objective* (or ontological) description of the world nor to a metaphysical realism.

Quite on the contrary, according to the anthropological–cognitive perspective in some way the "social actor" (every social actor and in spite of his peculiar cultural context) pragmatically "wants" to qualify *in a objective, although formal, manner* the reality in order to reach the point of a *true* statement about the world and society. Along this line, the cognitive dimension implies at least an ontological commitment by the speaker: *bonum* is the result of an interpretation of the world which is considered as respondent to the truth and not merely as a fictional (or functional) mental construction.[24]

1.2. *Commune*

With regards to the second term included within the expression *bonum commune*, i.e. the notion of *commune*, I mainly focus on two elements.

Firstly, from an anthropological–cognitive view the notion of *commune* has an *objective, although formal,* nature too.

More precisely, and similarly to the notion of *bonum*, the concept of *commune* represents another and complementary *cognitive* qualification. In fact, on a conceptual level it lies at an upper stage compared to the social and concrete experience: that is to say, using the category of *commune* we somehow *qualify* the complex and disordered amalgam produced by the infinite and indefinite number of social relations *as a unity*. Furthermore, this was always the same perspective developed throughout the

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[23] Regarding this perspective see, for instance, Jerry A. Fodor: *The Language of Thought*. Hassocks, The Harvest Press, 1976 (especially the Introduction focused on the discussion of two kinds of reductionism, logical behaviorism and physiological reductionism, with the goal "to discuss some aspects of the theory of mental processes", 1.; see also the conclusions 197–205.); within the critical debate, at least Hilary W. Putnam: *Philosophical Papers*. Cambridge, Cambridge University Press, 1980.

[24] From this point of view the anthropological-cognitive approach is different with respect to some contemporary theories based on a "social ontology": John R. Searle: *The Construction of Social Reality*. New York, Free Press, 1995.; Id.: *Intentionality. An Essay in the Philosophy of Mind*. Cambridge, Cambridge University Press, 1983. On the opposite, a cognitive-formal approach to the notion of "common good" presents some analogies with the medieval doctrine of intentionality.

entire western tradition: as observed above, since from Aristotle the western political thought conceived politics and law as dimensions grounded on the pair "good (i.e. sense)–collective horizon". In other words: from a methodological point of view we can elaborate a collective *sense*, or a model of *bonum*, once it is provided the preliminary condition to conceive the social relations *as a unity*.

But, on a second level and once again in a similar manner to the concept of *bonum*, the category of *commune* is to be consequently distinguished from other theoretical outlooks. In particular, the anthropological–cognitive interpretation of the concept of *commune* should not be confused with some recent sociological positions or with an economic perspective.

Commune, at any rate according to its traditional meaning, does not correspond to the so-called "shared cooperative theory" (SCT).[25] Starting from a sociological approach, this orientation highlights the cooperative, but ultimately conventional, nature of the agreements underlying the social contexts. From this point of view, the cooperation, according to the game theory, surely represents a "common" social practice[26] and, then, a condition (or a pre-condition) for social life. Nevertheless, because of its shared basement, in some way SCT appears only the product of an implicit and contingent convergence between individual and voluntary choices and, hence, it is always revocable.

Quite on the contrary, the traditional concept of *commune*, including the crucial notion of "practice" as it was elaborated since the Greek context, implies a "common belonging". That is to say that a priority to the notion of *commune* is recognized: insofar it precedes the individuals it is undeniable and fundamental.

But the cognitive profile of the notion of *commune* should also not be confused with the pragmatic/transcendental perspectives (with particular reference to Jürgen Habermas[27]). Starting from a pragmatic interpretation of the human relations, these ones are categorized as "intersubjective horizons" and essentially based on the linguistic dimension: in other words, according to this orientation language plays a crucial role as a sort of "common" mediator.

The concept of *kommunikative Handeln* proposed by Habermas (and similarly by Karl Otto Apel) is paradigmatic. For the German philosopher the linguistic dimension represents in a pragmatic manner, that is to say especially and primarily meant *as a* social "fact", the transcendental condition of possibility of the human relations. In other words: for Habermas the "common" in some way is produced by the mere *fact* (*Handeln*) of communication, or better by the linguistic social agency, wherein language is at the same time a *transcendental* condition: language *is* the (social) common. Ultimately, according to the Habermasian view the concept

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[25]   Michael E. BRATMAN: Shared Cooperative Activity. *The Philosophical Review,* 101, 2, 1992. 327–341.

[26]   For a famous example see Margaret GILBERT: Walking Together: A Paradigmatic Social Phenomenon. In Peter A. FRENCH – Theodor E. UHELING – Howard K. WETTSTEIN (eds.): *Midwest Studies in Philosophy. The Philosophy of the Human Sciences* (v. 15). Notre Dame IN, University of Notre Dame Press, 1990. 1–14.

[27]   Jürgen HABERMAS: *Theorie des Kommunikativen Handelns*. Frankfurt a. M., Suhrkamp, 1987.

of "common" corresponds to, or it is strictly implied by, the linguistic dimension, both as a fact and as a transcendental condition in a neo-Kantian perspective. Unlike the anthropological outlook (and *lato sensu* the western tradition), the pragmatic–transcendental perspective implies that the social (or political, institutional) concept of common does not represent a *cognitive statement* concerning the human dimension, neither a (possible) ontological position.

A cognitive, or anthropological, interpretation of the notion of *commune* implies (similarly to what just observed with regards to the concept of *bonum*) a direct reference to the dimension of intentionality. Furthermore, the conceptualization of the social bond and of the political obligation *as a unity* or *as a whole*, logically underlying the notion of *commune*, elicits to some extent the presence and the possibility of *a* "common meaning" (a *minimum* meaning) and, then, of a sort of collective intentionality.

But, once again, this view should not be confused with other similar and recent reintroductions of intentionality. I think, in particular, to some models elaborated within the Anglophone area[28] and, more generally, starting from a sociological approach along the lines of different looks.[29] All these models refer to a "common" cultural platform in order to understand the social contexts, but, more closely, they share a mentalist and, partially, pragmatic horizon. In the light of these premises, strongly conditioned by Anglophone categories, the above mentioned reintroductions of the idea of intentionality appears to be just a superficial and functional rethinking of the same concept: in particular, these attempts appear very simplified if compared, for instance, to the complex and rich rethinking of the notion of intentionality proposed in the last century by Edmund Husserl.

In this direction the *cognitive* dimension implied by the concept of *commune* (according to its just clarified meaning), at first glance presents some analogies with the symbolic dimension and, more precisely, with the notion of "social imaginary": especially I think about the point of view proposed by an author as Cornelius Castoriadis.[30] Nevertheless the difference between the two approaches is clear: in fact, within the latter orientation (*bonum*) *commune* is only a *form of representation* of society without any relation to the classical, and more complex, concept of symbol.[31] In other words, the very thesis based on "social imaginary", in spite of being critical of the metanarratives, does appear in some way post-modern and tends to understand the concept of *commune* (and maybe also the notion of *bonum*) as a metanarrative.

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[28]   For instance Margaret Gilbert : *On Social Facts.* London, Routledge, 1989. In a wider look G. Meggle (ed.): *Social Facts and Collective Intentionality.* London, Fouque London Publishing, 2002.; but see also the previous footnotes number 24 and 25.

[29]   For instance Michael E. Bratman: *Faces of Intention. Selected Essays of Intention and Agency.* Cambridge, Cambridge University Press, 1999.

[30]   Cornelius Castoriadis: *L'Institution imaginaire de la sociétè.* Paris, Seuil, 1975.

[31]   With regards to the relevance of the symbolic dimension in order to understand the "social constructions" P. Legendre: *De la société comme texte. Linéaments d'une anthropologie dogmatique.* Paris, Fayard, 2001.

Finally, the concept of "common" elaborated from an anthropological and cognitive point of view should be distinguished from the economic notion of "interest", at least according to the classical economics (maybe with the exception of some excerpts in Adam Smith and with reference to a part of the Austrian School).

In an economic way of thinking, the "(common) interest", that is to say the individual interest shared by every member of society, is structurally and exclusively connected to the problem of allocation, based on mutual trade and transaction and concerning an "utility" in order to reach the better settlement of society (or its optimization according to Pareto's theory). In an opposite direction, the traditional notion of *commune*, including the economic dimension (i.e. the role of the οἰκονομία in Aristotle[32]), encompasses the problem of the very sense of social life: to summarize, if the model of modern economics concerns the "common interest" considered as the sum of the individual goals, the anthropological–cognitive notion of *commune* (inspired by the classical tradition) has regard to the society as a whole or, better, as a community.

The last remark highlights the structural relation between the concept of "common" (*commune*) and community, along a notorious, but sometimes very simplified and questionable, identification or equation "community (contextual dimension)=common". I will return hereinafter on this point, especially by distinguishing the cognitive perspective about *commune* (and broadly *bonum commune*) from the communitarian one.

To sum up the remarks hitherto proposed, once again we should emphasize the crucial role played by an anthropological–cognitive overview. It lies on an *objective* (anthropological, structural) disposition (confirmed by some elements belonging to the historical western tradition) in order to qualify the social life according to a universal dimension, which is *positively* defined *as a bonum commune*.[33] This seems an unquestionable anchorage, in some way also from an utilitarian outlook: in fact, if you look closely, the conceptualization of the "utility" is a form of theorization or generalization of the common good along the lines of the equation "utility=good".

2. *Bonum commune* and law: a philosophical–legal survey

On a philosophical–legal level the previous remarks allow us to deepen some articulations of the category of *bonum commune* or, symmetrically, of the distinct notions of *bonum* and *commune*. Law represents the necessary and inescapable articulation of *bonum commune*: as western tradition teaches, *bonum commune* is not an abstract ideal or theory, but a concrete historical experience wherein law represents a structural dimension.

From this point of view, I will try to outline a brief philosophical-legal survey in order to propose a possible classification of "legal goods". The analysis is based on a sort of *climax*, or a logical *continuum*, by distinguishing at least three dimensions or

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[32]   See also what has just been observed above.

[33]   Regarding the concept of "common" as a third dimension, or as a "new public space", see Daniel Innerarity: *Il nuovo spazio pubblico*. Roma, Meltemi, 2008.

levels: a) legal conceptualization (in a strict acceptance), particularly related to the notions of "common good" and "public good"; b) political/institutional level, based on the concept of "general (collective) goods"; c) international and transnational level, which involves the notions of "human rights" and "fundamental rights".

a) Law and the concept of *bonum,* as a *qualifying* category, are historically and theoretically implied with each other. As is well known, at least by the roman experience the notion of *bonum* (good) represents a typical legal qualification, in relation both to the definition of law (*jus*) and to some decisive theoretical categories as, for instance, the notion of *bona fides*.[34]

The relation "law–*bonum*" can be articulated at least on a double level, in particular with the conceptual pair "private"–"public" strictly related to the modern period.

On the level of "private law", we should focus on the difference between the legal notion of "good" and the economic qualification. Although both the legal approach and the economic analysis deal with "goods", their perspectives should be considered in a very different way (similarly to the previous remarks concerning the notion of *commune*). The economic approach generally conceptualizes the "good", especially according to a marginalist view, depending on its possibility of quantification: in other words, as a "utility" grounded in the notions of bargain, trade and, ultimately, within the horizon represented by the market.

In contrast, law, and in particular private law, conceptualizes the notion of "good" in a wider manner, that is to say related to multiple conceptual dimensions and not immediately (or not always necessarily) as an economic utility: for instance, you can think of some personal or subjective/individual dimensions (privacy, honour, respectability, dignity), which are somehow "public", or common, dimensions. That is to say: they are irreducible to mere "utilities" or, more precisely, they are "goods" which are protected by the entire legal order, as well as other relevant "public" dimensions (environment, health and so on). The point is that the legal (better: the private legal) formalization and the economic approach represent very *different conceptual qualifications*. Although law deals with economic utilities, the legal concept of "good" (*bonum iuridicum*) does not correspond to the economic "utility" or to a simple "resource".[35]

On the public level (or public law), the complex and very articulated notion of "common good" is primarily to be understood as *a political (or sociological) category* related to the social context as a whole: in some way, it is what *identifies* a society as its *ethos*. In the light of what has just been observed above about *bonum commune*, the

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[34]   It must be remembered the famous definition of law (*jus*) by Celsus and quoted by Ulpianus: "*[…] [N]am, ut eleganter Celsus definit, ius est ars boni et aequi*" (D. 1, 1, 1). Moreover we should remember that the term *bonum* could derive from the archaic form *duonum* and from the Indo-European "DVE", from which also "deus". With regards to the notion of *bona fides* Luigi Lombardi Vallauri: *Dalla fides alla bona fides*. Milano, Giuffrè, 1961.

[35]   Concerning this aspect, regarding the relation between law and economics, see the complex position elaborated by the Italian scholar Luigi Mengoni. Luigi Mengoni: *Scritti I Metodo e teoria giuridica*. Milano, Giuffrè, 2011. (edited by Carlo Castronovo – Antonio Albanese – Andrea Nicolussi), especially 55–145.

point is represented by the crucial relation between the notion of "common (good)" and the category of "public".

It is not my intention to deepen here the possible, and historically frequent, overlap between "common (good)" and "public good" (as a legal category), which represents a very delicate and complex issue. I want only to highlight a point: although interlaced with each other, nevertheless "common (good)" and "public good" are different categories which belong to distinct conceptual levels: "common" is the category, or the social–cultural basement, by which a society can be considered *as a unity* and, as such, it is a wider notion than the concept of "public" which was frequently and simply identified, at least within the modern period, with the "State-dimension" (but for this distinction see below).

In other words: philosophy and theory of law or, more in general, the legal dimension and what we traditionally call *ius*, cannot renounce to elaborate, although formally, a notion of *bonum* and *bonum commune*: this is a sort of *objective*, or *cognitive*, good.[36]

b) With regards to the political–institutional level we have to take into account what is usually defined as "general (or collective) good". More precisely, it is what can be properly named as a political and institutional "good": grounded in the "common good" (*bonum commune*), this level of "good" should be understood as the articulation of the public "good" *within a particular and historical political system*.

Hence, I propose the following conceptual sequence (without a smooth transition): 1) the "common good" is the basement of society conceived *as a whole*, approximately and broadly corresponding to *ethos* and somehow including different levels (sociology, ethics and so on); 2) the "public good" represents the theoretical model of its legal articulation, that is to say the distinction, at least throughout Modernity, between law and other social dimensions (law–ethics, law–economics and so on); 3) "general (collective) goods" are the further articulation of the "public good".

On this level the question is: *what* are the (general-collective) "goods" *within a specific society*? In theory, according to this perspective both the two terms of the expression *bonum commune* may be conceived in the light of many different and opposing models: from the theological and medieval legitimateness up to, for instance, the communist or democratic horizon.

Now the *cognitive and formal* (and not primarily substantive) *dimension* of "common good" becomes clearer: in other words, it is the necessary (inescapable) horizon or framework whereby a society can outline its legal paradigm.[37] More in detail, here

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[36]   For the theoretical pair "private and public" see, for instance, Jeff Wᴇɪɴᴛʀᴀᴜʙ – Krishan Kᴜᴍᴀʀ (eds.): *Public and Private in Thought and Practice: Perspectives on a Grand Dichotomy.* Chicago, The University of Chicago Press, 1997.

[37]   For this aspect see, paradigmatically, what has just been remarked concerning the Aristotelian notion of *politeia* as a process of formalization of the "common good", notably with respect to the models of constitutions (Aʀɪsᴛᴏᴛʟᴇ: *Politics,* IV, 2, 1289a 26 and ff.; [Aʀɪsᴛᴏᴛʟᴇ (1995–1997) op. cit. II. 70. and ff.]) according to a theoretical perspective which appears very different, from instance, from the

there is the room, and the logical and legal space, for the constitutional processes: constitutions, and more generally the fundamental institutional processes, represent the articulation of the "common good" and of the "public good" suited to a specific society, in the matter of balance of public powers, protection of individual spheres and positions, priority and hierarchy of goods on a constitutional level and so on.

c) Hitherto we have considered the role played by the category *bonum commune* within a limited context, that is to say related to a spatially determined society and historically coinciding with the State. But recently the content of *bonum commune*, more than its precise expression or formula, has been going beyond the State-dimension, extending its relevance also on an international and transnational level, with particular relation to the question of "human rights".

On this level, we might observe in the notion of "human rights" a sort of re-edition of the old concept of *bonum commune*, which now could be defined as *bonum universale*. Precisely, the *transition* is from the category of *commune* to the notion of *universale* and, ultimately, to the concept of "fundamental goods (rights)": in this perspective, "human rights" should be considered as the new, and universal, *bonum commune* of mankind *sub specie* of fundamental rights.

As is well known, "human rights" represent nowadays a sort of cultural *koiné* based on a transnational, though very undetermined and theoretically unexplained, concept of *bonum commune*. From a philosophical–legal point of view, we can try to sketch out, by an historical glance and in a very schematic way, the conceptualization of the notion of 'human right" which is rooted at least in two paradigms: the "traditional" (or classical-modern) look and the contemporary one.[38]

The "classical paradigm", or the first generation of human rights, was a typical product of "traditional" contexts. In particular, it developed within modern societies and, especially, within *western* social models, approximately starting from the beginning of the twentieth century, although based on philosophical premises dating back to the seventeenth century.

In these social contexts it was relatively easy to recognize, on a sociological level, the fundamental subjective rights and, *hence*, "human" rights. In fact, from a theoretical point of view, this identification of human rights seems to be based on an anthropological equation between "subject/legal subject" and "human being", in some way according to Locke's lesson[39] notoriously oriented to the crucial role played by the protection of three original individual spheres: "life", "property", "freedom"[40].

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      modern notion of *Rule of Law*.

[38]   With regards to this point let me quote my work *Human Rights: Pragmatic Utility, Theoretical Approach and Complex Societies*, relation presented to the XXVIth World Congress of Philosophy of Law and Social Philosophy, *Human Rights, Rule of Law and the Contemporary Social Challenges in Complex Societies*, Belo Horizonte (Brazil), 21–26 July, 2013 (forthcoming).

[39]   John Locke: *Two Treatises of Government*. Cambridge, Cambridge University Press, 1988. (1690).

[40]   *Ibidem* 285 and ff.

In other words, the modern paradigm provides for a sort of *perfect equivalence* between "individual (subjective) rights" and "human rights": that is to say, a close and direct relation between "(western) citizen (of a State)" and "human being"[41].

The contemporary model of human rights (the second generation), which in some way characterized the western societies in the last century, *extends* both the "list"' of human rights and the *apparatus* of their legal instruments. Due to the crucial role played by the so-called *Welfare State* during the 20th century,[42] the debate focused on a *new* typology of human rights. That's why western societies of the last century were characterized by a great attention to the relevance of some social dimensions: education, labour sphere (principally understood *as a right* to have a job[43]) and individual dignity, particularly for disabled persons.[44]

This cultural turn (or shift), from the classical–modern paradigm to the contemporary model, presents at least two corollaries.

On an anthropological ground a different model of "human being" emerges. Unlike the classical–modern framework, somehow rooted in an abstract or formal typology of "subject", the *new* human rights focus on a more "dynamic" and complex notion of "human being", which is to be understood in the light of *all its historical articulations and social differences*. But, at the same time, we can also recognize a legal–philosophical corollary. This new look has symmetrically produced an increasingly greater amount (for number and relevance) of new legal instruments (Charters, Declarations, Constitutions, *et cetera*) and, in particular, it has stressed the more and more decisive role played by the international Courts in order to identify and protect human rights.[45]

It is also to be noticed the above mentioned and decisive transition from the notion of "human rights" to the locution of "fundamental rights", according to the suggestion proposed by some contemporary authors.[46] In this way it is possible to bypass some theoretical questions underlying the traditional doctrine of human

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[41]   Regarding this point see the *Declaration of the Rights of Man and of the Citizen* (1789) and the *Universal Declarations of Human Rights* (1948), and furthermore many other Charters or documents drafted throughout the twentieth century (for instance the so-called "Helsinki accords" dating back to 1975).

[42]   With regards to this point see, for instance, the entire work developed at the *Centre on Rights Development* of the University of Denver.

[43]   Clarence W. Jenks: *Human Rights and International Labour Standards*. London–New York, Stevens & Sons – Frederick A. Praeger, 1960. But I mention also the text of the Italian Constitution, art. 1.

[44]   Theresia Degener – Yolan Koster Dreese (eds.): *Human Rights and Disabled Persons: Essays and Relevant Human Rights Instruments*. Dordrecht, Nijhoff, 1995.; Ana Paula Barbosa-Fohrmann: *Human Dignity in the Moral Discourse of Social Justice for People with Mental and Cognitive Disabilities*, relation presented to the XXVIth World Congress of Philosophy of Law and Social Philosophy, *Human Rights, Rule of Law and the Contemporary Social Challenges in Complex Societies*, Belo Horizonte (Brazil), 21–26 July, 2013 (forthcoming).

[45]   Joseph Wronka: *Human Rights and Social Policy in the 21st Century: a History of the Idea of Human Rights and Comparison of the United Nations Universal Declaration of Human Rights with United States Federal and State Constitutions*. Lanham, University Press of America, 1992.

[46]   Robert Alexy: *Theorie der Grundrechte*. Baden-Baden, Nomos, 1985.

rights (especially related to their western conceptual horizon): in other words, the category of "fundamental rights" should be conceived as a sort of *bonum commune universale* in order to create the cultural room for the social identifiability, and then the legal protection, of a wider paradigm of human rights. We may, for instance, think about the fundamental human right to access to natural resources (water, air and so on), particularly for people belonging to the so-called Third world, or about the new question concerning the access to new technologies.

Apart from some relevant questions raised by this orientation,[47] the point is as follows: can we consider this wider model of human rights as a new edition of the concept of *bonum commune*, in its turn based on a sort of new "natural law" whose pivotal idea are the fundamental rights? The question is very complex because it belongs to a more general historical and cultural framework, which is related to the (apparent and discussed) renaissance of natural law throughout the twentieth century, at least dating back to the so-called "Nuremberg principles" (Resolution of the United Nations 95/I 1946) and other subsequent documents (the just mentioned "Helsinki accords").

To sum up, the possible interpretation of the doctrine of fundamental rights in the light of a new natural law may allow us to draw, along the lines of the scheme previously proposed, this new following conceptual sequence concerning the theoretical and legal articulations of *bonum commune*: "common good", "public good", "general (collective) good" and "fundamental good" (understood as a reinterpretation of *bonum commune* in the light of the doctrine of fundamental rights).

Nevertheless a final point is to be underlined.

Although being used as a theoretical scheme in order to interpret human rights, the notion of *bonum commune* not only maintains its *cognitive* and *formal* dimension (i.e.: the problems concerning the concrete determination of the number and the extension of "human rights"), but it should be conceptualized according to a modern or, better, postmodern paradigm. In other words, within the contemporary sceneries the reinterpretation of *bonum commune* here suggested, and more widely the ancient and classical doctrine of *bonum commune* (which generally flourished within a well-structured society: for instance the medieval period), have to face some crucial cultural transitions.

3. Changes and challenges

The last remarks introduce us to the decisive question: can we still talk about *bonum commune*? How can we discuss this ancient expression according to the suggested approach, that is to say *bonum commune* as an anthropological dimension and a *cognitive-formal* understanding of society and law? In other words: what is nowadays *bonum commune*?

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[47]   In this contribution I cannot consider some questions concerning this model of human rights and related, for instance, to the possibility of their extension to collective subjects and the definition of their "number".

The point is that, from a sociological and cultural point of view, contemporary contexts are characterized by unknown and hardly foreseeable changes and challenges: in particular, changes *involving* (or *implying*) challenges. I would like to highlight some current and decisive questions *bonum commune* has to face both on the cultural–philosophical level and in the light of the current economic crisis and, finally, with regards to the sociological context. In the conclusive paragraph I will try to put forward some elements and reasons in order to provide a possible answer to the previous questions.

From a philosophical point of view we have to put in question, in particular, the typical relation (or circle) between the concept of *bonum commune* and the notions of "tradition" and "community" developed within the western thought. More precisely, I focus on a contemporary theoretical perspective which is fundamentally based on the substantial identification "tradition–community" and, hence, on the crucial role played by the pair "common good–community": the communitarian movement.[48]

In a very broad manner communitarianism emphasizes a model of society based on the historical–social context. This model is explicitly grounded on a communitarian horizon and rooted in the theoretical sequence "(common) good–community–tradition", which is ultimately related to a narrative background. We can consider paradigmatically an author as Alasdair MacIntyre who, for many reasons, synthesizes the communitarian orientation. Starting from Aristotelian and Thomistic premises, the Scottish philosopher in some way identifies and superimposes the concept of "tradition", "community" and "common good".

So, for instance, MacIntyre states:

> "Traditions, when vital, embody continuities of conflict. […] A living tradition then is an historically extended, socially embodied argument, and an argument precisely in part about the goods which constitute that tradition. Within a tradition the pursuit of goods extends through generations, sometimes through many generations. Hence the individual's search for his or her good is generally and characteristically conducted within a context defined by those traditions of which the individual's life is a part, and this is true both of

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[48] With regards to this philosophical-legal look see, for instance, the following references: Elizabeth Fʀᴀᴢᴇʀ: *The Problems of Communitarian Politics*. Oxford, Oxford University Press, 1999.; Henry Tᴀᴍ: *Communitarianism. A New Agenda for Politics and Citizenship*. London, MacMillan, 1998.; Derek L. Pʜɪʟʟɪᴘs: *Looking Backward: A Critical Appraisal of Communitarian Thought*. Princeton, Princeton University Press, 1993.; Shlomo Aᴠɪɴᴇʀɪ – Avner Dᴇ Sʜᴀʟɪᴛ (eds.): *Communitarianism and Individualism*. Oxford, Oxford University Press, 1992.; Axel Hᴏɴɴᴇᴛʜ (hrsg. von): *Kommunitarismus: eine Debatte über die moralischen Grundlagen moderner Gesellschaften*. Frankfurt am Main–New York, Campus, 1992.; Stephen Mᴜʟʜᴀʟʟ – Adam Sᴡɪꜰᴛ: *Liberals and communitarianism*. Oxford, Basil Blackwell, 1992.; Robert Bᴏᴏᴛʜ Fᴏᴡʟᴇʀ: *The Dance with Community. The Contemporary Debate in American Political Thought*. Lawrence, University Press of Kansas, 1991.; Franco Rᴇsᴛᴀɪɴᴏ: *Filosofia e postfilosofia in America. Rorty, Bernstein. MacIntyre*. Milano, Franco Angeli, 1990.

those goods which are internal to practices and of the goods of a single life. Once again the narrative phenomenon of embedding is crucial: the history of a practice in our time is generally and characteristically embedded in and made intelligible in terms of the larger and longer history of the tradition through which the practice in its present form was conveyed to us; the history of each of our own lives is generally and characteristically embedded in and made intelligible in terms of the larger and longer histories of a number of traditions. I have to say «generally and characteristically» rather than «always», for traditions decay, disintegrate and disappear".[49]

Similarly, and to completion of this position, the definitions of "virtue" and "practice" proposed by the Scottish philosopher:

"*A virtue is an acquired human quality the possession and exercise of which tends to enable us to achieve those goods which are internal to practices and the lack of which effectively prevents us from achieving any such goods.*"[50]

In MacIntyre's position we synthetically grasp the typical communitarian, and *lato sensu* western, equation "tradition = community = good". Nevertheless this perspective lays itself open to some criticisms and at least for two reasons: both on a methodological and on a conceptual level.

From a methodological outlook the *communitarian* notion of *community* seems very questionable. On the one hand, particularly but not exclusively in MacIntyre, it is strictly related to the categories elaborated by the Anglophone sociological and philosophical tradition, on the other hand communitarians never provide a precise, that is to say intentionally as well as extensionally, definition of the dimension of community. Community is identified by many expressions or locutions somehow related, and in a generic manner, to the semantic area based on the concept of community: *community, intersubjective dimension, shared meanings, national identity.*

From this point of view the communitarian orientation, from Charles Taylor up to Michael Sandel and Michael Walzer[51] (obviously with different degrees), are inclined to simplify the complex western model of community dating back to the classical concepts of *koinonia*, *civitas*, and so on. In particular, the tendency of communitarians to intersect different ambits (especially ethics and law) is to be understood within a wider look, because the question involves the delicate, and radical, relation between

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49   Alasdair MacIntyre: *After Virtue: a Study in Moral Theory.* London, Duckworth, 1987². 222.

50   *Ibidem* 191 (emphasis in the text).

51   Charles Taylor: *Sources of the Self: The Making of the Modern Identity.* Cambridge MA, Harvard University Press, 1989.; Michael J. Sandel: *Liberalism and the Limits of Justice.* Cambridge MA, Cambridge University Press,1982.; Michael Walzer: *Spheres of Justice: a Defense of Pluralism and Equality.* Oxford, Basil Blackwell, 1983.

"theory" and "praxis": in other words, the communitarian approach (and especially MacIntyre) tends to superimpose conceptual levels and pragmatic dimensions so as to identify *immediately* the community with the historical or contextual horizon.

On the theoretical level the methodological *impasse* is strictly related to (and directly influences) some crucial notions. The problems involve every level of the communitarian argumentation: the concept of "community", fluctuating between "contextual (historical) reference" and "prescriptive (normative) level" (or again: the real-historical community and the ideal community); the model of practical reasoning, grounded in the substantial identification of reason and history and based on the problematic notion of "narrative" (order) and, finally, the model of justice.[52] The latter aspect seems very relevant with regard to the concept of *bonum commune*: in fact, communitarians rethink the ancient relation "common good–justice" elaborated by Aristotle and Thomas in the light of their particular interpretation of community, so that there is a sort of overlapping between the communitarian dimension and justice. That's why the concept of "just" is always somehow absorbed within the community and there is no room for the notion of "conflict".

In other words, the entire conceptual communitarian paradigm is put in question.

Starting from a wider look, the doubts involve not only the basic sequence "'community–*bonum commune*" or, with particular reference to MacIntyre, the sequence "practice"–"narrative order"–"moral tradition", but also the conceptual premises and the cultural categories underlying this model as the sociological homogeneity and the horizon of "history". Unlike within the classical world, as well as in the Middle Ages, wherein it was relatively easy to elaborate *bonum commune* starting from the shared conceptual horizons and the political–sociological universe, nowadays all these theoretical and historical coordinates are put in question.

But, beyond the philosophical perspective, the traditional paradigm of *bonum commune* is also to be rethought in the light of the current economic crisis and, more widely, of the so-called globalization.[53] In spite of a certain economic *vulgata*, spread out especially in the Nineties of the last century[54] and based on a sort of rough liberalism or libertarianism, the recent social–economic transformations have highlighted that *bonum commune* does not coincide merely with the economic development and growth.

Bonum commune encompasses also the relevance of other dimensions structurally unsusceptible of economic assessment. For instance, we can enumerate the theoretical space for the notion of environment including the problem of its legal protection and the increasing relevance of the "commons" (see also the previous reference to the *new*

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[52]   For this point see especially Alasdair MacIntyre: *Whose Justice? Which Rationality?* Notre Dame IN, University of Notre Dame Press, 1988.

[53]   Zygmunt Bauman: *Globalization: The Human Consequences*. New York, Columbia University Press, 1998.

[54]   Francis Fukuyama: *The End of History and the Last Man*. New York, Free Press, 1992.

human rights[55]), the central role played by new models of responsibility,[56] the more and more decisive issue concerning balanced relations between countries *et cetera*.

Hence the relevance of some recent proposals concerning a possible, and alternative, economic model, that is to say a model of economics rooted in the concept of "common good" and contrasting the contractual logic underlying the liberal model. I mention, in particular, the current model of *civil economy*, recently developed by some Italian scholars[57] and inspired by the Italian economic tradition elaborated throughout the 17th and 18th century (but dating back to the classical-eudaimonic framework), whose pivotal idea is the strict connection between economy and other social and anthropological dimensions as community and mutual relations.

This perspective allows us to reconsider some basic economic categories expressively in the light of *bonum commune* as, just for instance, the crucial idea of "corporate". As is well known, the classical debate is divided between two antithetical positions: the German/continental model of corporate *as a social (public) institution* (or *Unternehmen an sich*, according to Walther Rathenau's theory), and hence including the reference to the horizon of *bonum commune* and, on the opposite side, the British/American tradition, rooted in a model of corporate *as a nexus of contracts*.[58] In other words, the decisive point lays in the necessity to unify the sociological level and the anthropological one, that is to say individual dimension and collective horizon or, in other words, the economic *praxis* and the common social sense, once again according to the best western tradition concerning the doctrine of *bonum commune*.

Finally, the philosophical and economic mutations are strictly related to another decisive aspect: the "multicultural question". It represents a structural change and a great challenge for democratic systems, involving a progressive modification of both the sociological structures and the political institutions. Nevertheless the "multicultural question" does not concern only, neither primarily, the positive and immediate sociological effects (i.e.: familiar models, public order and so on), but it is essentially related to the cultural level, that is to say to the necessary comparison or clash of multiple cultural models (*Weltanschauungen*). In fact, this radically new scenario involves the symmetric diffusion of many models of *bonum commune* (or of

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[55]   Daniel Garcia San José: *Environmental Protection and the European Convention of Human*. Strasbourg, Council of Europe Publishing, 2005; Alan Boyle – Michael R. Anderson (eds.): *Human Rights Approaches to Environmental Protection*. Oxford, Oxford University Press, 1998.

[56]   Hans Jonas: *Das Prinzip Verantwortung: Versuch einer Ethik für die technologische Zivilisation*. Frankfurt am Main, Suhrkamp, 1986.

[57]   Luigino Bruni – Stefano Zamagni (eds.): *Handbook on the Economics of Reciprocity and Social Enterprise*. Cheltenham–Northampton, E. Elgar, 2013; M. A. Lutz (1999) op. cit., *passim*.

[58]   Amelia Bernardo: La "responsabilità sociale" nel governo dell'impresa. In: Bruno Montanari (a cura di): *La possibilità impazzita. Esodo dalla modernità*. Torino, Giappichelli, 2005. 347–379; furthermore Daniel Pinto: *Le choc des capitalismes*. Paris, Odile Jacob, 2013. (concerning the future of capitalism); Michael Walzer: *Toward a Global Civil Society*. Oxford, Berghahn Books, 1998.; see also Jonas (1986) op. cit.

its semantic equivalent in other cultures), each of them developed within a theoretical framework frequently heterogeneous to the traditional western model.

From this point of view a strategy rooted in the "overlapping consensus"[59] in some way simplifies the question, especially in order to elaborate a model of *bonum commune* suited to the current sociological contexts. In particular, we should face this social context by discussing seriously the polarity "multiculturalism"–"interculturalism", trying to explore the possibility to build up not only a multicultural society (i.e. based on a simple puzzle-composition or "puzzle society") but an intercultural social model as a real comparison and interlacing between cultures.

To summarize, at least apparently unknown sociological conditions and new cultural perspectives compose, a very complex framework within which we shall reshape the crucial role of the traditional notion of *bonum commune*.

4. Conclusions: unity, institution and relation

The previous remarks underline the decisive question: is there still a sociological, theoretical, legal space for *bonum commune*? Furthermore, this question should also compare itself with another decisive question represented by the current crisis of the law, which is, since Aristotle, a structural (although sometimes forgotten) dimension of the western theorization of *bonum commune*, involving both its theoretical model (the model of law as a "logical order" or "conceptual system") and its performativity.

Nevertheless, there is still a space for a *new and rethought (and profoundly reshaped) notion of bonum commune*. I put forward some conceptual coordinates at a triple level, between philosophy and law and interlaced with each other, as a sort of theoretical scale or *climax*: *bonum commune* as a *unity*, *bonum commune* as a (political) *institution* and *bonum commune* as a philosophical/anthropological *dimension*.

On a sociological level *bonum commune* is to be understood as a concept of *unity*.

More precisely, by *bonum commune* we indicate the minimum cohesion which is expected to be the formal, and substantial, condition for the existence of society. This is a weak notion of *bonum commune*: in other words, can we renounce to the existence of a social context thinkable *as a society* or as a *unity*? In this direction, for instance the current debate concerning the existence of a "European public (legal, institutional) space" highlights the problems raised by the absence of a shared social-cultural space and, consequently, the difficulty to establish functional political-institutional models.

Hence the relevance, on a political and legal level, of a second possible dimension of *bonum commune*: *bonum commune* as an *institution*.

Starting from the Greek experience, and broadly according to the western philosophical and legal tradition, *bonum commune is always* rooted in a structured society, that is to say in an *institutional* structure and in a legal system. In other words, *bonum commune* cannot be conceived as an abstract dimension: on the contrary, it arises

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59   John Rawls: *Political Liberalism*. New York, Columbia University Press, 1993.

and develops *only within* an aggregated context (πόλις, *civitas* and so on).[60]Along this direction, we should deepen the fundamental role played by the idea of "institution": in fact, more in detail, it is to be understood not only as a political–legal articulation but, even before and in a wider look, as an anthropological dimension.

This latter, especially considered in the light of its strict connections with the previous dimensions, represents the most important level *of bonum commune*.

From the anthropological point of view we have a theoretical circle: *bonum commune* corresponds with the human "relation" and, in a symmetric manner, the "relation" is to be understood as a *common* (or, better, universal) *good*. The elaboration of *bonum commune* concerns both the dimension of meanings, that is to say the common–universal human capacity to elaborate social senses, and in order to their necessary political–legal formalization (i.e. the "common goods") and, consequently, the definition of the legal or political tools to protect them, by now within a multicultural perspective.

In conclusion, to sum up the entire argumentation this triple conceptual scheme concerning the concept of *bonum commune* (sociological level: *bonum commune* as a unity; institutional level: *bonum commune* as an institution; anthropological level: *bonum commune* as a dimension) presents a twofold advantage.

On the one hand, it somehow represents an ideal prosecution or an evolution of the western philosophical–legal heritage, with particular reference to the pair "community–common good".

The Greek κοινωνία, as well as the Roman and later medieval notion of *civitas*, especially if it is understood as a political and legal basis of *bonum commune* (ἀγαθός), concerns not only the multiple and various human relations *within* the *polis* or in an institutionalized context. By the notion of κοινωνία, and more widely by its articulation at a later stage called *bonum commune*, western tradition has also indicated the *necessary* anthropological inclination to elaborate "social meanings" *in a cognitive manner*. In other words, society has never been just an "empty space", wherein trades and bargains take place, but it is the expression of a culturally (i.e. philosophically, theoretically) horizon oriented towards a universal dimension. This is the *bonum commune* or, better, the *commune bonum* (the real "common good") which characterizes our tradition and, maybe, the human being itself.

On the other hand, this possible rethinking of *bonum commune* as an *anthropological-cognitive form or disposition*, but not in a formalist manner, could be still useful to understand the contemporary and complex western societies. Maintaining its theoretical soundness, it appears sufficiently adaptable (or flexible, suited) to our contexts both in order to guarantee a social/cultural unity and to face the current and very different cultural conditions.

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[60] "Communitas et unum quasi corpus humanitatis de singulis curam gerere, velut homo quilibet in suis membris et debet et potest." (*Questiones de iuris subtilitatibus*, V, 7, 47–49): I quote from *Quaestiones de iuris subtilitatibus*. (ed. by Ginevra ZANETTI) Firenze, La Nuova Italia, 1958. 23. With regards to the Aristotelian origin of this work Adriano CAVANNA: *Storia del diritto moderno in Europa. Le fonti e il pensiero giuridico 1.* Milano, Giuffrè, 1982. 40–41.