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"Usi civici": the Italian side of the Commons

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abstract

The Commons represents a topical subject, hugely important for the future: in these last two decades it has become an object of interest for all modern social sciences, and for the public opinion. The current international debate has fallen on a fertile ground also in Italy. In Italy this debate has focused both on the legal definition of the commons and on their historical experience through the centuries.
The present study aims at drawing the attention on the specific reality of the Italian system of common lands, underlying the awareness and the importance of these resources, that still represent one third of the national territory. The social and cultural context, the environmental issue, a system of communities based on solidarity and cooperation are the heterogeneous elements of collective utilization of these natural resources: woods, pastures, forests.
So, what does this concept really mean and represent today? How and why did the Italian Legislator decide to unify under a single legal framework – the law n. 1766/1927 and the *Regio Decreto* n. 332/1928 - the different types of commons , emerged through time as a consequence of historical and social evolution? At this point it is necessary to clarify what can be defined as *usi civici*.
They represent perpetual rights (*ius lignandi*, *pascendi*, *serendi*, etc.) of a specific community, on collective, public or private lands. These rights can be exercised *uti singulus et uti civis*. In the 20th century the expression *usi civici* has been the object of a process of vulgarization. Doctrine and jurisprudence misused it, applying it to all the situations of common ownership: chaos was the result.
The confusion was created by legal doctrine, although it existed already in historical written sources, which report many different meanings of the term, as *bona communitativa* and *communitas*.
The basis of all forms of collective belongings has always been the community, settled in a given territory and having its own self-organization. Not everybody in fact has the right of access these properties: in pre-modern Italy lands, woods, pastures, and also the *fructus* offered by nature, were in most cases conceived as common goods, but they belonged and could be enjoyed only by the people who were part of that specific community. The development of the Italian municipal towns (*Comuni*) did not affect the existing communities, but crept into a pre-existing natural and direct relationship between human beings and land. Thus, history presents a multiplicity of evolving situations of these collective rights, in which it is nevertheless possible to identify some constant elements: indivisibility, unavailability and imprescriptibility. To any settlement

of self- organized people - however called: *amministrazioni separate dei beni di uso civico*, *comunanze*, *partecipanze*, *regole*, *università agrarie*, etc. - corresponds a specific collective form of utilization. For this reason, to subsume such variety of situations and rights under one single legal model - as the 1927-28 laws quoted above did - appears too narrow and even counterproductive. Ever since the various forms of collective belongings resist to the laws' fingers. The 1927-28 laws did not recognize the persistence of different realities, and pretended to rule all of them under the legal categories of the *Regno di Napoli*, one of the regional states existing before the unification of the country in 1870.

A reflection of the Italian legislator would therefore be highly welcomed. In the last few years – after 2009 - many promising projects have been started, aimed at introducing and recognising a new category of goods in the Italian Constitution, defined as "*beni collettivi*" (common goods).

The debate has given new lymph to this field of study, bringing out a renovated conscience for the importance of "common goods". The present crises of the capitalistic system shows the need to go back to the origins and to establish a new relationship between human beings and natural resources.

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keywords
Civic Uses; Collective rights; Commons; Community; Italy; Usi civici

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"Usi civici": the Italian side of the Commons

The *Commons* are a topical subject, crucial for the future. In the last two decades they have become an object of interest for all the modern social sciences, and in the public opinion.

The current global debate has fallen on fertile ground also in Italy, where commons belong to a consolidated debate and have often been considered just as a legal concept, although they played a very important role in the history of the different people who through time dominated and inhabited the Italian peninsula.

The present paper aims to focus on the specific reality of the Italian system of common lands, reinforcing the awareness of their relevance, as they still interest one third of the national territory.

A specific social, cultural and environmental context and the existence of communities based on the solidarity principle are the basic and common elements of a very heterogeneous multiplicity of forms of collective utilization of natural resources – woods, pastures, forests –, that goes under the expression "*usi civici".*

So, what the concept of *usi civici* really means? How and why did the Italian Legislator unify under a single legal framework – the *legge* n. 1766/1927 and the *regio decreto* n. 332/1928 - different realities, that are the result of wide reaching historical and social evolution?

After a brief overview, we will illustrate the most significant steps that characterize the Italian context. This paper consists of five sections/paragraphs: the first deals with a historical approach of the theme; the second examines the legal qualification of civic uses within the Italian legal system; the third discusses the current Italian debate; the fourth deals with civic uses 'in action', focusing on three Italian realities, where the *usi civici* represent a fundamental part of everyday life of the local communities. These three realities are: the *Regole di Cortina d'Ampezzo*, in northern Italy; the *Università Agraria di Tarquinia*, in central Italy; and that of Sardinia, one of the two major Italian islands. Finally, the last section is devoted to brief conclusions.

We shall stress the importance of *usi civici* in today's society: especially after the deep crisis of the economic-capitalist system, the return to tested institutions - as *usi civici* are - is as necessary as the development of a new relationship between men and natural resources.

1. *A historical approach*

The term *usi civici* seems to evoke memories of an elusive past. In the 20th century it has been object of a singular process of vulgarization: legal doctrine and jurisprudence misused it to label all the situations in which common ownership was involved[1].

A historical approach seems therefore to be the most appropriate and the only one which allows to fully understand this multifaceted reality in its complexity[2].

Under the term civic uses goes all the perpetual rights (*ius lignandi, pascendi, serendi, spigandi,* etc.) of the members of a specific community, on collective land, public or private[3].

These rights are based on the satisfaction of basic essential needs, and can be exercised *uti singulus et uti civis* only by the individuals belonging to the community. Not everybody in fact has the right of access to these goods: in pre-modern Italy lands, woods, pastures and also the *fructus* offered by nature[4] were in most cases conceived as common goods. They belonged to and could be enjoyed only by the people who were part of the community in which the goods were situated.

A confusion in defining what collective goods/properties/rights and civic uses are has always existed. This uncertainty was not determined by the of 1927-28 legislation[5] or by the development of legal doctrine.

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[1] G. CERVATI, *Profili storico-giuridici dei demani collettivi e degli usi civici*, in *Nuovo Diritto Agrario*, 3-4, 1986; V. CERULLI IRELLI, *Proprietà pubblica e diritti collettivi*, Padua, 1983

[2] P. GROSSI, *Un altro modo di possedere. L'emersione di forme alternative di proprietà alla coscienza giuridica post-unitaria*, Milan, 1977; E. CONTE, *Beni comuni e domini collettivi tra storia e diritto*, in *Oltre il pubblico e il privato*, edited by M.R. MARELLA, Verona, 2012; E. CORTESE, *Domini collettivi*, in *Enciclopedia del diritto*, vol. XIII, Milan, 1964, p. 914 ss.

[3] G. CURIS, *Gli usi civici*, Rome, 1928; G. RAFFAGLIO, *Diritti promiscui, demani comunali ed usi civici*, in *Enciclopedia giuridica italiana*, Milan, ed. 1905, 1915, 1939; U. PETRONIO, *Usi civici*, in *Enciclopedia del diritto*, XLV, Milan, 1992, p. 931; G. FLORE, A. SINISCALCHI, G. TAMBURRINO, *Rassegna di giurisprudenza sugli usi civici*, Rome, 1956

[4] A. DANI, *Frutti naturali e dominii comunitari nell'esperienza giuridica di Antico Regime*, in *Archivio Scialoja-Bolla. Annali di studio sulla proprietà collettiva*, 2006, 1, pp. 105-120.

5 Legge 16 giugno 1927, n. 1766 and regio decreto 26 febbraio 1928, n. 332. The whole Italian legislation in the field of civic uses is freely available at the following link: http://www.demaniocivico.it/

It was already in the historical sources, where there are many different meanings of the term *bona communitativa*, and *Communitas*[6].

The common denominator however has always been the idea that at the basis of all forms of collective belonging there is a community, settled on a territory and having its own organization[7].

The confusion can be traced back to the agrarian collectivism's experiences of the Roman world and of the Germanic tradition.

Civic uses had their golden age during the Middle Ages, being the backbone of the feudal system and society[8]. In fact, the feudal system (in all its extremely varied forms according to different people, culture and history) allowed that a part of the territory within the feud's boundaries was given freely to the inhabitants of the villages, who used it for their elementary economic utilities - mainly collecting firewood, grass and agricultural products[9].

A look at the situation of southern Italy confirms a concept affirmed by legal doctrine, applicable to the whole *Mezzogiorno d'Italia*: the presumption that civic uses exist whenever there is a feudal reality (*ubi feuda, ibi demania*)[10].

The concept of separated *dominia* exercisable by different persons on the same good (*dominium directum* and *dominia utilia*), allowed to overcome the monolithic conception of property typical of the Roman world, which was focused on and derived from the role played by the roman *dominus*.

The multiplicity of *dominia* was functional not only to describe and analyse the feudal society and economy, but also to develop collective forms of enjoyments. For this reason, the multiplicity of *dominia* has been the object of various studies, among which those by Paolo Grossi - one of the most important Italian legal historian, judge of the Italian Constitutional Court since 2009 - deserve special attention.

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[6] A. DANI, *Pluralismo giuridico e ricostruzione storica dei diritti collettivi*, in *Archivio Scialoja-Bolla. Annali di studio sulla proprietà collettiva*, 2005, 1, pp. 61-84; A. DANI, *Origini e continuità medievale del comunitarismo rurale: alcuni problemi storici aperti*, in *Studi senesi*, 2008, 1, pp. 7-50.

[7] G. CERVATI, *Profili storico-giuridici dei demani…*

[8] M. BLOCH, *La société féodale. Les classes et le gouvernement des hommes*, Paris, 1940 ; E. CONTE, *Diritto comune. Storia e storiografia di un sistema dinamico*, Bologna, 2009

[9] F. CALASSO, *Medio Evo del diritto*, Milan, 1954; J. LE GOFF, *Il Medioevo. Alle origini dell'identità europea*, Rome-Bari, 2001

[10] R. TRIFONE, *Feudi e demani. Eversione della feudalità nelle provincie napoletane: dottrine, storia, legislazione e giurisprudenza*, Milan, 1909; F. LAURIA, *Demani e feudi nell'Italia meridionale*, Naples, 1923; E. CONTE, *Demanio feudale*, in *Enciclopedia Federiciana, ed. Istituto dell'Enciclopedia italiana Treccani*, 2005

Referring to *dominia*, Grossi speaks of *reicentrismo*, to define a juridical system based on the "*res*" instead that on the "individuals" who exercise the rights on the *res*[11].

In the ancient regime the concept of *dominium*, conceived as a multiplicity of powers that several subjects could exercise on the same thing, entered in conflict with the new concept of property, which was deeply influenced by the French civil code, and circulated in Europe and in Italy during the early 19th century[12].

The rise to power of the bourgeoisie, as well as the progress in agricultural technologies, led the legislator to introduce a new concept of property - one which not admit the insistence of more subjects on the same land - leading to a legal system that was based on the individual, leaving no space for collective forms of property.

The category of property was therefore built around the individual, who became the base of the entire legal system. Property was thus conceived only in terms of the individual, while the almost millennial experience of collective ownership was relegated to the margins[13].

In the 18th century civic uses came under fire also by the economic doctrine of the time, considering them as an obstacle to the enjoyment of private property and to the progress of agricultural techniques. This doctrine was followed and applied by most of the enlightened rulers of the century, which launched a series of reforms that were aimed at liberating the property from such burdens. And this trend has been intensified ever since[14].

The new approach to property as absolute individual property has changed the legislator's perception, as we can see from the consequences that the new approach has had in the modern laws and codes.

Following the tradition of the French codification, the Italian civil codes (of 1865 and 1942) conceded no space to collective forms of belonging.

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[11] P. GROSSI, *Il dominio e le cose. Percezioni medievali e moderne dei diritti reali*, Milan, 1992; P. GROSSI, *L'ordine giuridico medievale*, Rome-Bari, 1999.

[12] F. MARINELLI, *La cultura del code civil*, Padua, 2004; F. MARINELLI, *Miti e riti della proprietà*, L'Aquila, 2011; S. PUGLIATTI, *La proprietà e le proprietà (con riguardo particolare alla proprietà terriera)*, in *Atti del terzo congresso nazionale di diritto agrario*, Palermo 19-23 ottobre 1952, Milan, 1954, now in *La proprietà nel nuovo diritto*, Milan, 1954; P. GROSSI, *La proprietà e le proprietà nell'officina dello storico*, in *Quaderni fiorentini per la storia del pensiero giuridico moderno*, XVII, 1988; S. RODOTA', *Il terribile diritto. Studi sulla proprietà privata*, Bologna, 1990.

[13] M. BLOCH, *La lutte pour l'individualisme agraire dans la France du XVIIIème siècle*, Paris, 1930.

[14] B. SORDI, *L'amministrazione illuminata. Riforma delle comunità e progetti di costituzione nella Toscana leopoldina*, Milan, 1991

2. *The issue of legal classification*

The Italian legal system does not yet contemplate the category of collective goods. Clearly this is deficiency of the Italian civil code which – following the French tradition - is a veritable *ode* to private property[15]. It must be underlined moreover that even the Italian Constitution does not acknowledge the common property.

For these reasons, it is difficult to say which position the *usi civici* have in our legal system. This question deserves special attention and leads us to question the legislative attempts to dismiss and abolish those rights. Thus we shall examine carefully the Italian political and social situation at the turn of the 19th and 20th century[16].

The existence/persistence of collective forms of appropriation of land has been always present in the late 19th-20th Italian parliamentary debate, from the *Inchiesta Jacini* of 1885, denouncing the indifference of the government to the theme of agricultural development, to the Law n. 5489/1888, aiming to dismiss and abolish all the civic uses in central Italy (*ex dominii pontifici*).

Civic uses constitute a specific regulatory scheme. The only legislation which currently governs this matter is represented by the liquidation laws of '27-28 (*Legge 16 giugno 1927, n. 1766* and *Regio Decreto 6 febbraio 1928, n. 332*, hereafter referred to as the "laws of '27-28"). For nearly a century, from the approval of the just mentioned laws till now, collective rights and civic uses have been considered by the law as synonyms, although in many Italian regions the term usi civici has never been used to conceive the matter. We must underline that the term *usi civici* refers to the concept of *usus*, as a personal use servitude exercised by an atypical subject, the community.

But the '27-28 laws did not recognize the existence of different types of civil uses, and therefore all cases were governed using the same rules, which happened to be those of the previous legislation in force in the *Regno di Napoli*. To their merit it can mentioned only the fact that all the previous provisions on the subject were put together in one single text. Needless to say that such heterogeneous reality – consisting of various forms of collective belongings - slipped through the fingers of the law.

[15] F. MARINELLI, *Gli usi civici*, in *Trattato di diritto civile e commerciale*, edited by Cicu, Messineo, Mengoni, Milan, 2003 and 2013. ; F. MARINELLI, *La cultura del code…*, Padua, 2004; F. MARINELLI, *Miti e riti…*, L'Aquila, 2011
[16] P. GROSSI, *Un altro modo di possedere…,* Milan, 1977

The goal of the 27-28 laws was to abolish and dismantle/dismiss all forms of collective belongings and rights. The reasons for this choice were legal and ideological.

The legal one was to entrust the system to a unitary conception of property, considering collective goods absorbed by the creation of private individual properties[17]. Collective rights were therefore circumscribed to lands assigned by the law n. 1766/1927 under the provisions of articles 11-12.

In other words, the Italian Legislator tried to impose the concept of individual property –public and private - to the whole peninsula. The Legislator decided that automatically all provisions and institutions contradictory were to be repelled.

The ideological reasons: the legislators of the 20th century - conditioned by the economic theories of the 18th century - believed that the creation of small individual properties (small businesses) would promote agriculture's productivity.

They were also convinced, however, that the *usi civici* were an obstacle to be removed to increase agriculture's productivity.

In order to create small rural private properties, the legislators adopted a system of *quotizzazioni* (i.e. division of lands in small allotments). The fascist government adopted this system when defining the 1927-28 laws on "*usi civici*", as it was convinced that giving the people fragmented property assignments was a necessary step to gain the consent of the peasantry. The 1927-28 laws also established investor's consortia, but this provision encountered the hostility of the subjects who should have utilized it[18].

As we said above, the '27-28 laws followed the civic uses legislation pattern adopted in the R*egno di Napoli*, included the provision of the *Commissario liquidatore*, who was given the power to take administrative and judicial decisions: but governing the multifaceted realities of civic uses appeared very soon not so easy.

Almost a century has passed since the approval of the mentioned laws, and the future of civic uses is still uncertain: nor abolition and nor dismissal have yet prevailed. A reflection by the Italian legislator would therefore be highly welcome[19].

[17] G. BOGNETTI, *La riforma della legge usi civici*, in *Rivista di diritto agrario*, 1954.
[18] G. CERVATI, *Profili storico-giuridici dei demani…*
[19] The *Costituente dei beni comuni*, started in 2013, follows the results and the works of the commission established by decree of the Minister of Justice, June 21, 2007, chaired by Stefano Rodotà. The commission concluded its work in February 2008 and its results were discussed in the National Academy of the *Lincei* in Rome, at a conference organized

3. *Commons and civic uses in the present Italian debate*

Common properties and civic uses always existed. It was however Paolo Grossi who pointed out the importance of these goods and rights, using the famous lines by Carlo Cattaneo[20], "*un altro modo di possedere*" as the title of one of his important books which has been translated in English[21]. Grossi's work has revived the debate[22], and enabled the integration of civic uses "*beyond the public and private*"[23].

The Italian doctrinal debate on the commons gained *momentum* in the last 10 years - especially after Elinor Ostrom was awarded the Nobel Prize in 2009. However this revival has not succeeded to give a new perspective to civil uses, overcoming the idea that thy are a remnant of the past. The debate on what should be considered a *common* (water, space, internet, work) is still very open[24]. In this context, civic uses seem to be pushed aside.

We have seen above in this paper that civic uses are an ongoing reality. Their system continues to be based on a double fundament: first, the laws of '27-28, meant to dismiss the civic uses - considered a burden and a limitation to private property; second, the legal doctrine and the law-case interpretation, which is trying to give legal form to civic uses and locate them within the Italian legal system.

4. *Civic uses "in action"*

It is now time to briefly analyze how the different forms of collective belongings in Italy operate today. Their diversity can be clearly perceived from the names given to the different types of civil uses: *Regole*, *Vicinìe*, *Partecipanze*, *Comunanze agrarie*, *Università agrarie*, *Amministrazioni separate dei beni di uso civico*, etc.

The ownership of the land by the local communities is a common feature of all types of civic uses; the management, instead, can change

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on April 22, 2008. The proceedings of this work were published in the volume *I beni pubblici. Dal governo dell'economia alla riforma del codice civile*, editors U. MATTEI, E. REVIGLIO, S. RODOTÀ, Rome, 2010.

[20] C. CATTANEO, *Rapporto sulla bonificazione del piano di Magadino*, 1853, *"…questi non sono abusi, non sono privilegi, non sono usurpazione: è un altro modo di possedere, un'altra legislazione, un altro ordine sociale che, inosservato discese da remotissimi secoli fino a noi…*"

[21] P. GROSSI, *An alternative to private property*, 1981

[22] P. GROSSI, *Un altro modo di possedere…*, Milan, 1977; P. GROSSI, *La proprietà e le proprietà…,* Milan, 1988

[23] M.R. MARELLA, edited by, *Oltre il pubblico e il privato*, Verona, 2012.

[24] U. MATTEI, *Beni comuni. Un manifesto*, Bari, 2012. G. RICOVERI, *Beni comuni vs. merci*, Milano, 2010, G. RICOVERI, *Nature for sale. The Commons versus commodities*, 2013.

in relation to the collective good under consideration: woods, pastures, but also services to the members of the community[25].

Three realities will be briefly described and compared: the *Regole ampezzane*, the *Università agraria di Tarquinia*, and the Sardinian common properties.

The main asset of the *Regole ampezzane*, located in *Cortina d'Ampezzo*, in northern Italy, consists of woods and forests. Although Cortina today represents a trendy and expensive tourist destination, the collective ownership and use of forests and pastures were for a long time the main source of sustenance for the *Ampezzo*'s people. They regulated the relationship with the environment and granted the sustainable use of the territory of the valley. Not all the people who live in Cortina can be considered *regolieri*, and strict rules of procedure limit the access to descendants of the original families. The ancient system of rules defines collective rights of management and enjoyment of the natural, cultural, and economic heritage. A collective heritage where conservation and production coincide, which must be preserved to be passed to future generations. Land cannot be sold, nor its intended use can be changed.

The *Università Agraria di Tarquinia*, in central Italy, represents a different experience. Its origin lies in an association existing in Italy in the late Middle Ages, called *Arti e corporazioni*, articulated by economic activity. *Arte degli Ortolani* and *Arte dei lavoratori del Frumento* carried out respectively horticulture and farming, both of which were closely related to the economic and social reality of the territory, whose main resource was agriculture. The origin of *Arte Agraria*, now called *Università Agraria*, can be traced back to the *Arte dei lavoratori del Frumento*.

From the end of the 15th century, the *Arte dei lavoratori del Frumento* exercised the right to cultivate both the land belonging to the Apostolic Camera of the Papal State and other private lands, paying a rent to the municipality. A rent that at first was temporary and then became perpetual. The enjoyment of these rented lands was reserved to the *participants* (members of the community), who were breeders of the small livestocks or *mosciaroli*, i.e., farmers; the remaining part of the territory was used as pasture. The voices and the stories of these collective forms of enjoyment are documented in the archival sources of the *Congregazione del Buon Governo*. From these sources it

[25] E. CONTE, *Comune proprietario o comune rappresentante?La titolarità dei beni collettivi tra dogmatica e storiografia*, in *Rivista di Diritto Agrario*, 78, 1999, 181-205.

emerges that the *Arte* and the Apostolic Camera of the Papal State had a direct and strong relationship.

The experience of the region of Sardinia, one of the two major islands of Italy, could appear unusual because it is related to its geographical condition and history. The natural isolation of the region – being an island - allowed the preservation of many important local institutions, both historical and juridical. Among these institutions, there are the civic uses.

Rights of civic uses exist in Sardinia since the Middle Ages and are known as *ademprivi* (from the Latin *ademprivia*)[26]. The basic rules provided that the feudal lord could acquire the fruits of his land (wood, increase in flocks, etc.) subject to the right of *ademprivio, i.e.* only after the fulfillment of the demands of local people's daily life.

On October 6, 1820 it was enacted the so-called Royal "*Editto delle chiudende*", similar to the anglo-saxon "laws of enclosure", under which it was entitled the absolute ownership of common lands by the "*Comuni*" (local governments), while the private feudal land had to be hedged and closed as individual property.

Civic uses are now regulated in Sardinia by the regional law n. 12/ 1994[27], which divides them in two categories: the first includes woods and pastures; the second, lands conveniently used for cultivation. The right to alienate the common lands, or to change their use, is subject to the Regional permission and it is possible only when the local government has ascertained that the change gives a real benefit to the majority of citizens having the right to use that public land.

Today the most serious problem concerns the sale of land for public use, illegally perpetrated by several municipal government of the island of Sardinia in favor of private operators.

5. *Conclusions*

From our brief review, it results that the millennial institution of civic uses still plays an important role in Italy and it fuels the debate on the commons.

[26] I. BIROCCHI, *Per la storia della proprietà perfetta in Sardegna. Provvedimenti normativi, orientamenti di governo e ruolo delle forze sociali dal 1839 al 1851*, Milan, 1982.
[27] Legge regionale Sardegna 14 marzo 1994, n. 12, *Norme in materia di usi civici. Modifica della legge regionale 7 gennaio 1977, n. 1*, freely available at the following link: http://www.normattiva.it/

The persistence of these collective ownership structures also shows how it was possible to preserve large areas for an environmental and sustainable economy and society thanks to the existence of civic uses.

In many areas of the country, the relationship between the ownership of the goods, which is for the locals, and their administration, which is the responsibility of the exponential institution of the community (municipal bodies or separate administrations), remains critical.

It is clear however the difference between civic uses and commons: the former constitute a collective property that refers to a specific community, while the latter may refer to a specific community or to a spread community.

Both civic uses and commons have the same function, which is to grant the collective use of these goods in a reasonable and sustainable way, for they rely to future generations.

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