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# European Sharing and Collaborative Cities: The Italian Way

Giorgia PAVANI\*

*The article analyses the issue of Sharing and Collaborative Cities from a primarily methodological perspective. Starting from statistical data that confirm the constant growth of the urban population, and taking into account the major issues that affect urban policies (environment, inequalities, poverty), the author focuses on the different methodological approaches in the study of collaborative cities. Subsequently, an Italian case study is presented, which involves shared administration and the main implementation tools involved (Regulation of the management and regeneration of urban commons, including collaboration agreements).*

Keywords: sharing city, collaborative city, smart city, cooperative economy, sharing economy, urban regeneration, urban commons, local government, city legal studies, urban public policies

## 1 THE FUTURE WILL BE EVEN MORE URBAN

For some years now, cities have become the subject of study in social and economic sciences, as well as within traditional sectors of urban planning and architecture. Sociologists, political scientists and economists are devoting more and more attention to the study of urban democracy and urban governance, while jurists have recently been interested in the regulation of new socio-economic phenomena that have a strong impact on the city (such as the governance of urban commons and the effects of the development of digital platforms).

This interest is destined to grow because the data leads to the affirmation that cities will increasingly be protagonists of public policies as they are regulated at the international, European, national and regional levels.<sup>1</sup> This is due to the constant

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<sup>1</sup> A first thread of interest has been expressed by scholars of International Law: Y. Blank, *The City and the World*, 44 Columbia J. Transnat'l L. 875 (2006); G. E. Frug & D. J. Bar Ron, *International Local Government Law*, 38 Urb. Law. 1, 1 ff. (2006). On city law, see the following §.

increase in the urban population and, on the other hand, to the interests that revolve around the city.

On the first point, in Europe 74% of the population lives in cities and further growth is projected by 2050, although with important differences within the European Union and between cities in different countries.<sup>2</sup>

On the second point, there are several issues that impact cities, starting with those in the fields of economics and finance. Due to growing demographic concentration, the consequences of the economic and financial crisis of 2008 were actually felt the most in cities. To cope with this economic situation, many European countries have approved reforms of public administrations that have redesigned the map of local autonomies. In particular, for the countries that signed a Memorandum of Understanding on Specific Economic Policy Conditionality,<sup>3</sup> the reforms have weakened the financial and administrative autonomy of local autonomies. The most affected countries are those belonging to the Mediterranean area (Portugal, Greece, and Spain) in addition to Ireland.<sup>4</sup> The cuts in public spending have profoundly impacted the urban social context, weakening urban economies, contracting social services, thus, increasing social inequalities and the level of poverty in cities.<sup>5</sup>

This growing movement towards cities has also affected environmental issues. Cities can be protagonists of climate change through their environmental policies.<sup>6</sup> ‘The adaptive capacity in regard to climate change takes into account the economic, socio-cultural, institutional and technological ability of a region to adapt to the impacts of a changing regional climate’.<sup>7</sup>

<sup>2</sup> From the Second World War to today, the number of city inhabitants has grown from 751 million in 1950 to 4.2 billion today (*World Urbanization Prospects* 2018). These data, together with Nomisma’s elaborations of United Nations data, are commented on by V. Orioli, *Città collaborative e rigenerazione urbana. L’esperienza di Bologna*, in *New Policies and Practices for European Sharing Cities* 410–411 (C. Alvisi et al. eds, Bologna 2019).

<sup>3</sup> Point IV of the *Memorandum*, signed by the Greek government on 2 May 2010 is an example of the constraint of administrative reforms: ‘Parliament adopts legislation reforming public administration at the local level, notably by merging municipalities, prefectures and regions with the aim of reducing operating costs and wage bill. Parliament adopts legislation requiring online publication of all decisions involving commitments of funds in the general government sector’. For a comment, see P. Glavinis, *The Memorandum of Greece in the European, International and National Legal Order* (Athens-Thessaloniki 2010).

<sup>4</sup> *La racionalización de la organización administrativa local: las experiencias española, italiana y portuguesa* (M. Almeida Cerredá, C. Tubertini & P. Costa Gonçalves eds, Madrid 2015).

<sup>5</sup> From the latest Eurostat data, in 2018, 21.8% of the population in twenty-eight European countries was considered to be at risk of poverty or social exclusion, <https://ec.europa.eu/eurostat/news/themes-in-the-spotlight/poverty-day-2019> (accessed Oct. 2020).

<sup>6</sup> For implementation of The Covenant of Mayors – the world’s largest movement for local climate and energy actions – various Action Plans were adopted concerning the environment (the list can be consulted at, <https://www.pattodeisindaci.eu/piani-e-azioni/piani-d-azione.html> (accessed Oct. 2020)).

<sup>7</sup> <https://www.espon.eu/climate-2012>, section: Concept, methods and measurement (accessed Oct. 2020).

In cities, social and environmental issues are, therefore, closely linked to urban governance strategies. International and European Agendas<sup>8</sup> also support *bottom-up* policies of integrated urban development and aim at increasing social inclusion to try to stem the social inequalities produced by environmental imbalances. Cities comply with some of the Sustainable Development Goals (SDGs) established by the United Nations (from global challenges against poverty, inequality, climate change, environmental degradation, etc.).<sup>9</sup> These policies are emerging in a new cultural context that is based on different legal categories from those used up to now. In fact, a new paradigm for environmental and climate studies is emerging in the scientific community, moving from the concept of right to the environment and sustainable development to that of ‘integral ecology’,<sup>10</sup> which is the result of a new vision of the human-environment-territory relationship.<sup>11</sup>

Finally, closely connected to the two previous issues is the issue of healthcare: the healthcare crisis due to the Covid-19 pandemic has mainly affected highly populated metropolitan areas and has increased the economic-social gap already very present there.

<sup>8</sup> The twelve priority themes for making cities more inclusive and sustainable, identified by the *EU Urban Agenda*, which stems from the *Pact of Amsterdam* (2016), affect urban policies in connection with other levels of government (territorial and national), such as: urban mobility, air quality, urban poverty, etc. (*Urban Intergroup at the European Parliament*, <http://urban-intergroup.eu> (accessed Oct. 2020)). An experimental application of the *EU Urban Agenda* is the action plan entitled, *Partnership on Innovative and Responsible Public Procurement* (10 Jun. 2018), a pilot project that allows cities to take advantage of new fields of action through contracts with a high rate of innovation and social, environmental and economic sustainability.

<sup>9</sup> See *Transforming Our World: The 2030 Agenda for Sustainable Development* (2015) and, *The New Urban Agenda*, UN Habitat (2017) the second reference refers to the right of the city to develop in ‘the legislation, political declarations and charters’ of some national and local governments (at 5) (<http://habitat3.org/the-new-urban-agenda/> (accessed Oct. 2020)).

<sup>10</sup> The ongoing climate and environmental crisis is a clear sign of the failure of the international legal model for the environment; it is based on an anthropocentric legal paradigm on which the narrative of sustainable economic, social and environmental development is based, which has not protected the earth from the exploitation of limited resources (among many authors, see W. P. Cunningham, M. A. Cunningham & B. W. Saigo, *Fondamenti di ecologia* (Milan 2004); F. Boero, *Nature and the Governance of Human Affairs*, in *Come governare l’ecosistema? – How to Govern the Ecosystem? – ¿Como gobernar el ecosistema?* 47–60 (S. Bagni ed., Bologna 2018). For several years now, we have been affirming the need to move from an anthropocentric to an eco-centric legal paradigm, leading to the development of ecological law, perceived as a common good: U. Mattei & A. Quarta, *Punto di svolta. Ecologia, tecnologia e diritto privato. Dal capitale ai beni comuni* (Sansepolcro 2018). This change can only start from the territories (and from local authorities) in order to foster a bottom-up dynamic.

<sup>11</sup> The literature on the eco-city and sustainable city ranges from the impact of cities on the natural ecological system to the idea of the city itself as an ecosystem. See e.g., the approaches used in the following: *The Sustainable City. Urban Regeneration and Sustainability* (M. Marchettini et al. eds, London 2004); E. Rapoport, *Utopian Visions and Real Estate Dreams: The Eco-city Past, Present and Future*, 8(2) *Geo. Compass* 137–149 (2014).

## 1.1 AND CITIES WILL BE INCREASINGLY BECOME PROTAGONISTS OF SOCIO-ECONOMIC-CULTURAL CHANGE

Cities, therefore, play a very important role in capturing the (new) needs of the community and of its inhabitants, in guaranteeing and promoting their economic and social rights, as well as in removing those (new) obstacles of economic, social, environmental and digital nature which constrain freedom and equality of citizens. In itself, this is nothing new: regardless of local government models throughout the world, most countries envisage a primordial unity that is organized within a minimum territory (above the family, however configured), to which is entrusted the *care* and management of its territory and community.<sup>12</sup>

In the Italian case – but this also applies to all the countries that belong to the French-Napoleonic model of territorial organization – the municipality is the body called upon to resolve the issues that, *prima facie*, arise from the needs of the community; and becomes the privileged interlocutor of both individuals as well as social groups where human personality is expressed and, at times, it assumes the role of *intermediary* between these subjects and the central government, offering solutions or exposing the problems that permeate the social context. On one hand, the municipality promotes new requests from citizens and, on the other hand, offers solutions even in the absence of a regulatory framework, on the assumption that local governments have a greater innovative capacity than central governments.<sup>13</sup>

The new element, from a theoretical perspective, is represented by the spread of a new legal paradigm that moves from the ‘local government law’ to the ‘law of the city’ and develops into the ‘right to the city’. The idea of reconstituting a city model that is different from the one produced by industrialization and the accumulation of capital, which appears as a higher protection of rights, was already

<sup>12</sup> The results of two research projects conducted worldwide confirm the role of these *units*, with some exceptions ‘for example, in tribal or clan-based legal systems, which are largely recessive, or where the basic level of social organization does not consider the territory a constitutive element, and this happens in continental Europe, in common law systems (both European and extra-European), in Latin America, in Africa, in Asia (above all due to the influences of colonialism), regardless of their belonging to the liberal-democratic, authoritarian, or socialist form of state’: L. Pegoraro, *Introduzione. Municipi d'Oriente. Una macrocomparazione per differenze*, in *Municipi d'oriente 7* (H. Kudo et al. eds, Rome 2008). Other research has been published in *Municipi d'occidente. Il governo locale in Europa e nelle Americhe* (G. Pavani & L. Pegoraro eds, Rome 2006), Spanish translation *Municipios de Occidente. El Gobierno local en Europa y en las Américas* (Bogotá 2008). On the classification level, for political scientists, in the absence of theoretical models that can reflect the actual complexity, the points of reference continue to be those from the (‘golden’) decade of the 1990s, starting with the first successful classification (remodelled and updated in subsequent years), which distinguishes between the Northern model (Northern European countries) and the Southern model (Southern European countries), developed by *Central and Local Government Relations. A Comparative Analysis of West European Unitary States* (E. C. Page ed., London 1987).

<sup>13</sup> L. Bobbio, *I governi locali* (Rome-Bari 2002).

present in literature since the late 1960s.<sup>14</sup> In recent years, the literature has been studying this propensity of local authorities (especially municipalities), to go beyond their area of competence recognized by law in order to deal with further needs of the community.<sup>15</sup> This is particularly felt in those legal systems where a legal reference for the concept of a city is lacking, such as in Italy, where the term *city* is by no means foreign to the legal culture of the peninsula (we can recall the era of the city-state during the Renaissance). However, this is extraneous to the current legislation on local government, based on Article 114 of the Constitution<sup>16</sup>; or where this concept is recessive with respect to that of local municipality (as in France or Spain, where there is special legislation on large cities, since 1982 and 2013, respectively).

In the theoretical framework of city law, various collaboration practices are proliferating between public administration, citizens and other organizations and social groups, based on the logic of sharing goods and services, which is often facilitated by the use of information technology.

The decisions of local administrations, which have been adopted to deal with the effects of the sharing economy on the urban economy, are also related to this paradigm (discussed in section 3, below).<sup>17</sup>

<sup>14</sup> H. Lefebvre, *Le droit à la ville* (Paris 1968). Regarding socio-economic studies, the opening words of the essay on cities by M. Weber, *Die Stadt* (Tübingen 1999) is still a good starting point for studies on the definition of cities. Recently, the well-known book by J.-B. Auby, *Droit de la ville. Du fonctionnement juridique des villes au droit à la Ville* (Paris 2013), has inspired many studies that have contributed to the theoretical construction of a 'city law', which, for some 'does not prefigure a new law that replaces the already known law, but it should be outlined only to enrich the means available to cities to respond more effectively to emerging social needs, being able to draw on diversified tools that must be combined with wisdom and balance': F. Giglioni, *Nuovi orizzonti negli studi giuridici delle città*, in Alvisi et al. eds, *supra* n. 2, at 105. D. Harvey, *Rebel Cities. From the Right to the City to the Urban Revolution* (London-New York 2012).

<sup>15</sup> Cities are projected towards a new scenario, in which 'the law of the city overrides the law of the state and of the *Comunidades Autónomas*, as cities take on global problems and not just local ones': T. Font I Llovet, report presented at the conference in memory of Prof. Luciano Vandelli, *Autonomie regionali e locali tra passato presente e future*, held in Bologna from 15 to 16 Nov. 2019 (quotation freely adapted by the author, pending the written contribution). In a study a few years ago, it was argued that the city was the combination of many trades, social and professional organizations, that it was not sufficiently studied in the law manuals of local authorities and that it went 'beyond the municipality': R. Cavallo Perin, *Beyond the Municipality: The City, Its Rights and Its Rites*, 2, *It. J. Pub. L.* 307 ff. (2013); I. M. Porras, *The City and International Law: In Pursuit of Sustainable Development*, 36 *Fordham Urb. L.J.* 537 (2009).

<sup>16</sup> Article 114, Italian Constitution: 'The Republic shall be composed of municipalities, provinces, metropolitan cities, regions and the State'. G. M. Labriola, *Città e diritto. Brevi note su un tema complesso*, 1 *Istituzioni del federalismo* 5 ff. (2018).

<sup>17</sup> Many authors state that the sharing economy is an urban phenomenon: N. M. Davidson & J. J. Infranca, *The Sharing Economy as an Urban Phenomenon*, 34 *Yale L. & Pol. Rev.* 215 (2016); S. Sassen, *Cities in a World Economy* (London 2012); J. Kassin & J. Orsi, *The Legal Landscape of the Sharing Economy*, 27(1) *J. Envtl. L. & Litig.* (Spring 2012); *Shareable! L'economia della condivisione* (T. Bonini & G. Smorto eds, Torino 2017). For an overview of public policies in different cities, see the 2013 report on the website: [shareable.net](http://shareable.net), entitled: *Policies for Shareable Cities: A Sharing Economy Policy Primer for Urban Leaders*.

For these reasons, in recent years, cities have been labelled with adjectives such as ‘smart’ (referring to cities that place information and communication technologies at the service of the community),<sup>18</sup> ‘sharing’ (referring to a broad concept of sharing that includes both bottom-up cooperation policies and those that attempt to create strategies favourable to the various manifestations of the sharing economy),<sup>19</sup> and more recently ‘cooperative/collaborative’ (see section 2, below), accepting, alternatively, the evolution of information technologies or the development of markets in the urban context, or collaboration practices aimed at the care of urban commons.<sup>20</sup> Beyond the labels, what is relevant is the correlation between local rules and the development of the phenomena of collaborative economy and shared administration, in that one influences the other and vice versa, transforming cities into a fruitful location for experimenting with innovative solutions<sup>21</sup> and mayors, once again, into the modern ‘Sisyphus, Tantalus and Damocles of the local administration’.<sup>22</sup>

<sup>18</sup> Some scholars from the University of Vienna have developed a definition of smart cities based on six pillars (smart economy; smart mobility; smart environment; smart people; smart living; smart governance), see R. Giffinger et al., *Smart Cities. Ranking of European Medium-Sized Cities*, PDF version (Vienna 2007). For a summary of the numerous definitions, see A. Cocchia, *Smart and Digital City: A Systematic Literature Review*, in *Smart City. How to Create Public and Economic Value With High Technology in Urban Space* (R. P. Dameri & C. Rosenthal-Sabroux eds, London 2014); for the different meanings: V. Albino, U. Berardi & R. M. Dangelico, *Smart Cities: Definitions, Dimensions, Performance, and Initiatives*, 22 J. Urb. Tech. 1, 1–19 (2015); M. Batty et al., *Smart Cities of the Future*, 214 Eur. Physical J. Spec. Topics 481–518 (2012). Criticizing the smart city model by focusing exclusively on the technological dimension: A. Greenfield, *Against the Smart City* (New York 2013).

<sup>19</sup> The literature is substantial. In reference to some basic texts, see D. McLaren & J. Agyeman, *Sharing Cities. A Case for Truly Smart and Sustainable Cities* (Boston 2015); M. Finck & S. Ranchordás, *Sharing and the City*, 49(5) Vand. J. Transnat’l L. 1299–1369 (2016); National League of Cities, *Cities. The Sharing Economy and What’s Next* (Washington 2015); *Sharing Cities. A Worldwide Cities Overview on Platform Economy Policies With a Focus on Barcelona* (M. Fuster Morell eds, Barcelona 2018); Y. Voytenko Palgan, *The Roles of City Governments in the Sharing Economy*, in *Shareable* (2019), <https://www.shareable.net/the-roles-of-city-governments-in-the-sharing-economy/> (accessed Oct 2019).

<sup>20</sup> On the relationship between the sharing economy and common goods: G. Smorto, *The Sharing Economy as a Way to Urban Commoning*, 7 Comp. L. Rev. 1 ff. (2016).

<sup>21</sup> M. C. Dorf & C. F. Sabel, *A Constitution of Democratic Experimentalism*, 98(2) Colum. L. Rev. 267–473 (1998); C. F. Sabel & W. H. Simon, *Minimalism and Experimentalism in the Administrative State*, 100(1) Geo. L.J. 53 ff (2011).

<sup>22</sup> The symbols – and the myths – described by L. Vandelli, *Sindaci e miti. Sisifo, Tantalo e Damocle nell’amministrazione locale* (Bologna 1997), they can be adapted to the new economic, social and technological context of cities, where both dimensions of sharing today represent a challenge for local administrators and officials, see F. Chasin, *The Role of Governments in Peer to Peer Sharing and Collaborative Consumption*, in *The Rise of the Sharing Economy: Exploring the Challenges and Opportunities of Collaborative Consumption* (P. Albinsson & Y. Perera eds, Westport 2018).

## 2 USING TOP-DOWN AND BOTTOM-UP APPROACHES TO STUDY SHARING AND COLLABORATIVE CITIES

The results of research carried out within the Jean Monnet projects mentioned have shown that, in the academic environment, these new phenomena and their impact on cities and urban governance tend to be analysed separately, thanks to a division between disciplinary fields that does not favour the multidisciplinary/interdisciplinarity necessary for addressing these types of issues.

Regarding the sharing economy, before coming to recognize it as a primarily urban phenomenon, the literature maintained that the relationship between digital technologies, the market and the city would make communication and remote interaction simpler and cheaper and would attenuate ‘the requirement, typical of an industrial-type economy, of the physical proximity of people and resources for carrying out the production and exchange of goods and services’.<sup>23</sup> Contrary to what was argued in these initial theses, there has been ‘a radical transformation of economic relations that puts cities increasingly at the center. The new digital economy – this is the conclusion – is primarily an urban phenomenon’, which is growing strongly,<sup>24</sup> which impacts cities in different ways, also on the basis of their dimension. The operator (*rectius*: the platform) can decide to offer the product/service in one city rather than another, in the so-called modality Consumer-to-Business (C2B), with exchanges between consumers and businesses through intermediary sites (platforms) that offer individual services, a typical expression of the so-called gig economy (as in the cases of AirBnB<sup>25</sup> and Uber). Exchanges between companies and consumers without intermediation and through online platforms (Business-to-Consumer – B2C) can significantly affect urban policies, for example, mobility policies, as it is demonstrated by car/bike sharing services. These services are perceived as being green and healthy and are used to reduce the environmental impact of transport by decreasing the consumption of non-renewable energy sources.<sup>26</sup> Car/bike services are increasingly becoming *complementary services* with respect to local public transport and are, therefore, regulated in the context of urban mobility: ‘[ ... ] bike sharing as a concept of shared mobility is presented and classified within the context of urban transportation and mobility’<sup>27</sup>).

<sup>23</sup> G. Smorto, *Autonomie locali e politiche pubbliche per l'economia digitale*, 4 Istituzioni del Federalismo 892 (2019). Smorto refers to the argument expressed, among others, by W. G. Flanagan, *Urban Sociology: Images and Structure* 378 ff (Lanham 2010).

<sup>24</sup> See *Digital Economy Report 2019. Value Creation and Capture: Implication for Developing Countries*, United Nations (2019).

<sup>25</sup> G. Quattrone et al., *Who Benefits from the ‘Sharing’ Economy of Airbnb?*, Proceedings of the 25th International Conference on World Wide Web. International World Wide Web Conferences Steering Committee, 1385 ff (2016).

<sup>26</sup> *Sharing Economy. Making Supply Meet Demand* 410 (M. Hu ed., London 2019).

<sup>27</sup> P. Vogel, *Service Network Design of Bike Sharing Systems. Analysis and Optimization* 7 (London 2016).

Apparently excluded – but not necessarily *outsiders* – from urban policies, are the ‘business models of the collaborative economy’,<sup>28</sup> Business-to-Business (B2B), as they occur between companies for the exchange of services or information, and Peer-to-Peer (P2P), or between individuals, without the involvement of institutional subjects. Public administrations can, however, decide to intervene with support and promotion policies towards initiatives of this type.

The methodological approach used in these studies (top-down) starts from the phenomenon of the sharing economy to arrive at the analysis of the city’s public policies, and is mainly adopted by private law scholars and economists. This is an often unaccomplished path that has not yet led to a fruitful dialogue between the local and global dimensions of the digital economy. The analyses stop at the functioning of digital markets and the effects they produce on the discipline of work, privacy, competition, without taking into consideration the effects that digital platforms produce on the territory.

Concerning the so-called shared administration, that is the set of sharing practices between citizens and local authorities (*see* § 3), the (bottom-up) approach moves from the effects produced by some new services favoured by technologies (sharing mobility, short rents in urban centres, etc.) and analyses their impact on the urban environment and public policies. This approach considers collaborative practices between citizens and public administration as examples of shared economy. This way of studying the subject is more familiar to public law scholars, sociologists, political scientists. Again, the path is often unfinished, since the analysis of new services does not always contribute to achieving a complete understanding how digital markets work.<sup>29</sup>

The distance between the two ways of dealing with the issue, by scholars of different disciplines, means that more than one logical step is often necessary to connect the collaborative economy to urban policies and avoid representing, on one hand, the sharing economy only in the B2B and P2P variants and, on the other hand, shared administration as a mere evolution of participation policies, supported by local authorities.

The analytical distinctions proposed by Neal Gorenflo – transactional sharing v. transformational sharing<sup>30</sup> – and by McLaren and Agyeman – commercial

<sup>28</sup> K. Stoke et al., *Making Sense of the UK Collaborative Economy* (Nesta 2014), [https://media.nesta.org.uk/documents/making\\_sense\\_of\\_the\\_uk\\_collaborative\\_economy\\_14.pdf](https://media.nesta.org.uk/documents/making_sense_of_the_uk_collaborative_economy_14.pdf) (accessed May 2020).

<sup>29</sup> On the two approaches, *see The Cambridge Handbook of the Law of the Sharing Economy* (N. M. Davidson, M. Finck & J. J. Infranca eds, Cambridge 2018).

<sup>30</sup> *See* <http://collaboriamo.org/la-sharing-economy-transazionale-e-trasformativa-intervista-con-neal-gorenflo-al-ritorno-dalla-sharing-school/> (accessed May 2020). In transactional sharing (economic) exchange prevails, while in transformational sharing the logic of sharing prevails, since sharing practices are based on collaboration and cooperation between regular producers and end users, and create solid and lasting social bonds with the aim to generate benefits for the community.

sharing v. communal sharing<sup>31</sup> – have prepared the groundwork for some classification proposals on city studies. In Italy, the most significant advancement in systemology is attributable to Christian Iaione, who emphasized the transition from sharing to pooling, and distinguishes between sharing city and co-city.<sup>32</sup>

The taxonomy is not precise: the line that divides the two models is similar to a grid that lets elements of one and the other filter through.

In the first (sharing city), local governments act as supporters and facilitators of subjects (individuals or organizations) operating in the field of sharing economy to promote innovative practices in the urban economic context. The sharing city is based on empirical analysis; and it is characterized by the spontaneity of the innovative proposals of the cities that are studied with a bottom-up approach. In the sharing city *variant*, cities can promote forms of dialogue with platforms or mediation between them and representatives of social partners (hoteliers, committees of residents in historic centres, taxi drivers ... just to mention the most well-known cases of platforms, such as Airbnb or Uber). The activities of both platforms have a significant impact on urban planning as well as the regulation of local transport in many large cities, as demonstrated by the phenomenon of urban touristification which has reached considerable dimensions in many European cities<sup>33</sup>). Local administrations try to avoid the use of coercive tools and act by leveraging the cooperation between the various actors (mainly private ones), fostering compliance with the principles of solidarity and transparency in the activity of the platforms, without directly intervening on the level of legislation.<sup>34</sup>

<sup>31</sup> McLaren & Agyeman, *supra* n. 19.

<sup>32</sup> C. Iaione, *Le politiche pubbliche al tempo della sharing economy: nell'età della condivisione il paradigma del cambiamento è la collaborazione*, in *Le politiche della condivisione. La sharing economy incontra il pubblico* 35 ff (E. Polizzi & M. Bassoli eds, Milan 2016); On the different forms of urban pooling, see C. Iaione, *The Right to the Co-city*, 1 Italian J. Pub. L. 129 (2017); C. Iaione, *The Co-city, Sharing, Collaborating, Cooperating, and Commoning in the City*, American Journal of Economics and Sociology 416 (2016); C. Iaione & E. De Nictolis, *Urban Pooling*, Fordham Urban Law Journal 666 (2017).

<sup>33</sup> On this phenomenon, see D. Wachsmuth, & A. Weisler, *Airbnb and the Rent Gap: Gentrification Through the Sharing Economy*, 50(6) *Envtl. & Plan.: Econ. & Space* 1147–1170 (2018). Only in some large cities have companies like Airbnb agreed to collaborate with local authorities, e.g., for the collection of tourist taxes. S. Picascia, A. Romano & M. Teobaldi, *The Airification of Cities: Making Sense of the Impact of Peer to Peer Short Term Letting on Urban Functions and Economy*, Proceedings of the Annual Congress of the Association of European Schools of Planning (Lisbon 2017). Uber's attempt to enter the transport market of European cities has, above all, clashed with the demands of the taxi driver unions. In the absence of national regulations, the Court of Justice of the EU intervened, which treated the two cases differently, applying the (very favourable) legal regime of 'information society services' to the brokerage business of Airbnb (Judgment of the Court of Justice in C-390/18, YA and AIRBNB Ireland UCv Hôtelière Turenne SAS and Association pour un hébergement et un tourisme professionnel (AHTOP) and Valhotel, 19 Dec. 2019 ECLI: EU: C: 2019: 1112), while it applied the (more complex) legal regime of the 'transport sector' to Uber. (Case no. C-434 Profesional Elite Taxi/ Uber Systems Spain SL, 20 Dec. 2017 ECLI:EU:C:2017:981).

<sup>34</sup> An example of promotional and mediation activities is represented by the Charter of Fundamental Labour Rights in the urban context, promoted by the Municipality of Bologna and signed by representatives of some platforms in May 2018. The objective of the charter is to 'promote safe and

In the second model (co-city), the primary objective is to:

favor the transition of cities and especially neighborhoods towards an urban/metropolitan collaborative ecosystem in which the care and regeneration of cities, the needs of people and the perspectives of the local economy are faced, satisfied or cultivated by leveraging strategies centered on civic intelligence and collaboration between public, private and community/society.<sup>35</sup>

In the *co-city* model, the community element is predominant; the forms of collaboration between public and private are more regulated by the local administration. The methodological approach changes according to the instrument analysed and the diffusion of isomorphism practices (for example, as we will see in the following section, the proliferation of regulations on common goods, and the consequent collaboration agreements, requires a first deductive approach of the legislation and a second approach of empirical analysis of the various agreements).

### 3 SHARED ADMINISTRATION AND COLLABORATIVE CITIES IN ITALY

The prevailing model in Italy is that of the *co-city*, with the leading case being that of Bologna, the first city to experiment with innovative instruments of cooperation between public and private actors, namely the collaboration agreements (§ 3.1). However, experiences which mark the transition from the sharing city model to the co-city model are not lacking, even without losing the initial imprinting, as demonstrated in the case of Milan. In the economic-financial capital a ‘light’ governance model was initially established, based on the paradigm of smart cities, which places the relationship between new technologies and business services at the centre of urban policies.<sup>36</sup> The transition from sharing city to co-city has occurred in recent years, with the gradual adoption of tools that are typical of a

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dignified employment in the city territory, while ensuring the adaptability of the digital labour market and the improvement of the living and working conditions of the service providers’. The charter is mainly aimed at the c.d. riders and sets some minimum standards of protection for the worker on the platforms that subscribe to the charter.

<sup>35</sup> Iaione, *Le politiche pubbliche al tempo della sharing economy*, *supra* n. 32, at 44.

<sup>36</sup> From 2011, during the administration of the centre-left Mayor Giuliano Pisapia, the municipality has undertaken to promote the dissemination of the collaborative economy through information and financial tools (a register of operators and experts of the sharing economy; a qualified list of coworking spaces) and soft law tools (e.g., the municipal resolution of Dec. 2014, accompanied by the document, *Milan sharing city*, which identifies the guidelines of collaborative practices and the support role of the municipality). The situation of Milan was studied due to its characteristics of a ‘bottom-up experience’, supporting the new forms of work and market that were spontaneously developed in the city. The coordination activity was entrusted to advisors who were external to the municipal organization: M. Bernardi & D. Diamandini, *Shaping the Sharing City: An Exploratory Study on Seoul and Milan*, 203 J. Cleaner Production 30–42 (2018); *Governare Milano nel nuovo millennio* (A. Andreotti ed., Bologna 2019), see the introduction in particular.

shared administration, which have been integrated with the typical tools of the sharing city model.

The Italian co-city experiences are attributable to the category of the so-called ‘shared administration’, i.e., a new model of administration, based on the different relationships between politics, administration and citizens, which supports (without replacing) that of traditional administration.<sup>37</sup>

The harbingers of this new way of administering began in the 1990s, with the approval of a series of administrative reforms that undermined the so-called ‘bipolar paradigm’,<sup>38</sup> according to which the relationship between public administration and citizens shall respond to separation and opposition. The administrative reforms to the administrative procedure (Law 241/1990) and to administrative simplification (Decree of the President of the Republic 28 December 2000 no. 45) help to bring the two poles closer together. By participating in the administrative procedure, private individuals become ‘co-administrators’; by applying the institutions of administrative simplification, private individuals become ‘self-administering’ because their activity produces effects that replace those of the public administration activity.<sup>39</sup> In both cases, private individuals collaborate with the public administration, but they still act within the bipolar model because the public administration controls the administrative procedure to achieve the public interest.

The shared administration model breaks with this scheme: we pass from a ‘vertical, bipolar, hierarchical and unidirectional relationship between institutions and citizens to a horizontal, multipolar, equal and circular relationship’.<sup>40</sup> This paradigm shift was legitimized by the constitutional amendment implemented through constitutional law No. 3 of 2001, which amended Title V of the Constitution (dedicated to territorial organization) and introduced the principle of horizontal subsidiarity (Article 118, 4th paragraph of the Constitution<sup>41</sup>). It is a relational and, in some respects, revolutionary principle of the relationship between institutions and citizens.<sup>42</sup> Therefore, to ‘promote the autonomous

<sup>37</sup> G. Arena, *Introduzione all'amministrazione condivisa*, 117–118 Studi parlamentari e di politica costituzionale 29 ff (1997); G. Arena, *Cittadini attivi* 28 (Rome-Bari 2006); *L'età della condivisione. La collaborazione tra cittadini e amministrazione per i beni comuni* (G. Arena & C. Iaione eds, Rome 2015). More recently, see G. Arena, *I custodi della bellezza. Prendersi cura dei beni comuni. Un patto fra cittadini e istituzioni per far ripartire l'Italia* 32 ff (Rome 2020), self-published Ch. 2.

<sup>38</sup> S. Cassese, *L'arena pubblica. Nuovi paradigmi per lo Stato*, *Rivista trimestrale di diritto pubblico* 602–650 (2001).

<sup>39</sup> Arena, *Cittadini attivi*, *supra* n. 37, at 26–27.

<sup>40</sup> *Ibid.*, at 29.

<sup>41</sup> ‘The State, regions, metropolitan cities, provinces and municipalities shall promote the autonomous initiatives of citizens, both as individuals and as members of associations, relating to activities of general interest, on the basis of the principle of subsidiarity’.

<sup>42</sup> On the horizontal subsidiarity principle, see D. Donati, *Il paradigma sussidiario* (Bologna 2013); *La sussidiarietà* (P. Donati & I. Colozzi eds, Rome 2005); A. Poggi, *Le autonomie funzionali «tra» sussidiarietà verticale e sussidiarietà orizzontale* (Milan 2001); G. U. Rescigno, *Principio di sussidiarietà*

initiatives of citizens' does not mean that citizens must replace the activity of the public administration to make up for any of its shortcomings (even in times of economic and financial crisis in which public administrations struggle to fulfil their tasks). On the contrary, it implies that citizens and institutions work together to take care of the common good.

Shared administration is the administrative translation of the principle of horizontal subsidiarity. Collaboration practices launched in the co-cities allow citizens to identify the common good to be treated through a series of activities designed and shared with the public administration. The cultural turning point is significant because it determines the transition from a public administration that – unilaterally – takes care of public goods, to an administration that co-takes care – with private individuals – of public goods which, thanks to this paradigm shift, become common goods.<sup>43</sup> The result is not the mere sum of resources and activities, but a new way of administering; using the metaphor of colours proposed by Gregorio Arena 'supposing that the public administration is yellow and the citizens are blue, the result that emerges by applying the principle of subsidiarity is not a simple mixture of two colors, but is a completely new color: green'.<sup>44</sup>

Shared administration aims to promote:

collaborative relationships or, better, sharing relationships, which are inspired by a coherent set of values and general principles, such as mutual trust; publicity and transparency; the responsibility; inclusiveness and openness; equal opportunities and the fight against forms of discrimination; sustainability; proportionality; adequacy and differentiation; informality; civic autonomy; proximity and territoriality.<sup>45</sup>

Citizens who participate in shared administration practices abandon the status of *passive citizens* and become 'active citizens', taking care of common goods and exercising a new form of participation in the administrative space.

The implementation of the horizontal subsidiarity principle has been very slow. The cultural change of the relationship between public administration and citizens (who can become active), took a long time. In recent years, local authorities (in particular municipalities), have experimented with various tools for including citizens in decision-making processes (participatory budget, consultancy, etc.), but the concrete

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*orizzontale e diritti sociali*, 1 Diritto pubblico 5–50 (2002); A. Albanese, *Il principio di sussidiarietà orizzontale: autonomia sociale e compiti pubblici*, 1 Diritto pubblico 51–84 (2002).

<sup>43</sup> As G. Arena correctly points out, *Citizens active*, at 110 and Arena, *I custodi della bellezza*, *supra* n. 37, at 15, Art. 118, para. 4 of the Constitution uses the term 'general interest', a concept much closer to what in the Anglo-Saxon world is referred to as *public interest*. The principle of horizontal subsidiarity therefore goes beyond the concept of *public interest*, according to a subjective notion of the administration (which pursues *public interests* which are *interests of the State*, unilaterally and, mainly, with authoritative acts) and affirms the concept of general interest (which can be pursued with independent private initiatives, in collaboration with the public administration).

<sup>44</sup> Arena, *Cittadini attivi*, *supra* n. 37, at 103.

<sup>45</sup> <https://www.labsus.org/glossario-dellamministrazione-condivisa/> (accessed May 2020).

implementation of Article 118, paragraph 4 of the Constitution took place with the adoption of the regulations for the care and regeneration of common goods and collaboration agreements (*see § below*).

A significant step forward in the recognition of the new shared administration model was made with the sentence of the Constitutional Court no. 131 of 26 June 2000 relating to the ‘Code of the Third Sector’.<sup>46</sup> The Constitutional Court recognized the importance of the co-design and co-programming activities of public administrations together with social sector entities. Between these entities, ‘a shared administration channel is established, an alternative to that of profit and the market’. The Code of the Third Sector thus became ‘one of the most significant implementations of the principle of horizontal subsidiarity developed by Art. 118, paragraph 4 of the Constitution’.<sup>47</sup> Leading scholarship has seen a certain parallelism between the sentence of the Constitutional Court no. 75, 1992, relating to voluntary organizations and third sector entities that collaborate with the public administration: it is the ‘most direct realization of the principle of social solidarity’.<sup>48</sup>

### 3.1 MUNICIPAL REGULATION FOR THE COLLABORATION BETWEEN MUNICIPALITIES AND THEIR CITIZENS FOR MANAGING AND REGENERATING COMMON URBAN GOODS

For many years the principle of horizontal subsidiarity and, consequently, the shared administration model were not implemented. The autonomous initiatives of citizens – provided for by Article 118, paragraph 4 of the Constitution – were not promoted by local administrations and citizens struggled to propose forms of collaboration with their own municipality or with other institutions.

For some years now, however, there has been a direct implementation of the principle of horizontal subsidiarity, through a regulatory instrument that is arousing

<sup>46</sup> The Code of the Third Sector (Legislative Decree 117/2017, amended by Legislative Decree 3, Aug. 2018, no. 105) regulates the activities of a range of subjects of social or civic sectors (voluntary associations, social promotion, cooperatives, non-profit organizations, etc.) and relations with public institutions. The Constitutional Court recalled that these subjects were part of Italian history: ‘Even before the public welfare systems were discovered, the creativity of individuals was expressed in a multiplicity of associative forms (mutual benefit societies, charitable activities, pawnshops, etc.) which have thus been able to guarantee assistance, solidarity and education to those who, in the most difficult moments of our history, were excluded’. On the new legislation of the Third Sector, *see* A. Fici et al., *Dalla parte del Terzo settore* (Bari-Rome 2019).

<sup>47</sup> Judgment, <http://www.giurcost.org/decisioni/2020/0131s-20.html> (accessed May 2020).

<sup>48</sup> E. Rossi, *Il fondamento del Terzo settore è nella Costituzione. Prime osservazioni sulla sentenza n. 131 del 2020 della Corte costituzionale*, 3 *Forum di Quaderni Costituzionali* 57 (2020). *See also* L. Gori, *Sentenza 131/2020: sta nascendo un diritto costituzionale del Terzo settore*, *Impresa sociale* (27 Jun. 2020) and *I rapporti tra pubbliche amministrazioni e enti del terzo settore. Dopo la sentenza della Corte costituzionale, no. 131 of 2020* (A. Fici, L. Gallo & F. Giglioni eds, Naples 2020), in course of publication.

some interest, even outside Italy. We are referring to the ‘Municipal Regulation for collaboration between municipalities and their citizens for managing and regenerating common urban goods’ (hereinafter: Regulation). This Regulation was approved for the first time in 2014 by the Municipality of Bologna<sup>49</sup> with a view toward overcoming the smart city model and affirming the collaborative city model,<sup>50</sup> and it was slavishly imitated in the following years by many Italian municipalities.<sup>51</sup> The success of the model and its circulation by imitation throughout Italy allowed for an overall reasoning on the characteristics of this new regulatory instrument and the administrative act connected to it: the collaboration agreement.

Regarding the legal basis, the Regulation represents a direct implementation of the principle of horizontal subsidiarity (Article 118.4 of the Constitution) and a concrete manifestation of that ‘right to the city’ which is expressed mainly through the enhancement of regulatory autonomy recognized to municipalities by Article

117.6 of the Constitution.<sup>52</sup> By exercising regulatory power, municipalities can speak out for the needs of their communities, directly interpreting the Constitution, without having to wait for the intervention of the state legislator.<sup>53</sup>

The Bologna Regulation was approved in a particularly difficult historical period (the post economic and social crisis of 2008), when, due to budget cuts, all Italian local administrations were struggling (and are still struggling) to fulfil their mission with respect to the community’s needs with scarce public resources. The spirit of collaboration between public and private, therefore, became more a necessity than a political ambition. It is not surprising, however, that the first

<sup>49</sup> The Regulation was approved with the Municipal Council Resolution no. 172 of 2014.

<sup>50</sup> Within the electoral program of the second mandate 2016–2021, there is an interesting case of self-qualification of the city (Municipality) of Bologna which establishes, in a political document, its evolution from smart to collaborative (‘we have begun to speak of “collaborative city” as an approach that is capable of overcoming the model of the smart city that had established itself in those years as a qualitative objective for many cities ... in the first mandate we promoted an approach based on subsidiarity. What differentiated it from the most noted smart city is the approach resulting from the approval of the first “Regulation for the shared management of common goods”’. *Idee e valori per Bologna. Linee programmatiche di mandato 2016–2021*, <http://www.comune.bologna.it/sites/default/files/documenti/Linee%20programmatiche%20mandato%202016-2021.pdf>) (accessed May 2020).

<sup>51</sup> An update on the approval of new regulations is, [www.labsus.org](http://www.labsus.org), the association’s web page, *Labsus. Laboratorio per la sussidiarietà*, and in the annual reports. An overview of the early regulations and agreements can be found in *La rigenerazione di beni e spazio urbani. Contributo al diritto delle città* (F. Di Lascio & F. Giglioni eds, Bologna 2017).

<sup>52</sup> Article 117.6 of the Constitution, ‘The State shall have regulatory powers in its areas of exclusive legislation, subject to any delegations of such powers to the Regions. Regulatory powers shall be vested in the Regions in all other subject matters. Municipalities, provinces and metropolitan cities shall have regulatory powers as to the organisation and implementation of the functions attributed to them’.

<sup>53</sup> F. Giglioni, *I regolamenti comunali per la gestione dei beni comuni urbani come laboratorio per un nuovo diritto delle città*, 2 *Munus* 287 ff (2016); P. Michiara, *I patti di collaborazione e il regolamento per la cura e rigenerazione dei beni comuni urbani. L’esperienza di Bologna*, 2 *Aedon* (2016).

attempt to regulate the collaborative approach to the care of urban assets was carried out in Bologna, in an urban context that is particularly favourable to experimenting with new forms of civic collaboration.<sup>54</sup> However, the Regulation is not the result of a conception *in the laboratory*, but is the result of the political will of a municipal administration inclined to innovation and cooperation,<sup>55</sup> assisted by a group of scholars who for some years have been working on the topic of common goods and shared administration.<sup>56</sup> This collaboration between scholars, local authority and citizens has characterized all of the long procedure for approving the Regulation.

The proposal by leading scholars to implement the principle of horizontal subsidiarity was accepted in a normative text that combines the pursuit of the general interest (by the public administration and citizens for the protection of common goods), with individual autonomy, through formal recognition of shared administration practices, such as urban regeneration. Urban regeneration is the subject of contemporary urban planning study and concerns ‘those territories already used for “urban” functions and practices that today need to be renewed through the introduction of new uses, different meanings and spatial qualities and updated materials’.<sup>57</sup> On a legal level, since the 1990s, urban planning law has responded to these redevelopment programs with instruments linked to previous legal categories (property, the right to build, etc.), which today struggle to satisfy the care of urban commons.<sup>58</sup>

Urban commons are, in fact, the subject of the Regulation and are defined as ‘tangible, intangible and digital assets, which citizens and the administration, also through participatory and deliberative procedures, recognize as functional to individual and collective well-being ...’. The Regulation does not refer exclusively to

<sup>54</sup> Bologna is known for its participatory tradition and for the many forms of civic collaboration carried out by the approx. 1,000 registered associations. Furthermore, Bologna is the capital of the Emilia-Romagna Region which has the highest number of cooperatives in Italy; one third of the city’s gross domestic product is produced by cooperatives.

<sup>55</sup> After the approval of the municipality, the municipal administration of Bologna initiated other collaboration policies through the so-called ‘Urban Innovation Plan’; among these is the Participatory Budget, which involves citizens in the management of a portion of the municipal budget that is to be allocated to city transformation projects (2017 and 2018 editions), also in areas such as sports, culture and the environment (2019 edition).

<sup>56</sup> Dealing with a multidisciplinary group within the Labsus project.

<sup>57</sup> Orioli, *supra* n. 2, at 414. Often regeneration interventions are initiated by citizens’ requests rather than derived from institutional initiatives (such as the recovery of spaces of everyday life in Bologna); they involve spaces that take on a symbolic value for the city (e.g., the transformation of the New York High Line, supported by the Friends of the High Line association, <https://www.thehighline.org/>) (accessed May 2020); at times they are of a temporary nature (e.g., the ‘Città aperte’ pedestrianization program promoted by the Municipality of Milan in 2018, <https://www.comune.milano.it/aree-tematiche/quartieri/piano-quartieri/piazze-aperte>) (accessed May 2020). Otherwise, they may be the result of a clash between the local administration and citizens, which may lead to decisions other than those planned (for an example, see the Darwin Eco-système in Bordeaux, <https://darwin.camp/projet-darwin/une-friche-urbaine-renovee/>) (accessed May 2020).

<sup>58</sup> For Italy, see Di Lascio & Giglioni eds, *supra* n. 51, and to the bibliography quoted in the text.

traditional ‘local goods’, but to common goods, i.e., those goods that do not have a specific legal regime, valid for all types (classic common goods such as agricultural land, woods and pastures fall into this category, water resources, fishing areas, but also the so-called new commons, such as public buildings, infrastructures, squares, schools, cultural heritage, city streets, or intangible assets such as local cultural traditions and global assets such as climate or environmental resources, but also legality, safety).<sup>59</sup>

Collaboration between (active)<sup>60</sup> citizens and the public administration is based on a series of general principles that are typical of administrative activity (e.g., transparency; proportionality; sustainability) and other principles and values that govern the collaboration between public and private individuals, some of which are unrelated to the logic of the public law of *continental footprint* (e.g., mutual trust; informality; inclusiveness and openness).

Based on these principles, collaboration agreements (or collaboration pacts) are stipulated to regulate specific asset care activities (sporadic or periodic); regeneration (e.g., the restoration of the value of an asset); and shared management. This is the technical-legal instrument on which the alliance between citizens and administration rests or, using the evocative words of Gregorio Arena, ‘a powerful factor of social, cultural and also administrative innovation’. ‘When citizens sign a collaboration agreement, they are not exercising a power, nor are they fulfilling a duty, but they are exercising a new form of responsible and supportive freedom, recognized by Article 118, last paragraph, Constitution. Not substitutes! Sovereigns, if anything’.<sup>61</sup>

In the literature, the legal framework of collaboration agreements<sup>62</sup> and their legal nature are still uncertain and span from the thesis of *non-authoritative*

<sup>59</sup> P. Chirulli, *Sussidiarietà e collaborazione «amministrata» nei beni comuni urbani*, in *La Co-Città. Diritto urbano e politiche pubbliche per i beni comuni e la rigenerazione urbana* 55 ff (P. Chirulli & C. Iaione eds). Due to space limitations, it is not possible to go into great depth regarding the theories on urban common goods, as an evolution of the concept of common goods, ‘constructed’ in solidarity through an agreement with local institutions for co-management of urban resources. On these concepts, see M. J. Madison, Brett M. Frischmann & K. J. Strandburg, *Constructing Commons in the Cultural Environment*, 95 *Cornell L. Rev.* 657 (2010); S. Foster, *Collective Action and the Urban Commons*, 87 *Notre Dame L. Rev.* 57 (2013), and, for a theory of the city as a common good, see S. Foster & C. Iaione, *The City as a Commons*, *Yale Law and Policy Review* 281 (2016).

<sup>60</sup> Article 2, c) of the Regulation: ‘all subjects, individuals, associates or in any case those united in social formations, including that of an entrepreneurial nature or with a social vocation, who take action towards the care and regeneration of urban commons pursuant to this regulation’.

<sup>61</sup> G. Arena, on the Labsus website & Arena, *I custodi della bellezza*, *supra* n. 37, at 42 ff describes the new forms of subsidiarity.

<sup>62</sup> On the Regulation as a legal basis that legitimizes the collaboration agreements, some scholars suggest ‘to insert the single agreement not only in this regulatory framework, but in a further legal framework of support, using ... the tool offered by positive law, that is, in order to support the single pact with a double regulatory framework’, therefore, to seek, from time to time in positive law, further legitimacy with respect to the municipal regulation, see G. Calderoni, *Patti di collaborazione? Sì, ma preferibilmente*

*administration acts* for which the public administration acts according to the rules of private law (this is a possibility provided, in general, by Article 1, paragraph 1-bis Law 241/1990), to the (majority) thesis of bilateral acts governed by administrative law, in which the public administration recognizes assets of general interest to be entrusted to private individuals, through a discretionary judgment, subject to the rules of public law (integrative agreements or substitutes for the provision, pursuant to Article 11, Law 241/1990). However, it would be a *necessary collaboration* agreement because if the negotiation did not end with an agreement, the procedure would fail (in fact, the local administration cannot conclude the procedure with the approval of an administrative act unilaterally).

The Regulation provides for many forms of support for the activity of individuals, depending on the object of the collaboration agreement: the administration of free goods and materials, the simplification of bureaucratic costs, cash financing, training of volunteers, concession for the free use of buildings and common areas, and contributions for insurance coverage.

In five years of experimentation, the Municipality of Bologna has received more than 500 proposals for collaboration agreements, more than half of which have ended positively with the agreement being signed.<sup>63</sup> Most of those agreements were proposed by associations; less than a third from individual citizens. In general, the object of the pacts concerns the care of common goods, the care and regeneration of spaces, and activities with children and teenagers.

The experience of Bologna has been replicated in many Italian municipalities.<sup>64</sup> In the first years following the approval of the Bologna Regulation, only a few cities had adopted a similar Regulation and had started experimenting with Collaboration Pacts (in 2017, half of the agreements signed throughout Italy were distributed between Bologna and Trento). In recent years, the experimentation has extended to many other municipalities, mainly in Northern Italy (69% of the pacts), of medium and large size (52% of the municipalities have a population of over 50,000 inhabitants; the relationship between pacts and demographic consistency becomes even more evident if we consider that as many as 79% of the agreements analysed in the 2019 Labsus Report were stipulated in large municipalities). As regards the panorama of subjects presenting the pact proposals to local authorities, in recent years it has been much more varied. The main subject is still represented by associations, but there is an increase

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(e, talvolta, necessariamente) con una seconda (e più esterna) cornice giuridica. Appunti e spunti, a partire soprattutto dal Regolamento comunale bolognese del 2014 e da qualche caso applicativo, in *La Co-Città* 36.

<sup>63</sup> At the link, <http://partecipa.comune.bologna.it/beni-comuni> (accessed May 2020) an update is available on the collaboration agreements and their contents.

<sup>64</sup> The statistics are taken from the 2019 Report on the shared administration of Labsus commons, available on the web page. The photograph taken on 30 Jun. 2019 restored the image of an Italy with over 1,000 tangible pacts.

in cases of: individual citizens; spontaneous committees; both for profit and social enterprises; and apartment buildings (a new entities who have recently stipulated agreements with the public administration). As for the approval process of agreements within the municipal administration, in 76% of the cases it is the responsibility of the managers of the public administration. For half of the other cases, the participation of political bodies is expected together with the approval of the administrative director, while for the other half the exclusive participation of political bodies is foreseen.

The principal object of the pacts is the care of green areas, regarded as common goods (gardens and urban parks), but the cases of care for squares and streets of the city are increasing, as well as schools and seats of culture (libraries, theatres, etc.). In recent years, many agreements have several common goods as their object and not just one, as was the case in the first phase of experimentation (usually the pursuit of the general interest is achieved with the protection of a tangible asset, to which a series of activities are supported for the care of an intangible asset).

The main areas of intervention regard culture and social inclusion, which tend to integrate with each other.

The average duration of the agreements is one year, although the multi-year agreements are increasing (usually up to a maximum of three years). In almost all cases, the administration provides resources to be allocated to various types of agreements (tax, material, simplification, promotion or insurance), often provided in a combined form. Compared to the initial years, many administrations take on the insurance coverage for the subjects who stipulate the agreements. This tool for supporting the activity of private individuals has proved to be a fundamental guarantee for stimulating proposal initiatives for the agreements.

#### 4 THE FUTURE HAS BEGUN ... WITH A REVOLUTION

The shared administration model, with its implementation tools (Regulations and collaboration agreements or pacts), looks like a great revolution for the Italian legal system. It is a change of legal paradigm that incorporates a series of phenomena for the transformation of contemporary society (starting with the request of city dwellers to collaborate with institutions to co-manage and/or self-manage urban commons). Under the umbrella of the new paradigm, in many European and non-European cities, that 'local regulatory wave' is spreading<sup>65</sup> which leads local authorities to give legal discipline to these new phenomena.

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<sup>65</sup> P. Chirulli & C. Iaione, *Introduzione*, in *La Co-Città* 4.

These transformations are felt both from the perspective of citizens – who become co-administrators, without having to go through the only way of access for the care of common goods and the pursuit of the public interest, i.e., the classic representation scheme – as from the public administration perspective. In fact, shared administration undermines existing administration models and innovates relations between citizens and institutions, between the public sector, the private sector and the social sector.

This impacts on various pillars that govern modern democratic societies, which are closely connected to each other: citizenship (on one hand, it is a status enriched by a series of rights that constitute an ‘administrative citizenship’<sup>66</sup>; on the other hand, it is a status that is not necessary for conversion into active citizens. The collaborative city, in fact, goes beyond the legal categories used up to now for the exercise of certain participation rights and it also welcomes the proposals of non-citizens, or minor citizens, of citizens residents and non-residents, etc.<sup>67</sup>); representation (the novelty consists in the fact that it is no longer necessary to be elected and hold public offices to take care of the common goods and pursue the public interest; through collaboration practices, anyone can propose a form of co-administration of common goods, exercising a new form of participation in the sphere of administration); responsibility (until now connected solely to political representation, now attributable to those who – non-elected citizens – also act in the name of the community to take care of a common good).

These are important transformations that lead the public administration to enter into dialogue and collaboration more and more with different subjects. A public administration that accounts for the phenomena of the sharing economy will be able to modulate the degree of interaction with citizens, depending on the asset to be protected, the public interest to be pursued, the type of subjects involved and to prepare a urban governance composed of ‘incrementable strata’.<sup>68</sup> The shared administration is placed in the layer that is most in contact with citizens, which still is little explored and, perhaps for this reason, is surprising, as the words of a policy of a small municipality in central Italy testify, from which is felt all the innovative impact of this way of administering: ‘Collaboration agreements are a sort of Copernican revolution for municipalities like ours, in which administrative action has always been directed and exercised by a few, if not by only one’.<sup>69</sup>

<sup>66</sup> With the administrative reforms begun in the 1990s, the citizen has enriched the ‘list of his rights towards the public administration’ and ‘he is no longer placed in a position of subordination’, see S. Cassese, *Lo spazio giuridico globale* 156 (Rome-Bari 2006).

<sup>67</sup> Perhaps it would be more appropriate to use the concept of inhabitants, already used by Lefebvre, *supra* n. 14.

<sup>68</sup> Iaione, *Le politiche pubbliche al tempo della sharing economy*, *supra* n. 32, at 57.

<sup>69</sup> Moira Rotondo, *Municipal Councilor of the Municipality of Pontecorvo (FR), in the 2019 Labsus Report*.

On the theoretical level, the shared administration was supported by all the elements which compose the legal systems<sup>70</sup>: the legislative formant (from the Constitution – which since 2001 includes the principle of horizontal subsidiarity – from some regional laws,<sup>71</sup> by local authority byelaws); the jurisprudential formant (various first instance Courts have expressed themselves in favour of forms of co-management of common goods, also recognizing legal value in situations of initial illegitimacy,<sup>72</sup> but the most relevant recognition is that of the Constitutional Court with sentence 131/2020); the scholarly formant (scholars helped to create the category of shared administration based on the theory of city law). All those formants did not limit themselves to recognizing and re-emerging the cooperative and welfare spirit that has always inspired third sector bodies and other entities in Italy (e.g., the Catholic Church and other religious confessions), even before the Unification of Italy. As we read from the parliamentary works of the 2001 constitutional reform, the meaning of the principle of horizontal subsidiarity is not that of the nineteenth-century, of the ‘division of labor [ ... ] what society can do on its own does not allow for government interference’,<sup>73</sup> but the one specified by the parliamentarian who presented the amendment during the parliamentary work of constitutional reform, Hon. Giuseppe Cotturri, who spoke of ‘circular subsidiarity’.<sup>74</sup>

Within the framework of this new paradigm, Italian cities are experimenting with new collaboration practices. The spread of information through the media favours the practices of isomorphism, inside and outside the borders of the Italian territory, and leads the cities to dialogue with each other by *institutionalizing* relations.

In fact, the signatures of charters and declarations are multiplying in which mayors express their intention to collaborate to stem, control, intercept the effects of the sharing economy that are impacting on the territory and to urban citizenship.

The most recent and best known is the *Sharing Cities Declaration: Cities’ Common Principles and Commitments for City. Sovereignty Regarding the Platform Economy*, signed in Barcelona at the Sharing Cities Summit in November 2018, initially by thirty-two cities around the world and open to the signing of others,

<sup>70</sup> R. Sacco, *Legal Formants: A Dynamic Approach to Comparative Law*, 2 Am. L.J. Comp. L. 343 ff (1991).

<sup>71</sup> The Lazio Region was the first to approve a law on the shared administration of common goods (Regional Law No. 10/2019).

<sup>72</sup> The cases are dealt with by Giglioni, *supra* n. 14.

<sup>73</sup> Consider the principle of subsidiarity from the citizens’ side. See G. Moro, *Governance sussidiaria, un esempio sul campo*, in *La Co-Città* 8–9.

<sup>74</sup> G. Cotturri, *Novità e portata progressiva della sussidiarietà orizzontale nella costituzione italiana. A proposito dell’Art.118, ult. comma, nella revisione del Titolo V*, 9 Gli argomenti umani. Sinistra e innovazione (Sep. 2003).

with the aim of sharing the inspiring principles for a government of the digital economy.<sup>75</sup> In addition to these coalitions between cities, bilateral agreements are also spreading to test new strategies between cities that share a socio-economic fabric and/or a historical experience of participation of the population in the decision-making processes of the local authority (e.g., the agreement signed by the mayors of the cities of Bologna and Barcelona in November 2018).<sup>76</sup>

These documents have the advantage of making (from below) a contribution to the theoretical construction of city law; the ('very') soft law that emerges from these 'Charters' is all based on the themes of social solidarity and projects the cities towards a new scenario, which will nourish this thesis more and more.

From the point of view of comparative law, the exchange of best practices between cities and, in general, the phenomena of isomorphism which have been addressed, raise some doubts, if only in reference to the requirements of comparability. The interaction between cities that belong to models of different forms of government and that organize local services based on different models could prove fruitless, if not even a harbinger of errors. Diversity does not automatically exclude comparison, it just requires a certain degree of care.<sup>77</sup>

This attention to the method of comparison would make it possible to avoid the error of basing the analysis exclusively on the local government laws of the various European states and, on that basis, to compare the solutions and innovations proposed by the various local authorities.

The application of comparative law would make it possible to take into consideration the new use of the word *city* (a term that is beginning to circulate in an autonomous form compared to other uses of this word by legislators),<sup>78</sup> and

<sup>75</sup> The Declaration insists on the major socio-economic issues influenced by the sharing economy (work, inclusion, health, environmental sustainability, economic promotion of small and medium-sized enterprises) and on the new issues that this phenomenon has brought to the surface (data protection, urban commons, etc.). The signatory cities undertake to promote supportive public policies, to support businesses/technological platform activities and to protect the environment, together with digital protocols in compliance with local legislation.

<sup>76</sup> In which we read that 'cities, protagonists of social, economic, environmental and technological changes, are the level of government capable of identifying the most effective solutions for citizens and of proposing new, more open and democratic forms of governance', and that 'a stronger role of cities within the European Union would strengthen the Union itself ... in the municipal dimension of politics and in the leadership of cities they see the best response to the inequalities created by the processes of globalization and to the resurgence of nationalism and sovereignty'.

<sup>77</sup> On the comparability requirements, see M. Ancel, *La confrontation des droit socialistes et des droits occidentaux*, in *Legal Theory, Comparative Law: Studies in Honour of Imre Szabó* (Z. Péteri ed., Budapest 1984); M. Lesage, *Comparing Public Institutions, Their Organization and Procedures: East-West Cooperation in East-West Comparisons*, in *International Comparative Research. Social Structures and Public Institutions in Eastern and Western Europe* (M. Niessen, J. Peschar & C. Kourilisky eds, Oxford 1984).

<sup>78</sup> In this way, Scarpelli, recalling the last Wittgenstein, teaches us that for the analysis of meaning we must not look for the referent but for the use, 'and only when the use is referential [to] look for the referent' since 'the search for use is never a search for the meaning of an isolated word that, with special evidence in the case of non-referential words, would result in a dead end': U. Scarpelli, *Diritti*

to pass from an analysis of positive rights to an analysis of legal systems, from an analysis of sources of law to an analysis of formants, doctrinal in particular. In this perspective, broadening the Italian experience could be useful for studying the evolution of the administrative model to which Italy belongs, and to reason on the approach between different models (regulating the forms of participation in the management of municipalities' assets affects the characteristics of the French-Napoleonic administration model; a model far from the Anglo-Saxon 'give back' culture, in which the citizen does not directly deal with the public interest).

So, one has to proceed step by step: if one wants to be inspired by a homogeneous context, perhaps it is better to start with a general reference to some values that cities can share and to some challenges that they can face in a collaborative way. Since the sharing economy is a global phenomenon that was initially studied in the United States where the main platforms were developed, and later it spread to Europe, regulatory challenges caused by these changes have yet to be successfully solved, both at the European level and that of Member States.

From a European perspective that privileges the protection of social values and equality over economic efficiency, cities take on a very important role, helping to remove those (new) obstacles that prevent social equality in the face of these new business models and to promote economic and social rights<sup>79</sup>. Therefore, given that media labels underlie social phenomena, which the legal system should take into account, before the defining terms *sharing* or *collaborative*, as used for this new vision of cities, I would propose inserting the adjective *European*.

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*positivi, diritti umani: un'analisi semiotica*, in *Diritti umani e civiltà giuridica* 34 (S. Caprioli & F. Treggiani eds, Perugia 1992).

<sup>79</sup> Cities are asserting their own identity at the European level by using guarantee instruments that were previously unknown at the local level, as demonstrated by the acceptance of the appeals filed by the cities of Paris, Brussels and Madrid by the Court of the European Union, which has partially annulled the commission regulation that sets emission limits for nitrogen oxides that are too high for the testing of new passenger and light commercial vehicles (Judgment of the Court of 13 Dec. 2018 – City of Paris, City of Brussels and *Ayuntamiento de Madrid v. European Commission* (Joined cases T-339/16, T-352/16 e T-391/16)).