Chapter 14—Conclusion. Is the Governance of the Commons a Model for a New Global Governance?

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1. Background <a>

The immediate aftermath of the end of the Cold War sparked a new cosmopolitan enthusiasm for common goods, such as the environment, public health or knowledge, to be governed cooperatively by a wide array of actors on the international scene. There was a palpable sense of urgency and a keen desire to seize this opportunity to design a worldwide institutional framework capable of managing sustainably the goods vital to the future of mankind. But beyond this minimalistic consensus, there was no further political agreement. How was this global governance to be designed? What goods should be subjected to it? Who should participate and how? The ambition of this book has been to tackle those questions in some details and to explicit on a normative, institutional and legal level, what shape a global governance of those crucial goods could adopt.

The editors of this volume offer a captivating overview as well as a detailed scrutiny of an innovative model of governance that, in their view, could beneficially be transposed to the global stage and implemented on a different scale by international actors. This model of governance is associated with the commons, a specific type of community-level self-organization. Popularized by the trail-blazing work of Elinor Ostrom in the field of political economy, this model of governance recently took a more explicitly political tone. As Cogolati and Wouters expose in their introduction to this volume (chapter 1), commons exist only insofar as they are sustained through 'commoning' practices, that is horizontal and self-determined cooperative practices and norms that compel virtually all community members. The governance of the commons is thus in itself a highly peculiar model of governance, whose legitimacy relies strongly on its proto-democratic character (Deleixhe, 2018). For the co-participants to the commoning practices are also its co-deciders, thus providing the collective of the stakeholders with a decision-making process to determine their preferences in terms of collective policies.

I would like in the conclusion to this stimulating volume to argue that the political principle underlying the commons resonates with the emerging global governance and offers an innovative political model to reform and regulate international interactions. For commons are intrinsically associated with a polycentric logic of *governance*, involving all stakeholders in the definition of the practices to be adopted to manage them sustainably. To substantiate this claim, I will proceed in three steps. I will first emphasize that the commons should not be associated

narrowly with a certain type of goods but rather deserve to be treated as a ground-breaking model of governance. I will then highlight that the type of governance provided by the principle of the common bears some striking similarities with the concept of global governance as it was introduced in the academic and political debate in the 1990s. Finally, to stress the originality and the added-value of the commons, I will contrast them with another contemporary model of governance advocated on the international stage, that is the model of the global public goods (GPGs). I will stress that the latter reiterate a (slightly amended) logic of *government* on a different scale, including the recourse to a centralized authoritative power, whereas commons provide opportunities for a decentralized and proto-democratic global governance to arise.

2. The Commons as an Innovative Model of Governance <a>

The word 'commons' traditionally refers to resource domains available for joint use by community members. By extension, the term commons came to be used to refer to 'a resource to which no single decision-making holds exclusive title' (Wijkman, 1982: p. 512). Prior to the seminal work of Ostrom, it was widely admitted that their open access and the rivalrous nature of the goods they contained would lead to a collective action problem (Olson, 1965). As a result, only two distinct policies could be prescribed to ensure that long-term interests would prevail over immediate individual gains: either the invisible hand of the market or the Leviathan state (Ostrom, 1990: pp. 8-13). Elinor Ostrom convincingly showed that the pessimistic 'metaphoric model' of the prisoner dilemma was misleading. It rests on a mistaken construal of the commoners which clearly does not tally with empirical facts. Through a careful scrutiny of numerous case studies in the Philippines, Switzerland, Japan and Spain, Ostrom argues that commons have existed and proven themselves sustainable over long periods of time (centuries in the case of the Andalusian irrigation system) (Ostrom 1990: pp. 58-88). For commoners are social actors who communicate, observe social norms and judge their fellow members on the basis of their reputation (Ostrom, 1990: pp. 15-21). They understand that it is in their own best interest to build institutions that will create incentives for others to cooperate. Notably, they design monitoring and conflict-resolution mechanisms that foster mutual trust by preventing commoners from free-riding (Ostrom, 1990: p. 94). In sum, commoners have proven themselves capable of self-organization and autonomous government of the commons on which they depend for their subsistence (Ostrom, 1990: pp. 90-102).

Ostrom's originality lies partly in what we may call her constructivist/institutionalist turn. For she was the first author to clearly expose that commons were not just a pool of resources but depended on a coordinated governance. The collective institutions and social norms created by the community members are not just instrumental in sustaining the commons. In fact, they are *part of* the commons themselves. Commons are therefore not only a natural *thing* but also a *social construct*. Sauvêtre (Chapter 5 in this volume) makes forcefully this point. In his view, commons amount to the institutionalization of cooperative practices and can by no means be reduced to a resource domain to be managed. Hence his stark distinction between two politics of the commons in the Global South: *either* the affirmation of a social sovereignty *or* a developmentalist strategy to optimize the exploitation of resources without depleting them.

But Ostrom eventually appeared to shy away from her own conclusions. Instead of adhering to her rationale and considering that anything could become a commons *if it was governed as such*, Ostrom inconsistently argued that only certain goods, namely common-pool resources and the knowledge commons, should be collectively administered (Dardot & Laval, 2014: pp. 30-33). The 'reification of the commons' in Ostrom's work is condemned by critical commons scholar, such as Dardot and Laval. Firstly, it fails to explain why the initial movement of enclosures (that is the forced privatization of commons) had historically occurred (Dardot & Laval, 2014: pp. 30-33). If meadows and forests ceased to be governed as commons all over Europe in the sixteenth- and seventeenth-century, it was not because landlords suddenly realized that their naturally open layout could be altered to make them exclusive. Rather, it was due to a shift in the social relations between the gentry and the commoners (Meiksins Wood, 2002). Similarly, Susan Buck observes that open-access goods tend to be regarded as natural or global commons to be governed multilaterally (Antarctica, deep seabed, outer space, etc.) only while there exists no technology that makes their exploitation profitable (1998: p. 1). Commons denote not a relation between a resource and a community, but a specific kind of relation between individuals who consider themselves to belong to a shared and constructed community. If no good is naturally common, it follows that goods must be instituted as commons; that is, they have to be *put in* common. Collective self-governance is not *part of* the commons, it is *constitutive* of the commons.

Cogolati and Wouters, following Dardot and Laval (see also the contribution of Dardot in this volume, Chapter 2), suggest calling this collaborative activity itself *the common* to radically distinguish it from its reified forms. The principle of the common invites us to 'introduce everywhere, in the most radical and most systematic fashion, the institutional form of self-government' (Dardot & Laval, 2014: p. 46). It contrasts radically with the two classical policy prescriptions, that is the recourse to market or to the state, in that it is not articulated as a property regime. It is not assumed that the political solution to the conundrum of having multiple owners making claims to a single pool of goods lies in clarifying the rightful owner (whether by distributing private property rights, turning the commons into a public good or even outlining what a common ownership of the good would potentially look like). For it struggles against any form of definite appropriation and intends to substitute the right of use for any claim to property. Hence only those that take an active part in the production of the commons are entitled to be co-participants in the decision-making process about its use. As a matter of fact, many social activists across the world united around the idea that 'the world was not for sale', i.e. that not all goods were meant to be commodified, and that some areas of social life should remain governed trough bottom-up initiatives, which would include resisting any top down attempt to assign them a property regime.

Secondly, the common blurs the distinction between the social and the political. Empirical examples of commons, from region-wide irrigation systems to locally organized inshore fisheries and peer-to-peer data transfer, prove at once to be an efficient model of economic production—ensuring that a collective resource will not only be preserved but also proliferate in the long run for the greatest benefit of all—and to be instrumental in shaping self-governed communities. The *commoning* process creates autonomous social organizations that escape the

classical dichotomy between private and public, and reshuffle the boundaries between the social and the political (Dardot & Laval, 2014: pp. 463-464). The radical demand of self-governance that underpins the principle of the common is as valid for small production schemes as it is at the level of the whole political community, where what is at stake is society's creation of itself (Castoriadis, 1999).

But commons are not only small, self-organized communities. Several of the resource domains on which mankind depends (the atmosphere, the high seas, Antarctica) are to be found on a global scale (Levin, 2006). And as things currently stand, they are in dire need of a governance framework (Clancy, 1998). Additionally, we can identify a new type of commons that, far from requiring to be used parsimoniously have on the contrary to be shared and used widely to prosper, such as the cultural or the knowledge commons (Frischmann, Madison & Strandburg, 2014). Along with new infrastructures of communication and innovative information technologies came the rise of decentralized, horizontal, and egalitarian networks producing immaterial goods (Benkler, 2006). Here too open-access and non-rivalrous goods, though key tenets of the digital commons, is not a quintessential quality of the goods in question, for information can just as easily be turned into an exclusive commodity. The ownership regime of these goods can fall prey to IP regulation, copyrights and other patents generating financial rents out of a restrictive access to a piece of information (Boyle, 2008; Rifkin, 2000). What characterizes those ground-breaking cooperative practices is rather their governance regime, i.e. their stubborn resistance to any form of centralizing authority (Galloway, 2004; Himanen, 2002) coupled with a rejection of the wage relationship typical of the labor market (Lessig, 2001) In her contribution to this volume, Beerkens (Chapter 9) brings this peculiarity of the knowledge commons to the fore. In academic publishing, an oligopoly of commercial publishing corporations prevents the establishment of an open access to scientific knowledge and undermines the effort to replace this market-based distribution of knowledge by a self-governance of scientific knowledge by the academic community. At stake is an opposition between a restricted and monetized access to scientific knowledge and a universal scheme of knowledge exchange inside the scientific community.

Commons are therefore not only very diverse in nature but also potentially universal in scope. The self-organization that is quintessential to their model of governance can be found in large networks of actors. The efforts to coordinate action on the international scene to preserve or develop them have had some limited successes (for instance regarding the mitigation of climate change) but have otherwise remained at a very inchoate stage (Nordhaus, 1994). They nonetheless generated an exponentially growing literature on how to better design their principles of governance (Stern, 2011).

Any enthusiasm regarding the potentialities of the commons should thus be tampered by an important consideration, highlighting that scale is of the essence for those issues (Ostrom et al., 1999). The reason why small-scale commons have proven to be sustainable is because they relied on a community whose thick relationships allowed them to design self-governance schemes and curb anti-social behaviours. It remains to be seen whether the international community shares some of the features that are found at the local level and whether there is enough trust and reciprocity amongst its members to ensure a peaceful provision of global

institutions designed to ensure compliance with its rules and social norms at an international level. Though it may appear a tall order, a substantial literature on global governance highlights some promising features of the post-Cold War international community.

3. A Reappraisal of the Notion of Global Governance <a>

It has by now become a truism to say that global governance is a concept that has low informational value: '[Governance is] a ubiquitous "buzzword" which can mean anything or nothing' (Jessop, 1998: p. 30). Claiming that an activity belongs to the realm of governance tells us little about its actual processes and contents, the way in which the actors involved relate to each other, or the legal architecture framing its cooperation. As a consequence, the concept itself has often been criticized for the fuzziness of its boundaries. To some, it is now akin to an 'empty signifier' (Offe, 2009). In the words of Finkelstein: '"global governance" appears to be virtually anything' (1995: p. 368). But the concept remains, in spite of all criticism, widely used (Weiss, 2000).

The introduction of the concept of global governance in the scientific debate by James Rosenau did little to prevent its refraction into a myriad of related, but nonetheless different definitions. It pits governance against the older notion of government and, while admitting that both are concerned with the steering of human affairs, it comes to the conclusion that: 'Both refer to purposive behavior, to goal-oriented activities, to system of rules; but government suggests activities that are backed by formal authority . . . Governance . . . is a more encompassing phenomenon than government. It embraces governmental institutions but it also subsumes informal, non-governmental mechanisms' (Rosenau, 1992: p. 4). From this opposition between a centralized authority backed by coercive powers and a looser and more decentralized cooperation that involves a wide array of actors that willingly engage into a common network (see also the distinction which Christiaan Boonen draws in Chapter 4 between *power-over* and *power-with*), Rosenau draws the following principle: 'governance is a system of rule that works only if it is accepted by the majority (or, at least the most powerful of those it affects), whereas governments can function even in the face of widespread opposition to their policies' (Rosenau, 1992: p. 4). Since it relies on the consent of its participants, governance presupposes an element of *deliberate* cooperation. And when governance proves to be ineffective, the result is not *bad* governance but rather its absence, that is anarchy.

Since the world as a political system lacks an authoritative central power, all types of interactions that go beyond national boundaries could potentially be defined as global governance. But such an understanding runs the risk of watering down the concept and rendering it insignificant. In my view, it is therefore necessary to draw a few sharp distinctions if we want to isolate the peculiarity of governance (Risse, 2011). We need to resist the suggestion made by Rosenau that governance would encompass government. For the core state institutions, we should retain the term *government*. But on the other hand, governance implies a deliberate coordination overseen by multiple actors and is often embedded in institutional frameworks (that is, international organizations on the global stage), which sets it apart from the spontaneous interactions carried out by utility-maximizing actors in a free social space. In

other words, market transactions and free social interactions should remain beyond the scope of governance. A last caveat should be added. Governance might be a cooperative activity, but this does not entail that it is friction-free. Imbalances of power remain one of its hallmark (Barnett & Duvall, 2005), as well as an unequal distribution of its burdens and benefits (Strange, 1995). In this volume, Eimer (Chapter 8 in this volume) insists on this critical point. A well-orchestrated global governance may mitigate crude political pressures in asymmetrical relations of power. But in his view, it still fails to address the issue of *structural* power imbalances, that is power imbalances significant enough to be internalized by the relevant actors and to determine the negotiation context and outcomes, even in the absence of any threat or pressure. Boonen (Chapter 4 in this volume) goes one step further by indicating that any attempt to overcome this uneven distribution of power may generate violence, be it from dominant positions resisting any institutional evolution or from the actors trying to reverse the current *status quo* and this potential for violence cannot be ignored when thinking about the governance of the commons.

Furthermore, because of globalization and of the perceived democratic deficit in the functioning of international organizations, an additional development emerged that brought a new layer of complexity to the concept of global governance: a political discourse in support of global *democracy*. Now that the world was no longer divided into two political blocks relentlessly pitted against each other by their world views, global democracy was regarded not only as a desirable and idealistic horizon but also as a feasible prospect. Of course, opinions diverged wildly on whether the logics of democracy and global governance were mutually reinforcing or rather undermining each other. Likewise, views were split on whether there was any chance to ever bring democracy to function properly beyond its cradle: the nation state. The cosmopolitan enthusiasm that followed the fall of the Berlin wall would soon subside. But during approximatively a decade, the 1990s, it had become virtually impossible to relate global governance exclusively to a question of effectiveness. Global governance was expected to soon become robust enough to meet some democratic standards and prove its legitimacy.

And, for a while, global governance was indeed regarded as being positively correlated to democracy since it implied a shift away from the exclusive and sovereign authority of the states, resulting in a decentralization and horizontalization of decision-making. Many authors thus saw a bright future for a process of democratization expanding beyond the boundaries of the nation state (Habermas, 2001; Archibugi, 2004; Held, 2009). However, this belief in the democratizing force behind the shift toward governance seems lost in later articles. Soon, harsh critics, such as Mark Bevir and Chantal Mouffe, would describe the efforts to make global governance more inclusive as window-dressing and non-democratic in essence (Bevir, 2006). Others rather see a necessary trade-off between effectiveness and democracy (Scharpf, 1999). One would have to choose between a swift and efficient process of decision-making that may overlook some of the requirements of democracy and a democracy in the thick sense of the word that would inevitably prove to be slow and impractical at the international level.

What would nevertheless remain from those polemical exchanges is the fleeting vision of an international community that would no longer be satisfied with the mitigated chaos that so often

characterizes its interactions and appears ripe to engage into a more self-conscious regulation of its practices.

4. The Model of Global Public Goods \<a>

One example of such a model of governance on the global level was provided, with the support of the United Nations Development Programme (UNDP), by a group of renowned scholars who coined the term GPGs to express and frame the challenges urgently faced by the international community. Drawing a comparison with the literature on public goods at the level of the nation-state, it was suggested that supreme international coordination was required to overcome the structural under-provision of certain public goods on a global level. New governance instruments and methods were needed to bridge the gap between expectations and deliveries of public goods at the global level. The term has since then enjoyed a spectacular success and permeated much of the international policy discourse.

Academically, the concept of GPGs can be traced back to the pioneering work of Paul Samuelson grounded in neoclassical economics (1954). In his seminal article, Samuelson identifies the features that make a good public (that is its non-rivalry and non-excludability) and stresses that, if a good presents those traits, a free rider problem is likely to arise. For, if there is no way for the agent providing the good to exclude other agents from benefiting from it, how could he obtain some returns on its investment from it? The resulting situation is therefore a suboptimal one, in which the public good is not provided even though most of the agents desire it and would be willing to contribute (Sandler, 2001; Anand, 2004). The logical way out of this conundrum is that a legitimate third party with coercive means at its disposal must produce and distribute this public good. For only an authoritative entity can collect a financial contribution of all the beneficiaries. In a domestic economy, the most likely candidate to shoulder that responsibility is the sovereign state. Public goods are, in this sense, market failures that ought to be corrected by a state-like authority.

Attempts have been made by a network of researchers closely associated with the UNDP and led by Inge Kaul to transpose this rationale onto the global scene (Kaul, Grunberg & Stern, 1999; Kaul, Conceiçao, Le Goulven & Mendoza, 2003; Kaul & Conceiçao, 2006). If markets fail to provide public goods at the national level, there is no reason to assume that they would fare any better at the international level. But the situation is further complicated by a structural difference: there is no state-like entity to appeal to on the international stage (Kindleberger, 1986). No single actor is powerful or legitimate enough to compel other agents to contribute and cooperate. Therefore, it is up to a coalition of actors to step in the state's shoes and coordinate themselves through governance mechanisms and international law to ensure the provision of the public good in question (Schaffer, 2012).

But while both GPGs and commons came to refer to some implicit models of global governance, the similarities stop here. Although the two approaches touch on the issue of the shortcomings of collective action, include a global dimension, and overlap partly with regard to the goods that they apply to, they put an emphasis on different policy instruments, advocate distinct governance mechanisms and carry a different set of political, economic and legal implications. Crucially, they put forward contrasting views on the role of the state, multilateral

organizations (in particular the United Nations) and international law in providing GPGs and preserving the global commons.

Contrast the respective assessments of the relation between the law of the commons and international law to provide GPGs offered by Groff and Karlsson-Vinkhuyzen (Chapter 7), Mattei (Chapter 10), De Schutter (Chapter 11), Cogolati and Wouters (Chapter 12), and Brunnée (Chapter 13) in this volume. While Groff and Karlsson-Vinkhuyzen (Chapter 7) see the international rule of law as *the* primordial GPG supporting and making possible the global governance of the commons, Mattei (chapter 10) argues from a deep-ecological point of view that international law is part of the problem, and certainly not part of the solution, calling for a strict return to local, community-level governance. The four remaining scholars adopt a somewhat more nuanced position on this relationship. De Schutter (Chapter 11) looks at the historical dynamic of the relationship between commons and international law and concludes that, though this relationship started on the wrong foot since international law was tasked with the legitimation of exploitative practices in the colonial world, this historical injustice can be redressed by a practice of international law that puts the human rights at its core. Cogolati and Wouters (Chapter 12) argue in the same vein that innovative legal instruments already provide juridical resources to protect and preserve commons in the Global South, such as the right to natural resources or some elements of the rights of indigenous peoples and peasants. Brunnée (Chapter 13) stresses that, in assessing the relation between international law and the governance of global commons, one should not only consider the content of the relevant legal instrument but also pay attention to the effects of its procedural requirements.

In contrast, while the governance of the commons cannot be dissociated from bottom-up management practices and relies on a decentralized decision-making process that turns the community of the stakeholders into masters of their own fates, the governance of public goods presupposes a high degree of centralization of the decision-making process and calls for the creation of a towering authority tasked with the monitoring of the compliance of all actors. This distinction is highlighted and further substantiated by several contributions to the book. Dardot (Chapter 2) is keen to point out that, since the governance of the commons is rooted in local cooperative practices, the most appropriate institutional design to govern the commons is a non-centred federalism. Approaching the same issue from the viewpoint of political economy, Hagen and Crombez (Chapter 6) reach a surprisingly similar conclusion. To be both efficient and legitimate, global governance of commons should not strive for the integration of its different international regimes into a single scheme but rather improve their interconnectedness and increase their overlap, thus creating a tightly-knit polycentric governance. This claim prompts Brando and De Schutter (Chapter 3) to express their scepticism as to whether such a governance would still qualify as 'federal'. Since the emphasis is firmly laid on a decentralized distribution of the competences, would such a model not be better described as 'confederal'? And in this case, would it have the resources to promote shared rules across its subcomponents?

The parallel with the analytical distinction between governance and government is striking. Commons, just as governance, depend on a decentralized scheme of cooperation and cannot operate if the stakeholders do not consent to the social rules they must observe (or because they are nudged into adopting a social behaviour to enhance their reputation) whereas GPGs respond

to a logic of government, since they requires a strong and centralized authority (the UN is the usual suspect in the literature to fulfil this role) to escape the collective action dilemmas leading to their underprovision. Bearing this in mind, the governance of the commons seems to offer a more promising model for an effective and legitimate global governance than the governance of GPGs. Not that the latter cannot be effective, but its organizational mode is closer to an inchoate world-state than to a polycentric federalism.

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