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POCKET PARKS: LEGAL STRATEGIES AND CITIZEN ENGAGEMENT TO ENHANCE CITIES' SUSTAINABILITY

ABSTRACT. The article aims to identify the broad range of sustainable benefits provided to cities by the creation of pocket parks, including health-related, environmental, economic and social aspects. It examines several relevant legal aspects inherent to such parks, by describing the legal characteristics and frameworks of two jurisdictions where these parks thrive, the US and England, in a comparative light. It notes an EU project featuring urban parks, including pocket parks, to further compare similar features and the benefits deriving from them, and offers reflections on common goods. It then analyses pertinent aspects of the Italian legal system, seeking to identify viable means to strengthen the possibility of creating pocket parks there, placing the discussion within the broad context of civic engagement, subsidiarity, empowerment, law enforcement and the rule of law.

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1. Introduction

Access to clean, open spaces in our cities plays an essential role in allowing increased walkability, better air quality and a healthy social and economic life. The adoption by all UN Member States of the “2030 Agenda for Sustainable Development” underlines the need to “make cities and human settlements inclusive, safe, resilient and sustainable” through “safe, inclusive and accessible, green and public spaces.” One sustainable solution is the creation of such areas by converting relatively small, residual lots located across urban neighborhoods into viable parks, which can provide many benefits to city-dwellers. Creating such parks, known as pocket parks, requires innovative approaches across architectural, environmental and administrative sectors. However, the legal aspects of setting up pocket parks are of *a priori* importance, and effective legal strategies are often accompanied by active citizenship and engagement. This paper will discuss the benefits of pocket parks, examine the legal paradigms and approaches that have been successful in countries where they have been established, such as the United States and England, as well as an EU project regarding urban parks. After a brief discussion on “common goods,” the article concludes with a look toward the legal posture, challenges and potential solutions to create and maintain pocket parks in Italy, including the importance of crucial overarching elements: civic engagement, subsidiarity, empowerment, law enforcement and the rule of law.

2. Need for and Benefits of Increased Green Spaces in Cities

“Greening” refers to the actions needed to protect the natural environment and to combat the various ecological harms our planet is now facing. Health considerations demand that green areas be incorporated throughout densely populated areas to improve air-quality conditions and thereby benefit city-dwellers’ well-being. The WHO predicts that problems caused by climate change, such as increasing heat and decreasing rainfall, will provoke increased allergopathies in coming years.¹ It recommends “restoring de-

¹ “Climate and Health Country Profile: Italy,” WHO/FWC/PHE/EPE/15.52, World Health Organization 2018, p. 4.

graded ecosystems and establishing new Green Infrastructures² (GI)” as appropriate strategic actions in “countering air pollution, climate change and urban heat island effect” in Italian cities.³

In economic terms, creating small green oases in dense urban areas is an effort that would fit squarely within the “Safe and Just Space for Humanity” of “doughnut economics.” Economist Kate Raworth depicts this space within a doughnut-shaped graphic, occupying the ring between “ecological ceiling” and “social foundation,”⁴ as elaborated in *Doughnut Economics: Seven Ways to Think Like a 21st-Century Economist*.⁵ Increasing the number of green areas throughout our cities would at once shore up health conditions and other essentials of our social foundation, while protecting against the various threats of overshooting sustainable limits of a “regenerative and distributive economy,” such as climate change and air pollution.⁶ Other research underlines urban parks’ importance by showing that they “improve the quality of life and generate a relevant benefits flow” that generally outweighs their management costs, thus producing a net gain for citizens.⁷ Benefits flowing from urban green spaces to health and well-being reduce healthcare expenditure, reducing productivity losses and problems of anti-social behavior or petty crime.⁸ “Parks and green areas can also be a resource for economic growth or development. Attractive parks attract use, and with it expenditure

² Defined by the EC’s GI communication as «a strategically planned network of natural and semi-natural areas with other environmental features designed and managed to deliver a wide range of ecosystem services» in COM/2013/249final.

³ “Climate and Health Country Profile: Italy,” p. 12.

⁴ K. RAWORTH, *A Safe and Just Space for Humanity*, 2012 Oxfam. “Environmental stress can exacerbate poverty. Crossing planetary boundaries, or their regional thresholds, can push people back below the social foundation, or prevent them from ever achieving it. The current and potential impacts of climate change, for example – including rising temperatures, shifting seasons, sea-level rise, and increasing droughts and floods – seriously undermine poor people’s ability to ensure their food security, health, and access to safe water and sanitation [...]” Id. at p. 16. Available at: <<https://bit.ly/3sDGR8m>>. Accessed 20.4.2021.

⁵ K. RAWORTH, *Random House*, New York (2017).

⁶ Id.

⁷ T. TEMPESTA, *Benefits and Costs of Urban Parks: A Review*, AESTIMUM 67, December 2015: 127-143, p. 127.

⁸ *Park Atlantic Urban Parks and Green Areas Action Plan, Main Report*, November 2012, p. 13 (hereinafter *Park Atlantic Main Report*).

through footfall for local shops and cafes.”⁹ They can also enhance property values, thus increasing local property taxes.¹⁰

Regarding broader societal considerations, the insertion of small parks across cities would also contribute to greater inclusivity. According to the UN Department of Economic and Social Affairs’ Statistics Division, with regard to Sustainable Goal 11, “Sustainable Cities and Communities,” not only does air pollution pose a health hazard, but too few open public spaces lie within easy walking distance to make cities more inclusive.¹¹ “Where public space is inadequate, poorly designed or privatized, the city becomes increasingly segregated.”¹² Indeed, though such spaces may exist, they are not evenly distributed across cities so that all residents have convenient access to them.¹³ Increasing interaction, cohesion and engagement among persons generates a sense of community that can build greater understanding and empathy, thus leading to empowerment and positive change in society. Grassroots movements such as Retake Roma,¹⁴ a volunteer organization aimed at bolstering civic pride, personal responsibility and empowerment through educational and hands-on clean-up events in Rome, demonstrate this nexus between engagement and empowerment. The *Retake solidale* project unambiguously targets this goal: “The project for a supportive community aims to make the inseparable link between urban regeneration and human regeneration explicit and concrete.”¹⁵

⁹ Ibid.

¹⁰ Ibid.

¹¹ United Nations SDG Goals, Goal 11, Sustainable Cities and Communities. Available at: <<https://unstats.un.org/sdgs/report/2019/goal-11/>>. Accessed 20.4.2021

¹² Id.

¹³ Id. “Based on 2018 data from 220 cities, in 77 countries, few cities have been able to implement a system of open public spaces that covers entire urban areas – that is, within easy reach of all residents. Findings show that the average share of the population within 400 metres walking distance of an open public space is around 31 per cent, with huge variations among cities (from a low of 5 per cent to a high of 90 per cent). A low percentage does not necessarily mean that an inadequate share of land is open public space, but rather that the distribution of such spaces across the city is uneven.” Id.

¹⁴ <<https://retake.org/roma/>>. Accessed 27.4.2021.

¹⁵ <<https://retake.org/roma/retake-solidale/>>. Accessed 27.4.2021.

The need to improve living conditions in cities all over the world has been acknowledged in by the United Nations in the UN Sustainable Development Goals (SDGs), adopted by all the UN Member States via the “2030 Agenda for Sustainable Development” with the aim of providing a path towards achieving a more sustainable future. Among the SDGs, Goal 11 is: “Make cities and human settlements inclusive, safe, resilient and sustainable.” More specifically, Goal 11.7 reads: “by 2030, provide universal access to safe, inclusive and accessible, green and public spaces [...]” Such a goal is to be verified and measured by means of the “average share of the built-up area of cities that is open space for public use for all.”¹⁶

European authorities have also endorsed actions aim to increase green spaces in cities. “Nature-based solutions based on the creation, enhancement, or restoration of ecosystems, including soils and green infrastructure, in cities can improve air quality and regulate GHG in the atmosphere, both directly through the removal of air pollutants and carbon storage and sequestration and indirectly by reducing energy needs and pollutants emissions through natural cooling and active mobility.”¹⁷

3. The Purpose and History of Pocket Parks

As seen above, many concerns lead to the consensus that more green spaces in our cities would benefit those living in them, and indeed the very life of the entire planet. However, large tracts of land in which to situate large public parks are unavailable – or prohibitively expensive – in urban settings. By definition, urban spaces are densely populated with buildings and pavement covering most city areas, reducing nature or eliminating it altogether. The versatility of small, “pocket parks” – occupying usually less than one acre of land, which allows them to serve as welcome, green gap-fillers within the urban fabric – provides an opportunistic solution to convert otherwise abandoned or unused space into attractive rest or play spots throughout cities. They can be placed anywhere innovative planners identify: between buildings, replacing decommis-

¹⁶ SDG Indicator 11.7.1; see: <<https://sdg.data.gov/11-7-1/>>.

¹⁷ European Commission, *Horizon 2020 Work Programme 2018-2020, 12. Climate action, environment, resource efficiency and raw materials*, European Commission Decision C(2020)6320 of 17 September 2020.

sioned roads or railroad tracks, in tracts of land along power lines. They can be built quickly and inexpensively, often using recycled materials to furnish them.

Pocket parks began during post-WWII reconstruction in Europe, providing war torn cities a way to rebuild public spaces with little cash, labor and raw materials.¹⁸ The parks first took hold in the United States when Professor Karl Linn, a landscape architect who had also studied psychology,¹⁹ became part of a Philadelphia postwar-economic-boom pilot project, called the “Melon Commons,” an innovative, “decentralized experiment in participatory neighborhood-scale urban renewal.”²⁰ In 1961, Linn involved his first-year landscape-architecture students in an innovative educational effort that seems to be a precursor to and landscape-architecture corollary of “Street Law.”²¹ He organized meetings with his students, community members and a neighborhood advisory board and the class proposed a design for the park, or “commons.” This groundbreaking effort combined “interagency cooperation, community engagement, and imaginative design” to counter urban blight and enhance collective identity, thus encouraging “more authentic feelings of community, cooperation, and self-reliance.”²²

¹⁸ Trust for Public Land, *Pocket Park Tool Kit*, available at: <https://www.tpl.org/sites/default/files/Pocket%20Park%20Tool%20Kit_FINAL.pdf>, accessed 21.4.2021. See also: American Society of Planning Officials, *Information Report*, No. 229, December 1967, Chicago Illinois.

¹⁹ In his early work, Linn specialized in healing trauma in children; he believed that nature could forge peace-making and conflict resolution.

²⁰ A. GOODMAN, “Karl Linn and the Foundations of Community Design: From Progressive Models to the War on Poverty,” *Journal of Urban History* 1-22, Sage, 2019, p. 4.

²¹ “Street Law” is a legal clinic, or hands-on course taught in law schools throughout the world, first taught at Georgetown Law School in 1972, that uses innovative, interactive teaching techniques allowing law students to become teachers of civic action to high-schoolers or other cohorts, thus becoming promoters of social action. See R. SPITZMILLER, “The Influence of Comparative Law in Teaching ‘Street Law’ in Italy,” *Roma Tre Law Review*, n. 2/2019, pp. 219-240.

²² GOODMAN, “Karl Linn and the Foundations of Community Design,” pp. 4-5. “The design was a hybrid urban-naturalistic scheme with rolling hills and play equipment made of recycled and repurposed materials found among the neighborhood’s crumbling structures. This included an amphitheater made of marble steps salvaged from partially demolished homes, a sandbox of used bricks, and play structures built from telephone poles and industrial cable reels (Figure 2). This strategy of reuse emerged from lack of funds, but as Linn wrote, these materials also added ‘a dimension to design that cannot be accomplished on sites that were scraped barren by the blades of bulldozers.’ In the context of conventional understandings of urban renewal at this time, Linn argued that designers must make spaces that draw directly from existing community resources and which, in turn, reaffirm community identity.” Id., at 5.

Linn deemed the neighborhood an “emerging institution of grass roots democracy.”²³ His work on community-based urban renewal contributed to the War on Poverty, which led to passage of federal legislation and funding such as the Economic Opportunity Act (EOA) in 1964, part of Lyndon Johnson’s “Great Society,” the Housing and Urban Development Act and “Community Action.” These efforts that gave opportunities to blacks, women and other oppressed individuals and spurred grassroots movements to transform themselves “from protest to direct action on social problems.”²⁴ In very tangible terms, these early efforts in the US are emblematic of the ability to create legal strategies through citizen engagement to enhance cities’ sustainability by means of pocket parks.

Since the 1960s pocket parks have since taken hold elsewhere, notably in other cities in the US,²⁵ Australia, Singapore, England, and Denmark – where they are called “Small Public Urban Green Spaces (SPUGS)”²⁶ – demonstrating their benefits to environmental, health, social and even aesthetic needs.²⁷

4. Legal Features of Pocket Parks: A Comparative View

Having described the many characteristics and benefits of establishing pocket parks throughout our cities, we turn to the focus of this article, the legal considerations that underlie their creation, maintenance and sustainability. In addition to property and ownership rights, zoning regulations and other local and national regulatory

²³ K. LINN, “Neighborhood Commons: Advocacy Design and Volunteer Builders,” box 12, folder: “Neighborhood Commons” – F5 Summary’ 67-87, Karl Linn Collection, Environmental Design Archives, University of California, Berkeley, cited in GOODMAN, “Karl Linn and the Foundations of Community Design,” p. 7.

²⁴ GOODMAN, “Karl Linn and the Foundations of Community Design,” p. 14.

²⁵ In New York City, e.g., two parks stand out as emblematic of pocket parks: Paley Park (1967) and Greenacre Park (1971).

²⁶ See K.K. PESCHARDT, J. SCHIPPERIJN AND U.K. STIGSDOTTER, “Use of Small Public Urban Green Spaces (SPUGS),” *Urban Forestry & Urban Greening* 11(3): pp. 235-244, 2012.

²⁷ For a visual presentation of pocket parks, see N. JEWELL, *WOHA revamps Singapore office with lush ‘pocket parks,’* Inhabit, Feb 15, 2017. “Although the architects had to work within a number of spatial restrictions, they were able to strategically maneuver new open space out of the existing layout. The plan focused on vertically ‘lifting up’ the existing office space in order to maximize flexibility and provide optimal natural light and city views.” Available at: <<https://inhabitat.com/woha-revamps-singapore-office-with-lush-pocket-parks/>>. Accessed 21.4.2021.

schemes play important roles in the legal landscape characterizing pocket parks. These tools are often used by long-sighted urban planners to encourage, through concessions and other advantages, the creation of green areas or public spaces aimed at collective use. Below we will describe some of the legal features and structures that support pocket parks in a representative jurisdiction in the US (New York City) and England. We will cite a relevant project involving four countries in the EU and consider some international features before finally analyzing the legal posture in Italy regarding the potential to create pocket parks there.

To understand the regulatory posture of pocket parks, the most fundamental legal principle to examine is that of the property rights of the parcels of land where pocket parks are generally situated at the time the park is being created, and those rights and corresponding duties once parks are established. Ownership of the land parcels targeted for the creation of pocket parks varies greatly; it can be publicly or privately held, or some combination of these. Sometimes, the exact ownership rights may be difficult to ascertain: land with potential to become a viable pocket park often presents itself as a sort of no-man's-land. Once title to the property is properly identified, the parcel may be transferred to a range of entities, even held jointly by multiple owners that vary across communities, in different cities, states and countries. Such parks may be “both owned and maintained by the city, [...] owned and maintained by a charitable foundation [or] held by public private partnerships.”²⁸

4.1. USA: New York

Pocket parks in NYC exemplify the two main types of legal ownership – public and private – through its two major programs through which pocket parks are created: “Privately Owned Public Spaces (hereinafter POPS)” and the “NYC Plaza Program.” POPS are “spaces dedicated to public use and enjoyment and which are owned and maintained by private property owners, in exchange for bonus floor area or waivers.”²⁹

²⁸ Kronkosky Charitable Foundation, Research Brief, *Pocket Parks*, March 2016, p. 3.

²⁹ <<https://www1.nyc.gov/site/planning/plans/pops/pops.page>>. Accessed 27.4.2021.

They are governed by zoning regulations first introduced in 1961.³⁰ The NYC Plaza Program³¹ is based on a partnership between the city's Department of Transportation and private actors to convert unused public land into useful, vibrant parks called "pedestrian plazas." Because the first deals with publically owned land and the second with private property, these two programs through which New York City incentivizes and regulates pocket parks represent normative prototypes.

In the POPS program, the city promotes open, green spaces by granting greater floor area to proposed buildings whose premises include a small parks that adhere to prescribed design criteria regarding location, orientation, size, access, amenities, seating, greenery, lighting, litter receptacles and signage as well as regulations regarding maintenance and compliance.³² The parks, though situated on private property, must be open to the public, thus bringing light and air to the pedestrian street level. Today, over 590 POPS have been created at over 380 privately owned buildings throughout New York City.³³

In the NY City Plaza program, the Department of Transportation (DOT) partners with qualified organizations to convert underused, abandoned streets and plazas

³⁰ Id.

³¹ Authorized under NYC Administrative Code, Title 19-157, "Pedestrian plazas," in 2016. Title 19 "authorizes the New York City Department of Transportation ("DOT") to promulgate rules to provide a regulatory framework for DOT's pedestrian plazas. These rules do so by adding definitions to section 4-01 and a new section 4-16 to DOT's Traffic Rules. Among other things, the rules formalize an application process by which DOT will designate pedestrian plazas; impose uniform rules of conduct for all pedestrian plazas; and create specific rules for the Times Square Pedestrian Plaza." New York City Department of Transportation, "Notice of Adoption of Rules related to Pedestrian Plazas." <<https://www1.nyc.gov/html/dot/downloads/pdf/notice-of-adoption-plaza-rules.pdf>>. Accessed 21.4.2021.

³² POPS must adhere to principles requiring they be open and inviting from the sidewalk, accessible, safe, secure, comfortable and engaging. See <<https://www1.nyc.gov/site/planning/plans/pops/pops.page>>. The complete text related to public plaza design standards are found in NYC Planning Zoning Resolution Article III Chapter 7 - Special Urban Design Regulations § 37-70 to 37-78, "Public Plazas," as amended in 2007 and 2009, contains design criteria regarding area dimensions, location, orientation, size, access, amenities, seating, greenery, lighting, litter receptacles and signage as well as regulations regarding maintenance and compliance. <<https://zr.planning.nyc.gov/article-iii/chapter-7>>. Accessed 21.4.2021.

³³ See <<https://www1.nyc.gov/site/planning/plans/pops/pops.page>, which describes the parks and contains an interactive map>. Accessed 21.4.2021 A history of NY's pocket parks is provided here: <<https://www1.nyc.gov/site/planning/plans/pops/pops-history.page>>.

into pocket parks, which become vibrant social spaces in neighborhoods.³⁴ The DOT and the “partner” form an agreement to assign between them the responsibilities of funding, insuring and maintaining the parks, including the planning and organizing of events to ensure they become lively centers for community activity.³⁵ Thus, while the city may technically own the parks, they may be run and maintained by volunteers or citizen groups.

Funds may be acquired from “public-private ventures, individual contributions, and philanthropic support... to underwrite start-up and equipment costs.”³⁶ Funding to develop pocket parks throughout the United States may also come from the Trust for Public Land, a non-profit organization founded in 1972 that “helps communities raise funds, conduct research and planning, acquire and protect land, and design and renovate parks, playgrounds, trails, and gardens.”³⁷ Thus, funding may originate from a vast array of sources, and parks’ ownership can vary in form and combine multiple parties, both public and private.

4.2. England

England’s pocket-park project has a broader sweep than the New York citywide programs in two ways. It is offered on a national basis, and legal ownership of the property where the parks can be created “may rest with the community, the local authority or other public sector body, or a private sector body or trust including a housing association.”³⁸ This comprehensive and truly flexible program, headed up by the Ministry

³⁴ See <<https://www1.nyc.gov/html/dot/html/pedestrians/nyc-plaza-program.shtml>>. Accessed 27.4.2021.

³⁵ See NYC Plaza Program Application Guidelines 2021. Available at: <<https://www1.nyc.gov/html/dot/downloads/pdf/nyc-plaza-program-guidelines.pdf>>. Accessed 27.4.2021.

³⁶ National Recreation and Park Association, Issue Brief, “Creating Mini-Parks for Increased Physical Activity.” Available at <<https://www.nrpa.org/contentassets/f768428a39aa4035ae55b2aaff372617/pocket-parks.pdf>>. Accessed 27.4.2021.

³⁷ The Trust for Public Land, available at <<https://www.tpl.org/our-work>>. Accessed 27.4.2021.

³⁸ Ministry of Housing, Communities and Local Government “Pocket Parks: helping communities transform unloved, neglected or derelict areas into new green spaces, Prospectus,” 2019, p. 6. “All [grant] applications will need to provide written evidence of agreement from the landowner to the works or activities outlined in the application.” Ibid.

of Housing, Communities and Local Government (MHCLG), is called the “Pocket Parks Plus Scheme,” through which the MHCLG allocates funding to projects all across England. The program provides funding to local authorities supporting the projects as authorized under national legislation.³⁹ “The scheme provides support, through grants to community-led bodies working in partnership with their local authority, with the aim of creating new pocket parks or bringing existing green spaces up to a safe, usable and inviting standard.”⁴⁰

As of March 2020, England had funded 352 grants to create 146 new parks through supporting community groups, thereby converting 206 derelict urban spaces into green, vital areas in towns and cities across the country.⁴¹ The project Prospectus explains the important links between community and green spaces:

Communities are at the heart of everything we do. They are where we live, work and play. Parks and green spaces are a hub of many communities. Neglect of these precious spaces can create a detrimental effect on the local people and environment. [...]. The benefits of green spaces – no matter their size – are well-known. Even some of our smallest ‘pocket parks’ help to shape local identity, help people overcome social isolation and create a sense of belonging in the places we call home.⁴²

The program aims to build “safer, stronger communities and creating places which are ‘owned’ and valued by everyone within local communities.”⁴³ However, this type of “ownership” does not refer to a proprietary asset in the strict legal sense, as discussed above, but rather, it conveys a social significance: that heightened sense of be-

³⁹ Local Government Act 2003 c. 26, Part 3, Chapter 1, Section 31.

⁴⁰ “Pocket Parks: helping communities transform unloved,” 2019, p. 4.

⁴¹ Ministry of Housing, Communities & Local Government and Robert Jenrick MP, “68 new parks to inject green space into urban areas.” 3 March 2020. Available at: <<https://www.gov.uk/government/news/68-new-parks-to-inject-green-space-into-urban-areas>>. Accessed 29.4.2021.

⁴² The Rt. Hon. Robert Jenrick MP, Secretary of State for Housing, Communities and Local Government, in “Pocket Parks: helping communities transform,” <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/852241/191025_PP_Prospectus.pdf>.

⁴³ “Pocket Parks: helping communities transform unloved,” 2019, p. 4.

longing to a community, which is a key benefit generated by pocket parks. This type of “ownership” is indeed a significant aspect of the pocket-park-creation process. Also known as “community-building,” it is accentuated through active participation in the park’s creation and especially in its ongoing care by those who will ultimately use it. The “Pocket Parks Plus Scheme” builds this type of community involvement directly into the grant-application process, which stresses the importance of “robust maintenance and sustainability”⁴⁴ and establishes “sustainability” as one of the “core criteria”⁴⁵ for submission evaluation. It first provides “Statement of intent, including outline sustainability and maintenance plan” as an “Example of evidence likely to score highly,”⁴⁶ and suggests “increased voluntary support/voluntary activity to support the park” as an Outcome and “Increase in the number of volunteers who help to maintain the park regularly (monthly)” as an Indicator.⁴⁷ Other suggested outcomes include “increased use of the park bringing people from different backgrounds together (social mixing), increased wellbeing and social connections,” which could be indicated by providing, e.g., the “number (and percentage) of people who say that people in this neighbourhood can be trusted.”⁴⁸ It is clear that the desired synergies of creating pocket parks center on attaining a greater sense of “community” or “ownership” in this broad sense. This outcome is sought after consistently across jurisdictions as an important by-product of creating these small urban gardens.

4.3. The European Union

One EU project relating to urban parks of all sizes was organized and funded through INTERREG Atlantic Area, an EU funding program promoting transnational cooperation in the fields of Innovation & Competitiveness, Resource Efficiency, Territorial Risks Management, Biodiversity and Natural & Cultural Assets⁴⁹ in five European

⁴⁴ Id., at p. 10.

⁴⁵ Id., at p. 21.

⁴⁶ Ibid.

⁴⁷ Id. at p. 26.

⁴⁸ Ibid.

⁴⁹ <<https://www.atlanticarea.eu>>.

countries.⁵⁰ The project, called “Park Atlantic” involved five cities in four Atlantic Area countries: Angers and Pau-Pyrénées in France; Limerick, Ireland; Santiago de Compostela, Spain and Vila Nova de Famalicão, Portugal.⁵¹ The project’s main objective was to “enhance the inherent value of urban parks and green areas in the Atlantic Area and to encourage their contribution for sustainable urban development.”⁵²

The vast expanse of the project across four countries contributed to great diversity in the type of legal contexts and approaches these parks and green areas comprised, reflecting the public/private ownership distinctions and the wide range of funding methods for their creation and maintenance, as observed in the US and England. Given this wide diversity of legal contexts, an analysis of the myriad examples in each city and country is untenable here. The project’s Main Report contains a useful “Toolkit of Best Practice for Parks and Green Areas Management,” drawn from the project’s analysis of the parks in the five partner cities. This Toolkit contains policies that fall into three main themes: “urban composition features,” “social features” and “economic features” that comprise and reflect the various considerations discussed above.⁵³ Unsurprisingly, the use and benefits of pocket parks feature widely in this report as a best practice: as a method to attain connectivity of parks and green areas⁵⁴ and as a key variable contributing to “urban legibility,” which “enables citizens and visitors to gain an emotional ownership of the city arising from having a mental picture of it, of feeling that they know it and are safe in it, or of recognizing its beauty.”⁵⁵ In Spain, a medium-term action plan item was to identify a site for the development of a community pocket park, using the model of public participation in Pau-Pyrenees.⁵⁶

The Park Atlantic project ultimately aligns with what was described above in the US and England regarding the importance of and symbiotic relationship between

⁵⁰ France, Ireland, Portugal, Spain and the United Kingdom.

⁵¹ *Park Atlantic Main Report*.

⁵² *Id.* at p. 2.

⁵³ *Id.* at p. 80.

⁵⁴ *Id.* at p. 84.

⁵⁵ *Id.* at p. 86.

⁵⁶ *Id.* at p. 156.

civic participation and the establishment and care of city parks and green areas. Its Main Report endorses citizen empowerment to achieve its objectives, citing the need for “on-going dialogue to identify [the community’s] needs, opinions and values (which evolve over time) and by facilitating their participation in devising solutions and strategies and decision making.”⁵⁷

4.4. Common Goods

Recently, interest in the “commons” or “common goods” as a bundle of property rights has drawn attention from legal scholars worldwide. According to this notion, one can argue that regardless of which property or ownership status is vested in the land when parks are first created, once they become established within the city’s community life, they effectively become what are known as “common goods.” At the international level, a wide range of literature exists on the commons,⁵⁸ demonstrating that “in modern legal systems, the commons represent the epitome of the crisis of the public/private di-

⁵⁷ Id. at 102. “For successful community participation, certain preconditions must be met. These include:

- People must want to be engaged in local decision making through community participation;
- The information/data necessary to enable groups make informed decisions must be available (see for example Greenspace Information for Greater London: <<http://www.gigl.org.uk/>>);
- The community must be empowered to make effective decisions;
- Community leadership and skills training is an essential part of the process;
- There must be a policy framework within the city administration to permit and support community participation;
- The participants must have confidence in the officials engaged with the programme and there needs to be efficient and supportive co-ordination.” Ibid.

⁵⁸ See: J. BOYLE, 2003. Foreword: The opposite of property? *Law & Contemporary Problems* 66: 1; BOYLE, 2003. The second enclosure movement and the construction of public domain. *Law & Contemporary Problems* 66: 33; CHATTERTON, 2010. Seeking the urban common: Furthering the debate on spatial justice. *City* 14(6): pp. 625-628; B. Coriat (ed.). 2015. *Le retour des communs. La crise de l'idéologie propriétaire*. Paris: Editions Les Liens qui Libèrent; P. DARDOT-C. LAVAL, 2014. *Commun. Essai sur la révolution au XXI^e siècle*. Paris: La Découverte; M. DAVIES, 2012. Persons, property, and community. *feminists@law* 2(2): 1-21; M. Davies (ed.), 2015. *Property Volume IV: Public-private spaces, the commons and the public domain*. Abingdon: Routledge; H. DEMSETZ, 1967. Toward a theory of property rights. *The American Economic Review*. 57(2): pp. 347-359. G. HARDIN, 1968. The tragedy of the commons. *Science, New Series* 162(3859): pp. 1243-1248; L. LESSIG, 2004. The creative commons. *Montana Law Review* 65: 1; L. LESSIG, 2006. Re-crafting a public domain. *Yale Journal of Law & Humanities* 18: 56; P. LINEBAUGH, 2008. *The Magna Carta Manifesto: Liberties and commons for all*. Berkeley: University of California Press; E. OSTROM, 1990. *Governing the commons. The evolution of institutions for collective action*. Cambridge: Cambridge University Press; B. Parance and J. De Saint Victor (eds.). 2014. *Repenser les biens communs*. Paris: CNRS Editions.

chotomy in property law.”⁵⁹ Common goods have been defined as goods “that cannot be *enjoyed* without [their] communal aspect,” and which “gain their quality as goods only in connection to a community” and that “typically take a community to create and to sustain.”⁶⁰ Gregorio Arena has defined common goods as any goods for which a community has assumed responsibility, thus providing for their care, reuse and regeneration, so that the enrichment of such goods can enrich everyone, not only the owner.⁶¹ Another Italian scholar defines common goods this way: “all those goods and resources that every individual shares and exploits together with other human beings, whose enjoyment no one may be excluded.”⁶² Fulvio Cortese provides an overview of the Italian debate on common goods, describing it as falling within two different camps: those who approach common goods as an inefficient management model from a “purely ideological point of view,”⁶³ and those who believe that common goods are “functional in activating a *different administrative model* from the traditional one.”⁶⁴ The Italian Court of Cassation has also pronounced itself on this matter. In 2011, “it offered a first formal recognition of the category of common goods. Examining the claim of a private fishery to an area of the Venice Lagoon, the Court maintained that state properties had to be considered common goods when they were devoted to the fulfillment of people’s fundamental rights (in this case, the right to enjoy the environment).”⁶⁵

⁵⁹ M.R. MARELLA, “The Commons as a Legal Concept” *Law Critique* (2017) 28:61-86, at p. 63.

⁶⁰ A. MARMOR, *Do We Have A Right To Common Goods?* Canadian Journal of Law and Jurisprudence Vol. XI, No. 2 (July 2001).

⁶¹ G. Arena, *I beni comuni* (ed.). Nota allegata al Bando per progetti emblematici provinciali, 2018.

⁶² N. CARESTIATO, “*Beni pubblici, beni comuni e proprietà collettiva.*” Available at: <<https://www.slideshare.net/de-crescitafvg/beni-pubblici-beni-comuni-e-propriet-collettiva-nadia-carestiato>>. Accessed 29.4.2021.

⁶³ F. CORTESE, “What Are Common Goods (*Beni Comuni*)? Pictures from the Italian Debate.” *Revista da Faculdade de Direito da UFMG, Nº Especial - 2nd Conference Brazil-Italy*, pp. 121-146, 2017, at p. 123.

⁶⁴ *Id.*, at p. 124. The author cites Gregorio Arena as the proponent of this point of view.

⁶⁵ MARELLA, “The Commons as a Legal Concept”, at p. 63, citing Cass. Civ. Sez. Unite. Sent., 14 February 2011, n. 3665.

5. *Italy: Current Legal Posture*

Turning to the normative context regarding the potential for establishing pocket parks in Italy, we can first examine the urban planning Law of 17 August 1942, no. 1150 – incorporating changes made by Law no. 765 of 6 August 1967 – establishes that the maximum ratios between “spaces intended for residential and productive settlements” and “public spaces or spaces reserved for collective activities, public green areas or parking areas” must be observed in urban planning. Ministerial Decree 2 April 1968, no. 1444 then identifies minimum quantities of public spaces per inhabitant (so-called urban planning standards), distinct in relation to various objective differences in territories. Despite the new distribution of legislative competences enacted by Constitutional Law of 18 October 2001, n. 3 on the subject of “territorial government,” the standards established at the ministerial level still continue to act as a point of reference for regional urban planning legislation. These standards must in any case observe a fundamental principle, to ensure a balanced relationship between residential and productive settlements and public and collective-use spaces.⁶⁶

However, it should be stressed that even the detailed provisions on urban planning standards are not sufficient to guarantee the effective implementation of adequate public spaces. The identification in urban planning instruments of the areas allocated to such spaces is only the prerequisite for a process aimed at their expropriation and implementation through related works. The lack of public resources together with the new rules on expropriation for public benefit⁶⁷ have contributed to the increase the difficulty municipalities face to create urban spaces for collective use. An attempt has been made to overcome these difficulties by having the public works of urbanization carried out directly by the private sector, but further problems with this approach exist. These include the so-called “monetization of standards” – allowed by regional urban planning legislation, i.e., the payment of money by private parties instead of their finding areas necessary to carry

⁶⁶ P. BIONDINI, “*Beni pubblici e beni comuni: città, spazi pubblici e beni urbani a fruizione collettiva*,” Labsus, Laboratorio per la sussidiarietà, 18 December 2017. Available at: <<https://www.labsus.org/2017/12/i-beni-pubblici-urbani-nella-prospettiva-dei-beni-comuni/>>. Accessed 20.3.2020.

⁶⁷ Unified text on Expropriation for Public Use, Presidential Decree (D.P.R.) n. 327/2001 and successive modifications and integrations, updated 2019.

out works of general interest due to the “lack of available areas” and the struggle by local authorities to maintain the goods created through these conventions.⁶⁸ A viable alternative is presented in that the “public spaces referred to in the regulations on urban norms and standards do not necessarily have to be publicly-owned public property, as they may instead be private spaces destined for public use, made and managed by private parties, even on a contractual basis with the municipal authority.”⁶⁹ To that end, well established case law on this matter could incentivize private parties to transform their property into areas for public use, and even allow them derive profit from the assets in question.⁷⁰

These strategies could be facilitated in establishing pocket parks through the reliance on citizen participation to help manage these spaces – urban public goods for collective use – or common goods. In Italy, as we will see below, this may occur through application of the constitutional principle of horizontal subsidiarity.⁷¹ Article 118, paragraph 4 of the Italian Constitution reads: “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.” Through this principle, and in conjunction with state and/or local regulations, methods of managing public goods are being implemented. Such methods aim in particular at urban public goods for collective use, which directly and actively involve citizens, individuals or associates. Individual citizens and groups of them (active citizens), by spontaneous initiative or responding to an invitation from the municipality, can propose interventions of care or regeneration of public spaces (green areas, squares, streets, sidewalks, etc.. and other public spaces, public property or subject to public use) as well as buildings of the municipality that are in a state of even partial disuse or dilapidation.⁷²

⁶⁸ BIONDINI, “*Beni pubblici e beni comuni: città, spazi pubblici e beni urbani a fruizione collettiva*,” Labsus, Laboratorio per la sussidiarietà, 18 December 2017, at p. 6. Available at: <<https://www.labsus.org/2017/12/i-beni-pubblici-urbani-nella-prospettiva-dei-beni-comuni/>>. Accessed 20.3.2020.

⁶⁹ Ibid.

⁷⁰ Id. at p. 7.

⁷¹ Article 118, paragraph 4, Italian Constitution.

⁷² BIONDINI, “*Beni pubblici e beni comuni: città, spazi pubblici e beni urbani a fruizione collettiva*,” Labsus, Laboratorio

Once the strictly legal issues regarding property rights and urban-planning in creating pocket parks are understood and overcome, we can proceed to the problems regarding their ongoing care. All common goods, including pocket parks, require regular maintenance; like any other public park, as common goods, they are subject to normal wear and tear. Since common goods are open to and used by the public at large, they are unfortunately also vulnerable to acts of vandalism. Thus, to maintain parks in good order and to combat the effects of vandalism, such spaces depend to a large extent on a well-developed sense of respect for common goods and civic duty among those living in the area and to the ability of law enforcement to prevent malicious or destructive acts. This is why both a strong sense of civic responsibility and efficient law enforcement are among the essential elements needed to sustain pocket parks: where either is lacking, urban security is not guaranteed, and the parks simply cannot be maintained in a clean, safe and orderly fashion. These broader issues concerning property rights and maintenance as they relate to the broader elements of civic engagement, subsidiarity empowerment, law enforcement and the rule of law will be examined below.

6. Legal Challenges and Potential Solutions for Creating Pocket Parks in Italy

Collaboration between cities and citizens comprises activities that, taken individually, are usually of modest importance. However, if the principle of horizontal subsidiarity is correctly interpreted and widely implemented, what begins as small activities in the daily lives of a few active citizens appears capable of initiating a wider process of revitalization of the democratic constitutional model based on the enrichment of the expressions of popular sovereignty.⁷³ Together, these concerns contribute to urban security, and in a broader sense, to what is known as the rule of law. In this section, we will explore these aspects and propose possible solutions to the legal challenges that exist for the creation and maintenance of pocket parks in Italy. A two-pronged approach will be used in our analysis: 1. Civic Engagement, Subsidiarity and Empowerment and 2. Law Enforcement and the Rule of Law.

per la sussidiarietà, 18 December 2017. Available at: <<https://www.labsus.org/2017/12/i-beni-pubblici-urbani-nella-prospettiva-dei-beni-comuni/>>. Accessed 20.3.2020.

⁷³ Id.

6.1. Civic Engagement, Subsidiarity and Empowerment

Ironically, Italy's vast natural splendor and rich cultural heritage lie in contrast to its civic culture, which is somewhat characterized by apathy. Generally, citizens tend to believe they can simply delegate authority to the public administration to take care of all the normal and maintenance and emergency situations that require action across all sectors of public life. Even with the outbreak of the corona-virus pandemic, which has spurred a surge in civic awareness and community spirit, active citizenship and true participatory democracy are relatively weak, and still in their adolescence. The recent rise in popularity and victory in the 2018 parliamentary elections of the young Five Star Movement, the political party based on direct, online participation, symbolize the experimental changes (typical of adolescence) that have been occurring in Italy recently and the desire for increased citizen involvement.⁷⁴ Despite the emergence of this new political scenario, governments are still unable to take care of the vast range of matters requiring regular attention and emergency management in the public domain, including the maintenance and care of public spaces such as parks. This longstanding inertia and numerous other factors have been contributing in a broad sense to a declining quality of life in Italy.⁷⁵ Many areas that could be used to create pocket parks have fallen into abandonment, or worse, have become havens for illegal activity.

This bleak situation has led to a need for citizens to learn more about the way their cities are run, to empower themselves as active citizens who can create more efficient, clean, law-abiding and safe living conditions. Arena and Cotturi have summarized the current state of affairs as follows: "The public sphere, as such, of our country seems no longer be the responsibility of anyone."⁷⁶ Italy does seem ready for "a change of the paradigm... concreteness, effectiveness, practical sovereignty, active citizenship, and shared administration."⁷⁷

⁷⁴ A. FLORIDIA-R. VIGNATI, "Deliberativa, diretta o partecipativa?" *Quaderni di Sociologia*, 65 | 2014, pp. 51-74.

⁷⁵ SPITZMILLER, "A Comparative-Law perspective on Street Law in Italy: Drawing best practices from Common-Law traditions to boost Civic Engagement in a Civil-Law Context," *Street Law and Public Legal Education: A collection of best practices from around the world in honour of Ed O'Brien*, (D. McQuoid-Mason, ed.) Juta and Company, Cape Town (2019), pp. 221-236 at 221.

⁷⁶ G. ARENA-G. COTTURRI, *Il valore aggiunto: come la sussidiarietà può salvare l'Italia* (2010), p. 12.

⁷⁷ Id. at 26. Translation by the author.

Faced with the need for a shift in societal responsibility and organization, citizens have begun to form groups that enable them to contribute to the care of common goods. As noted above, one of these is Retake Roma,⁷⁸ a volunteer association playing a role in empowering citizens to take care of common goods through a grassroots movement that has spread across the peninsula. Retake Roma is a non-profit, non-governmental, non-partisan organization founded in 2010 and currently comprised of some 80 self-organizing neighborhood groups in Rome alone. Aimed at bolstering civic pride, personal responsibility and empowerment, it organizes educational and hands-on clean-up events that engage citizens in the democratic process of caring for and defending common goods. The volunteers seek to raise awareness about the need to increase and improve normal maintenance operations by city administrations; they educate citizens about their duty to respect the public places by influencing public opinion through first-hand engagement, social media amplification, endorsements and testimonials from key opinion leaders; they gain support and action from public authorities and the private sector. For pocket parks to catch on and take hold in Italy, the idea would likely arise through a grassroots demand from citizens, perhaps through a movement such as Retake.

Pocket parks face characteristic problems facing all common goods, labelled the “Tragedy of the Commons” in Hardin’s seminal work.⁷⁹ These problems have been amply described based on Flood and Dresher’s prisoners’ dilemma – where cooperation would inevitably lead to a the best outcome, but individuals generally end up worse off because they choose options based on self-interest alone – and the metaphor of the free rider, who similarly pursues strictly individual needs and avoids contributing to common endeavors.⁸⁰

The Retake movement reinterprets the role of citizens from passive by-standers to active protagonists in “retaking” their cities, collaborating with and stimulating the

⁷⁸ <<https://www.retakeroma.org>>.

⁷⁹ G. HARDIN, “The Tragedy of the Commons.” *Science* 162 (1968): pp. 1243-1248.

⁸⁰ See R. HARDIN, “The Free Rider Problem,” *The Stanford Encyclopedia of Philosophy* (Spring 2013 Edition), E.N. Zalta (ed.), and U. POMARICI, *Beni comuni*, in Pomarici, Costa, Rapone, et al., “Atlante di filosofia del diritto (beni comuni, cittadinanza, codice, democrazia costituzionale dignità, diritti fondamentali) Vol. 1 (ed.) (2012). p. pp. 1-58, Torino: Giappichelli.

institutions to do their work better. Active citizens pursue self-interest by taking care of common goods, creating scenarios where everyone benefits. Moreover, Retake’s “approach, aimed at qualifying itself as a relevant subject in the public-private-non-profit partnerships, PPPNP – which has become one of the main forms of organized interventions in local politics – seems to supersede the vision through which every issue of urban politics is resolved exclusively with institutional relationships where the city administration is [merely] called upon to carry out its own functions.”⁸¹ The sense of empowerment engendered by active citizenship lies at the basis of the legal principle known as horizontal subsidiarity. It is opportune to describe in more detail how Retake empowers citizens across a broad range of the demographic spectrum – even marginalized portions of society.

Retake’s activities constitute virtuous cycles by creating visible results of rescued urban space that then become the banners of proof that improvement is possible; “before and after” photos are posted on line and transmitted to some 90,000 followers on its social media.⁸² The positive cycle of change serves to inspire others with the encouraging results achieved. These refurbishing events and their dissemination through social media meet the criteria of best practices provided by Italy’s Former Minister of Integration, Kashetu Kyenge, who characterized them as “trigger[ing] a social mechanism that produces positive effects that mutually implement, in accordance with a win-win dynamic.”⁸³ Retake’s activities fit Kashetu Kyenge’s formula, which she describes as those where “high culture comes down from its pedestal, opens its doors and arises in communication and in service to society,”⁸⁴ since Retakers “act as a driving force to avoid surrendering to the state of things, proof that you can do things differently and in a better way.”⁸⁵ This embodiment of the principle of empowerment is closely linked to the legal principle, horizontal subsidiarity.

⁸¹ M.C. ANTONUCCI-A. FIORENZA, *Democrazia dal basso: Cittadini organizzati a Roma e nel Lazio*, (2016), p. 87.

⁸² See <<https://www.retakeroma.org/2018/05/03/retake-italia-il-nostro-primo-incontro/>>. Accessed 4 April 2020.

⁸³ C. KASHETU KYENGE, “Foreword,” in C. BARTOLI “Legal clinics in Europe: For a commitment of higher education in social justice” *Diritto & Questioni Pubbliche*, Special Issue (2016) at p. 8.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

As mentioned above, subsidiarity has been established relatively recently as a legal principle in Italy, demonstrating that the general legal framework seems ready to embrace change as well. In 2001 the Italian Parliament approved and a referendum confirmed revisions of Title V of the Italian Constitution, inserting the principle of subsidiarity in paragraph 4 of Article 118 of the Italian Constitution. The term “subsidiarity” also expresses one of the key principles of European law, as established in 1992 in the Treaty of Maastricht and currently formulated under the Treaty on European Union, which entered into force in 2009. In both the EU and in Italy, this principle helps distribute and allocate administrative resources and functions throughout the governmental frameworks. In the EU context, it regulates and limits EU authorities from acting when national or even local governments could do so in more effectively, requiring that decisions be taken as closely as possible to the citizens.⁸⁶ In some instances, instead, action is indeed warranted at the European level. This occurred, e.g., in case C-547/14, where Philip Morris et al challenged the EU’s authority as exercised by Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014, regulating the manufacture, presentation and sale of tobacco. The Court of Justice of the European Union upheld the EU’s Tobacco Products Directive, holding that “the Commission’s proposal for a directive and its impact assessment include sufficient information showing clearly and unequivocally the advantages of taking action at EU level rather than at Member State level.”⁸⁷ At the EU level, this vertical type of subsidiarity thus regulates concurrent powers, providing a flexible mechanism that weighs the national interest against local ones, paralleling the supremacy clause in the United States and the *konkurrierende Gesetzgebung* in Germany.

Under the Italian constitutional principle of *horizontal* subsidiarity, instead, we can observe an increased interaction and productive synergy developing between institutions and grassroots movements such as Retake Roma, especially in the field of urban security, highly relevant to the potential for creating pocket parks. A key example of

⁸⁶ See “The Principle of Subsidiarity, European Parliament,” available at: <<https://www.europarl.europa.eu/factsheets/en/sheet/7/the-principle-of-subsidiarity>>. Accessed 4 April 2020.

⁸⁷ Case C-547/14, paragraph 226.

this collaboration is invitation by Italy's Chamber of Deputies to Retake Roma to be heard⁸⁸ relevant to the drafting of the Legislative Decree on Security.⁸⁹ Retake's proposals were taken into consideration and incorporated into the Security Decree of 2017.⁹⁰ Thanks to Retake Roma's proposals, school and university grounds fall within the areas eligible for pacts for urban security and all the touristic and cultural points of interest, regardless of the number of tourists that visit them, will be protected, in the law that will be further examined below.⁹¹

Retake has been presenting its philosophy and methodology of active citizenship in schools in its *Retake Scuole* program since its founding, often partnering with other civic and legal organizations. One such organization is Labsus, or the *Laboratorio per la sussidiarietà*,⁹² a think-tank of legal scholars supporting the implementation of the principle of horizontal subsidiarity, where volunteers – active citizens – elaborate ideas, collect a vast array of experiences and materials and report on relevant initiatives throughout Italy, including Retake Roma.⁹³

If we compare the situation regarding active citizenship and empowerment in Italy to that of the United States, e.g., we can note the historic analysis of Alexis de Tocqueville on these matters – even if he wrote about them using different names – in *Democracy in America* in 1835. His thoughts show deeply rooted differences between European and American legal and civic cultures that persist even today. On active citizenship and empowerment, he wrote: “the most powerful, and perhaps the only, means of interesting men in the welfare of their country which we still possess is to make them partakers in the Government, [...] everyone takes as zealous an interest in the affairs of

⁸⁸ <<http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/74/audiz2/audizione/2017/10/03/stenografico.0023.html>>.

⁸⁹ <<https://www.retakeroma.org/2017/03/07/dl-sicurezza-le-proposte-di-retake-a-montecitorio/>>.

⁹⁰ <http://www.camera.it/_dati/leg17/lavori/stampati/pdf/17PDL0049720.pdf>.

⁹¹ <<https://www.andreamazzotti.eu/decreto-sicurezza-migliorato-grazie-alle-proposte-dei-retakers-retake/>>.

⁹² <<https://www.labsus.org/>>. Accessed 4 April 2020.

⁹³ “*Retake Roma... dal degrado: Il movimento è riuscito nell'intento di riqualificare importanti spazi urbani*” Lucia Zonfrilli, 13 October 2013, *Laboratorio per la sussidiarietà*. See: <<http://www.labsus.org/2013/10/retake-roma-dal-degrado/>>. Accessed 4 April 2020.

his township, his county, and of the whole State, as if they were his own, because everyone, in his sphere, takes an active part in the government of society.”⁹⁴ The link between active citizenship and the welfare of our societies, including security and care of common goods, leads us to the need for adequate law enforcement and respect for the rule of law.

6.2. Law Enforcement and the Rule of Law

Recent laws have been enacted in Italy to address the problem of declining urban spaces, including the Security Decree discussed above. It defines urban security as the public good relating to the livability and decorum of cities, to be pursued also through the joint contribution of local authorities through the following interventions:

- requalification and recovery of the most degraded areas or sites;
- elimination of marginality and social exclusion factors;
- crime prevention, in particular predatory crime;
- promoting respect for legality;
- higher levels of social cohesion and civil coexistence.⁹⁵

All these elements must be tackled simultaneously once to reverse the overall declining tendency of urban spaces, which falls within the category of “wicked problems.”⁹⁶ The legislature’s multilateral approach aimed at this range of factors reflects the vicious cycle that link the threats of harm to common goods, weak social cohesion, insufficient law enforcement and the degeneration of the rule of law.

The interventions identified by the Italian legislature are intended to “strengthen the intervention of local authorities and police forces in the fight against the degradation of urban areas,”⁹⁷ increasing urban security and pursuing the following objectives, which aim to foster a culture of legality while recovering and protecting common goods:

⁹⁴ A. DE TOCQUEVILLE, *Democracy in America*, translated by Henry Reeve, Penn State Electronic Classics Series Publication, (2002) V 1 at 270. Available at: <<https://goo.gl/MmPVwx>>. Accessed 4 April 2020.

⁹⁵ “Sicurezza urbana: il testo coordinato del decreto”, Legislative Decree, coordinated text 20/02/2017 n° 14, *Gazzetta Ufficiale* 20/02/2017.

⁹⁶ H.W.J. RITTEL, M.M. WEBBER, Dilemmas in a general theory of planning. *Policy Sci* 4, pp. 155-169 (1973).

⁹⁷ “Sicurezza urbana: il testo coordinato del decreto”, Legislative Decree, coordinated text 20/02/2017 n° 14, *Gazzetta Ufficiale* 20/02/2017.

- preventing phenomena of widespread and predatory crime, [...] in particular to the benefit of the most degraded areas;
- promoting respect for legality, including initiatives to dissuade any form of illegal conduct, including the arbitrary occupation of real estate and the sale of counterfeit goods, as well as the prevention of other phenomena that disturb the free use of public spaces;
- promoting respect for urban decorum.

As noted above, pocket parks have developed mainly in places such as the United Kingdom, the United States and Scandinavia, all of which possess robust institutional frameworks and efficient law enforcement, hence they have strong ratings in the rule of law. The World Justice Project Rule of Law Index 2020⁹⁸ (hereinafter WJPRoLI), the “world’s leading source for original, independent data on the rule of law,”⁹⁹ includes qualities such as institutional framework, absence of corruption and law enforcement among the eight main factors contributing to measure and rank the countries around the world regarding the rule of law. Not surprisingly, Denmark, Norway, Finland and Sweden topped the WJPRoLI rankings in 2020, and the UK ranked 13th with the US coming in 21st out of 128 countries.¹⁰⁰ Italy comes in at 27th,¹⁰¹ mostly due to its lower scores in categories such as “Absence of Corruption,” where it ranks 35th,¹⁰² and “Order and Security,” where it comes in 56th.¹⁰³ In addition, Italy scores relatively poorly in regulatory enforcement, 32nd, where the UK, US and Scandinavian countries all rank in the top 20.¹⁰⁴

This overview of Italy’s placement as compared to the countries where pocket parks are flourishing provides insights as to the areas that need improvement from a legal point of view. The Italian Security Decree is certainly a step in the right direction,

⁹⁸ Available at: <<https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2020>>. Accessed 21.3.2020.

⁹⁹ *Id.*, p. 4.

¹⁰⁰ *Id.*, p 16.

¹⁰¹ *Ibid.*

¹⁰² *Id.* p. 23.

¹⁰³ *Id.*, p. 28.

¹⁰⁴ *Id.*, p. 29.

addressing the types of measures that could allow abandoned urban areas to be converted into vibrant common goods. To reach the objectives set out in the decree, the legislature has provided for the possibility of pacts for urban security between territorial networks of volunteers – a characteristic manifestation of civic engagement. Such pacts might arrange for the protection of urban “furniture,” (e.g., electrical enclosures, dumpsters, utility poles) green areas and city parks. They could also encourage the use of the police force to pursue extraordinary territorial control and provide for the installation of video surveillance systems.¹⁰⁵ The enactment of such laws and encouragement of this type of pact illustrate the current need in Italy for strengthening civic engagement, law enforcement, and the interaction between them.

The above analysis has aimed at identifying the strengths and weaknesses found in the Italian legal system as a way to formulate viable means to strengthen the common goods, specifically focusing on the potential to create pocket parks. The greening effects achieved by creating such parks in our cities would provide sustainable improvements to the environment while producing health, economic, and broader societal benefits. Some positive signs are emerging as Italy and Europe prepare to reopen with the lessons learned during the Covid-19 pandemic. Social distancing and mask-wearing have awakened civic culture and engagement as citizens have realized our great interdependence; we increasingly understand the important role we can play if we cooperate and actively contribute to the achievement of our common goals, with the help of the government and within the legal framework, respecting the rule of law.

¹⁰⁵ “Sicurezza urbana: il testo coordinato del decreto”, Legislative Decree, coordinated text 20/02/2017 n° 14, *Gazzetta Ufficiale* 20/02/2017.
