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Massimiliano Cicoria, *PhD, Common Property Law*
University of Naples Federico II, Italy

LEGAL SUBJECTIVITY AND ABSOLUTE RIGHTS OF NATURE

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Summary

The anthropocentric approach that characterizes all human knowledge has led to a distortion of the relationship with Nature and a view of it as a mere object of law. This approach, presumably originating with Socrates, had solid support in Plato, Aristotle, Ptolemy, and finally, in Catholic patristics, hinging on all disciplines starting from philosophy, psychology, economics, up to law. Dwelling on the latter, examples of legislation that qualify Nature as an object of law are, increasingly over time, the Forest Charter of 1217, the Italian Law No. 1766 of 1927 on civic uses, and furthermore – Art. 812 of the Italian Civil Code, and finally – the cd. Consolidated Environmental Law. This view is, however, changing in some states such as Bolivia, New Zealand, India, Ecuador, Uganda, – the states that through either legislative acts or rulings of supreme courts have begun the process of granting both to Mother Earth in general, and rivers in particular, the status of juridical persons which are endowed with series of very personal rights, which are recognized. This is not the case in Europe, where the relevant legislation continues to consider Nature (or, better, the Environment) as an object of law, therefore as a "thing" from which to draw, albeit within certain limits, utilities of all kinds. By analysing legal instruments potentially useful for a Copernican revolution on this point – in particular, the Kelsenian concept of "legal person", the meaning of "company" and the European provisions on Artificial Intelligence – the first conclusion is reached: in a relationship that is not only theoretical, but also practical and utilitarian, it would be opportune to start considering, also through acknowledgments in constitutional sources, the Nature as a subject and no longer an object of rights. In this regard, following the general theories of people's rights, it could be granted certain absolute rights, of which the right to water, restoration and biodiversity are examined in the current article. Hence, we come to the second conclusion, namely, the contrasts that, in Western law, such an approach could suffer, analysing in particular the problems of neo-naturalism and representation.

"…. all the more so because this land
it was made by nature"
(Lucretius T. C. *De rerum natura*, 1058)

Introduction

In a previous work[1], I had the opportunity to examine the theme of the subjectivisation of Nature, that is, the hypothesis of granting to the latter, in its various forms and representations, a full juridical subjectivity without, on the other hand, reducing it to a mere object of law. Here, in addition to retracing the main features of that antecedent, I will also attempt, and in broad terms, to hypothesize certain absolute rights of which Nature, as a subject of law, would be the holder.

The starting point must be Art. 812 of Italian Civil Code according to which trees, springs and watercourses constitute immovable property rooted in the ground, so that, according to Art. 810 CC, "may be the subject of rights". The legislator of 1942, imbued with a totally anthropocentric conception, then opted for the cataloguing of trees (and of nature in general) in the broader concept of "everything", hence, of objects from which to derive some economic utility[2]. The past doctrine did the same thing, just as the recent one still does[3], which, at most, considers placing Nature (or, rather, the Environment) within the vast concept of "collective good". This concept, although at the first glance it might appear more concrete, seems, on the other hand, to be at variance with the principles that will be stated at the end and, in any case, not in line with the new supranational guidelines. Suffice it to say that even the use, indeed constant, of the term "environment" appears reductive, where it must be pointed out that, if Nature means "what is about to be born[4]", the environment means "what surrounds someone[5]" while, therefore, the first term exalts the subjective element, the second presumes the man around whom something revolves.

However, and in a dutiful heliocentric process of subjectivisation, it is mandatory to discuss the problem from the opposite perspective: no longer "what is a tree" (and, therefore, what is nature), but "who is a tree" (and, therefore, who is nature), giving rise to an equivalence for nothing theoretical between living beings of different substance that can frame the man not only as a mere "spectator – user – destroyer" of earthly resources, but, above all, as part of a whole that must

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1 Referral to Cicoria M., is permitted, La "subjetividad jurídica" de la Naturaleza [The "legal subjectivity" of Nature]. In: Cuadernos de Gobierno y Administración Pública, Madrid, 8–1, 2021, 35-0.

2 On this point, cf. Pugliatti S. v. Beni (teoria generale) [Goods (general theory)]. In: Enc. Dir., V., Varese, 1959, 164 ff.

3 Pàstina D. v. Alberi [Trees]. In: Enc. Dir., I, 1958, 1011; Bianca M.C., Diritto Civile [Civil Law], 6, The property, Milan, 1999, 55; Miccichè C. L'ambiente come bene a utilità collettiva e la gestione delle lesioni ambientali [The environment as a collective good and the management of environmental injuries] In: The right of the economy, 2018, 1, with extensive references.

4 Notably, "nature" is the future participle of the Latin verb *nasci* (to be born). This term is well suited, from a terminological point of view, to the idea of the vital force that is the foundation of the world. The term then derives from the Latin translation of the Greek φύσις (=of nature), that is the first and fundamental reality, principle and cause of all things.

5 Present participle of the Italian verb *ambire* (encompass, surround).

be exploited, but with limitations, reasoning and the obligation of custody. This heliocentric procedure would lead, in some ways, to a return to the past and hence – to strengthening the ancestral relationship that man had with Nature which, gradually over the course of time has waned in favour of the predominant culture, in a contrast – all literary – which led man to claim domination of the entire planet[6] (and now the Universe as the object of expeditions and research). In this sense, the journey, starting from the Presocratics and up to the present ecologists, appears in a circular manner, and the expression of millennial at the centre overlaps with the perpetuate need of man to create rational categories through which to systematise, catalogue and explain every slightest natural event. Among the four terraqueous elements, referred to by Thales of Miletus or Anaxagoras[7], arises the topical need to safeguard creation through the use of alternative energy sources. This stands, then, as a cumbersome, stratified and confused mass, which bears the name of human culture, – the set of rules, ideas, reasoning, orientations, interpositions, overlapping, subsumptions and whatever else through which the man has intended to regulate his own vital course or rather the process of civilization.

1. Philosophical and normative notes

Given the established naturistic thought of the Presocratics, the path that has gradually led to culture being opposed to nature can commence with Socrates[8]. Beyond what Plato relates regarding his master in "Phaedrus"[9] and "Phaedo"[10], the testimonies of Diogenes Laertius about Socrates are interesting: "…convinced

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[6] The reference to Genesis 9: 2 is to the point: "And God blessed Noah and his sons and said to them, "Be fruitful and multiply and fill the earth. The fear of you and the dread of you shall be upon every beast of the earth and upon every bird of the heavens, upon everything that creeps on the ground and all the fish of the sea. Into your hand they are delivered. Every moving thing that lives shall be food for you. And as I gave you the green plants, I give you everything". Available: https://www.biblegateway.com/passage/?search=Genesis+9&version=ESV [viewed 28.12.2021.].

[7] And Anaximenes, Anaximander or, again, Parmenides and Zeno, the doctrines of which are excellently summarized in AA.VV., I Presocratici, Testimonianze e frammenti [The Presocratics, Testimonies and fragments], 1, Rome-Bari, 1993, 79 ff.

[8] The question could also be analysed from an anthropological and religious point of view. On this point, see the considerations of Carducci M. v. Natura (diritti della) [Nature (rights of the)], in Digest, Disc. Priv., Agg., 2017, 486 ff.

[9] In Fedro in Opere complete, 3, Parmenide, Filebo, Simposio, Fedro ["Phaedrus" (Complete Works, 3, "Parmenides", "Philebus", "Symposium", "Phaedrus"] Bari, 1993, p. 216) Socrates reports: "I am a lover of knowledge, and the men who dwell in the city are my teachers, and not the trees or the country". Available: http://www.classicallibrary.org/plato/dialogues/ [viewed 28.12.2021.].

[10] In Fedone (in Opere complete, 1, Eutifrone, Apologia di Socrate, Critone, Fedone, ["Phaedo" (Complete Works, 1, "Euthyphro", "Apology of Socrates", "Crito", "Phaedo"], Bari, 1993, p. 161) Socrates specifies, with regard to the philosophy of Anaxagoras and the 'true causes' at the foundation of the world: "But as I have failed either to discover myself or to learn of anyone else, the nature of the best, I will exhibit to you, if you like, what I have found to be the second best mode of inquiring into the cause".

that naturist speculation does not concern us at all, he discussed moral issues in the workshops and in the market" and again – "It seems to me that Socrates also speaks of nature, since he sometimes spoke of providence, as Xenophon says, but he says that his conversations focused solely on ethics"[11]. Essentially, in western civilization Socrates marks the limen between the analysis of the four naturist elements and the concepts of beauty, justice, morality, goodness, friendship and so on, therefore, the clear boundary between nature and culture. This gap was further marked by Plato and Aristotle. The first, in "Phaedrus" (as well as in "The Republic", "Cratylus" and "Gorgias"), deepens the concepts of 'reminiscence' and 'pre-existence of the soul', both referable to the so-called "World of ideas", i.e., to the reality itself, different from naturist reality, not perceptible by the senses, but attainable only with pure thought. He clarifies that the true cause of the occurrence of things does not lie in the elements of natural science, but in the idea itself of which only sensitive realities participate[12]. For his part, Aristotle, detaching himself from this approach, in "Metaphysics", as well as in "Nicomachean Ethics" and in Book III of "De anima", emphasizes that nature – "the substance of those things which have a principle of movement in themselves"[13], is a pyramidal construction, in which the lower step forms the matter for the development of the upper one. The apex of this hierarchical scale is man, lord of nature, able to transform into action all the potentialities contained in the lower degrees. It takes, in this way, in the cradle of Western civilization, the geocentric theory takes shape that, gradually borrowed from the most distant astronomy, leads up to Ptolemy with the well-known concept of the Earth at the centre of the entire Universe.[14]

This approach is then further borrowed from the Catholic religion, in particular – from the patrist Thomas Aquinas who emphasized that it was also well-suited to the reading of the Old Testament[15]. However, if in the Platonic-Aristotelian view the centre of the cosmos was not a privileged place, according to the church, the geocentric system assigned to the Earth a favoured position, making man the apex and the end of creation, sanctioning the predominance of culture over nature. Since this period, all sciences – philosophy, anthropology, economics

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[11] Diogenes Laertius, Vita di Socrate, in Vita dei filosofi [Life of Socrates. In: Life of the Philosophers], II, pp. 18–47. The references are given in AA.VV. Socrate, Tutte le testimonianze da Aristofane e Senofonte ai Padri cristiani [Socrates, All the testimonies from Aristophanes and Xenophon to the Christian Fathers], Rome-Bari, 1986, pp. 377 and 387.

[12] Plato, Fedro, ["Phaedrus"]. In: Opere complete [Complete Works], 3, "Parmenides", "Philebus", "Symposium", "Phaedrus", Bari, 1993, pp. 248a–249d.

[13] Aristotele, Metafisica [Metaphysics], Bari, 1984, E, 1.

[14] To be precise, the first Greek astronomer to consider that this approach was correct was Eudoxus of Cnidus, a pupil of Plato's (Diog. Laertius, Vite dei filosofi [Lives of the philosophers], cited work, VIII 86) and a little older than Aristotle. Presumably, it was he who led Aristotle himself to the conclusions reported in "De Coelo", a work that, composed of four books and translated from Arabic, dominated both ancient and medieval Christian and Islamic culture for about two millennia.

[15] In particular, in the Psalms: "He set the earth on its foundations; it can never be moved" (104,5); and in Joshua: "Joshua said to the Lord in the presence of Israel: "Sun, stand still over Gibeon, and you, Moon, over the Valley of Aijalon." So the Sun stood still, and the Moon stopped, till the nation avenged itself on its enemies" (Chapter 10).

and therefore law – have always analysed nature as an "object", a productive good or a means by which to generate forms of profit. Examples are Locke[16], Darwin[17], Marx[18] and Puchta[19], who, each in his own field, have consolidated this approach. Areas and settings that, with the passage of time, have further expanded and solidified during the period of the industrial revolution and, more recently, the so-called globalization.

Limiting ourselves to the law not recent, two examples are to be explored. The first is Henry III's[20] Charter of Forest of 1217 which, addressed to all free men, specified that

> *every free man shall agist his wood in the forest as he wishes and have his pannage. We grant also that every free man can conduct his pigs through our demense wood freely and without impediment to agist them in his own woods or anywhere else he wishes.*

Apart from balancing of the opposing interests between sovereign and subjects, this document notes the concept of "forest"[21] as a good to be exploited, then in one of the first constitutional sources follows the transposition of nature as an object of utility. The second example to be analysed is the law No. 1766 of 1927 regulating the civic uses, i.e., the rights which are not due to the individual, but instead – to the collectivity, to "draw some elementary usefulness from the lands, woods or waters of a specific territory[22]". Although the law does not define the concept of civic use, it separates into two the "properly usable land" (Art. 11),

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[16] "God, who gave the world to men in common, also gave them the reason, to make the most advantageous and most comfortable use of it to life. The earth and all that is found therein is given to men for the subsistence and comfort of their existence. But although all the fruits which it produces naturally and the animals which it feeds, insofar as they are produced spontaneously by nature, belong to men in common, and although none originally has, with the exception of other men, private dominion over any of them as long as they are that way in the natural state, however, since they are given for the use of men, there must necessarily be a means of appropriating them in some way". Locke, The Second Treaty on Government, p. 26.

[17] In "The Origin of Species", Darwin introduced the concept of "natural selection" between individuals of the same species. If, however, the selection between individuals of the same species took place by "interference", the selection between different species took place by "competition" or, in the case of man towards other living species, by "appropriation", given the scarcity of natural resources.

[18] "First of all, work is a process that takes place between man and nature, in which man, through his own action, mediates, regulates and controls the organic exchange between himself and nature: he opposes himself, as one of the powers of nature, to the materiality of nature. He sets in motion the natural forces belonging to his corporeality, arms and legs, hands and head, to appropriate the materials of nature in a usable form for his own life" in "The Capital", I.

[19] Putcha C. F. Corso delle Istituzioni, trad. it., di Turchiarulo [Course of Institutions]. Trans. It. by Turchiarulo A., Naples, 1854, II, 6: "the right serves only to man".

[20] On this point, cf. Carducci M. cited work, p. 500, as well as Calderale A. La Carta della Foresta ai tempi di Enrico III Plantageneto [The Forest Charter at the time of Henry III Plantagenet]. LB Edizioni, 2020.

[21] It should be noted that in the Charter of Forest the term 'forest' had to be interpreted as 'common natural resources', therefore – pasture, wood, springs, etc.

[22] Thus, Flore, Siniscalchi, Tamburrino, Rassegna di giurisprudenza sugli usi civici [Review of jurisprudence on civic uses]. Rome, 1956, p. 3.

i.e., the land used for forest and permanent pasture, and the land for agricultural cultivation. For the purposes of our investigation, two points are relevant. The law indicates at the outset, in the first paragraph of Art. 3, such uses as "rights *of* nature" where the legislator should have used the term "rights *over* nature". The second fact is that these rights are divided by Art. 4 into essential and useful. The first are the "rights to feed and water one's own livestock, collect wood for domestic use or personal work, sow by payment to the owner", the second – those "to collect or draw from the fund other products to be able to trade in it, the rights to feed in communion of the owner and also for the purpose of speculation; and in general, the rights to use the fund in order to obtain economic benefits, which exceed those that are necessary for personal and family sustenance". In both cases, the legal classification of nature and its products as mere economic goods emerges[23].

2. Recent and new directions

The same conclusions are reached by analysing the most recent legislation and precisely both the Ronchi[24] decree, both the Environment Code[25]. In both texts, the word "nature" is mentioned only once[26], preferring the term "environment" instead. Already such datum, as mentioned at the beginning, appears relevant, since the visual angle is always anthropocentric. Wanting to dwell on the current legislation, hence – the Environment Code, suffice to say that the first paragraph of Art. 1 states that the decree "has as its primary objective the promotion of the levels of quality of human life", consequently – not the protection of nature. This promotion always specifies the same rule, it must be realized "through the safeguard and the improvement of the conditions of the atmosphere and the prudent and rational utilization of the natural resources". The element of use, then better explained in the substantial legislative text, suggests that the environment must still be understood as an asset to be exploited although compatibly to the principle of the "sustainable development"[27].

These clarifications, equal to those referred to in the previous paragraph, indicate that it is not possible in any way to share the substantial doctrine, which considers that the process of juridification of the environment, i.e., its

[23] In this sense, even the doctrine has had the opportunity to clearly distinguish, in the structure of civic uses, the subjective element (i.e., the individual or the community holders of the right) from the objective one (i.e., the land, belonging to the private, to the collective or to the Municipality): thus, Petronio U. v. Usi civici [Civic uses]. In: Enc. Dir., XLC, Milan, 1992, p. 931.

[24] Legislative Decree of 5 February 1997, No. 22 (in the General Gazette No. 38 of 15 February 1997 – SO No. 33) entitled "Implementation of directives 91/56/EEC on waste, 91/698/EEC on hazardous waste and 94/62 / EC on packaging and on packaging waste". Notably, the Ronchi decree was repealed by Art. 264 of the Environmental Code.

[25] Legislative Decree of 3 April 2006, No. 152 (in the Official Gazette No. 88 of 14 April 2006) containing "Environmental Regulations".

[26] Art. 3 quarter, third paragraph of the Environmental Code.

[27] Cit. Art. 3 quarter, third paragraph of the Environmental Code.

classification as an object of law, has been, all in all, minted recently. Hence, in a historical analysis, one A. stated that climate change and the new environmental sensitivities of the 1960s of the 900 have "pushed doctrine and jurisprudence to (re)think the relationship of man with the environment, qualifying the latter, at first, as a constitutional value, then, even, as a good in the legal sense[28]" and, in particular, as a common good. This result, according to this doctrine, would have been reached also through the constitutional interpretation given by the Council which, in the note judgment No. 641 of 1987[29], had to specify that the environment "has been considered a unitary intangible asset although to various components, each of which can also constitute, but all, on the whole, are attributable to unity"[30]. However, as has been pointed out previously, the objective representation of nature, and therefore its reification, has very ancient and hidden roots. This approach, at least at a supranational level, is gradually changing even if for individual entities or macrosystems. In this sense, the Constitution of Ecuador has stated, in the second paragraph of Art. 10, the legal nature of nature, in particular by ruling that "the naturalness will be subjected to the rights recognized by the Constitution"[31]. Again, in Bolivia, Art. 5 of L. No. 71 of 2010[32] defined Mother Earth as a "collective subject of public interest" to be granted, as per Art. 7, the right to life, to the diversity of life, to water, to clean air, to balance, to restore and to live free from contamination. Likewise, in New Zealand, the Whanganui River has been recognised as a legal entity through the Whanganui River Claims Settlement (*Whanganui Te Awa Tupua*) Act 2017 which, in Subpart 2 of Part 2, states: "the Te Awatupua is a legal person and has all the rights, powers, duties and responsibilities of a legal entity"[33]. And again, in Uganda, The National Environment Act 2019 establishes, in Art. 4, Sub. 1, that "nature has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its evolutionary processes[34]". Similarly, the Constitutional Court of Colombia in

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[28] Miccichè C. cited work, 1 (in part 3). The greatest difficulty encountered was the non-unity of the environmental phenomenon that was divided into material and immaterial factors.

[29] Ponzanelli G. Corte costituzionale e responsabilità civile: rilievi di un privatista (nota a C. cost. 30 dicembre 1987, No. 641, Tavanti c. Proc. gen. Corte Conti) [Constitutional Court and civil liability: findings of a private owner (note to C. cost. 30 December 1987, No.. 641, Tavanti v. Proc. Gen. Corte Conti)]. In: Foro It., 1988, I, 1057.

[30] The court – after having specified that the protection of the environment should not be marked by abstract "naturalistic or aesthetic" purposes, but by practical actions aimed at protecting the habitat in which man lives and acts – stressed that it "rises to primary and absolute value" and more precisely not only as a "legal good as recognized and protected by rules", but as a "free" good and therefore not subject to a subjective legal situation, but usable by the community and by individuals.

[31] Constitution of Ecuador, Art. 2, para. 2. Available: https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf [viewed 13.03.2021.].

[32] L. No. 71 of 2010, Art. 5. Available: https://bolivia.infoleyes.com/norma/2689/ley-de-derechos-de-la-madre-tierra-071 [viewed 18.03.2021.].

[33] Whanganui River Claims Settlement, Act 2017 which, Part 2, Subpart 2. Available: https://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html [viewed 18.03.2021.].

[34] The National Environment, Act 2019, Art. 4, Sub. 1. Available: https://nema.go.ug/sites/all/themes/nema/docs/National%20Environment%20Act,%202019%20(1).pdf [viewed 18.03.2021.].

judgment T-622/16 stated that "the Atrato River is subject to the rights that imply its protection, conservation, maintenance and [...] restoration" (paragraphs 9.25 and 9.32). In India the High Court of Uttarakhand Nainital, in the decision on the Mohd case Salim v. State of Uttarakhand & others established, on 20 March 2017 in paragraph 19, that "the rivers Ganges and Yamuna, all their tributaries, streams, any natural water flowing with continuous or intermittent flow of these rivers, are declared as legal person/legal entity/living entity having the status of legal entity with all the corresponding rights, duties and responsibilities of a living person[35]". Finally, in 2019 the High Court Division of the Supreme Court, Bangladesh, recognised the Turag River as a legal person/legal entity/living entity and stated that all the rivers in Bangladesh will have this same status[36].

All these experiences have led a doctrine that "the tendency that subjectivizes nature and its individual components is, indisputably, a phenomenon of worldwide in its scope[37]".

3. Food for thought

What, then, is missing to qualify nature in general or certain natural entities in particular not as mere objects in Europe, but as subjects of law endowed with legal subjectivity? So, as persons or centres of imputation of legal effects that have substantial and procedural ownership and, above all, power to protect a general right of resistance against today's intensive exploitation?

The question must also be asked in the light of the European legislation of reference and, in particular, both the provisions of Art. 37 of the Charter of Fundamental Rights of the European Union, and of the recent proposal for a Regulation of the European Parliament and of the Council establishing

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[35] The same court had the opportunity to grant, a few days later, "The quality of legal entity, legal person, juristic person, juridicial person, moral person, artificial person", to the "glaciers including the Gangotri and the Yamunotri, rivers, streams, torrents, lakes, air, meadows, valleys, jungles, forests, wetlands, prairies, springs and waterfalls, therefore – of subjects to whom to grant the right to exist, persist and maintain their ecological system (case Lalit Miglani v. State of Uttarakhand, Writ Petition – GDP – No. 140 of 2015).

[36] These examples are deepened by Perra L. L'antropomorfizzazione giuridica, in Diritto e Questioni pubbliche, XX, 2020 / 2 [Legal anthropomorphization, in Law and Public Issues, XX, 2020/2], pp. 47–70, as well as previously in Baldini S.
I diritti della natura nelle costituzioni di Ecuador e Bolivia [The rights of nature in the constitutions of Ecuador and Bolivia]. In: Visioni Latino Americane [Latin American Views], 2014, 10, pp. 25–39.

[37] Nunez R. M. Subjectivizing Nature? In: The Cardozo Electronic Law Bulletin, 2019, Vol. 25, No. 1 (part 5). Of the same A., cf. Nature, damage, subjects. Reflections on the subject of ecological justice, in Supreme Courts and Health, 2019, p. 2. See also the considerations of Gaeta M. A. Il problema della tutela giuridica della natura: un'analisi comparata tra Italia e Stati dell'America Latina [The problem of the legal protection of nature: a comparative analysis between Italy and Latin American States]. In: Nuovo Diritto Civile [New Civil Law], 2020, 4, 313, as well as ID., Principio di solidarietà e tutela di nuovi 'soggetti' deboli. La Foresta Amazzonica quale soggetto di diritto [Principle of solidarity and protection of new weak 'subjects'. The Amazon Forest as a subject of law]. In: Familia, 2019.

the framework for achieving climate neutrality and amending Regulation (EU) 201/1999. Art. 37, contained in Title IV of the Charter (the title devoted to the principle of solidarity), states that "a high level of environmental protection and the improvement of its quality must be integrated into Union policies and guaranteed in accordance with the principle of sustainable development[38]". Regarding the proposal for a Regulation[39], it aims to achieve the so-called climate neutrality within and no later than 2050, necessary "to transform the EU into a just and prosperous society that improves the quality of life of current and future generations, a society with a modern, efficient and competitive economy that in 2050 will not generate net greenhouse gas emissions and in which economic growth will be dissociated from the use of resources". In both texts, no reference is made to Nature, but rather to the resources to be exploited according to the principles of proportionality and sustainability[40]. This figure seems rather disheartening, since it continues to analyse the theme of what still remains to be exploited, how and above all – who is the beneficiary of this exploitation.

In any case, and by attempting to give a minimum support to the contrary heliocentric theory, three provocations are allowed. At the end of the 19th century, the diatribe around the concept of "person' was illuminated by the "pure doctrine" of Kelsen who, analysing the concept first understood as a "mask"[41] and, then, as an "individual"[42], condemned the naturalistic man by the juridical man Kelsen, in short, pointed out that the human being was not a juridical concept, but only biological and psychological and that "If one has to distinguish the naturalistic concept of man from the juridical concept of person, this does not mean that the person is a particular species of man, but that the two concepts represent two completely different units". Furthermore: "The juridical concept of person or subject of law expresses only the unity of a plurality of obligations and authorizations, that is, the unity of a plurality of rules establishing obligations and authorizations.

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[38] In GUUE C 326/391 of 26 October 2012. The principle of sustainable development enshrined in Art. 37 is based on Arts 2, 6 and 174 of the EC Treaty, now replaced by Art. 3, para. 3 of the Treaty on European Union and Arts 11 and 191 of the Treaty on the Functioning of the European Union.

[39] Available: https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:52020PC0080&from=EN [viewed 21.06.2021.].

[40] A less dramatic judgment must be given to the Paris Agreement on climate (in GUEE of 19 October 2016, Law 282/4) which, at the first "Noting", underlines "the importance of ensuring the integrity of all ecosystems, including the oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth".

[41] Guarino A. Diritto privato romano [Roman private law]. Naples, 2001, 288: "the original meaning of the word was that of "mask", and precisely for this reason person presumably passed to indicate all those who have form, human aspect, regardless of legal subjectivity" (22.5.1). The term "person" derives from "per" – "sonus-i", that is "through sound" or "through the voice": the latter, in fact, reached the spectators in Greek and Latin theatre through wooden masks that they amplified the sound.

[42] Guarino A. ibid., p. 288: "persona" was a term used starting from advanced classical law, for clear influence of Stoic philosophy, in order to designate man, with the exclusion of immaterial juridical subjects and with the inclusion, *vice versa*, of servants, peregrines, the filii familiarum". Regarding person, see also Bessone M. – Ferrando G. v. Persona fisica. a) Diritto privato [Physical person. a) Private law]. In: Enc. dir., Milan, 1983, p. 193.

The "physical" person corresponding to the individual man is the personification, i.e., the unitary expression personified, of the norms that regulate the behaviour of a man[43]". From this approach emerged the distinction between man, that is, natural reality, and "person", that is, *representation* of juridical knowledge, unitary expression personifying a group of obligations and juridical authorizations, that is, of a set of rules. An approach from which derived a wider citizenship in the codes of the juridical person and, above all, the possibility of considering a *person* also a "non man", that is, a living being different from the human canons. So, the consequence should be that nothing to prevent a further superfetation, wanting to consider Nature as a person of law endowed with its centre of imputation.

At this point, it could be argued that a macrosystem is too vast, complex, unequal to assign to it some "juridical subjectivity". But, in hindsight, the problem was already posed years ago for several universitas among which the most recent was the company. In this sense, the opposing theories (unitary and atomistic) are known and they mean the company either as "a single good[44], a new and distinct good with respect to the individual goods" or "simple plurality of goods functionally connected to each other[45]". Beyond the doctrinal dispute, the one most relevant from the current normative data, in particular from the provisions of Art. 2555 and ss. c.c., is the will of the legislator to safeguard the company in its unity and functionality, to the point of being able to speak, also for the explicit reference made by Art. 670 Code of Civil Procedure[46] of a sort of atypical universality of movable and immovable property. Furthermore, the question of the *universitas* is well founded in the macroeconomic concept of State, Regions, Provinces, Municipalities and so on. Hence, a very similar discourse could *cum grano salis* operate also with respect to Nature or to well-identified parts of it.

Finally, on 16 February 2017, the European Parliament approved the Resolution with recommendations to the Commission concerning civil law rules on robotics (2015/2103(INL)[47] pursuant to Art. 59, lett. F), Parliament also called on the Commission to explore, examine and assess the implications of all possible legal solutions, including "the establishment of a specific legal status for robots in the long term, so that at least the most sophisticated autonomous robots can be considered as electronic persons responsible for compensating for

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[43] Kelsen H. ReineRechtslehre. Einleitung in die rechtswissenchafticheProblematik (trad. It., Lineamenti di dottrina pura del diritto, a cura di Treves R. [Outlines of pure doctrine of law. Treves R. (ed.). Turin, 1952)], 88 ff.

[44] Campobasso G. F. Diritto commerciale, 1, Diritto dell'impresa [Commercial Law, 1, Business Law]. Turin, 1993, p. 145, which indicates "Ferrara as coryphaeus" (The legal theory of the company, Florence, 1945, p. 112).

[45] Campobasso G. F. cited work, p. 146, which refers to Colombo. L'azienda [The company]. In: Tratt. Galgano, III, p. 61.

[46] "The judge can authorize the judicial seizure: 1) of movable or immovable property, companies or other universality of goods, [...]".

[47] Resolution with recommendations to the Commission concerning civil law rules on robotics (2015/2103(INL), Art. 59, lett. F). Available: https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:52017IP0051&from=IT [viewed 02.11.2021.].

any damage caused by them, as well as possibly the recognition of the electronic personality of robots that make autonomous decisions or interact independently with third parties"[48]. Beyond the legal disquisitions, the point is that if it is assumed that some subjectivity or juridical personality to robots would be acknowledged at some point in the future, hence granting this status to technologies without their own life, clearly, this equal dignity should also be granted to living entities other than man.

4. Initial conclusions

A possible recognition, on a global or territorial scale, of the juridical subjectivity status of Nature, understood either in its entirety or in its precise and limited manifestations, could give rise to other consequential problems: the need for a representative body, the limits of power that such body must exercise, who appoints this body and who controls it, in addition to the rights, what are the duties of Nature, and so on. However, such problems are easily solved in a like manner as with respect to legal persons or local authorities. The point is that the now atavistic contrast between culture and nature, as well as the necessary predominance of man over natural events, have no future. The Leopardian idea of a stepmother nature[49] has no reason to be where it is found that mother earth supports us and has supported us since the beginning and, in general, that the problems plaguing the earth will inevitably befall also to human beings.

Art. 20 of the Finnish Constitution, entitled "Responsibility for the Environment", states that "nature and biodiversity, the environment and national heritage are the responsibility of each and every one" and that "Public authorities do everything in their power to ensure that everyone has the right to a healthy environment, as well as the possibility of contributing to decisions concerning the environment in which they live". Even if these principles, enshrined in a nation that has a certain ancestral relationship with the earth, represent an important step forward in the process of rapprochement between culture and nature (since they "constitutionalize" the second concept), they are still far from a current and dutiful vision of things. In short, man's attention to nature cannot be reduced or limited to the notions of "responsibility" or "damage", since this view suggests that the concept of nature continues to be framed as a mere object of human activity potentially harmful to the ecosystem. It is necessary, therefore, to begin a process of *subjectivation* of nature which, as a subject of law, can exercise and protect its own rights including, as we shall see, those of diversity, restoration and water.

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[48] The question is examined by Santosuosso A. Intelligenza artificiale e diritto, Perché le tecnologie di IA sono una grande opportunità per il diritto [Artificial intelligence and law. Why AI technologies are a great opportunity for law]. Milan, 2020, p. 198.

[49] "Oh Nature, Nature/ why do you not give now/ what you promised then? Why/ do you so deceive your children?" (Leopardi G., A Silvia [To Silvia], pp. 36–39).

Far from being futuristic[50] this process does not seem to be not properly developed in Italy where, even in the presence of parliamentary initiatives[51], evidently (especially in the parliamentary work) that there is confusion between the subject and the object. In particular, in the report to a recent draft constitutional reform, it first reads that, in the complex protection of the environment, even animals are "subjects that make up the ecosystem", then that "the concept of environment is finally a relational good that implies the material interaction between the man and nature, the complexity of which necessitates identification of rights and duties teleologically oriented toward the enhancement of this relationship". These assertions are an obvious example of conceptual confusion between subjects and objects. Needless to say, a simple and direct wording such as "The Republic protects Nature as a subject of law" would be better. This would involve *de relato* the application to Nature of all the proliferating doctrine on the natural person and his rights.

5. The right to water

The ecosystem does not feed on meat, but mainly on water. Compared to a resource that is already scarce for man[52], the discourse is twofold: how the human being must rationally exploit water for his needs and how he must guarantee to Nature the necessary quantities of water. The theme of interest here is not summarised in the well-known questions of the administration of water to the mankind or the equitable distribution of water between the different parts of the hemisphere or the private or public nature of water nor in the constitutional nature or the right to water[53], but instead it enquires, how to manage, with respect to Nature, problems like

[50] Regarding this, see "Universal Declaration of the Rights of Mother Earth" presented by the President of Bolivia Evo Morales to the United Nations on 21 June 2012, in which Mother Earth is qualified as a "living being" (Art. 1) to which the rights referred to in Art. 2 must be granted.

[51] See the draft constitutional law No. 1203, aimed at amending Art. 9 of the Constitution by adding the paragraph: "The Republic protects the environment and the ecosystem, protects biodiversity and animals, promotes sustainable development, also in the interest of future generations", filed in the Senate on 2 April 2019. Available: https://www.senato.it/service/PDF/PDFServer/DF/344113.pdf [viewed 12.06.2021.]. Note the further proposals filed with the Chamber of Deputies, in particular – the Muroni constitutional law No. 2174, containing "Amendments to articles 9 and 117 of the Constitution, regarding the protection of the environment, biodiversity, ecosystems and animals". Available: https://www.came-ra.it/leg18/126?pdl= 2174 [viewed 12.06.2021.] and the Constitutional Law Proposal Barba and others No. 240, containing "Amendments to articles 2, 9 and 41 of the Constitution, on environment protection and the promotion of sustainable development". Available: https://www.camera.it/leg18/126?idDocumento=240 [viewed 12.06.2021.].

[52] It should be noted that the water useful for man, that is, the fresh one, constitutes only 2.5% of all the water on the planet. Of this 2.5%, 70% is kept in glaciers and polar caps. These data are reported in the European Water Resources Charter adopted by the Committee of Ministers of the Council of Europe. Available: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680504d85 [viewed 03.08.2021.].

[53] Regarding this point, Carapezza Figlia G. Oggettivazione e godimento delle risorse idriche. Contributo a una teoria dei beni comuni [Objectification and enjoyment of water resources. Contribution to a theory of common goods]. ESI, Naples, 2008.

desertification and "the degradation of arid, semi-arid and dry sub-humid lands attributable to various causes including climatic variations and human activities[54]". This degradation is manifested, as specified by the new Ministry of Ecological Transition "with the decrease or disappearance of productivity and biological or economic complexity of cultivated land, both irrigated or not, grasslands, pastures, forests or woodland caused by land use systems, or by one or more processes, including those deriving from human activity and its settlement methods, including water and wind erosion, etc.[55]". A process, now known for a long time, that afflicts the entire planet and, as far as Italy is concerned, at least 30% of its territory with increasing risk for the major islands. Likewise, the Ministry of the Ecological Transition indicates the three main causes of natural[56], anthropogenic[57] and morphological[58] origin. These causes have been drawn up by the National Committee for the Fight against Drought and Desertification (CNLSD), established by DPCM of 26 September 1997[59].

As to supranational and national legislation, it is elephantiac, redundant and sometimes unclear. Furthermore, it is aimed at analysing the problem from the point of view of "the sustainable exploitation" of water resources, thereby disregarding Nature as a potential subject to be protected. The starting point can be the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (UNCCD), – the Convention signed by 196 countries[60] and aiming to "fight against desertification and mitigate the effects of drought in severely affected countries" (Art. 2). To this end, Art. 4 and 5 identifies the obligations of the signatory countries, as well as the plans of action and cooperation on international, national and local level (Arts 9 to 15); finally, permanent bodies are established, namely, the Conference of the Parties (Art. 22), the Permanent Secretary (Art. 23) and the Committee of Science and the Science and Technology Committee (Art. 24). Notably. the European Union has also signed the Convention

[54] According to Art. 1 of the United Nations Convention to combat desertification (UNCCD) signed in Nairobi in 1977.

[55] Available: https://www.mite.gov.it/pagina/la-desertificazione [viewed 03.08.2021.].

[56] The causes of natural origin can be summarized in aridity (i.e., in the simultaneous scarcity of precipitation in one with strong evaporations), in drought (i.e., in the reduction, albeit significant, of the levels of precipitation compared to the normality of the season), and finally, in the erosivity of the rain (i.e., in the disintegration of the soil due to short but intense rains, which fall on areas without vegetation capable of absorbing them).

[57] The anthropogenic ones are those related to socio-economic activities and their impacts and are, in an absolutely generic way, identifiable in agriculture, zootechnics, water management, forest fires, industry, urbanization, tourism, landfills and mining activities.

[58] Finally, the morphological ones are the slopes of the ground, the solar exposures of the Mediterranean slopes and the type of certain vegetal coverings.

[59] In the Official Gazette No. 43 of 21.02.1998.

[60] Italy has ratified the Convention by the Ratification and execution of the United Nations Convention to Combat Desertification in countries seriously affected by drought and/or desertification, in particular in Africa, with annexes, made in Paris on 14 October 1994 (in GU General Series No.142 of 20.06.1997, Ordinary Suppl. No. 122).

since 26 March 1998[61] and that the Conference of the Parties, with the recent document of 14 September 2017[62], decided "to adopt the UNCCD 2018 2030 Strategic Framework", postulating five strategic objectives essentially inspired by the so-called the principle of sustainability in the management of territories and water[63] some provisions of the domestic legislation are also dedicated to desertification and, in particular, of the Legislative Decree of 3 April 2006, No. 152[64] which reserves the entire Part 3, to the protection of water from pollution, to the management of water resources and, finally, to the fight against desertification. The activities aimed to achieve these purposes are numerous and punctually listed in Art. 56, *inter alia*, those referred to in part (d) support our reasoning, particularly – parts (d) (contemplating extractive activities in waterways, lakes, lagoons and in the sea) and (h) (considering the rational use of surface and deep-water resources). However, it should be noted that the primary objective of the entire legislation is "the promotion of the levels of quality of human life, to be achieved through the preservation and improvement of the conditions of the environment and the prudent and rational use of natural resources" (Art. 2). The opposing interests are balanced between, on the one hand, the environment (never called Nature) and, on the other, – the man that that environment must learn to exploit according to principles now known. Ultimately, the Nature is always understood as an object, thus, we arrive at the analysis of the so-called "river contracts" introduced, in the Environmental Code, by Art. 59 of the recent Law No. 221[65]. It is a genuine legal protocol signed between public and private bodies and aimed at the protection, correct management of water resources and the enhancement of river territories, together with the protection against hydraulic risk and the local development of such areas. The object of these protocols are the waterways in a perpetuated anthropocentric representation[66].

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[61] 98/216/EC: Council Decision of 9 March 1998 concerning the conclusion, on behalf of the European Community, of the United Nations Convention on Combating Desertification in Countries severely affected by drought and/or desertification, in particular in Africa (in OJ L 83 of 19.03.1998, pp. 1–2).

[62] Available: https://www.unccd.int/sites/default/files/inline-files/ICCD_COP%2813%29_L.18-1716078E_0.pdf [viewed 17.08.2021.].

[63] Another source of reference is Directive 2000/60/EC of 23 October 2000 which establishes a framework for community action in the field of water policy (in G.U.C.E. L 327 of 22.12.2000, pp. 1–73). Therein, no reference is made to Nature itself, but instead – to the exploitation of water resources: the European legislator, borrowing Art. 174 of the Treaty (now 191), specifies that the Community's environmental policy also in terms of water must be based "on the principles of precaution and preventive action, on the principle of correction, first of all, at the source of the damage caused to the environment, as well as based on the 'polluter pays' principle".

[64] Cfr. nt. 25.

[65] On "Environmental provisions to promote green economy measures and to limit the excessive use of natural resources" (in the Official General Series No. 13 of 18.01.2016).

[66] The latest arrest of the United Sections of the Court of Cassation should therefore be viewed favourably, which, in the recent sentence no. 11291 of April 29, 2021 (in Sole 24 Ore, 31.05.2021, 24, with an article by Zerman P. M. Corso d'acqua 'fragile': legittimo lo stop a impianti idroelettrici ['Fragile' watercourse: Suspension of hydroelectric plants is legitimate)] explicitly refers to "small mountain waterways" that characterize "a particularly fragile ecosystem". In a dutiful balancing of interests,

6. The right to restoration

The problems of desertification, as well as those of wild urbanization and deforestation, are a source of reflection for a further right that should be up to the Nature, namely, that of restoration. The theme is, already known to doctrine and jurisprudence since it is the subject of a specific regulatory provision and, in particular, of Art. 302, para. 9, of the aforementioned Environmental Code. However, the problem always appears to be addressed from the same point of view – Nature as a legal good.

Starting from the legal reference normative data, para. 9, states that "restoration", even "natural", means: in the case of waters, protected species and habitats, the return of damaged natural resources or services to their original condition; in the case of damage to soil, the elimination of any risk of harmful effects for human health and environmental integrity. In any case, the restoration must consist of the requalification of the site and its ecosystem, through any action or combination of actions, including mitigation or temporary measures, aimed at repairing, rehabilitating or, where it is deemed acceptable by the competent authority, to replace damaged natural resources or natural services. It should be noted that the paragraph in question, therefore the notion in itself of restoration, has not undergone changes on the occasion of the novelties, indeed already previously absorbed[67], made by Art. 25 of the 2013[68] Community Law which, conversely, has affected other provisions contained in Part Six of the CDA, therefore in the part

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the aforementioned watercourses are considered by the Court to be worthy of greater protection than the so-called renewable sources. In particular, the judges of legitimacy, in examining the relationship between the precautionary principle and the principle of support for renewable sources, consider "the precautionary principle prevails to protect the maintenance of water quality and indeed the creation of a system that increases it the possibilities for qualitative improvement". Although the Court never refers to the concept of 'nature', remarkably, the separation of fragile watercourses from the environment in general seems to begin to mark a path of subjectivization that separates the part from the whole.

[67] For the punctuality of speech, it is true that Directive 2004/35/EC, although transposed in Italy only in 2013, was an implicit primary source of reference for the 2006 news of the Board of Directors and, in fact, is referred to several times in Part 6.

[68] L. 6 agosto 2013, n. 97 (in G.U. 20 agosto 2013) [L. 6 August 2013, No. 97 (in Official Gazette of 20 August 2013)] with Art. 25, in particular, Directive 2004/35 / EC of 21 April 2004, of the European Parliament and of the Council on environmental liability with regard to the prevention and reparation on environmental damage, was implemented. The aforementioned Directive contemplates in point 15 of Art. 2 a much more limited notion of "restoration", namely: "in the case of water, protected species and natural habitats, the return of damaged natural resources and/or services to their original conditions and, in the case of damage to the soil, the elimination of any significant risk of causing harmful effects to human health". Regarding this, Pozzo B., La responsabilità per danno ambientale [Liability for environmental damage]. In: Rossi G. (ed.), Diritto dell'Ambiente [Environmental Law], Giappichelli, Turin, 2015, pp. 215–228. For the previous legislation, see ID, La nuova direttiva 2004/35/CE del Parlamento europeo e del Consiglio sulla responsabilità ambientale in materia di prevenzione e riparazione del danno, in Riv. giur. amb., fascicolo 1 [the new Directive 2004/35/EC of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of damage, in Riv. jur. amb., issue 1], Giuffrè Editore, Milan, 2006, pp. 1–18 e ID., La direttiva 2004/35/CE e il suo recepimento in Italia, in Riv. giur. ambiente, fascicolo 1 [Directive 2004/35/EC and its implementation in Italy, in Riv. jur. environment, issue 1], Giuffrè Editore, Milan, 2010, pp. 1–80.

dedicated precisely to precautionary and restoration activities and, in particular, on the introduction of Art. 298a which, in the third paragraph, refers to Annex 3 regarding repairs. This annex, fully based on Annex II to Directive 2004/35/EC, is relevant and clarifying, since it "establishes a common framework to be respected in order to choose the most appropriate measures to be followed to ensure the repair of environmental damage". It divides the repairs according to whether the damage is caused to the water, protected species and natural habitats (the first part) or to the soil (the second part), in a sequence of punctual remedies that tends to bring the damaged environment back to its original condition. With regard to the first repairs, they are subdivided into primary, complementary and compensatory reparation measures and are also punctually represented in their respective purposes, options[69] and choices[70]. Conversely, for land-related repairs, restoration activities expressly include "human health" as an interest to be protected, in any case by considering as a reference option that of "natural restoration, which is an option without a direct human intervention in the restoration process".

If these provisions appear punctual and stringent, certain doubt has been expressed regarding the person entitled to the protection of the environment, namely, the person with the underlying legal interest. In particular, Art. 309 of the CDA states that "the regions, the autonomous provinces and the local authorities, including the associated ones, as well as natural or legal persons who are or are could be affected by environmental damage or who have a legitimate interest in participating in the precautionary measures procedure, complaints and observations, accompanied by documents and information, concerning any case of environmental damage or imminent threat of environmental damage and request State intervention to protect the environment pursuant to Part 6 of this decree". The standard, as structured, presents a multiplicity of readings with respect to the interested parties or involved and must be analysed in conjunction with the subsequent Art. 311[71]. First of all, the regions, autonomous provinces, including associated local authorities and finally the natural or legal persons

[69] In this sense, the purpose of primary repair is to "restore damaged natural resources and/or services to or towards their original conditions", whereas complementary repair is to counterbalance, where appropriate, also through the use of an alternative and preferably adjacent site, the positive effects which, however, were not achievable by primary repair. Finally, the purpose of compensatory repair is to compensate for the loss until primary or complementary reparations are implemented.

[70] Notably, there is no decreasing principle. In choosing the option to use, a series of criteria listed in detail must be followed. However, primary reparation measures can also be taken that do not restore the damaged environment to its original conditions or which bring it back more slowly to those conditions. This is on the condition, however, that "the natural resources and/or services lost on the primary site […] are compensated by increasing the complementary or compensatory actions to provide a level of natural resources and/or services similar to that lost". The competent authority is also provided: "not to undertake further reparation measures" if there is no longer "a significant risk of causing harmful effects to human health, water, species and natural habitats protected" or if "the costs of the remedial measures […] are disproportionate to the environmental benefits sought".

[71] Para. 1 thereof establishes that "the Minister of the Environment and of the Protection of the Territory and the Sea acts, also by exercising civil action in criminal proceedings, for the compensation of environmental damage in a specific form and, if necessary, for an equivalent patrimonial, or proceeds in accordance with the provisions of the sixth part of this decree".

affected by the environmental damage or holding a legitimate interest, are listed. These persons are "affected" by environmental damage and, therefore, potentially holders of a claim for compensation and/or restoration, therefore of an interest to be protected. Then, it is recalled the Minister of the Environment and of the Protection of the Territory and the Sea, to whom not only to present denunciations or observations, but also to "ask for state intervention", therefore subject obviously entitled of legitimacy and representative power. Finally, the rule explicitly links state intervention to "environmental protection", as if to signify that the environment is the holder of the interest to be protected. However, such a last interpretation is evidently distorted by the reading of entire text of the law, since it, even in recent novels, is always aimed at identifying the environment as a mere object and not holder of rights in itself. Consequently, the only certainty is that the subject entitled to exercise the compensation and/or restoration is the Ministry, and this is in mind of Art. 311 CDA, both by virtue of what was established by the recent arrest on the subject by the Constitutional Court[72]. The judges of the laws, particularly in addition to sanctioning – in compliance with the general regulatory provision referred to in art. 117 Cost., as well as the aforementioned Art. 311 CDA – the exclusive competence of the State in relation to the judicial protection of the environment as provided by Directive EC[73], continue to indicate the environment as "a unitary immaterial good although with various components, each of which may also constitute, in isolation and separately, the object of care and protection; but all, taken as a whole, are attributable to unity[74]".

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[72] Judgment 126 of 19 April 2016, Pres. Grossi – Red. Coraggio (in G. U. 8 June 2016 No. 23). The sentence is published in Giur. Const., 4, 2016, 1509, with a note by Betzu M. – Aru S., Il risarcimento del danno ambientale tra esigenze unitarie e interessi territoriali [Compensation for environmental damage between unitary needs and territorial interests], as well as in Foro it. 2016, part I, col. 3409.

[73] The Court, in fact, is keen to clarify that there is also a subsidiary competence of additional subjects: "this does not exclude as we have seen that pursuant to Art. 311 of the legislative decree No. 152 of 2006, there is the power to act of other subjects, including the representative institutions of local communities, for the specific damages suffered by them. The Court of Cassation has repeatedly stated in this regard that the special legislation on environmental damage is flanked (since there is no real antinomy) to the general discipline of damage laid down by the Civil Code, therefore not being able to doubt the legitimacy of territorial authorities to become a civil party *iure proprio*, in the trial for crimes that have caused damage to the environment, not the compensation for damage to the environment as a public interest, but instead (like any individual or associated person) – for the damage directly suffered: direct and specific damage, further and different from the general, public one, of the damage to the environment as a public good and a fundamental right of constitutional significance".

[74] The Court continues, specifying that: "the fact that the environment can be used in various forms and different ways, as well as be the subject of various rules that ensure the protection of the various profiles in which it is expressed, does not diminish and does not affect its nature and its substance as a unitary good that the legal system takes into consideration. The recognition of the existence of a "unitary intangible good" is not an end in itself, but functional to the affirmation of the increasingly felt need for uniformity of protection, a uniformity that only the State can guarantee, nevertheless, allowing that other institutions could and should also take charge of the undoubted interests of the communities that directly benefit from the good".

7. The right to biodiversity

The normative reference is the so-called Habitat Directive, implemented in Italy in 1997[75], which highlighted the concepts of "environmental conservation" and "natural habitat". The first is intended as the "set of measures necessary to maintain or restore natural habitats and populations of species of wild fauna and flora in a satisfactory state"; the second in "terrestrial or aquatic areas distinguished by their geographical, abiotic and biotic characteristics, entirely natural or semi-natural" (Art. 1). The function and tools adopted by the entire Directive revolve within these two concepts, among which the main need is the need to "contribute to safeguarding biodiversity through the conservation of natural habitats as well as wild fauna and flora, in the European territory of the Member States to which Treaty applies. In this regard, the main obligations of the Member States and, in particular, the obligations to protect animal species (Art. 12) and plants (Art. 13) and to regulate the collection or exploitation of flora and fauna (Art. 14). The two points that, however, concern the present work are the concept of "Community interest" and the provision of Art. 22. The Community interest is analysed by Art. 1 in combination with the concept of natural habitat. In this regard, natural habitats of Community interest are those which in the territory of the European Union are either at risk of disappearing from their natural distribution or have a reduced natural distribution as a result of their regression or restriction area or finally, they are notable examples of typical features of one or more of the biogeographical regions of the Alps, Atlantic, Black Sea, Boreal, Continental, Macaronesic, Mediterranean, Pannonian and Steppe. Habitats, both in general and in the Community interest, are punctually listed by the Directive in Annexes I, II, IV and V. As far as for Art. 22, this establishes two principles both aimed at conservation of biodiversity. The first is the opportunity to reintroduce, within a given territory, local species if such a measure can contribute to their conservation; the second is the control over the intentional introduction of a non-local species. The difference between these two prerogatives is that while the first refers to native species that were obviously at risk or have been extinguished, the second has as its object allogeneic species that could cause some prejudice and, therefore, justify, in addition to control, also the ban on introduction.

Thus, Member States should be able to protect habitats in general and Community habitats in particular. This obviously implies that the Directive recognizes a right to biodiversity, i.e., to the need, for environmental and also human reasons, to maintain in certain places certain fauna or flora species regulating their conservation, use, reintroduction and, finally, prohibition to introduce certain species. This right is, in some respects, also clear from Recital 3

[75] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural and semi-natural habitats and wild flora and fauna (in Official Journal L 206 of 22.07.1992, page 7) implemented in Italy by Presidential Decree 8 September 1997, No. 357. The Directive 2009/147/EC of the Parliament and of the Council of 30 November 2009 on the conservation of wild birds (in the Official Journal of the European Union 20 January 2010, Law 20/7) is relevant to the subject.

which, explicitly, states that "this Directive, the main purpose of which is to promote the maintenance of biodiversity, while taking into account economic, social, cultural and regional needs, contributes to the general objective of sustainable development". Thereby the two opposing needs of development and preservation are reconciled.

Likewise, the Convention on Biological Diversity (CBD) signed in Rio de Janeiro on 5 June 1992[76] is moving both on a supranational scale, and on an internal scale, the Regulation implementing the Habitats[77] Directive which, in para. 2 of Art. 1 points out that "the procedures governed by this Regulation are intended to ensure the maintenance or restoration, in a satisfactory state of conservation, of natural habitats and species of wild fauna and flora of community interest". The powers of monitoring (Art. 7), protection (Arts 8 and 9), levies (Art. 10)[78] and the powers of introduction and reintroduction of species (Art. 12)[79] are also clarified by regional particularities.

Nevertheless, the recognition of a right, in this case – of biodiversity, does not clarify who is the real owner (therefore, the subject with respect to the object). Hence, both the aforementioned items of legislation specify that the Member States are only and simply obliged to exercise powers of protection and regulation. The Directive and the National Regulation are aimed at the protection of fauna and flora – entities that seem to acquire the status of real subjects of law.

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[76] The Convention, to which 192 countries adhere (including the European Union since February 2011), was ratified in Italy with Law No. 124, introducing "Ratification and execution of the convention on biodiversity, with annexes (Rio de Janeiro, 5 June 1992) (in the Official Gazette 23.02.1994, No. 44, S.O.). In Art. 1, the Convention specifies that "The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity. the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding".

[77] See note 74. It must be added that, as already mentioned in note 50, biodiversity is also referred to in the draft constitutional law No. 1203, filed in the Senate on 02.04.2019.

[78] The Directive, in fact, referred (Art. 14) to the Member States to regulate the measures and methods of taking and exploiting species of flora and fauna. In Italy it was specified that the Ministry of the Environment, after consulting the Ministry of Agricultural Policies and the National Institute for Wildlife, issues a decree establishing "adequate measures for the withdrawal, in the natural environment, of specimens of the species of wild fauna and flora referred to in Annex E, as well as their exploitation, are compatible with the maintenance of the aforementioned species in a satisfactory conservation status". In any case, the use of sampling methods that involve the disappearance or serious disturbance of the indicated species is prohibited.

[79] The principles are now established by the Decree of 02.04.2020, containing "Criteria for the reintroduction and repopulation of native species referred to in Annex D of the Decree of the President of the Republic 08.09.1997, No. 357, and for the introduction of non-native species and populations" (in the Official Gazette General Series No. 98 of 14.04.2020).

Conclusion

Such a representation brings with it multiple conceptual and framing problems, first of all that of a philosophical, so to speak. The need to recognize to Nature its own entity, consistency and juridical dignity could appear the attempt, in a liquid society[80], to replace the theological datum of a dead God with an equal or totemic entity to which cling or that, worse, it must be deified and declared untouchable in an almost pantheistic vision of Spinozian memory[81]. And, on the contrary, a prudent Doctrine has been able to point out that "The detachment between nature and theology, between the matter of scientific observation and the creative will of a God, has placed nature in itself, as simple and pure objectivity, 'which stands before the thought of man[82]'". However, if on the one hand it is evident that the world exists because man exists and that he cannot be separated from it, on the other – it seems reductive (and now anachronistic) both to consider given and certain the unique relationship God – Nature given and certain the univocal relationship God – Nature, and to consider the world as one and simple will and representation[83].

As a consequence, the second problem is the danger of a neogiusnaturalism, opposed to the structured and currently flourishing building of legal positivism. Hence, the question of another prudent Doctrine[84] appears to be modern: "Where do we want to stop? Faced with a doctrine that continues to be reborn, there are two possible explanations: 1) it is continually reborn because it is always alive; 2) it is continuously reborn because it has a difficulty to grow [85]". But if this alternative is, therefore, opposable to the fact that, in both hypotheses, the giusnaturalism has existed and continues to exist (in the first hypothesis because it is always alive, in the second because it is alive, but not well developed), two points are to be analysed in relation to our dialogue path. Right-naturalism served, above all, as an objectivistic theory of ethics, therefore bearer of superior principles that could not be exceeded even by sovereign power. In this sense, it was a remedy that led to the birth of modern constitutionalism, to the liberal conception of the state, to

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[80] The reference is to Bauman Z., Consumo, dunque sono [I consume, therefore I am]. Rome-Bari, 2010, as well as ID. L'etica in un mondo di consumatori [Ethics in a world of consumers], Rome-Bari, 2010 and ID. Per tutti i gusti. La cultura nell'età dei consumi [For all tastes. Culture in the age of consumption]. Rome-Bari, 2016. The current relativism was, in truth, already anticipated by Nietsche F. with his famous phrase "God is dead" in "The joyful wisdom" (125).

[81] In this sense, the adage *Deus seu Natura* which appears several times in the five books of Spinoza's Ethics (in Ethics – Demonstrated according to the geometric order, Bollati Boringhieri, 2006) is well known.

[82] Irti N., L'uso giuridico della natura [The juridical use of nature]. Editori Laterza, Rome-Bari, 2016, p. 30. The Master, in the entire study, categorically rejects the hypothesis of a nature in itself and regardless of man and classifies it as an object that is no longer and only in front of us, but that "appears instead submissive and enslaved".

[83] I recklessly borrowed the title of the well-known work by Schopenhauer A.

[84] On this point, the reference to Bobbio N., Giusnaturalismo e positivismo giuridico [Natural Law and juridical positivism]. Milan, 1977, passim.

[85] ID. Op. cit., 180.

the rule of law against the police state, and finally and ultimately to the theories of guaranteeing universal rights[86]. So, a return, albeit limited, to natural laws could well help to support the Copernican work that from a pure reification of nature leads to its subjectivization, hence – to the fixation of the fact that Nature is as such and that it has superior and absolute rights as each entity legally recognized by the *ius positum*. This leads to the second exception: the idea of a juridification of Nature is evidently posed by the juridical formalism, that is, the elaboration of the juridical technique and, therefore, of the positive law. Thus, no contradiction or opposition arises between the borrowing, so to speak, higher or naturalistic principles and implementing them, through legal technique, within the regulatory landscape.

Finally, another problem is that of superfetation in itself: the hypothesis of subjectivizing Nature would entail the creation, in the legal context, of an additional subject of law which, in addition to the natural person and the legal person (whether private or public), would cause duplication and potentially useless gatherings. Let it be clear that this is not the same logical path that centuries ago led to the creation of the juridical person, but of the usefulness or not of subsuming another subject as the centre of imputation of legal interests. The question, however, is whether the State or the citizen in itself can be considered not simply as representatives of the rights of nature, but instead – as holders of the same rights which, in the event of infringement, can be protected. The point is that a clear conflict of interest exists between the aforementioned subjects and Nature, since the State and the citizen are certainly and by law already the holders of rights over nature, such as those (partly examined) which grant them the right to exploitation of various resources[87]. Thus, the question should be changed to the following: whether or not the State and/or the citizen (who have the rights over nature) can also consider themselves to be the holders of the (potentially contrary) rights of Nature. To such a question every discreet civil lawyer would answer negatively or, alternatively, would hypothesize not the intervention of the Public Prosecutor (because this would protect the interest of State), but the designation of a special administrator (because this would protect the interest of Nature). This hypothesis, however, itself appears as a superfetation with respect to the most desired and simple recognition of Nature, – its juridical subjectivity.

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[86] ID. Op. cit., 180.

[87] The problem should also be analysed from the point of view of the relationship between Nature and business activity. An interesting food for thought could be the concept of 'sustainable success' referred to in the Corporate Governance Code of January 2020 (Available: https://www.borsaitaliana.it/comitato-corporate-governance/codice/codice.htm [viewed 23.09.2021.]) according to which, for listed companies, 'sustainable success can be defined as the objective "which guides the action of the management body and which is substantiated in the creation of long-term value for the benefit of shareholders, taking into account of the interests of other stakeholders relevant to the company". Among the stakeholders of primary importance, it is known, environmental responsibility assumes importance (Mazzucato M., Il valore di tutto. Chi lo produce e chi lo sottrae nell'economia globale [The value of everything. Who produces it and who subtracts from the global economy]. Laterza, 2018).

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