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The “juridical subjectivity” of Nature

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[en] Abstract: The climate changes that have been produced call for a different relationship between man and nature. Since the times of Socratic Greece, the second has been deemed, as well as for the law, as a ‘thing’ or a mere object of exploitation according to the most diverse economic necessities. In a dutiful Copernican procedure of “subjectivity”, the moment has come to bestow Nature, in the juridical field included, the plenary dignity as a lawful subject vested with plenary powers and subjective rights. After a preliminary introduction, A. analyses the topic from certain philosophic and, later, normative aspects, both less and more current. Lastly, by referring to institutions seemingly unrelated, it goes so far as to hypothesise the constitutionalisation of the principle of the juridical subjectivity of nature.

Key words: nature, juridical subjectivity, constitutionalisation, and philosophy.

[it] La “soggettività giuridica” della Natura

Abstract. I cambiamenti climatici che si sono verificati richiedono un rapporto diverso tra gli esseri umani e la natura. Fin dalla Grecia Socratica, quest’ultimo è stato esteso, anche per il diritto, come una “cosa” o un mero oggetto da sfruttare secondo le più svariate esigenze economiche. In un'obbediente procedura copernicana di “soggettivazione”, è giunto il momento di concedere alla Natura,anche in campo giuridico, piena dignità come soggetto di diritto dotato di pieni poteri e diritti soggettivi. L’A., dopo un'introduzione preliminare, analizza la materia a partire da alcuni profili filosofici e poi normativi, sia minori che più recenti. Infine, riferendosi a istituzioni apparentemente scollegate, arriva a proporre l’ipotesi della costituzionalizzazione del principio della soggettività giuridica della Natura.

Parolechiave: natura, soggettività giuridica, costituzionalizzazione e filosofia.

1. Introduction

From a recent reading, I quote: “I walk on in the path which is according to nature, till I fall down to rest, breathing out my last breath into that air I daily drew in, falling into that earth whence my father derived his seed, my mother her blood, my nurse her milk for my nourishment; that earth which supplied me for so many years with meat and drink, and bears me walking on it, and so many ways abusing it. (Aurelio, 2016:89)”. An ancestral relationship, narrated by Marcus Aurelius, which has faded in time up to the point of contrasting or, better said, dividing nature, perceived as a *locus vitae* of Edenic[1] memory, with respect to man, seen as a literary being (Meeker, 1974), i.e. as a doted entity, unlike other living being, with a significative voice through which he was able to name objects, plants or animals, separate them from himself and from each other, remember places, repeat events, write them down, submit them to the past, invent history: in a few words, dominate the whole planet (Meeker, 1974). The journey that parts from the presocratic philosophers all the way to modern day ecologists originates from a circular (hence, redundant) part, from another expression of millenary superposition in the centre of which exists and it has been existed man’s necessity to create superfetations, which are rational categories through which he aligns, explains, and catalogues every minimum event. Between the four terrestrial elements to which they have referred, directly or indirectly, Tales or Anaxagoras or Anaximenes or Anaximander or, again, Parmenides and Zenon (AA. VV, 1993: 79 et seq.) and the current evident necessity of shielding the creation through the use of alternative energies, interjects in the way of an inconvenient mass a stratified and confusing boulder, not necessarily positive, that bears the name of human culture, and is the ensemble of laws, ideas, reasonings, orientations, interpositions, superpositions, sub-positions and every other thing through which man has attempted to regulate his course in life, or, better yet, his process of “civilisation”. This process presumably started with Socrates, coursing through patristic and, better still, geocentric theories, later those of social Darwinism and industrial revolutions, all the way to the exploitation of ‘scarce resources’ and, thus, the preservation of the so-called bio-diversities.

The matter examined in this article is, in other words, the following. In the Italian civil code, that, as it is known, dates to1942, trees are perceived as immobile goods firmly rooted to the ground; the same argument is made in the case of springs and water streams. These entities are included in the category of things, meaning, goods that, according to art. 810 of the Italian Civil Code, “ can be lawful subjects”. The contrast between subject (be that a physical or juridical person) and an object or a good (be that a tree, spring, or creek[2]) is, therefore, evident. The aforementioned cultural path, has obligated, in absolute, past century’s legislators to classify trees as relevant objects, as ‘things’ from which we make use or even financial profit, and the same thing has done the most recently passed doctrine (Pàtina, 1999). Today, in the centre of a liquid and consumeristic civilization (Bauman, 2016), it is imperative to debate this issue from an opposite angle: it is no longer ‘what is’ a tree (ergo, ‘what’ is nature), but rather ‘who is’ a tree (ergo, ‘who’ is nature), initialising thus a heliocentric procedure of subjectivation or, at least, of equalisation of living beings that can surround man not just as a mere ‘spectator-user-destructor’ of terrestrial resources, but as a whole that must be exploited, but with limitations, reason and custodial obligation.

2. Philosophical aspects

In the conceptual path that has witnessed culture’s gradual opposition to nature (Carducci, 2017: 486 et seq.), we would like to point out two of the philosophical devices that are to the jurist’s[3] disposal, namely, *Phaedrus* and *Phaedo*.

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[1]The reference to the mythologic representation of the expulsion of man from Eden seems obligatory. In Pentateuch, Genesis in particular, we read that, after the creation of woman from Adam’s rib, the first man, i.e. Man made by the Lord in his image, going against heavenly will, tasted the forbidden fruit from the tree of the knowledge of good and evil.Ergo, the expulsion from Eden must be perceived metaphorically as a separation of man from nature; as a separation of culture from nature.

[2]The same conceptual discourse must be held in the case of beehives, as mentioned in art. 924 of the Italian Civil Code.

[3] In that sense, NatalinoIrti was known to have stated “how can the jurist, who doesn’t want nor the sterile repudiation of his time, nor the bitter mourn of the downfall, how can he look around him and not open a dialogue with the world of the philosophers? It is not, of course, about adding a quote or a bibliographic note –all extrinsic and ornamental– but about feeling within oneself the agony of the questions, od seeing the philosophical undercurrent of our work’s devices” (Irti, 2005).

Albeit with due caution[4], Plato in both works refers to Socrates or, better yet, to the partial relationship he shared with naturalist philosophers. In *Phaedrus*, when asked why he had no intention of leaving the city, Socrates replied: "I am a lover of knowledge, and the men who dwell in the city are my teachers, and not the trees or the country(Platone, 1993: 216)", whereas (again in *Phaedrus*) Socrates, initially attracted by Anaxagoras' philosophy (98 b and c), firmly dismisses it as an approximation, without searching for the 'genuine causes' in the foundation of the world: "but as I have failed either to discover it myself, or to learn of anyone else, I have changed my mode of inquiring(Platone, 1993: 216)".

Socrates, in absolute, as other sources[5] also corroborate, "breaks away" from the analysis of the four naturalist elements as to start discussing the concepts of beauty, justice, moral, etc., thus becoming the first of the occidental civilization, to set the limit between nature and culture. Said limit was also marked by the student Plato, father, as it is known, of Hyperuranion. In *Phaedrus*, (just as in *The Republic, Cratylus* and*Gorgias*) Plato explores the concepts of 'reminiscence' and 'pre-existence of the psyche', which date back to ideas, i.e.back to reality itself, to different concepts of naturalist reality, not solely perceived by the senses, but also accessed by pure thought. Furthermore, Plato clarifies that the true cause of the occurrence of things is not found in the elements of natural sciences, but in the same idea in which only the sensible realities participate (Platone, 193); what we are witnessing is a superfetation of the sensible reality (nature) against that of the ideal (culture).

Aristoteles parts from this notion and, nevertheless, detaches himself from it in *Metaphysics*, in *The Nicomachean Ethics* and in book III of *On the Soul*, in which the philosopher points out that nature, "the substance of those things which have a principle of motion in themselves" (Aristóteles, 1990), is organised according to a pyramidal construction where the subjacent staggered forms play an important role in the development of the higher. The peak of that scale is man, master of nature, capable of transforming in action all potential contained in the inferior grades.In short, the geometric theory, subsequently elaborated, with respect to planet Earth, by Ptolemy, takes shape, and is adopted, for various reasons, by the catholic religion as well, specifically by the patristic. Thomas Aquinas was one of the first among them to point out how this aspect is also adopted in the Old Testament and, therefore, to the word of the Lord[6]. However, if in the platonic-aristotelian point of view the centre of the cosmos was not a privileged place, in that of the church the geocentric system assigned to Earth a privileged position, making man the peak and the end of creation: thus, the predominance of cultureman's absolute right over nature.

From that period on, all sciences – including, firstly, philosophy, then anthropology and finally economy – have analysed nature as an "object", an active productive or an instrument through which profit in various forms is generated. Some quick examples, respectively, are Locke[7], Darwin[8] and Marx[9]

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[4]It is well known the reference of Diogenes Laertes in this regard (III,35): "they also say that Socrates, after listening to Plato's reading of *Lysis*, he exclaimed: "By Heracles! How many lies has this youth made me tell". Because Plato attributed Socrates many statements, though he never made them".

[5] "Convinced that naturalist speculation does not concern us in absolute, he discussed moral topics in the workshops and at the market "and again" it seems to me that Socrates also spoke of nature, since at times he spoke about providence, according to Xenophon, who, nevertheless, affirms that his conversations centred exclusively on ethics" (AA.VV, 1986: 377).

[6]Psalms, in particular: "He set the earth on its foundations, so that it should never be moved" (104.5); and 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" (Chap. 10) (Aristóteles, 1990).

[7]God, who hath given the world to men in common, hath also given them reason to make use of it to the best advantage of life, and convenience. The earth, and all that is therein, is given to men for the support and comfort of their being. And tho' all the fruits it naturally produces, and beasts it feeds, belong to mankind in common, as they are produced by the spontaneous hand of nature; and nobody has originally a private dominion, exclusive of the rest of mankind, in any of them, as they are thus in their natural state: yet being given for the use of men, there must of necessity be a means to appropriate them some way or other" in *The Second Treatise of Government, 26.*

[8]In *The Origin of Species*, Darwin introduced the concept of "natural selection" between individuals of the same species. However, if the selection between individuals of the same species occurred through 'interference'. The selection between different species occurs through 'competence' or, in the case of man towards other living species, through 'appropriation' due to the scarcity of natural resources.

[9]"Labour is, in the first place, a process in which both man and Nature participate, and in which man of his own accord starts, regulates, and controls the material re-actions between himself and Nature. He opposes himself to Nature as one of her

who have consolidated this perspective in their respective fields of work. Areas, it goes without saying, that further expanded with the industrial revolution, the intensive exploitation of nature and, above all, the so called "globalization".

3. Normative and jurisprudential aspects

Everyone knows of King John of England's Carta Magna Libertatum, but few of Henry III's 1217 Carta del Bosque (Carducci, 2020:500). Both Constitutions reflected on rights in regard to the sovereign; however, while the first limited its scope to the noble class, the second was directed to all free men and specified that "*every free man shallagist his wood in the forest as he wishes and have hispannage. We grant also that every free man can conduct his pigs through our demesne wood freely and without impediment against them in his own woods or anywhere else he wishes*". Beyond the recognition, and therefore, the conciliation of the conflicting interests of the sovereign and the subjects, what is most relative to the purposes of our discourse is the concept of the 'bosque'[10], perceived as a good to be exploited, therefore, the transposition of nature as a utility object.

Leaping forward in time, the same approach should be followed regarding civic uses,i.e., the rights that are not attributed to the individual subject, but to a community of people, organised or not, to "draw certain elementary benefits from lands, forests o waters of a specific territory" (Flore, Siniscalchiand Tamburrino, 1956). Matter, as it is known, is regulated in Italy by the Act 1766 of 1927[11] which, although it does not define the concept of civic use, it separates in two "terrains that cannot be utilized to convenience" (article 11), i.e.,those that are to be used as forests and permanent pastures and agricultural cultivation. There are two points that seem implacable, the first of which being what is defined by the law, in the first paragraph of art. 3, uses as "nature's rights" (while the legislator should have used the term "rights for nature"). Another fact is that these rights are divided in art. 4 in 'essential' and 'useful'. The first are "the rights to graze and give drink to the flock, collect wood for domestic use or for personal labour, sowing in return of payment to the employer". The second, vice versa, are "the rights to collect or draw from the depths other products which can be commercialised, the right to graze communally with the owner and with speculative purposes; and, in general, the rights to use the depths for the acquirement of economic benefits, superior to those necessary for personal and familial sustainment". In short, the facts for the most efficient exploitation of land, hence the juridic qualification of nature and its products as mere economic goods.

This approach is gradually changing, even for individual entities or microsystems, and the examples are endless and alarming to an international level. Among them, the Constitution of Ecuador establishes in the second paragraph of art. 10 the juridical character of nature, affirming, in particular, that "nature will be subject to those rights recognised by the Constitution[12]". In Bolivia, art. 5 of the Act no. 71 of 2010[13] defines Mother Earth as a "collective subject of public interest" to be granted, according to art. 7, the right to life, to the diversity of life, to water, to clean air, to balance, to the restoration to a life free of contamination. Once again, In New Zealand, Whanganui River has been recognised as a legal entity under the 'Te Awa Tupua Act (Whanganui River Claims Settlement) of 2017' which, in Subsection 2 of Section 2, establishes that: "Te Awa Tupua is a legal entity and has all the rights, actions, duties and obligations of a juridical person[14]". In Uganda, 'The National Environment Act 2019' establishes in art. 4, sub. 1, that "nature has a right to exist, persist, maintain and regenerate its life circles, structure, functions and evolutionary processes". Once again The Colombian Constitutional Court in its sentence T-622/16 pointed out that "Atrato River is subjected to rights which implicate its protection, conservation, preservation and (…) restoration" (paragraphs 9.25 and 9.32). Yet again, In India, the Supreme Tribune of Uttarakhand in Nainital, in the relative decision in regard to

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own forces, setting in motion arms and legs, head and hands, the natural forces of his body, in order to appropriate Nature's productions in a form adapted to his own wants" in *Capital, Volume I.*

[10]It is worth pointing out that in Carta del Bosque the term 'bosque must be interpreted as 'common natural resources', thus, pastures, forests, springs, etc.

[11]In G.U. 3 ottobre 1927 n. 228. Per un analisi anche storica degli usi civici, Petronio, v. *Usi Civici,* in *Enc. Dir*., Varese, 1992, XLV,930.

[12]On: https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf (accessed on March 18th, 2021).

[13]On: https://bolivia.infoleyes.com/norma/2689/ley-de-derechos-dela-madre-tierra-071 (accessed on March 18th, 2021).

[14]On: https://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html (accessed on March 18th, 2021).

the case Mohd. Salim v. State of Uttarakhand and others, established on the March 20th, 2017, in section 19 that "Rivers Ganges and Yamuna, all their tributaries, streams, and any natural waters flowing with continuous or intermittent through these rivers, are declared as juridical people/ living entities with the status of a legal person with all the rights, duties and responsibilities that correspond to a living person[15]". Once again, in 2019, the Division of the Supreme Tribune of the Supreme Court in Bangladesh, recognised River Turag as a juridical person/ a juridical entity a living entity and declared that all rivers in Bangladesh shall hold the same status[16].

4. Provocations or elements to think about

What is, therefore, lacking in order to classify nature in general or certain natural entities particularly in Europe as well (the Alps, for example, or Mont Blanc) not as mere objects, but as lawful subjects, endowed with juridical subjectivity? Hence, as people or centres of accusation of legal effects which have a substantial and procedural ownership and, above all, the faculty to protect a right to resistance[17] against the current intensive exploitation? In that sense, three provocations or, better said, thought-nourishing arguments, are provided, namely: the concept of 'person', the concept of 'company', the subjectivity of A.I.

Starting with the first one, in the late 19th century, the diatribe surrounding the concept of 'person' was illuminated by the Hans Kelsen's Pure doctrine', who subverted the initially conceived institution as a 'mask'[18] or as an 'individual'[19], examining man in the naturalist sense of man according to juridical order. Kelsen pointed out that the human being not only is a juridical concept, but merely y biological-psychological concept and that "if we must distinguish the naturalist concept of man from the juridical concept of the person, that does not mean that the person poses a particular type of man, but that the two concepts represent two completely different unities. The juridical concept of the physical or juridical person expresses exclusively the unity of a plurality of obligations and authorizations, i.e., the unity of a plurality of rules that establish obligations and authorizations. The 'physical' person that corresponds to solitary man is the personification, meaning, the unitary personified expression of rules which governs man's behaviour (Kelsen, 1952:88)". From this aspect emerges the distinction between man, which is the natural reality, and 'person', which is the representation of juridical knowledge, unitary expression that personifies the total of juridical obligations and authorizations, i.e., a total of rules. This can lead to the legitimacy of the juridic person as well as to the possibility of considering a 'non man' as a person, ergo, a living being distinct from human *canons*.

At this point, it could be argued that a macrosystem is significantly vast, complex, and uneven as to assign it a certain "juridic subjectivity". Said problem emerged, in fact, years ago for the company as well. In that sense, conflicting unitarian and atomistic theories are made known, the first aimed at the perception of the company as an "unique asset; a new and differentiated asset with respect to the individual assets (Campobasso, 1945: 112)", the second, on the contrary,seeking the consideration of "the company as a simple plurality of assets that are functionally connected (Campobasso, 1945: 146).

Beyond, however, the doctrinal dispute, the most relevant among the normative facts, particularly in the provisions of articles 2555 et seq. of the civil Code, is the desire of the legislator to safeguard the company's unity and functionality, to the point of being able to communicate with each other, but also in

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[15]On:https://nema.go.ug/sites/all/themes/nema/docs/National%20Environment%20Act,%202019%20(1).pdf (accessed on March 18th, 202).

[16]These examples are elaborated by Perra (2020), or Baldin (2014).

[17]It would be well to say that the right to resistance, generally studied very little and in depth, finds its expression in art. 2 of the Declaration of Human and Civil Rights on August 26, 1789, in which "The aim of all political association is the preservation of natural and imprescriptible human rights. These rights are liberty, ownership, safety, and resistance against oppression".

[18]"The original meaning of the word was that of 'mask', and precisely because of that it is presumed that the person came to indicate all those who possess a human aspect and form, independent from juridical subjectivity" (Guarino, 2001:288). The term 'person' derives from 'per'-'sonus', meaning 'through sound' o 'through voice': the last one, as a matter of fact, reached the spectators of ancient Greek and Roman theatre through wooden masks which amplified the sound (Guarino, 2001:288).

[19]"Person was a term used for the first time in advanced classical law, by the clear influence of Stoic philosophy, as to denote man, through excluding intangible juridical persons and including, vice versa, servants, pilgrims, filii familiarum" (Guarino, 2001: 288).

the explicit reference made in art. 670 c.p.c.[20] to a kind of atypical universality of mobile and immobile assets. A no different discourse could also be held with respect to nature or other, equally identified parts of her[21].

Finally, on February 16th, 2017, the European Parliament approved the Resolution that contains recommendations to the Commission about the civil law regulations in robotics (2015/2103 [INL]) according to which art. 59, lett. F the Parliament also invited the Commission to explore, examine and evaluate 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 more autonomous and sophisticated robots can be considered as electronically liable for the indemnification of any damage caused by them, as well as the acknowledgement of the electronic personality of the robots that make autonomous decisions or interact independently with third parties (Santosuosso, 2020:198)". So, beyond the legal disquisitions, the question is as follows: if we assume, in a non-immediate future, that the recognition of any juridical subjectivity or personality to robots, ergo, to technologies without a life of their own, why not 'grant' such dignity to vital entities as well?

5. Conclusions

There is no doubt that the examined issue requires a further and more in-depth analysis. Nor is there doubt that a possible acknowledgement, be that on a global or a territorial scale, of the juridical subjectivity of nature in its generality or its precise and limited manifestations could lead to other problems, such as, for example, the necessity of a representative authority and the limits to the power said authority must exercise. Yet that is not the point, since such problems are easy to overcome, as they have for juridical people with the legitimacy of a representative or state authorities through the establishment of collective authorities. The question lies in the fact that the current atavistic and truly human contrast between culture and nature, as the necessary predominance of man over natural events, doesn't have any other future other than that of termination. The notion of nature as a leopardian stepmother has no reason for existence where it is obvious that mother earth supports us and has done so since the beginning. And there is nothing moralistic or ethic in this discourse that can derive from the sentiment of guilt or responsibility for human actions, but a solely utilitarian, in the sense that the issues that take over the earth will inevitably catch up with us and loom more and more.

In Art. 20 of the Finnish Constitution, titled "Responsibility for the environment", it is established that "nature and biodiversity, the environment and the national patrimony are responsible for each and every one" and that "public authorities do everything in their power to guarantee that everyone has a right to a healthy environment, as well as the possibility to contribute to decisions related to the space in which they live". Even though these principles signify an important step forward in the process of bringing culture and nature closer together, as they 'constitutionalize' the second concept, they still are far from a realistic and necessary vision of things. In short, man's attention to nature cannot be reduced nor limited to the notions of 'responsibility' or 'harm', as such a viewpoint gives us to understand that we keep defining the concept of nature as a mere object of human activity that can be detrimental to the ecosystem. It is necessary to initiate a process of subjectivation of nature that, as a lawful subject, can exercise and protect its own, exclusive rights, including those of diversity, restoration, water, or clean air: plants don't eat meat!

And this process, which is anything but futuristic[22], could be accelerated not just via rapprochement between nature and culture, but even better through a change in culture, from 'human culture' to 'naturalist culture': in conclusion, the *humus* of nature should be rendered to the term 'culture', in order for people to understand that the plant of culture can only find its residence in the garden of nature. It is a learning process, and a slow one, that must begin with the constitutional principles. And in that spirit,

[20] "The judge can authorise the judicial confiscation: 1) of mobile or immobile goods, societies or other universality of goods, (…)".

[21] Not to mention the fact that the most complex human superstructure was perhaps the creation of the State, in itself and for Italy, composed of Regions, Provinces, Municipalities, Metropolitan Cities, Mountain Communities, Prefectures, PoliceHeadquarters and so on; all entities with their own physicality and juridical subjectivity.

[22] On this matter, it is worth reading the "Universal Declaration of the Rights of Mother Earth", presented by the president of Bolivia, Evo Morales, to the United Nations on June 21st, 2012, in which he classifies Mother Earth as a "living being" (art. 1), to which all rights referred to art. 2 re to be conceded.

the final provocation: for the art. 1 of the Italian Constitution to be modified in “Italy is a democratic republic, founded on labour and nature”: a starting point, an arrival point.

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