Economic and Ecological Analysis of Rights of Nature and «Tragic Legal Choices»

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Annex 10: Economic and Ecological Analysis of Rights of Nature (source: Bagni S., Carducci M. 2020)

BAGNI S., CARDUCCI M. *Rights of Nature and "tragic choices"* (CEDEUAM-UniSalento, 2020)

The topic of the economic and ecological analysis of the Rights of Nature is very complex and little discussed in the legal sphere[368].

However, the introduction of the Rights of Nature requires an appropriate elaboration according to the objectives of the European Commission's REFIT program.

Some schemes are shown below.

In current law, the environment is qualified in two different ways:

- as a set of "goods";
- as a set of "ecosystem functions".

In the first case, the Law regulates the use of resources and gives them an economic value[369]. In the second case, the Law protects natural processes (ecosystem functions[370]) and gives them a value.

These two perspectives always propose a "balance" between "value" of Nature as "good" or "function" and other human values (political, social, economic values). This balance is regarded as "legitimate", only because it conforms to the plurality of human interests (procedural and substantive) and not to the functioning rules of ecosystems.

Many cases confirm this perspective.

For example, in the Opinion of Advocate General Kokot in Case C-127/02, § 143, the protection of Nature is not considered as a protectable right, but only a general interest "balancing" with other interests.

In France, the Council of State (Conseil d'État) considers that "imperative reasons of overriding public interest", with economic and political content, may prevail over "ecological reasons" for the protection of wild species[371].

In Italy, the Council of State (Consiglio di Stato) qualifies environmental assessment as a "political function" of balancing interests, not only environmental but also economic; therefore, environmental assessment is never ecological[372].

Therefore, this legal approach has not fought the ecosystem and climate emergency that threatens the Earth. Thus, balancing could be defined as an ecological failure.

The main forms of this failure are the following:

a) the so-called "Chronic disturbance"[373] of ecosystems, due to a set of environmental impact assessments regulated by law in the absence of medium and long-term integrated analysis of cumulative data and solely focused on the interests of human action;

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[368] See, for example, COMINELLI L. *Cognition of the Law*, Cham 2018 (Chapter 3: Nature, Evolution, and Law, 83-134), GUSSEN B. *Axial Shift*, Singapore, 2019, 87-124.

[369] For example with the PES (Payments for Ecosystem Services): see EU Commission Science for Environment Policy, DG Environment News Alert Service, Issue 30/2012 *Payments for Ecosystem Services*, and *EU Natural Capital Accounting* (https://ec.europa.eu/environment/nature/capital_accounting/index_en.htm).

[370] See GRUMBINE E. *What is Ecosystem Management?*, 11 *Conservation Biology*, 1, 1997, 41-47.

[371] Conseil d'Etat no. 425395/2020.

[372] See Cons. Stato Sez II, no. 2248/2020.

[373] Starting from SINGH K. *Chronic Disturbance, a Principal Cause of Environmental Degradation in Developing Countries*, 25 *Envtl Conserv.*, 1, 1998, 1-2.

b) The "Tyranny of Small Decisions" emphasized by William E. Odum[374], in which the law operates a fiction, dividing the biosphere into distinct sections and giving each of them a different regulation, and considering the biosphere as an entity different from the other ecosystem dimensions;

c) The "Tyranny of Localism"[375], based on the idea that community-based environmental management can in itself satisfy the knowledge of the biosphere complexity;

d) the absence of a three-dimensional approach of "Climate Change and Environmental Degradation", focused on the joint assessment of *1)* climate change, *2)* air pollution and *3)* loss of ecosystem goods, resources and services[376];

e) the improper application of the principle of sustainable development and the precautionary principle[377];

f) the rhetorical use of the balance between economic and environmental interests, supported by the vision of the so-called "three pillars" (or "rings"[378]) of sustainability (society, economy, environment), which is highly criticized because it places on the same level situations that are actually very different[379].

Actually, Law, Economy and States depend on Nature, and not the opposite[380]. Stephanie R. Fishel called this dependence "*Microbial State*"[381].

If this dependence is not respected, economic analyses of the environment produce negative spirals and further ecosystem losses (called "*lose-lose*").

By introducing the Rights of Nature, Law must not simply attribute a "value" to goods and functions. It must respect the functioning rules of these goods and functions. Through the Rights of Nature, the "imperative reasons of overriding public interest" concern the functioning rules of the ecosystems on which everyone's life depends.

Ecological assessments are very complex[382] but scientists have identified the main ecosystem rules to be respected[383].

These rules are absolutely compatible with the "pillars" of the Rights of Nature.

The following scheme can be submitted

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[374] ODUM W.E. *Environmental Degradation and the Tyranny of Small Decisions*, cit.

[375] LANE M.B., CORBETT T. *The Tyranny of Localism*, 7 *J. Envtl Policy & Planning*, 2, 2005, 141-159.

[376] https://ec.europa.eu/knowledge4policy/foresight/topic/climate-change-environmental-degradation_en

[377] READ R., O'RIORDAN T., *The Precautionary Principle Under Fire*, 59 *Environment: Sc. & Pol. for Sust. Development*, 5, 2017, 4-15.

[378] BARBIER E.B. *The Concept of Sustainable Economic Development*, 14 *Envtl Conserv.*, 2, 1987, 101-110.

[379] LAITOS J.G., WOLONGEVICZ L.J. *Why Environmental Laws Fail*, 39 *Wm. & Mary Envtl L. & Pol. Rev.*, 1, 2014, 1-52.

[380] PELLETIER N. *Of Laws and Limits: An ecological Economic Perspective on Redressing the Failure of Contemporary Global Environmental Governance*, 20 *Global Envtl Governance*, 2, 2010, 220-228.

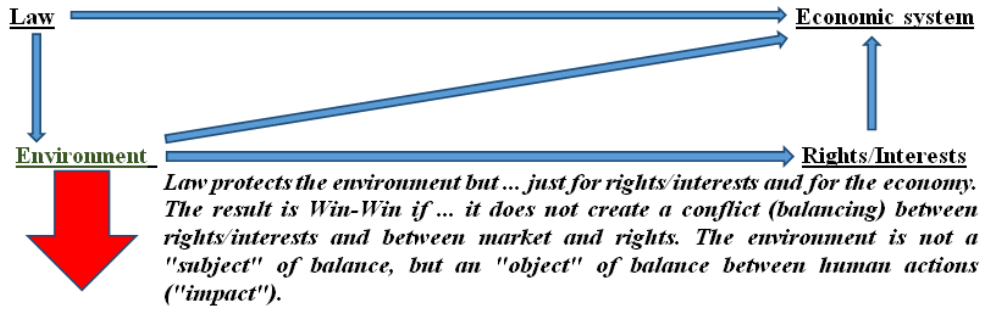
[381] FISCHEL R.S. *The Microbial State*, Minneapolis, 2017.

[382] See WHITE E.R. et al, *Success and Failure of Ecological Management is Highly Variable in an Experimental Test*, 116 *PNAS*, 46, 2019, 3169-23173.

[383] See MITTELSTAEDT **P. et al.** *Laws of Nature*, Berlin-Heidelberg-New York, 2005. The ecosystem approach allows to consider the "laws" of nature (see https://www.cbd.int/ecosystem/). In fact, it identifies, through scientific knowledge, the "critical non-replaceable" natural capital. This capital prevails over any "law" of the human will. Furthermore, it favors deliberation in compliance with the "fundamental laws" of ecology (the "Laws" of Albert A. Bartlett, Kenneth Boulding, Barry Commoner, Nicolas Georgescu-Roegen, Brilliant Green, Garrett Hardin, Karl William Kap, Stefano Mancuso etc.). See BOERO F. *Nature and the Governance of Human Affaris*, in *Come governare l'ecosistema? How to govern the Ecosystem? ¿Como gobernar el ecosistema?*, ed. Bagni S., Bologna, 2018, 47-60, and MANCUSO S. *La nazione delle piante*, Roma-Bari, 2019.

ECOSYSTEM AND CLIMATE EMERGENCY IN THE CURRENT EUROPEAN ENVIRONMENTAL LAW

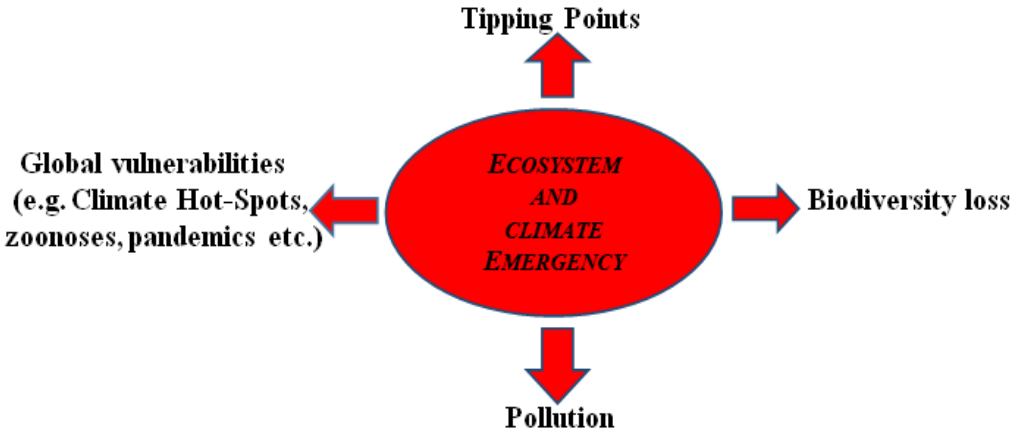
The structure of current environmental law.
(Alleged) Win-Win logic of the balance between rights/interests - economy - environment



Law protects the environment but ... just for rights/interests and for the economy. The result is Win-Win if ... it does not create a conflict (balancing) between rights/interests and between market and rights. The environment is not a "subject" of balance, but an "object" of balance between human actions ("impact").

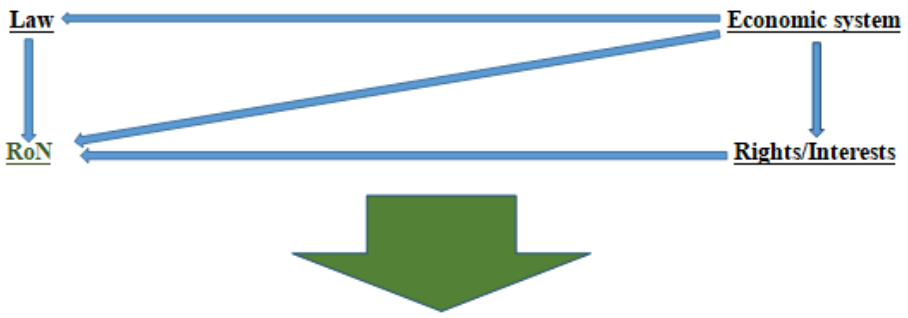
But ... the ecosystem and climate emergency show that the concrete effect of environmental regulation is Win-Lose not for the "environment" but for "earth life" (one earth - one health) and therefore for the economy and rights/interests. Definitely, it's Lose-Lose.
In the age of emergency, a "current" law becomes "dysfunctional" (fails).
But the failure in the emergency turns into a failure of an entire legal system.
It multiplies a dangerous "Lose-Lose" spiral.

EXAMPLE OF LOSE-LOSE SPIRAL



For this reason, we need to think of a "new subject" of law that includes all the components inside the "Spiral" of emergency and it can "govern" them through a new "method"; the elements of the emergency are all the components of the earth system, namely Nature.
Therefore, speaking about RoN does not mean recognizing the rights of "other subjects", but means including "all subjects" of the earth system in this unprecedented emergency. Even the human being is Nature. Consequently, also the human being has the "same rights" of Nature. This "identification" is not "cultural", but "physiological". We will overcome the emergency if we recover the "physiology" of the earth's system. If all the elements of life (all "subjects") do not come out of the spiral nobody will win. In the age of emergency, decisions are not a "tragic game" (sacrificing someone for someone else's sake); nor a "zero-sum game" (making a Win-Lose compromise). They are a "necessary game" (to give up something "exclusive of one's own", to win everything that belongs to any living subject: nature with its biodiversity, without pollution, without pandemics, without "Tipping Points").

RoN PERSPECTIVE IN THE ECOSYSTEM AND CLIMATE EMERGENCY



Law protects life (not "the environment") only if, in case of conflict between RoN and rights/interests, the primacy of RoN is affirmed "unconditionally". Only in this way all the people "win" everywhere, also for the economy. Man and the economy do not "lose", but "give up", because it is the only way to guarantee present and future life (pro natura as pro vita). Any other "Win" is a defeat, because the emergency remains "inside". Any balance is a "Loss" because it aggravates the emergency. The RoN discipline is used to define the "legal methods" of "renunciation". The "methods" must be applied in any "field" of European law. They are not a "matter" of environmental law, but the new "method" of the interpretation and action of all European law. Nature becomes the "subject" of rights which means that "essential content" of rights is constituted by the "method" of the RoN. Without RoN, fundamental rights can have a "present", but not a "future".

A European Charter of RoN must serve this purpose.
The only alternatives to this plan is balancing the "current" Law; but, in the era of the ecosystem and climate emergency, balancing only causes "Loss" (Tipping Points, Biodiversity loss, Pollution, Climate Change Hot-spots, Vulnerability, Pandemics etc.).

In conclusion, the ecological analysis of the Law serves to verify that human rules comply with these ecosystemic functioning rules. In this perspective, for example, the introduction of the "ecological impact analysis" of policies has been proposed[384].

However, the introduction of the Rights of Nature also modifies the economic analysis of the Law, as it imposes inter-temporal economic evaluations on the costs and benefits of any policy with respect to the natural cycles of the Earth system. In this perspective, the economic analysis of the Rights of Nature is similar to the economic analysis of the rights of future generations[385].

[384] See ASVIS *Rapporto SDGs 2019*.

[385] See ABRESCIA M. *Un diritto al futuro. Analisi economica del diritto, Costituzione e responsabilità tra generazioni*, in *Un diritto per il futuro. Teorie e modelli dello sviluppo sostenibile e della responsabilità intergenerazionale*, eds. Bifulco R., D'Aloia A., Napoli, 2008, 161-171.

Annex 11: Rights of Nature and "tragic legal choices" (source: Bagni S., Carducci M. 2020)

BAGNI S., CARDUCCI M. *Rights of Nature and "tragic choices"* (CEDEUAM-UniSalento, 2020)

The contrasts between fundamental rights that produce "moral conflict" in the decision-maker (legislator, administrative authority, judge) can be defined as "tragic choices".

These occur in two cases[386]:
a) when two or more fundamental rights are in conflict within the same category of persons to whom the decision is addressed;
b) when the same fundamental right conflicts between different categories of persons to whom the decision is addressed.

We talk about "moral conflict" because the "tragic choices" impose "*aut-aut*" decisions. These are based on:
- the denial of a fundamental right in order to protect another fundamental right within the same category of persons, in case ***a)***,
- the denial of the protection of one category of persons rather than another one, even though both of them have the same fundamental right, in case ***b)***.

In the field of fundamental human rights, the "tragic choices" involve bioethical issues: for example, in the case of abortion, the collision between two different rights of the mother (the right to life and the right to motherhood) or the collision of the same right (the right to life) between mother and unborn child may occur.
In these specific cases, the "*aut-aut*" decision is focused on the criterion of prevalence and proportionality (*pro choice/pro life*).

Can "tragic choices" occur in the case of Rights of Nature? How does the criterion of prevalence and proportionality apply?

The following possibilities can occur:
a) the collision between different Rights of Nature related to the same subject (single living being/species/ecosystem), for example between the right to life and the right to migration of the living subject/species X;
b) collision of the same Right of Nature between different categories of subjects (single living being/species/ecosystem), for example between the right to life of the living being/species/ecosystem X and the right to life of the living being/species/ecosystem Y
c) the collision between Rights of Nature and fundamental human rights with the same content, for example between the right to life of the living being/species X and the right to life of humans.

In practical terms the collision depends on the type of:
- content of Rights of Nature;
- Subject holding these rights (single living being, living species, ecosystem).

For example, if animals are considered as legal entities, the meaning of the so called "*five freedoms of animal welfare*" ("*Freedom from hunger and thirst (food and water)*"; "*Freedom from discomfort*"; "*Freedom from pain, injury and disease*"; "*Freedom to express normal behaviour*"; "*Freedom from fear and distress*")[387] changes.

Therefore, the introduction of the Rights of Nature into current EU law could produce some "tragic choices".

[386] See RUGGERI A. *Fatti, norme, criteri ordinatori. Lezioni*, Torino, 2009; CALABRESI G., BOBBIt Ph., *Tragic Choices*, New York, 1978, VAN DOMSELAAR I. *On Tragic Legal Choices*, 11 *L. & Humanities*, 2, 2017, 184-204.

[387] See https://www.animalhumanesociety.org/health/five-freedoms-animals.

Let us consider the following EU law provisions:
- article 13 TFEU, on "animal welfare" as "sentient beings";
- articles 36 and 114 (4) TFEU, on public policy, protection of health and life of humans and animals, preservation of plants, protection of the environment;
- Annex 1 to the TFEU, which lists 'live animals' among the 'products' of Article 38 TFEU (Chapter 1);
- Recital no. 41 of Directive 2006/123/EC, which states «*The concept of 'public policy', as interpreted by the Court of Justice, covers the protection against a genuine and sufficiently serious threat affecting one of the fundamental interests of society and may include, in particular, issues relating to human dignity, the protection of minors and vulnerable adults and animal welfare. Similarly, the concept of public security includes issues of public safety*».

How does the interpretation of these rules change if the Rights of Nature are recognized to subjects (animals or plants), to entire living species, to ecosystems?

What happens if the "*in dubio pro natura*" rule is included among the "fundamental interests" of the EU and if it collides with other rules (such as the right to life, the right to ecological integrity, the right to the reproduction of life cycles)?

The right to life of a living species (animal or plant) or an ecosystem could legitimize a State to use article 36 TFEU or article 114 (4) TFEU, as has already occurred in some cases (C-6/99; C-236/01; T-584/13).

Moreover, the Rights of Nature would also strengthen the content of Article 13 TFEU by extending the concept of "animal welfare" to the whole living system[388]. This "welfare" would become a parameter of proportionality of European decisions, according to the interpretation introduced by the Opinion of Advocate General L.A. Geelhoed in case C-244/03 (§§91-124).

In this context, the definition of the concept of "product" in art. 38 TFEU should be amended.

So, the scenarios of "tragic choices" could still arise. The cases could involve:
- the right to life of every single living being (for example, through imprisonment for the protection of the species) and the right to live freely in an ecosystem (there is a Colombian judicial precedent in the *habeas corpus* case known as "oso Chucho": Corte constitucional - sentencia SU-016/20[389]);
- the right to life of an alien animal species and the right to life of native animal species in the same ecosystem (can the 'right to migrate' of living species due to climate change be recognised?);
- the right to reproduction of the life cycles of all living beings and its preservation through sterilization practices;
- the collision between Rights of Nature and cultural rights and religious practices on animals or plants[390], or between the right to the health of living beings and the human right to health through scientific progress (article 15 of 1966 UN Covenant on Economic, Social and Cultural Rights) through animal experimentation[391];
- the collision between the right to the ecological integrity of a natural ecosystem and the human right to the maintenance of an ecosystem and its energy requirements;
- the collision between the "*in dubio pro natura*" rule and the "*in dubio pro reo*" principle in environmental crimes or crimes against animals and plants, where the prevailing criterion is always the human one[392].

[388] See SPARKS T. *Protection of Animals through Human Rights: The Case-Law of the European Court of Human Rights*, in *Studies in Global Animal Law*, ed. Peters A., Berlin-Heidelberg, 2020, 153-171; PETERS A. *Liberté, Egalité, Animalité. Human-Animal Comparison in Law*, 5 *Transn'l Envtl L.*, 1, 2016, 25–53.

[389] According to the Constitutional Court of Colombia, the Habeas Corpus «*es un instrumento de protección de la libertad de los seres humano, que es un derecho que no se puede predicar de los animales*».

[390] See ROTHENBURG W.C., STROPPA T. *Sacrifício ritual e crueldade contra animais: un caso de sustentabilidade cultural*, 17 *Veredas do Dir.*, 37, 2020, 295-322.

[391] See Italian case on experimentation on macaques: TAR Lazio, Sez. III-Quater, no. 5771/2020.

[392] See Corte di Cassazione, Sez III penale no. 13214/2010.

If the right of access to justice in relation to the Rights of Nature is recognized, these collisions would become the basis for litigation.

How to deal with such "tragic choices"?

Some authors propose "ecologically oriented"[393] or "ecological proportionality"[394] interpretations. Other authors suggest "Due Process of ecological law"[395].

However, these proposals do not include the Rights of Nature: they always consist of balancing operations, based on exclusively human interests.

Instead, by including the Rights of Nature, "tragic choices" must be decided through the above-mentioned "pillars", in particular the rules of non-regression, resilience and "*in dubio pro natura et clima*".

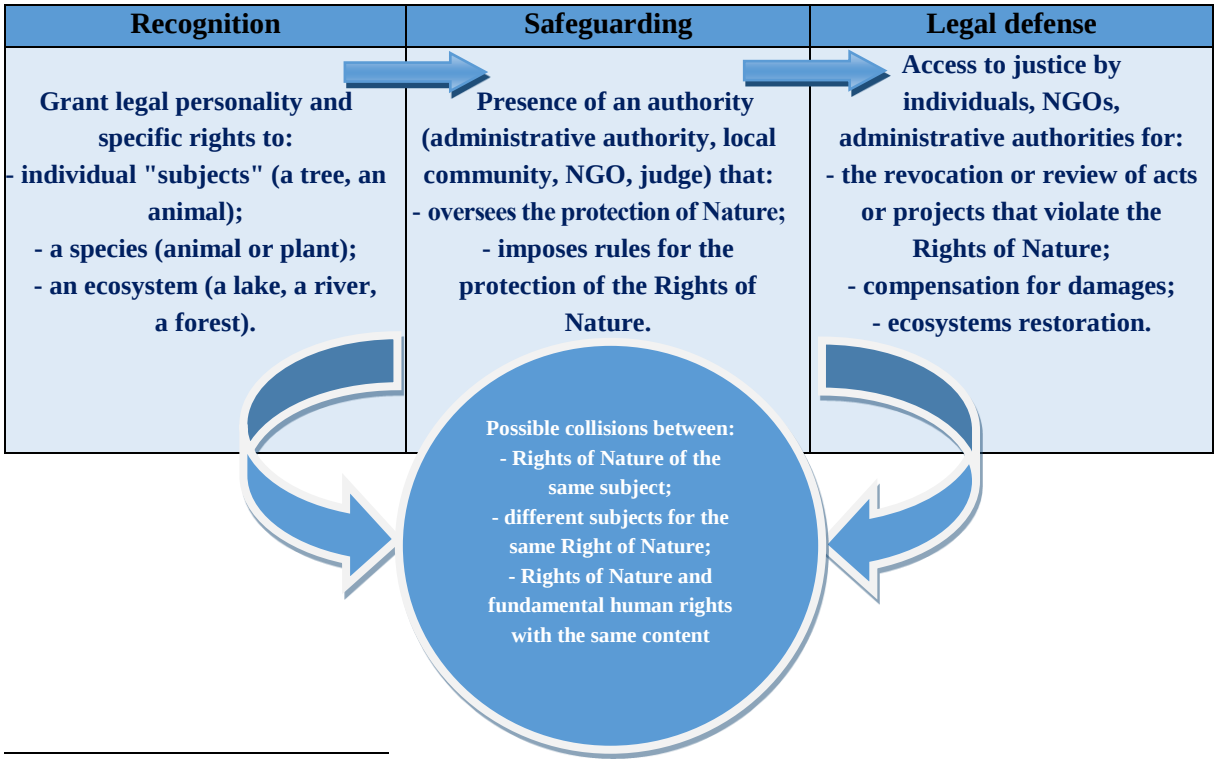
In fact, only these "pillars" ensure the protection of the entire ecosystem in the face of all "eco-legal" breaking points. They guarantee all living beings, including the human being.

In this perspective, they do not produce collisions in the common interest of survival.

Therefore, the "pillars" are the *Grundnorm* to solve any "tragic choice" in the era of the ecosystem and climate emergency.

The following scheme can be submitted:

Figure 27: Rights of Nature and "tragic choices" in the era of "eco-legal" breaking points



[393] MONTEDURO M. *Per una "nuova alleanza" tra diritto ed ecologia: attraverso e oltre le "aree naturali protette"*, 11 *Giust. Amm. Riv. Dir. Amm.*, 6, 2013, 1-44

[394] WINTER G., *Ecological Proportionality: an Emerging Principle of Law for Nature?*, in *The Rule of Law for Nature*, Voigt C. (ed.), cit., 111-116.

[395] DE ARAÚJO AYALA P. *Devido processo ambiental e direito fundamental ao medio ambiente*, Rio de Janeiro, 2020.

In the "tragedy" of the ecosystem and climate emergencies, the Rights of Nature prevent worsening "tragic choices". In fact, they adapt the legal system to the ecosystem reality. Let's see how.

In the anthropocentric law, legal subjectivity has always been related to the concept of "person", both natural or legal. It refers to a human being, real or in fiction. By the way, the word "person" comes from ancient Greek πρόσωπον (prósōpon) that means both the face, the actor's mask used in classic time during theatre performances and the character played. So, even if in legal history, not all human beings have been considered as "natural persons" since the beginning (let's think about blacks, slaves, strangers, women, children, disabled, etc.), when trade and economic interests pretended separating personal assets from business ones, the fiction of "legal person" was generated. Anyway, a human form (e.g. a company or association), belief (e.g. an idol) or interest (e.g. a trust) always stands behind the legal person.

The consequence is that the law can recognize to legal persons some or all rights usually recognized to natural persons. And once the right is recognized, no preferences could be claimed on the basis of the different qualification of the right-bearer: the honor of an individual is comparable to the honor of a company; property rights of a multinational are equivalent to the ones of a real person. Then, there are some rights that are only "human". We call them "human rights" and we enshrine them in international declarations or treaties, depending if they must be considered binding or not for the States.

Non-human species and the ecosystems would not enter into the person's fiction. They are not masks of humans, but autonomous entities. Moreover, an ecosystem, being it a garden or the Planet Earth, intended not as an autonomous subject, but as a complex relational concept, represents the conditions of existence for all its living components, but at the same time, the harmonic balance of all the parts is the condition of existence of the ecosystem.

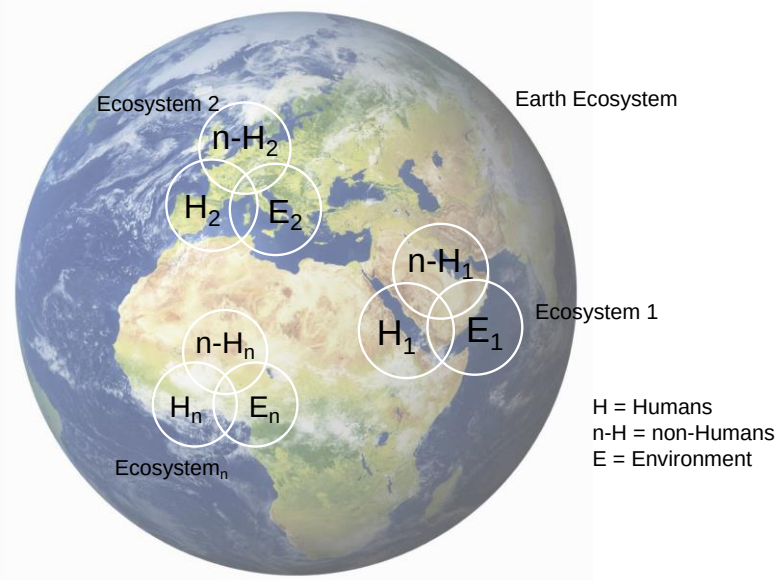
This means that there is an inter-dependent relationship between the survival of the whole and that of its parts. And the same interdependency exists even among the various minor ecosystems and the whole Earth ecosystem. Including non-human species and the ecosystems as new subject of rights means making the substantial differences among them relevant in the interpretative process, because there is a survival relationship of dependency among humans and non-humans legal subjects as part of an ecosystem, and among the various ecosystems and the planet.

This ecological principle of co-living, clearly stated in the theory of evolution, demands a change in the substantial concept of right. In legal theory, a right is a claim supported by the law. From an ecological point of view, an ecosystem's right is a set of co-living relationships whose balance must be defended for the survival of each subject of the relation[396]. It is true that in the theory of evolution, mutation and adaptation are the mechanisms that permit an evolution in the conditions of co-living and in the global balance. But the theory of evolution is neutral with respect of the interests of each species and ecosystem. This means that the planet life will always find a proper equilibrium, but it is absolutely equivalent in favor of whom the new balance will be established. The ecological principle of coexistence excludes "tragic choices", as it is based on a "ladder of choices" that always favors the survival of all living subjects.

This "ladder of choices" is built with this distinction of subjects:
- **Earth ecosystem** (**EE**);
- **Other ecosystems**, co-existing inside the planet (**E_1**, **E_2**, **E_3**, … **E_n**);
- **Human** and **non-human species**, co-existing in each ecosystem (**HS** and **n-HS**);
- **Human** and **non-human individuals** inside each species (**HI** and **n-HI**).

[396] NEDELSKY J. *Reconceiving Rights as Relationship*, 1 *Rev. Const. Studies/ Revue d'études const.*, 1, 1993, 1-26.

Figure 28a: "Ladder of choices" in the Earth Ecosystem



When anthropocentric rights collide, the criteria applied to solve the conflict are different:

a) **Hierarchy**,
a-1) if the rights are recognized by sources of law of different level: e.g. constitutional rights prevail over legislative rights;
a-2) where there is an interpretative criterion that recognizes preference to one of them (e.g. in dubio pro reo);

b) **Balancing**,
if all the rights in conflict are formally equivalent (e.g. all constitutional rights). In this case, two different principles can be applied. The principle of proportionality requires limitations of fundamental rights to be adequate, necessary and proportional to the aims pursued. On the other hand, the principle of protection of the essential nucleus of fundamental rights prevents the total sacrifice of one of the conflicting rights.

How would these criteria be applied, when eco-centric rights collide, pretending that Rights of Nature were incorporated at EU Treaties' level (or at constitutional level in national contexts)?

The survival of the planet is the pre-condition for the existence of all other subjects, so whatever action or omission that has a negative impact on the planetary boundaries should always be prohibited and EE rights should always prevail over the other legal subjects. The "*in dubio pro natura et clima*" rule should be interpreted and applied in this sense.

Then, diversity is a fundamental component both of the theory of evolution[397] and of biological communities. Moreover, other key ecological elements must be taken into consideration: complexity, productivity, stability (resilience and resistance), structure[398].

The complex co-living relationship among all natural ecosystems and the delicate balance between and inside them, make it more difficult to foreseeing all the feed-back loops deriving from their interaction. So, the second legal principle to be applied, when the first condition does not occur, is the "pro conservation rule" (already recognized by the CITES with respect of biodiversity and in principle 5 of the ecosystem approach endorsed by the COP of the Convention on Biological Diversity

[397] PIEVANI T. *La teoria dell'evoluzione. Attualità di una rivoluzione scientifica*, Bologna, 2017[3].
[398] CUNNINGHAM W.P. et al. *Environmental Science: a Global Concern*, Boston, 2004[9].

UNEP/CBD/COP/5/23[399]), in accordance with the "*in dubio pro natura et clima*" rule. This means that, when the conflict does not entail the safety of the EE, it must be applied the solution that guarantees the conservation of ecosystem and species diversity, independently from its costs, and even in cases where we are not able to estimate the exact ecological impact of a human action or omission.

In the same way, species rights should always prevail over individual rights.

Only when the previous conditions are satisfied, a safeguard clause in favor of human rights should apply. In fact, from an ecological point of view, among each category there is a total equivalency.

The EE interests prevail over the interests of the sub-ecosystems of the planet, that prevail over the interests of single species, that prevail over the interests of any individual.

But in ecological terms, anthropic ecosystems have the same value as the arctic biome; and among individual rights, the right to life of a man has the same value as that of a polar bear.

From a human point of view, this is unacceptable, as far as law is a human product and will always be administered by humans and for humans.

Only the common condition of vulnerability of all individuals and species in front of planetary ecological disaster justifies the juridification of the ecological rules and an expansion in the theory of legal personhood.

Therefore, when individual human and non-human rights collide, the "*pro-homine*" principle[400] should apply. But, in this case, the "principle of eco-proportionality" (proposed by Winter[401]) and the principle of defense of the "essential content" of the Rights of Nature should guarantee a reasonable balance and preserve the fundamental right to life also of non-human individuals.

So, in the case exemplified above, if the maintenance of human communities in the Arctic circle would put at risk the entire biome, the principle of conservation should prevail, preventing irreversible changes to the Arctic ecosystem.

If a human community can live in the Arctic, respecting the biome equilibrium, all such measures in order to preserve a harmonic coexistence in diversity must be taken.

If humans' communities hunt whales in pursuance of an ancient cultural tradition, and this does not menace the species survival, the human cultural right should prevail.

But if hunting is merely a human amusement or the rituals inflict unjustified sufferance to the animal, it should be prohibited, in application of the proportionality principle and the protection of the essential core of the animal dignity and right to life.

Here follows a scheme of conflicting rights resolution criteria.

[399] PADOVANI L. et al. *L'approccio ecosistemico: una proposta innovativa per la gestione della biodiversità e del territorio*, 49 *Energia, Ambiente e Innovazione*, 1, 2003, 23-32.

[400] MAZZUOLI DE OLIVEIRA V. et al. *The Pro Homine Principle as a Fundamental Aspect of International Human Rights Law*, 47 *Meridiano. J. Global Studies*, 17, 2016, 1-9.

[401] WINTER G., *Ecological Proportionality*, cit., 111-128.

Figure 28b: Conflicting Rights/Applicable rules

Conflicting Rights	Applicable rules
EE	Always prevail ("*in dubio pro natura et clima*")
E_1 v. **E_2**	Pro conservation and "*in dubio pro natura*" rules
HS v. **n-HS**	Pro conservation and "*in dubio pro natura*" rules. If extinction is not a risk, "*pro homine*" principle, but "eco-proportionality" and protection of the "essential content" of Rights of Nature
HI v. **n-HI**	"*pro homine*" principle, but "eco-proportionality" and protection of the "essential content" of Rights of Nature
E v. **S** or **E** v. **I**	Hierarchy, as application of the conservation principle
S v. **I**	Hierarchy, as application of the conservation principle

EE = Earth Ecosystem
E = Ecosystem
HI = Human Individual
HS = Human Species
I = Individual
n-HS = non-Human Species
n-HI = non-Human Individual
S = Species