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Articoli e saggi

Nature through the lens of the law: from sustainable development to legal personhood. A philosophical-legal sketch

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1. *Introduction: legal protection of nature between technicalities and moral change*

The Anthropocene narrative[1] highlights that human activities are the main cause of climate changes and environmental degradation, in other words the destruction of nature. This narrative also gives us an indirect warning: as we are responsible for the current environmental disaster, we have a duty to intervene. Interventions can be made at different levels, and the legal one is part of the possible solutions[2].

The recognition of the relevance of legal rules as an essential mechanism through which sustainable use of natural resources can be granted is part of the recent legal history, although the concept of forest sustainability is older and was

[1] «The Anthropocene […] is a term that has become increasingly used […] to denote the present time interval, in which many geologically significant processes and conditions have been, and continue to be, profoundly altered by human activities.» See P.L. Gibbard and M.J.C. Walker, *The term 'Anthropocene' in the context of formal geological classification*, in eds. C.N. Waters, J.A. Zalasiewicz, M. Williams, M.A. Ellis, A.M. Snelling, *A stratigraphical basis for the Anthropocene,* London, 2014, 395, 29-37, 29 ff.

[2] E. Biber, *Law in the Anthropocene epoch*, in *Geo. L. J.*, 2017, 106, 1-68.

first mentioned in the publication of *Sylvicultura Oeconomica* in 1713[3] where the three pillars of sustainability were formulated (environmental equilibrium, economic security, and social justice). More recently, attempts to protect nature were based on the concept of sustainable development, which integrates environmental sustainability, economic, and social development. At its very basic, this concept acknowledges that «Human beings have evolved within, depend on and are part of the world of nature»[4]. The evolution of this concept from political principles and declarations to legally binding rules[5] shows that the law has become an essential, albeit not exclusive, stimulus to operationalizing the basic elements of sustainable development, to codifying values, and facilitating its attainment[6]. However, to manage nature from the sustainable development's perspective has not proven decisive. Indeed, as some authors declare, the wide reach of the notion of sustainable development based on the three pillars model emerging from the Rio process in 1992 and further strengthened and made even more explicit during the Johannesburg Summit in 2002[7] has been reduced to mean, in many cases, solely «corporate sustainability»[8]. Thus, despite some positive effects produced by this *limited* approach to sustainability, humanity is still facing the «tragedy of the commons»[9] because what is lost following this strict notion is the ideal of sustainability as a moral achievement being this aspect a constitutive part of the sustainable development's story. Indeed, the reductionist view on sustainable development has its limits because its focus is mainly on the technical and procedural approach to environmental problems, which are of

[3] H. Carlowitz, *Sylvicultura oeconomica, oder haußwirthliche Nachricht und Naturmäßige Anweisung zur wilden Baum*-Zucht, TU Bergakademie Freiburg, 2000, reprint der Ausgabe 1713.

[4] M. Holdgate, *From care to action: making a sustainable future*, London, 1996, 1 ff.

[5] See F. Fracchia, *Lo sviluppo sostenibile. La voce flebile dell'altro tra protezione dell'ambiente e tutela della specie umana*, Napoli, 2010; S. Salardi, *Il diritto internazionale in materia di sviluppo sostenibile: Quali progressi dopo Rio? Rivista giuridica dell'ambiente*, 2008, 3-4, 657-683.

[6] M.C. Cordonier Segger, A. Khalfan eds., *Sustainable development law principles, practices and prospects*, Oxford, 2004; S. Salardi, *Sustainable development: definitions and models of legal regulation. Some legal-theoretical outlines on the role of law*, in *Rivista Quadrimestrale di Diritto dell'Ambiente*, 2011, 1, 77-100.

[7] Following this approach, sustainable development requires rethinking the balance between economic development and exploitation of natural resources. It means more than the simple integration of environmental criteria into developmental decisions. It demands a radical shift in institutional and political thinking and understanding of our living on earth. As stated by the Johannesburg Declaration on Sustainable Development we have to 'assume a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development -economic development, social development and environmental protection- at the local, national and global levels' see http://www.un-documents.net/jburgdec.htm.

[8] See P. Dauvergne, *The sustainability story: exposing truth, half-truths, and illusions*, in eds. S. Nicholson, S. Jinnah, F. Biermann and O. Young, *New Earth Politics: Essays from the Anthropocene*, Cambridge, 2016, 387-404, 391 ff. The recalled vision is not totally compliant with the meaning of sustainable development as originally envisioned, indeed as Wood underlines it «requires a massive departure from business as usual», S. Wood, *Voluntary environmental codes and sustainability,* in *Environmental law for sustainability. A reader*, Portland, 2006, 266 ff.

[9] G. Hardin, *The tragedy of the commons*, in *Science*, 1968, 162, 1243-1248.

course a crucial factor in developing effective legal tools, although they are not the only one to be taken into account for an adequate comprehensive implementation. To follow the strict view risks hiding a more all-embracing ethical vision on nature as an entity that could have an intrinsic value. Differently from the mere technical approach that «requires a change only in the techniques»[10], as is the case for corporate sustainability, the conception of nature having intrinsic value demands changes in prioritization of our values and moral standards. In order to achieve this goal, we have different tools. Based on what the law can offer, attempts were made recently to gain some ethical mileage in the search for solutions to environmental deterioration by qualifying nature or its constitutive elements as legal Persons. In fact, starting the second decade of the 21st century, in different countries[11] around the world decisions were made to assign legal personhood to nature or to individual natural resources. This trend is very fascinating as it goes to the heart of the anthropocentric vision of nature that has characterized a great part of the relationship between humans and nature throughout history, and it obliges to revisit that relationship. This trend demands indeed to redefine that relationship by considering nature and human beings one and the same at the legal level. As a consequence, a further positive effect of this redefinition would be the achievement of higher ethical standards in our everyday life because what is assumed following this trend is that extension in morality is the basic step to move forward towards designing solutions at other levels.

In order to bring about faster changes in the moral sphere, the law could contribute by assigning legal personhood to nature. This operation is indeed not just technical, rather it represents a symbolic and value laden choice. In order to understand the valuable contribution of attributing legal personhood to nature we need to analyze and contextualize the concept of Person within the legal realm. This operation will serve a twofold aim: firstly, to highlight the advantages of this trend both for humans and for the environment based on the optimistic assumption that following it can contribute to strengthening the original narrative of sustainable development and to reaching higher moral standards based on which changes in ideas and behaviors can be achieved; secondly, to revitalize the

[10] G. Hardin, *op. cit.,* 1243 ff.

[11] The process started in 2006 with the legal recognition in Pennsylvania and went on with further legal steps ranging from constitutional recognition of the rights of Nature to adoption of legal acts and resolutions at the local level. Countries involved in this process are Ecuador, Bolivia, Mexico, New Zealand, Colombia, India, Bangladesh, Uganda, California and Colorado. In addition, ongoing legal and policy processes relating to the rights of Nature are reported in the 2019 UN General Assembly Report of the Secretary-General *Harmony with Nature* (A/74/236) available at https://undocs.org/pdf?symbol=en/A/74/236. These ongoing trends include a wider range of countries and local communities, including some European nations. Further pending cases of recognition of rights to Nature are addressed by C. M. Kaufmann, *Mapping Transnational Rights of Nature Networks and Laws: New Global Governance Structures of More Sustainable Development*, prepared for the International Studies Association Annual Conference, Toronto, March 29, 2020.

debate in those countries where the strong anthropocentric tradition is strongly rooted and expressed through legal categories.

2. *Nature through the lens of the law: from exploitation and usefulness to conservation and protection*

In the philosophical-legal debate, especially in western tradition, nature has been alternatively conceived as the source and generator of value for specific groups and actors (for instance in the Natural law tradition) or as the constant conjunction of causes and effects linked by the principle of casuality (Legal positivism perspective)[12]. Despite being very different positions on nature, these two conceptions point at nature as something of immediate human utility[13], object of unlimited exploitation. As a direct consequence of this understanding, for quite a long time, environmental protection has been developed as anthropocentric in focus not recognizing an intrinsic value to nature. The shift from usefulness to humans and wild exploitation to appreciation of the close ethical relationship between humans and natural resources was promoted by the influential philosopher and scientist Aldo Leopold. In his well-known book entitled *A Sand County Almanac*, he argued in favor of a holistic biocentric morality and developed ideas that became crucial in modern environmental ethics. According to Leopold, what he termed *land ethic* «changes the role of Homo sapiens from conqueror of the land community to plain member and citizen of it»[14]. Leopold's land ethic incorporates a holistic approach[15], which is the main factor for the conceptual shift from exploitation to protection. In the legal sphere, the 1946 International Convention for the Regulation of Whaling is a paradigmatic example of the acceptance of this important shift in focus. In this convention whales are no longer considered just a resource for human consumption. Rather, they belong to species that have to be conserved. Further examples concerning ecosystem protection are the 1992 Biological Diversity Convention, the 1991 Protocol on Environmental Protection and the 1980 Convention on the Conservation of Antarctic Marine Living Resources, just to mention a few. The emergence of these international legal norms has changed the nature of environmental conser-

[12] H. Kelsen, *Pure theory of law*, New Jersey, 2005.

[13] There have been some attempts to draw on the principles of Natural law in order to extend rights to animals and nature and consequently to refuse Cartesian view on nature as a means for the use and purposes of humans, see for instance J. Lawrence, *Philosophical and practical treatise on horses: and on the moral duties of man towards the brute creation*, London, 1796.

[14] A. Leopold, *A sand county almanac*, New York, 1949, 240 ff.

[15] P.F. Cramer, *Rethinking environmental protection. A natural approach to nature*, Maryland, 2000.

vation. As a matter of fact, these norms have internationalized Leopold's suggestion and recognition that human beings cannot exist without preserving the environment. However, the focus remains anthropocentric, though «a more dilute anthropocentrism which recognizes the interrelatedness and interdependence of the natural world of which human beings form a part»[16].

When the sustainable development narrative began between the 1980s and 1990s, the attempt was to further use the assumptions of that weak anthropocentrism to move towards the equal balance between economic, social, and environmental interests (three pillars model). The idea was that economic, social, and environmental considerations had to be integrated in all sectoral policies, with all elements having equal weight. This three pillars model won political and legal approval and prevailed over other models concerning sustainability[17]. In the European Union, this is evidenced by the legal relevance attributed to the principle of integration in Article 6 of the Amsterdam Treaty, being this principle the main tool to implement the three pillars model[18]. However, the treaty does not provide a strict obligation to equally treat environment and economy from a legal-judicial perspective. The lack of a strict obligation to equally weight the three pillars was one reason for turning to a more technical and business-oriented conception of sustainability as referred to earlier by limiting the notion to mere technical solutions (environmental impact assessment being one example of this trend). And as a result, the law itself has been reduced to a means of technicalities losing sight of the broader ethical vision of sustainability that could have been promoted through legal rules. As Sienkiewicz notes «[r]egulatory measures are merely one aspect of what should be a comprehensive environmental policy […] In addition to regulatory measures, comprehensive environmental policy should include education, collaboration, tax-based incentives […]»[19]. In order to achieve such a comprehensive approach, regulatory measures of a technical kind are important, albeit not enough. The virtuously *performative* quality of the law is needed[20]. This is the ability of the law to lead towards a social coexistence based

[16] C. Redgwell, *Life, the universe and everything: a critique of anthropocentric rights*, in eds. A. Boyle and M. Anderson, *Human rights approaches to environmental protection*, Oxford, 2003, 71-87, 73ff.

[17] From a strict legal perspective, international law experts have studied different legal regimes following the Johannesburg Summit in 2001 in order to analyze the level of integration of environmental protection into different legal instruments. The best example of integration is represented by 'highly integrated new regimes.' These are legal regimes which include social, economic, and environmental aspects in the negotiation process, in the final agreement, and in the mechanisms used to solve conflicts. One example is the 2005 Cartagena Protocol on Biosafaty, see M.C. Cordonier Segger, A. Khalfan eds., *op. cit.*; M.C. Cordonier Segger, C.G. Weeremantry eds., *Sustainable justice reconciling economic, social and environmental law*, Leiden, 2004.

[18] M.C. Cordonier Segger, C.G. Weeremantry eds., *op. cit.*; D. French, *op. cit.*

[19] A. Sienkiewicz, *Toward a legal land ethic: punitive damages, natural values, and the ecological commons*, in *Penn St. Envtl. L. Rev.*, 2006, 91, 95-96, 96 ff.

[20] L. Ferrajoli, *Principia Juris*, Roma-Napoli, 2007.

on higher standards of decency and shared ethical values by means of its language and symbolic power of some of its categories. Attribution of legal personhood to nature goes in this direction.

As we will see in the following paragraph, the concept of Person in the law is indeed not just technical, but it is symbolic and value laden. And these features of the concept can contribute to strengthening the attempts of concretely recognizing intrinsic value to nature and natural resources and, in so doing, to promote equal weighting of environment with economic and societal interests as requested by the original ethical vision of sustainable development.

3. *What do we gain by qualifying nature as a legal Person?*

Legislations and court decisions that have attributed the qualification of Person to nature are distributed around the world[21], albeit not everywhere, though the trend is expanding. As we will see in what follows, problems concerning legal recognition of personhood to Nature do not depend on a technical impossibility. Rather, they are the outcome of a value laden choice influenced by the controversial semantic history of the concept of Person. This is indeed a polysemous concept whose meaning changes according to the context in which it is deployed. Legally speaking, Person has been at the center of heated debates between Natural law's defenders and advocates of Legal positivism. Debates on the definition of Person, of who is Person, of who has the properties needed to be included in its definition, have been tightly interwoven into larger controversies over the desirability of policies mandating inclusion or exclusion as for the distribution of benefits and rights[22]. In the legal sphere, Person is not a descriptive concept, rather a normative one. In general, it is a scheme used when some acts are qualified by norms[23]. In other words, it is a mechanism to judge human behaviors: it allows us to authorize, prohibit, oblige or forbid behaviors. In legal doctrine two conceptions of legal personhood can be identified: a strict technical approach and an *axiological* one. In the European context, the most relevant theoretical approach can be traced back to Hans Kelsen's definition of the concept of Person. In his view, Person is a normative concept referring to the personification of a set of norms regulating the conduct of human beings: natural/physical Person refers to

[21] See supra footnote 11.

[22] Qualification of nature as Person represents one example of the different situations in which the attribution of this qualification has been debated historically. The status of the embryo is one field of heated controversies in ethical discussions. But recently, proposals were made to qualify robots characterized by autonomous and self-learning abilities as legal Person (e-personality), thus entitling them to rights and duties.

[23] U. Scarpelli, *Contributo alla semantica del linguaggio normativo*, Milano, 1985.

the acts of a single human being, whereas juridical Person refers to the acts of a collectivity of human beings like a society[24]. Instead, the *axiological* approach is best understood with reference to the process of «constitutionalization of the Person». During this process the Person loses its strict technical features and neutrality, and it becomes the legal tool to construct one's individuality and to identify the values underpinning the legal system[25].

In European constitutions and in the Charter of Fundamental Rights, the Person is entitled to fundamental rights irrespective of differences among individuals. Whereas individual and difference are descriptive concepts, Person and rights are normative concepts. Following this perspective, individual identities or differences amongst individuals are equally protected and respected as they belong to the intimate, intangible, and unquestionable sphere of every Person. Thus, equality as equal freedom of rights is the *equality of differences*, which represents the value or the dignity of the Person[26]. This idea of equality is the result of the separation of the law from nature and also from morality. In other words, equality is the equal right of everybody to affirm and protect one's own identity by virtue of the equal value associated with all differences that make Person an individual different from others and each individual Person like everybody else[27].

The narrative of fundamental/human rights, and specifically of equality, is therefore strictly connected to the abovementioned ideal of Person. This narrative allows going to the heart of power organization and manifestation. As Luigi Ferrajoli deftly observes, human rights limit the exercise of any power by framing the «sphere of undecidable»[28]. In this sense, human rights represent a bulwark against any form of power, not only state power but also economic and technological powers. Recognition of human rights oblige institutions and governments to protect those rights by creating conditions to concretely implement them.

This focus on obligations of institutions as the correlative of the rights of the Person is a relevant argument in favor of extension of rights to nature or natural resources. Indeed, following this perspective, to attribute legal personhood to nature would mean to qualify nature as Person, thus obliging institutions to protect it against any power as it would be part of the «sphere of undecidable». Of course, to move in this direction means to be in favor of a broader applicability of the concept of Person, recognizing that legal categories are not fixed and can be extended for good reasons. This extension within the human rights framework can produce some positive effects for the destiny of nature, in particular

[24] H. Kelsen, *op. cit.*
[25] S. Rodotà, *Il diritto di avere diritti*, Roma-Napoli, 2012.
[26] L. Ferrajoli, *op. cit.*
[27] *Ibidem.*
[28] *Ibidem.*

the elevation of nature to a «level of moral and legal considerability commensurate with that of humans»[29]. As an indirect consequence, this could have positive implications for the popular understanding of nature and environment because the language of rights has an evocative power functional to shaping higher moral standards of behavior. And this performative effect could also be experienced in the judicial context as encouragement to «develop a viable body of law» as Stone already prophesized[30]. Thus, rights-talk, albeit not being a universal panacea, could contribute to achieving those goals of sustainability, as originally envisioned (equal consideration of environment, economy, and society), which have not been reached so far. Attribution of rights directly to nature may result in the recognition that this personified entity has a right to be protected, to not being destroyed, and to be restored when exploited and so on. As was observed, «for such rights to perform their function there would have to be a standard against which to measure whether what is being claimed is too much or too little»[31]. In light of this statement, I think that to achieve a comprehensive protection of nature as well as of humans it is important to introduce two conceptually different, albeit interrelated, categories of rights, namely, on the one hand, *environmental rights* concerning directly humans and indirectly nature and *rights of nature/environment* directly concerning nature and indirectly humans.

Although these two expressions are often used interchangeably, especially in common language, upon deeper analysis it is evident that they refer to different subjects entitled to rights, humans on the one side and nature on the other. Recognition and enforcement of both categories of rights could produce the necessary shift to change the course of environmental degradation as it could produce the best results in terms of preserving, managing, and protecting nature. Of course, rights of nature/environment will be exercised indirectly through human action as is the case for some human beings. Consider, for instance, the two extreme cases of newborns or patients in permanently vegetative states. However, the conceptual distinction between the two categories of rights could serve the specific purpose of virtuously shaping attitudes and behaviors as a manifestation of the virtuously *performative* ability of the law.

In light of the previous considerations, we can argue that to extend legal personhood to nature is in principle technically possible also in contexts characterized by a strong anthropocentric approach like the European one. Problems may arise when it comes to enforcement, which does not only mean to expand the list

[29] C. Redgwell, *op. cit.*, 83 ff.

[30] C.D. Stone C D Should Trees Have Standing? Toward Legal Rights for Natural Objects. *Southern California Law Review*, 1972, 45, 450-501, 489 ff.

[31] J.G. Merrills, *Environmental protection and human rights: conceptual aspects*, in eds. A. Boyle and M. Anderson, *Human Rights Approaches to Environmental Protection*, Oxford, 2003, 25-41, 33 ff.

and the entities entitled to their exercise, but to effectively enforce them[32]. In the following paragraph, legal trends and court decisions will be considered that have already established an operative legal basis for recognition of the rights to Nature.

4. *Legal trends and court decisions: attributing legal personhood to natural resources*

Needless to say, legislation and court decisions are two interrelated ways of building the traits for a global constitutionalism[33], as judicial enforcement is the concrete action through which legal implementation of rules is granted. But there is an additional crucial aspect of judicial activity, namely that it contributes not only to implementing policies and the resulting rules, but it is essential to their establishment and enforcement. Thus, legislating and deciding are not conflictual activities, but mutually supportive. If the aim is to achieve higher standards of environmental protection by attributing legal personhood to nature both the legislative and the judicial branches of the state architecture should work in tandem to grant the «sphere of undecidable»[34] to those qualified as Person. This is what occurred in some legal systems[35] like the Ecuadorian one. In what follows, this case and the most representative legislations and court decisions of the past 15 years will be mentioned in order to highlight the international legal trend on this topic[36], in which European legislators and courts are currently absent. But some trends show that this gap could be filled soon[37].

From the legislative perspective, the first revolutionary step was made in 2006 when the rural community of Tamaqua Borough issued the *Tamaqua Borough Sewage Sludge Ordinance*[38]. In section 7.6 it is stated that «Borough residents, natural communities, and ecosystems shall be considered to be "persons"

[32] N. Bobbio, *L'età dei diritti*, Torino, 1996.

[33] S. Rodotà, *op. cit.*, 68 ff.

[34] L. Ferrajoli, *op. cit.*

[35] Recognition of the rights to Nature may follow three ways: through courts' decisions; through the introduction of the legal identity of Nature in constitutions or acts; by using new pro Natura argumentative methods, see European Economic and Social Committee, *Towards an EU Charter of the Fundamental Rights of Nature*. *Study*, 2019, p. 14, available at https://www.eesc.europa.eu/sites/default/files/files/qe-03-20-586-en-n.pdf. Last accessed January 2021.

[36] Further countries representing this trend are for instance: Bangladesh, which became the first country to grant all its rivers the same legal status as humans in 2019. This means they will be treated as living entities in a court law; Uganda, which recognized the rights of Nature in the 2019 National Environment Act; Ohio, which did the same with the Lake Erie Bill of Rights in 2019, though it was declared unconstitutional in 2020; local communities in Colorado and California adopting the rights of Nature into their legislations.

[37] *Ibidem.*

[38] The text of the ordinance is available at http://files.harmonywithnatureun.org/uploads/upload666.pdf. Last accessed July 2020.

for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems». In this ordinance, those who have the right/duty to act in the name and on behalf of ecosystems qualified as Persons are the residents of the community. Following this perspective, nature, in particular ecosystems, are considered as those humans that cannot act and exercise their rights directly as referred to earlier. Three years later, the small city of Shapleigh in Maine issued a similar rights-based water extraction ordinance prohibiting Nestlé Corp. from extracting groundwater to fill their water bottles. In 2008 Ecuador introduced the rights of nature at the constitutional level. Article 71 clearly states that «Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes»[39]. In the same direction legal provisions were adopted in Bolivia[40] in 2010 and in Mexico between 2014 and 2017. As for Bolivia, two acts were promulgated: Act n. 071 de *Derechos de la Madre Tierra* (December 21, 2010) and Act n. 300 *Ley Marco de la Madre Tierra y Desarrollo Integra para Vivir Bien* (October 15, 2012)[41]. In 2014 in Mexico, the State of Guerrero passed a constitutional amendment that recognized the rights of nature in Article 2 and in Article 18 of the Constitution of Mexico City. In 2017 in New Zealand, the river Te Awa Tupua was declared legal Person in the *Te Awa Tupua Act*, which states «Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person»[42].

These rules, whether legislation or constitutional provisions, show that attribution of rights directly to nature by qualifying it as Person is an increasingly widespread legal trend supported by the United Nations[43]. In 2009, indeed, the General Assembly of the United Nations affirmed the intrinsic value of nature and the earth-centric approach, well expressed by the selected notion of *Harmo-*

[39] English translation of the Constitution available at https://pdba.georgetown.edu/Constitutions/Ecuador/english08.html. Last accessed July 2020

[40] In Ecuador and Bolivia, the rights of Nature are part of a more general philosophical vision inspired by the concept of *Buen Vivir*, which means living in harmony with nature, with oneself, and with others. See S. Baldin, I diritti della natura nelle costituzioni di Ecuador e Bolivia, *Visioni LatinoAmericane*, 2014, 10, 25-39; A. P. Benalcázar, *Il* Buen Vivir -sumak kawsay- *la costruzione di un paradigma per una diversa umanità (Ecuador)*, in eds. R. Martufi and L. Vasapollo, *Futuro indigeno. La sfida delle Americhe*. Milano, 2009.

[41] Respectively available at https://bolivia.infoleyes.com/norma/2689/ley-de-derechos-de-la-madre-tierra-071 and http://www.fao.org/fileadmin/user_upload/FAO-countries/Bolivia/docs/Ley_300.pdf. Last accessed July 2020.

[42] Article 14 (1) Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.

[43] This new trend represents an important, albeit not definitive, shift in the UN approach to Nature that has long been characterized by the anthropocentric vision as testified by the 1972 UN Conference on the Human Envirnment; 1987 World Commission on Environment and Development; 1992 United Nations Conference on Environment and Development; 2001 World Summit on Sustainable Development; 2015 UN Sustainable Development Summit.

ny with Nature.[44] On the dedicated website, it is explicitly recognized «that planet Earth and its ecosystems are our home and that "Mother Earth" is a common expression in a number of countries and regions, and we note that some countries recognize the rights of nature in the context of the promotion of sustainable development»[45].

Beyond the legislative and constitutional changes, there are some paradigmatic court decisions that base their judgment on or at least discuss as possible future development the recognition of rights and legal personhood to nature. These are decisions from courts in different countries that try to concretely implement the rights of nature. In what follows the most relevant cases are chronologically listed.

The 2011 Ecuadorian case is the first case of judicial enforcement of the rights of nature. Two landowners demanded the observance of the rights of nature protected in Article 71 of the Ecuadorian Constitution. The case was presented before the Provincial Court of Justice of Loja and an injunction in favor of the Vilcabamba River was granted. The Court ruled on the rights of nature «to exist, to be maintained and to the regeneration of its vital cycles, structures and functions»[46]. In 2015 the Supreme Court of New York, dealing with the legal status of two chimpanzees discussed whether these animals could be qualified as legal Persons. Although the court denied legal personhood to the chimpanzees, there were interesting arguments that showed how dynamic and transient the meaning of Person has been during history. As the court recognized: «the concept of legal personhood […] has evolved significantly since the inception of United States […] Not very long ago, only caucasian male, property-owing citizens were entitled to full panoply of legal rights under the United States Constitution.»[47] And the court quoted a previous decision stating that «if rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied»[48].

In 2016 Colombia's *Tribunal Constitucional* ordered protection of the Aratro River as an autonomous entity subject to rights[49]. In the following year, in March 20, 2017 the High Court of Uttarakhand at Nainital, India[50] declared the Ganges and Yumana rivers as living persons with rights akin to other living enti-

[44] 2009 The first UN General Assembly Resolution on Harmony with Nature (A/RES/64/196) was adopted. More information available at http://www.harmonywithnatureun.org/chronology/. Last accessed July 2020.

[45] *Ibidem.*

[46] Wheeler c. Director de la Procaduría General del Estado de Loja, Juicio No. 11121-2011-0010.

[47] The Nonhuman Rights Project v. Stanley, Supreme Court of the State of New York, New York County, Decision and Order, Intex. No. 152736/15, July 29, 2015, 18 ff.

[48] Obergefell v. Hodges, US, 135 S Ct 2602, 2015.

[49] Decision T-622/ 2016 The Aratro River as a 'subject of rights'.

[50] Mohd. Salim v. State of Uttarkhand and Others. Writ Petition (PIL) No. 126/2014, March 20, 2017.

ties. The court employed the concept of *juristic person* stating that «a juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person»[51]. This decision was followed by a second one[52] in which the same High Court declared the Himalayan mountain ranges, glaciers, rivers, streams, rivulets, lakes, jungles, air, forests, meadows, dales, wetlands, grasslands and springs «as the legal entity/legal person/juristic person/ juridical person/moral person/artificial person for their survival, safety, sustenance and resurgence»[53].

The legal provisions and court decisions discussed are not isolated attempts to revisit the *semantic pendulum* of the concept of legal Person and its strict connection with rights. In fact, the movement to extend legal personhood to nature «continues to build momentum»[54] and «the concept of legal rights for nature is becoming part of mainstream environmental law»[55], although, as mentioned above, not a globally accepted one yet. Resistance to this change do not depend on the technical impossibility of extending the category of Person to nature, but on different reasons like the legal tradition and understanding of legal categories, the historically rooted primacy of technology over nature, and the religious tradition that contributed to crystallizing the strong anthropocentric vision[56]. These factors may represent an obstacle, but not an absolute one, as traditions and legal categories are not set in stone and can be changed to serve new unprecedented purposes. Today, the environmental emergency demands a radical change in our ethical view on nature at a global level. The trend discussed in the current paragraph can produce positive effects only if it finds global acceptance and enforcement.

5. *(Un)conclusive remarks*

In the legal sphere, the idea of extending the concept of legal personhood to include non-human entities goes back over 100 years. For instance, in the USA in 1913 Sir John Salmond suggested revolutionary uses of legal forms to achieve utilitarian objectives. He clearly stated that «A legal person is any subject-matter

[51] *Ibidem*, 62 ff.

[52] Lalit Miglani v. State of Uttarakhand and Others. Writ Petition (PIL) No. 140 of 2015, March 30, 2017.

[53] *Ibidem*, 65 ff.

[54] E. O'Donnel, *Legal rights for rivers. Competition, collaboration and water governance*, New York, 2019, 1ff.

[55] *Ibidem.*

[56] See S. Baldin, *I diritti della natura nelle costituzioni di Ecuador e Bolivia*, *Visioni LatinoAmericane*, 2014, 10, 25-39.

to which the law attributes a merely legal or fictious personality. This extension, for good and sufficient reasons, of the conception of personality beyond the limits of fact -this recognition of persons who are not men- is one of the most noteworthy feats of the legal imagination»[57]. Salmond's statements highlight a basic, albeit still often neglected, reality: legal categories, principles, and concepts are not set in stone. They are not fixed, given entities[58] that have to be accepted and implemented in positive law as maintained by many advocates of the Natural law tradition or by those who are interested in maintaining the *status quo* so that their power is not put into question. Rather, legal categories are created by men for men. This point is crucial in the current discussion about recognition of rights to nature through legal personhood. Indeed, to choose to ascribe rights directly to nature has a twofold meaning. The first is technical, that is, to confer legal standing (the ability to sue and be sued) which enables Persons to go to court and protect their rights directly or indirectly. The second is value laden. As matter of fact, although strictly legally speaking, Nature and humans will have a different degree of legal capacity and subjectivity, the most effective outcome of this operation lies in its largely symbolic significance. It impacts on the perception humans have of nature by representing nonhuman entities as equal to humans. And this operation serves the purpose of affirming values in ways that draw them back into the social field from which they emerged, reconnecting them with ongoing political and cultural struggles. It is our choice to decide how far the concept of Person can be extended to include new entities. The success of this activity depends on different factors: educational, cultural, ethical, political, and so on. So far, despite the courageous decisions as referred to earlier, the judicial and legal trend recognizing rights to nature is still scarce and therefore unable to promote the dramatic shift needed to overcome environmental degradation by promoting higher standards of moral behaviors. To be effective the choice of assigning legal personhood to nature should be a global shared one, but we are still far away from reaching such a common consensus. A further general legal problem concerns judiciary enforcement. As a matter of fact, when nature does not have any formally identified guardians, the enforcement of the attributed rights relies on generic entities like citizens or NGOs.

To conclude, what could be more general positive outcomes of the legal recognition of rights directly to nature regards both the elevation of moral standards concerning our relationship with natural resources and the narrative of sustainable development as originally envisioned. As concerns this last point, two may be the relevant results in this field depending on what policy makers want

[57] J.W. Salmond, *Jurisprudence*. 4th ed. London, 1913, 279 ff.

[58] P. Borsellino, *Storicità del diritto e filosofia di orientamento analitico-linguistico. Quale rapporto?* In eds. A. Ballarini, *La storicità del diritto. Esistenza materiale, filosofia, ermeneutica*, Torino, 2018, 107-128.

to emphasize. First, the three pillars model demanding equal consideration of the economic, social, and environmental aspects could be strengthened by treating nature as legal Person because judicial treatments of the three pillars (economy, society, and environment) would no longer be based on the traditionally well rooted asymmetric relationship between development and environment, which usually results in the former prevailing over the latter in court decisions. Secondly, in case the before mentioned balancing outcome should be hindered by the strongly hierarchically rooted economic interests that usually predominate over environmental ones, legal personhood attributed to Nature could be pivotal in strengthening the logic of obligations underlying the original conception of sustainable development[59] that interrelates protection of environment with granting intergenerational equity.

In other words, the perspective that integrates *environmental rights* and *rights of environment* could be the successful way to protect both human beings and the environment from which their lives depend.

[59] On this point see F. Fracchia, *op. cit.*

Silvia Salardi - Abstract

Nature through the lens of the law: from sustainable development to legal personhood. A philosophical-legal sketch

The Anthropocene narrative highlights that human activities are the main cause of climate changes and environmental degradation. To limit this disaster interventions can be made at different levels, and the legal one is part of the available options. Starting the end of the 1980s attempts to protect nature were based on the concept of sustainable development. However, to manage nature from the sustainable development's perspective has not proven decisive. Starting the second decade of the 21st century, in different countries throughout the world decisions were made to recognize the qualification of legal personhood to nature or to single natural resources. The paper tries to highlight the advantages of this trend both for humans and for the environment based on the optimistic assumption that following it can contribute to strengthening the original narrative of sustainable development and to reaching higher moral standards based on which changes in ideas and behaviors can be achieved.

La natura attraverso la lente del diritto: dallo sviluppo sostenibile alla personalità giuridica. Uno spunto filosofico-giuridico

La narrativa dell'Antropocene sostiene che le attività umane siano la causa principale del cambiamento climatico e del degrado ambientale. Per limitare questa catastrofe si possono attuare interventi a vari livelli, tra cui quello giuridico. A partire dalla fine degli anni Ottanta, i tentativi compiuti per proteggere la natura sono stati basati sul concetto di sviluppo sostenibile. Tuttavia, la gestione delle risorse naturali dal punto di vista dello sviluppo sostenibile si è rivelata non decisiva. A partire dal secondo decennio del Ventunesimo secolo, in diversi paesi del mondo sono state prese decisioni per riconoscere la personalità giuridica alla natura o alle singole risorse naturali. L'articolo si propone di sottolineare i vantaggi di questo modello sia per gli esseri umani che per l'ambiente, basandosi sulla premessa ottimistica che questo potrà contribuire a rafforzare la visione originaria dello sviluppo sostenibile e a raggiungere standard morali più elevati su cui basare cambiamenti nelle idee e nei comportamenti.