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Legal subjectivity and absolute rights of nature

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In the regulatory landscape, Nature is understood as a legal asset. In Italy, art. 812 of the Italian Civil Code establishes that trees, springs and streams are immovable *property* that "*can form the subject of rights*". This representation is the result of an ancient cultural setting that, far from pre-Socratic material elements, has seen the gap between Nature and culture widen. A gap - attributable to Socratic theories - which has led, in every branch of knowledge, to the rupture of the ancestral relationship between man and earth. The idea of Nature as a pyramid at the top of which to place man passed from Aristotle to Ptolemy, author of geocentrism, and from this to the patrists. Among them Thomas emphasized the absolute collimation between this assumption and the Old Testament, giving himself space to theories that were unmoved for centuries. Philosophical, anthropological, economic and juridical thought has been built on these theories. Examples are Locke, Darwin, Marx, finally Puchta who consolidated the approach of Nature as a useful good for enjoyment.

This approach is evident from the first important legal documents, including the *Charter of Forest* of Henry III of 1217, according to which every free man was guaranteed to have access to the forest, drawing benefits for himself and for the cattle. Or, looking forward, the Italian law n°. 1766/1927 on civic uses or the current Environmental Code.
This view, however, is changing. The Constitution of Ecuador has established that “la naturaleza será sujeto de aquellos derechos que le reconozca la Constitución” (art. 10). In Bolivia, Mother Earth is defined as a "collective subject of public interest" to which the rights to life, water, clean air, balance, restoration and to live free from contamination are granted (art. 5 L. 71/2010). In New Zealand, the Whanganui River has been recognized as a legal entity by the 'Te Awa Tupua (Whanganui River Claims Settlement) Act 2017'. In Uganda, 'The National Environment Act 2019' states that "nature has the right to exist, persist, maintain and regenerate its life cycles, structure, functions and its evolutionary processes" (Article 4). In Colombia, the Constitutional Court (judgment T-622/16) affirmed that “the Atrato River is subject to rights that imply its protection, conservation, maintenance and (...) restoration”. In India, the High Court of Uttarakhand at Nainital ruled in 2017 that "the Ganges and Yamuna rivers, all their tributaries, flows, (...) are declared legal / legal persons / living entities". Finally, in 2019 the High Court Division of the Supreme Court recognized all rivers of Bangladesh as legal person / legal entity / living entity.

But this approach is not espoused in Europe. Art. 37 of the Charter of Fundamental Rights and the proposed Regulation for the achievement of climate neutrality continue to consider the environment a good to be exploited within the principles of sustainable development and 'polluter pays'. What would then prevent Europe from considering Nature as a subject of law? This question should also be asked in the light of the European Parliament Resolution on robotics (2015/2103 (INL)) which would like to grant electronic personalities to robots, therefore to non-living subjects. Well, certainly not the difficulty of a juridical superfection as legal persons were and this is because this experience was acquired thanks to Kelsen's theories on the 'mask' and on the individual; not yet the difficulty of reducing a macrosystem to a *unicum* and this is because we have remedied this problem with the *universitas*, the company, the preparation of the complex state machine.
So, let us hypothesize Nature as a subject to which to recognize absolute rights that it itself, through representations, can protect. These include the right to water, resulting from desertification, the right to rehabilitation, resulting from desertification itself, from urbanization and deforestation, and finally the right to biodiversity to preserve flora and fauna environments of community reference.

Certainly, such a theory would trigger exceptions including the legal attempt, in a liquid society, to replace a dead God with a new *totem* of reference and then lead to a revival of Giusnaturalism as opposed to juridical positivism. But Giusnaturalism has served as an objectivist theory of ethics, bearer of superior principles, which has led to modern constitutionalism, to the liberal conception and the law of the state, to the theories of universal rights. Moreover, the juridification of Nature is posed in itself by legal formalism, that is, it is elaborated by juridical technique and therefore by positive law itself. Another exception would be that subjectivizing Nature would entail the creation, therefore the usefulness in the legal context, of an additional centre of imputation of interests. The question, however, is whether the State or the citizen can considered themselves not only representatives, but holders of the rights of Nature. The point, however, is that there is a clear *conflict of interest* between the aforementioned subjects and Nature itself, since the State and the citizen are by law already holders of rights *over* nature. So the question should be whether the State and / or the citizen (who have rights *over* nature) can also consider themselves holders of the potentially contrary rights of Nature.

In conclusion, art. 20 of the Finnish Constitution states that "nature and biodiversity, the environment and national heritage are the responsibility of each and every one". If this principle represents a step forward in the rapprochement between culture and nature (since it 'constitutionalizes' the latter), it is far from a dutiful revolution of things. Where to start? Using, for example, in the normative acts the word Nature (what is about to be born) and not environment (what surrounds someone): the second postulates the pre-existence of man, therefore a vision only anthropocentric.

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