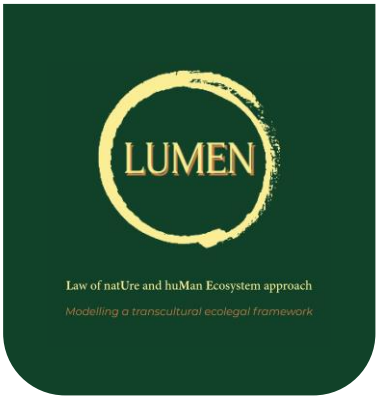
LUMEN
Law of natUre and huMan Ecosystem approach: modelling a traNscultural eco-legal framework

November 19-20, 2024

Book of Abstracts

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani Piano Nazionale di Ripresa e Resilienza | Alma Mater Studiorum Università di Bologna | Università degli Studi Firenze | Università degli Studi di Trieste



Università degli Studi di Firenze
Campus delle Scienze Sociali
Via delle Pandette
50127 Firenze
Room D4/0.05 & D15/0.05

https://site.unibo.it/lumen/en

https://meet.google.com/qus-dusr-ivz

NextGenerationEU

PRIN 2022 PNRR “LUMEN - Law of nature and human ecosystem approach: modelling a transcultural eco-legal framework”, P.I. prof.ssa S. Bagni, Università degli Studi di Bologna, finanziato dall'Unione Europea – NextGenerationEU a valere sul Piano Nazionale di Ripresa e Resilienza (PNRR) – Missione 4 Istruzione e ricerca – Componente 2 Dalla ricerca all’impresa – Investimento 1.1, Avviso PRIN 2022 PNRR DD n. 1409 del 14 settembre 2022, codice proposta P20222H49L – CUP J53D23018680001.

Index

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani Piano Nazionale di Ripresa e Resilienza | Alma Mater Studiorum Università di Bologna | Università degli Studi Firenze | Università degli Studi di Trieste

The role of agents of carbon transformation in destabilizing and disrupting the fossil bloc from below

Anna Berti Suman, Marco Grasso, Daniel Delatin Rodrigues

Discourses on climate and climate politics have been recast in an 'existential' vein and centred on whose model of life can survive (Grasso 2022). This is evident especially in the lives of people daily confronted with the fossil fuel system. The urgency of the global ecological and climate crisis demands an overarching societal change, similar to what Polanyi (1944) referred to as the 'Great Transformation'. It requires – besides the obvious technological breakthroughs – a profound change of attitudes, behaviors, and values, and of norms, incentives, and policies (Tàbara et al. 2019; Fezey et al. 2020). For this change, the roles, actions, and interactions of multiple agents are crucial to overcome the resistance of incumbents and compel and/or induce them to embrace less carbon-intensive paths (Geels et al. 2017; Skjærseth et al. 2021). In this perspective, some agents become the driving force that destabilizes and disrupts the 'fossil bloc' (Grasso 2022; Watts 2005). We refer to the coalescence of interests defined a 'transnational historical bloc' (Gramsci 1929), a set of interests preventing a societal transition to less carbon-intensive models.

These agents, instead of being merely passive 'victims' of the fossil fuel dominant model, become 'agents of carbon transformation' (ACTs) to change the socio-economic systems they are immersed in. They contribute to put an end to the fossil bloc's harmful behaviors by (re)claiming sovereignty over land to preserve health and well-being, by reversing trends of silencing bad practices and other wrongdoings, by attempting to dismantling the very bases of the fossil bloc. To challenge the 'social license to operate' (Gunningham et al. 2004; Kelly et al. 2016) of the fossil bloc, ACTs can, for example, oppose an oil giant in a particular territory by providing institutional controllers with evidence of infractions and of the harmful impacts associated with fossil fuel activities. If ACTs manage to build coalitions with governmental and institutional subjects, their role, originally limited within the scope of social movements, may also acquire institutional relevance. Government and institutional actors who recognize and support ACTs (re)build bonds of trust and find new legitimacy in the eyes of disenchanted citizens. While ACTs can trigger interventions, they also need the support of institutions, as they possess instruments to impose substantial modifications to fossil operations. Thus, our conceptualization and analysis of ACTs explores the phenomenon at its intersection with regulatory governance structures and the related power dynamics. Our contribution will focus on two case studies: the first on the relatively poor region of Basilicata, in Southern Italy – a European hub for oil production since the '90s – whose inhabitants had to come to terms with oil extraction (Berti Suman 2024); the second on Civitavecchia, the 'fossil energy' city close to Rome, where a composite coalition of ACTs successfully resisted the conversion of a coal plant to gas by offering a sustainable alternative to it. Our overarching goal is to conceptualize and outline what we frame as the 'destabilization and disruption from below paradigm', where ACTs are the crucial driving force to direct socio-energy systems towards less carbon-intensive models.

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani PIANO NAZIONALE DI RIPRESA E RESILIENZA | ALMA MATER STUDIORUM UNIVERSITÀ DI BOLOGNA | UNIVERSITÀ DEGLI STUDI FIRENZE | UNIVERSITÀ DEGLI STUDI DI TRIESTE

The ecologization of environmental protection in the "Brazilian federalism": an analysis based on the theory of legal formants

Leura Dalla Riva

The climate emergency presents itself today as a challenge for humanity. The short-term and electioneering policies of contemporary democracies, however, ignore the interests of non-citizens, especially vulnerable populations at a global level who will be most affected by extreme climate events, non-human beings and future generations (cfr. Eckes, 2021; Fritsch, 2023). As a consequence of the permanence and deepening of socio-environmental and climate problems (cfr. IPCC, 2022), denouncing and seeking to overcome this situation, criticism of the anthropocentric nature of modern science and law has emerged in the 21st century (Capra; Mattei, 2015; Moraes et al., 2019; Leite, 2021). In this sense, important contributions in defense of an "ecologization" of the law, for example, have been developed within Brazilian doctrine. In this context, this research seeks to ascertain how Brazilian institutions and law have been mutating towards an ecological reading. To this end, Rodolfo Sacco's theory of legal formants is used, with an analysis of the Brazilian doctrinal, constitutional, legislative, and jurisprudential formants. Brazil has a peculiar federal organization that contrasts the traditional North American format, which is why many authors call it "Brazilian federalism" (Linhares, 2012; Ferreira Filho, 1982). The importation of the North American model was widely criticized due to the lack of historical and social correspondence between the countries, so that a "centralized federalism" was created in Brazil, which underwent its most significant change with the 1988 constitutional text, recognizing Municipalities and the Federal District as federative entities alongside the Union and the States (Souza Neto; Sarmento, 2012). Currently, however, this federated structure has allowed for the emergence of ecological readings in the Brazilian legal system, at local, state, and national level (Sarlet; Fensterseifer, 2021; Oliveira, 2022). In the field of constitutional wording, new interpretations have made it possible to recognize non-anthropocentric positions in art. 225 of the CRFB/1988. In the legislative field, non-anthropocentric attitudes - such as the Rights of Nature - have been recognized in local and state legislation. As for jurisprudence, there are regional and higher court rulings recognizing a mitigated anthropocentric reading of the 1988 Constitution, as well as adopting principles such as “in dubio pro natura” (Dalla Riva, 2024).

CAPRA, Fritjof; Ugo MATTEI, Ugo. The Ecology of Law. Toward a Legal System in Tune with Nature and Community. Oakland, Berrett-Koehler, 2015.

DALLA RIVA, Leura. Structural challenges to the rights of Nature’s protection in Latin America: a comparative study between Ecuador and Brazil. PhD Thesis. PhD in Comparative Law and Integration Processes. Università degli studi della Campania Luigi Vanvitelli. Tutor: Domenico Amirante. Caserta, Italy, 2024.

ECKES, C. (2021). Tackling the Climate Crisis with Counter-majoritarian Instruments: Judges between Political Paralysis, Science, and International Law. European Papers, 6(3), 1307-1324.

FRITSCH, M. (2023). Climate Change and Democracy. In: Pellegrino, G. & Di Paola, M. (2023). Handbook of the Philosophy of Climate Change. Springer, 2023.

LEITE, José Rubens Morato et. al. (Coord.). A Ecologização do Direito Ambiental Vigente: Rupturas Necessárias. 2. Ed. Rio de Janeiro: Lumen Juris, 2021.

LINHARES Paulo de Tarso Frazão et al. Federalismo à Brasileira questões para discussão. Diálogos para o Desenvolvimento. Volume 8. Brasília: IPEA, 2012.

MORAES Germana de Oliveira et. al. Do Direito Ambiental aos Direitos da Natureza. Teoria e Prática. Universidade Federal do Ceará. Fortaleza: Mucuripe, 2019.

OLIVEIRA, Vanessa Hasson de. Direitos da Natureza. 2. Ed. Rio de Janeiro: Lumen Juris, 2022.

SARLET, Ingo Wolfgang; FENSTERSEIFER, Tiago. Direito Constitucional Ecológico: Constituição, direitos fundamentais e proteção da natureza. 5. ed. São Paulo: Thomson Reuters Brasil, 2021.

SOUZA NETO, Cláudio Pereira de; SARMENTO, Daniel. Direito constitucional: teoria, história e métodos de trabalho. Belo Horizonte: Editora Fórum, 2012.

United Nations. IPCC. Climate Change 2022: Impacts, Adaptation and Vulnerability Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change. https://www.ipcc.ch/report/ar6/wg2/.

From Sustainable Development to Ecological Integrity: Sparse Signals of a Comprehensive Paradigm Shift in EU and Italian Environmental Law

Ilaria Costanzo

Degradation of ecosystems is, together with climate change, the hallmark of the so-called Anthropocene Epoch: its impact on societies' well-being – e.g. threats to food security, vulnerability to climate hazards, risk of diseases through spillover effects – is increasingly severe and its causal relationship with human conduct is widely documented. In the legal sphere, this awareness is questioning the effectiveness of environmental law and even the appropriateness of its overarching objective. The traditional approach of prevention and mitigation of environmental damage has indeed proven itself insufficient in meeting the sustainable development goal. In addition, the juridical transposition of the latter concept has been weak: environment, economy, and society, being conceived as equally important pillars of (sustainable) development, have been discretionarily balanced in administrative decisions and, ultimately, priority has been given to short-term economic interests, in spite of environmental protection. To overcome the inadequacies of the current legal framework, a new reference objective has been suggested, namely "ecosystem integrity". This concept describes the capacity of an ecosystem to maintain its organization and to continue its process of self-organization notwithstanding changing environmental conditions, supporting biological diversity, resource productivity, and services of value for humans. Replacing the objective of "sustainable development" with the "ecological integrity" one would imply establishing environmental protection as the prerequisite for any socio-economic development. I argue that, despite the apparently piecemeal references, this objective is progressively gaining consideration in EU law. I support this statement analysing two specific trends of environmental law – the "protective" one and the "proactive" one – which should be understood in continuity and reinforcing one another. The "protective" trend consists in the introduction of the DNSH principle and the corresponding conformity evaluation in the main EU Funds: through the promotion of a minimum standard of environmental safeguard – by imposing criteria whose respect guarantees the absence of significant harm for environmental objectives in human activities – EU Institutions are recognizing the priority of the environment over economic and social interests. The protection of a non-negotiable core of ecological integrity is, in other words, imperative and therefore excluded from discretional balancing with other values. This represents an advancement of the assessment dynamics of the EIA. Moreover, the enhancement of ecosystem's integrity is supported by a "proactive" trend, consisting in advancing the regenerative approach as a major strategy for environmental protection, beside prevention and mitigation. Despite the current deadlock, the EU proposal for a Regulation on nature restoration proves the intention of embracing restoration initiatives in a comprehensive way, with the aim of reconstituting the integrity of damaged ecosystems and abandoning the emergency-response logic of repairing specific and isolated pollution and degradation phenomena. In other words, prevention and mitigation legal instruments for sustainable production and consumption are deemed insufficient for respecting planetary boundaries; they must therefore be accompanied by a strong legal framework for restoring ecological integrity. Ultimately, the aim of the essay is to collect evidence for demonstrating a paradigm shift in environmental law's overarching objective, from sustainable development to ecological integrity, through the systematic analysis of legal novelties that support this interpretative position.

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani Piano Nazionale di Ripresa e Resilienza | Alma Mater Studiorum Università di Bologna | Università degli Studi Firenze | Università degli Studi di Trieste

Non-individualistic view of human nature ans sustainable development. Perspectives from Global South

Clarissa Giannaccari

In 2015, the District Court of Lahore in Pakistan stated that «Climate Justice links human rights and development to achieve a human-centered approach, safeguarding the rights of the most vulnerable people and sharing the burdens and benefits of climate change and its impacts equitably and fairly», recognizing the close link between human conception, environment and development.

In 2018, the Supreme Court of Colombia affirmed «The scope of protection of fundamental rights is not only the individual, but also the other . . . the other people who inhabit the planet, other animals and plants . . . but, also, it includes those not yet born, who also deserve to enjoy the same environmental living conditions as we do», applying the principle of intergenerational equity to future generations.

The most recent debate about the climate crisis, environmental protection, and sustainable development is closely linked to the reflection on future generations. It's essential to consider alternative theories and legal structures compatible with a non-individualistic view of human nature. Development in climate litigation provides numerous concepts to envision a suitable degree of legal safeguard for future generations.

A significant number of cases from different countries have found an intergenerational aspect of constitutional rights, including rights to life, property, and a healthy environment. A number of courts have determined that future generations are protected by rights, that the principle of intergenerational equity should inform the interpretation of rights, or that sustainable development to meet the needs of future generations is a fundamental right in itself. In a separate opinion on a case before the Inter-American Court of Human Rights, Judge Trindade observed that «Human solidarity manifests itself not only in a spacial [sic] dimension ...but also in a temporal dimension—that is, among the generations who succeed each other in the time, taking the past, present, and future altogether».

In the Global South, courts generally play a greater role when governments fail to address social, economic, and ecological problems. Many constitutions, particularly in Latin America, include environmental provisions or even nature's own rights. In the absence of such rights, many courts have created them by interpreting the right to life to include ecological concerns. This active approach, which has been termed 'transformative adjudication', enables courts to react to new challenges. Particularly since 1993, the Supreme Court of the Philippines has ruled in the first successful decision on the rights of future generations worldwide that the right of future generations to a "balanced and healthful ecology" is so basic that it "need not even be written in the Constitution for [it is] assumed to exist from the inception of humankind".

Legal pluralism - shaped by international environmental law, indigenous rights, human rights, and new interpretation of private law under a 'green principle' - can provide a valid basis for constructing frameworks for intergenerational justice. Recognizing the value of these varied sources enables us to broaden our temporal perspectives and understand the interconnectedness of the past, present, and future.

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani Piano Nazionale di Ripresa e Resilienza | Alma Mater Studiorum Università di Bologna | Università degli Studi Firenze | Università degli Studi di Trieste

The Katsa-su territory of the AWA indigenous people as a victim of the armed conflict in Colombia: a transcultural and interjurisdictional contribution to the rights of nature - El territorio Katsa- su del pueblo indígena AWA como víctima del conflicto armado en Colombia: un aporte transcultural e interjurisdiccional para los derechos de la naturaleza.

Daniel Laureano Noguera Santander

The present investigation seeks to understand how the large territory “Katsa Su” belonging to the Awá indigenous people was recognized as a victim of the armed conflict, a precedent of great importance in Colombia that invites us to understand how from this community, despite living firsthand the Armed conflict confrontations and a constant fight for their territory by various external agents, demonstrates that the survival of the population and its culture were greater, leading to the strengthening of its worldview. For this reason, it is of great relevance to know its history, its uses and customs, its identity and its own justice to understand how, based on this, the State must organize a new intercultural understanding, and if it wants to go further, adopt a holistic vision. It is possible to guarantee this transition from the classic legal paradigm to the transcultural and also the interjurisdictional, elements that allow the creation of rights that emerge from this new social interrelation.

In this sense, it is highlighted that in 2016 in Colombia a Peace Agreement was signed that created the Special Jurisdiction (JEP), a decision-making body that has currently transcended important issues that favor oppressed populations, an example of this. is, the recognition of the “Katsa Su” territory, as a victim of the armed conflict, where from a new epistemic vision this jurisdiction adopts an ethnic-racial, transcultural and interjurisdictional approach, constituting a new form of interpretation and argumentation from the inter -logos, which offers from Colombia a possibility of understanding others in their reasons from the “polyphony of logos”, an awareness that from the cultural logos, will allow us to understand that it is important to look for paths and alternatives that allow us to open up to spaces of other logos; This being a new ethical-political perspective that from this dialogue of knowledge in Colombia allowed the development of the transcultural and interjurisdictional, ensuring that the worldview of the Awá and their vision of the territory is understood by the state. The remembrance from other logos allowed us to classify the place they inhabit as a victim of anthropocentrism, thus involving new approaches to strengthen the new rights of nature and in conclusion, reparating in an ecocentric way to all the true victims of the conflict.

Ancestral and Earth law knowledge: intercultural legal practice as foundation for Mother Earth rights

Johana Fernanda Sánchez Jaramillo

This essay will analyze the importance of a legal practice based on ancestral knowledge from First Nations and Earth Law as a foundation for Mother Earth Rights. The inclusion of these understandings in judges' decisions promotes an intercultural approach to Mother Earth Rights. This is essential since the legal personhood of Mother Earth right as a hybrid category, or mestizo, should be built based on the dialogue of two different types of knowledge: western and ancestral -from diverse indigenous, afro, or farmers communities. The conversation between these two sources is critical for fostering a reciprocal interaction between humans and non-humans.

This perspective involves a paradigm shifting from the instrumental relation established during the Abya-Yala colonization to an intimate and loving relationship among living and non-living creatures. Ancestral knowledge such as Awá people will help the judges to build stronger cases because some of the case rulings were overturned due their lack of strong legal and theoretical grounds and knowledge about nature/Mother Earth rights from the judges.

Earth law is relevant because his main advocate Tomás Berry was inspired by First Nations correlation to other living beings. Earth law three basic rights: to exist, to inhabit and to fulfill one's role in the Earth community have been practiced since ancestral times for indigenous people such as Awá or Kamentsá from Colombia.

This work will demonstrate how ancestral knowledge and Earth Law could strengthen the legal personhood, adjudicated to rivers, regions, parks, by embracing an intercultural legal practice that enhance and enrich the hegemonic comprehension of Mother Earth/Nature. The old vision of Earth as a subject, living being, a mother and caregiver, challenges the juridical perpetuated narratives of her and contributes to re-create "new" social representations of Nature, which allow her exploitation to the extent of putting at risk her and our survival.

Finally, as legal professionals we must rethink the way we view this matter. Evaluating our own approach to law is critical to overcome, as in Paolo Grossi words, "the modern mythology of law", which preferred a petrified law rather than alive and aligned law as a product of social and cultural practices.

This essay will have the following structure:

1. Introduction
2. Nature rights
3. Earth law
4. Awá and Kamentsá knowledge
5. Intercultural legal practice
6. Final reflections

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani Piano Nazionale di Ripresa e Resilienza | Alma Mater Studiorum Università di Bologna | Università degli Studi Firenze | Università degli Studi di Trieste

Tools for the judicial application of the Non – Regression Principle. Non – Regression Principle, Emerging Environmental Law Principles, Environmental Justice, Judicial Tests, Ecological and legal standards.

Angela María Amaya- Arias

The non-regression principle derives from the principle of progressivity of human rights and has gradually been incorporated into Environmental Law. The essence of the principle is a limitation on government action that would appreciably reduce the level of environmental protection achieved unless such a change is absolutely and duly justified. However, it also has a judicial application as a tool that allows judges to identify when a legal modification or situation unjustifiably affects the level of environmental protection achieved. Although this principle has its antecedents in 2012, and despite having an important doctrinal consolidation, Latin American jurisprudence is still very timid on the subject. Therefore, this research seeks to review and update what has happened to the principle in recent years, identify recent judicial decisions that allow us to understand how the principle is being applied, and provide guidelines to comprehend ecological and legal minimum standards as crucial elements when applying the principle. Finally, we aim to propose updated tools for its interpretation in light of a regressivity test.

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani PIANO NAZIONALE DI RIPRESA E RESILIENZA | ALMA MATER STUDIORUM UNIVERSITÀ DI BOLOGNA | UNIVERSITÀ DEGLI STUDI FIRENZE | UNIVERSITÀ DEGLI STUDI DI TRIESTE

How genetic information of a spices could help to protect Nature in Courts: the case of the sea cucumbers in the Galapagos Islands

David Cordero-Heredia

Jaime Ortiz Pachar

The rights of nature movement gained significant momentum with their recognition in the Ecuadorian Constitution of 2008. Since then, activists, scientists, lawyers, and communities have been shaping the jurisprudence surrounding these rights through litigation. The 2019-2022 Constitutional Court was particularly receptive, deciding the first cases concerning the rights of forests and rivers. These decisions have developed crucial concepts that help the public understand the rights of nature, including the right to integral respect for its existence and the maintenance and regeneration of its life cycles, structure, functions, and evolutionary processes.

Scientists play a fundamental role in identifying the limits that human activities should not exceed to prevent permanent damage to ecosystems or the extinction of endangered species. Robust data on the species in the “Los Cedros” forest was crucial in convincing to the majority of the Constitutional Court to ban mining activities there. In the criminal justice system, protecting the rights of nature involves prosecuting actions that endanger the environment. For decades, seasonal bans on hunting and fishing certain species have been essential tools for the government to maintain healthy populations. In both constitutional and criminal law, protecting the rights of nature requires understanding the behavior of species and ecosystems to fit the legal categories of protection.

Our project aims to demonstrate how in-depth genetic studies of species that serve as biological markers can be key to understanding when an ecosystem is at risk (constitutional law) and when human actions violate environmental protections. Our case study focuses on the sea cucumber in the Galapagos Islands. Due to its ecological importance and high demand in Asian markets, the sea cucumber is a protected species during certain months. Studying sea cucumber populations can provide evidence in rights of nature cases, indicating areas of the Galapagos that may require special protection policies. Additionally, mapping the genetic information of sea cucumber populations can help environmental authorities verify the origin of captured specimens, ensuring fishing activities comply with protected area regulations.

This case study can guide activists in implementing preventive measures to monitor ecosystem health and gather evidence for potential litigation in both constitutional and criminal law.

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani Piano Nazionale di Ripresa e Resilienza | Alma Mater Studiorum Università di Bologna | Università degli Studi Firenze | Università degli Studi di Trieste

Can restoration as a more-than-human right repair lake Vättern? Exploring how ecological restoration as a right can repair harm to more-than-humans - a case study of lake Vättern.

Mariam Carlsson Kanyama

Ecological restoration is widely acknowledged as essential to mitigate climate change and halt biodiversity loss[1]. Increasingly, obligations to restore ecosystems are codified in international legal instruments.[2]

There is however no uniform understanding or use of the term restoration by legal actors and courts at the international level.[3] The lack of uniform understanding among the judiciary arguably reflects the fact that there is no singular definition of ecological restoration by practitioners and that 'ecological restoration' or 'ecosystem restoration' is an evolving scientific concept. [4]

The term Rights of Nature (RoN) is a new legal approach whereby nonhumans are recognized as rights-holders (Kauffman & Martin 2018). Restoration as a right, the right to restoration, is a central provision in many RoN laws. [5] Scholarship that considers the right to restoration in relation to a specific ecosystem is scarce.

In light of the above, this paper discusses the opportunities and challenges of enshrining restoration as a legal right and how it addresses and repairs harm to more-than-human beings. It does so by exploring the right to ecological restoration through Earth jurisprudence[6] in relation to lake Vättern[7], a vulnerable aquatic ecosystem and source of drinking water in southern Sweden. By consulting the Eco-jurisprudence[8] monitor, the paper reviews and analyses legislation and case law related to restoration. Thereafter, the paper discusses what restoration for lake Vättern entails by considering the health of lake Vättern (as described in scientific reports and through data from citizen science initiatives) in relation to the science of restoration ecology. It then critically engages with the right to

[1] P.18, Synthesis report, Becoming generation: restoration, ecocsystem restoration for people nature and climate UNEP-FAO, 2021

[2] Please see the Aichi Biodiversity targets in 2010, EU Biodiversity strategy for 2030, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on nature restoration and the UN General Assembly in 2019 declaring 2021- 20230 as the UN Decade on Ecosystem Restoration

[3] P. 15, Mendes A, Martínez Hernández L, Badoz L, Slobodian L, Rabaça JE. Towards a legal definition of ecological restoration: Reviewing international, European and Member States' case law. RECIEL. 2023;32(1):3-17. doi:10.1111/reel.12476 towards a legal defintion of restoration

[4] Ibid

[5] See Article 72, Ecuador's constitution (2008) & article 2, Mar Menor Act (19/2022, of 30 September) & Article 2 (j) Universal Declaration for the Rights of Mother Earth, Cochabamba, Bolivia 2010.

[6] Earth jurisprudence is a philosophy of law and human governance based on the idea that humans are only one part of a wider community of beings and the community is dependent on the welfare of the Earth as a whole, see Harmony With Nature - Earth Jurisprudence Inputs (harmonywithnatureun.org)

[8] The Eco Jurisprudence Monitor is an interactive online platform that compiles ecological jurisprudence initiatives globally Eco Jurisprudence Monitor

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani Piano Nazionale di Ripresa e Resilienza | Alma Mater Studiorum Università di Bologna | Università degli Studi Firenze | Università degli Studi di Trieste

restoration as an RoN provision in relation to the concept of restorative justice[9] in the context of ecological restoration at lake Vättern.

[9] The goal of restorative justice is to repair harm caused by a conflict (Levad 2012)

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani PIANO NAZIONALE DI RIPRESA E RESILIENZA | ALMA MATER STUDIORUM UNIVERSITÀ DI BOLOGNA | UNIVERSITÀ DEGLI STUDI FIRENZE | UNIVERSITÀ DEGLI STUDI DI TRIESTE

How can the concept of forestizenship contribute to the bottom-up construction of a Plurinational State based on the Sumak Kawsai? An indigenous perspective.

Elias Canal

There is a prevailing consensus within the international community regarding the existence of an ecological crisis, manifested through various problematic aspects of the ecosystem, such as the collapse of biodiversity and issues related to climate change.
The contemporary "ecological deficit" is understood as a simplified calculation of a complex issue, wherein the consumption of natural resources exceeds the planet's capacity for organic reproduction and regeneration, resulting in a severe unsustainability of the current human existence model[10]. Marquardt's study is particularly insightful in this context, asserting that globalizing the European lifestyle, which is dependent on fossil fuel consumption, would require the resources of three to six planets[11].
According to Amirante[12], this scenario does not merely represent a crisis of economic development but a crisis of civilization itself. To address this globally significant challenge, there is an emerging appreciation for studies aimed at realigning collective needs with the ecosystem. Outside the Euro-Atlantic framework, Toniatti[13] argues that an expansion of the field of inquiry of the comparative method should be favored, particularly within the Global South. Baldin[14] contends that the primary question is whether, beyond mainstream discourses on sustainable development, there exist alternative theories that seek to reinforce the protection of social-ecological systems and substantiate the concept of ecological sustainability.
This article aims to amplify the voices from the Brazilian forest, specifically those of autochthonous peoples who do not align with nationalisms emerging from colonialist foundations, but rather with the concept of Sumak Kawsai (Quechua language, translated in Spanish as Buen vivir) within a Plurinational State. The specific proposal concerns a new principle that can stimulate new considerations of what is common in a Plurinational State.
The central question addressed is how the concept of forestizenship can contribute to the bottom-up construction of a Plurinational State based on Sumak Kawsai.
This research is inspired by Ailton Krenak, a leading contemporary voice in Brazilian indigenous thought. Krenak explains that the concept of forestizenship emerged in a regional context during a dynamic period of social struggle in Amazon forest at the end of Brazil's military dictatorship (post-1975). The communities there sought to establish something distinct from traditional citizenship, advocating for a new arena for rights claims based on affective alliances, which presuppose "affections between unequal worlds". With the goal to transcend the conventional notion of citizenship, which centers on the urban/city/polis concept of the National State, Krenak[15] proposes a

[10] Carducci, M. *Le premesse di una "ecologia costituzionale"*. Veredas do Direito, Belo Horizonte, v. 17, n. 37, 2020, pp.89-111. Disponibile in: http://revista.domhelder.edu.br/index.php/veredas/article/view/1760. Accesso: 14/06/2024.
[11] Marquardt, B. *Historia de la sostenibilidad. Un concepto medioambiental en la historia de Europa central (1000-2006).* Historia Crítica N. 32, Bogotá, 2006, pp. 172-197.
[12] Amirante, D. *Costituzionalismo ambientale. Atlante giuridico per l'Antropocene*, Il Mulino, Bologna, 2022, pp. 1-273.
[13] Toniatti, R. *Per una concezione aperta, plurale ed eterodossa del metodo comparato nel diritto costituzionale*. DPCE online, 2020/1, p. 838.
[14] Baldin, S. *La sostenibilità ecologica e i principi eco-giuridici per la salvaguardia del sistema Terra*. Rivista di Diritti Comparati, n.3, 2022, p.242.
[15] (Free translation) Krenak, A. *Futuro Ancestral*, Cia das Letras, São Paulo, 2023, p.82.

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani Piano Nazionale di Ripresa e Resilienza | Alma Mater Studiorum Università di Bologna | Università degli Studi Firenze | Università degli Studi di Trieste

forest perspective as a framework that "does not seek equality but instead recognizes intrinsic alterity in each person and being, thus introducing a radical form of inequality".
From this viewpoint, it is worth exploring the hypothesis that adopting the concept of forestizenship within contemporary constitutionalism could offer a novel approach to nature, ecology, and culture. This would mean reinterpreting politics as a different dimension of existence, distinct from the predatory practices driven by powerful interests.

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani PIANO NAZIONALE DI RIPRESA E RESILIENZA | ALMA MATER STUDIORUM UNIVERSITÀ DI BOLOGNA | UNIVERSITÀ DEGLI STUDI FIRENZE | UNIVERSITÀ DEGLI STUDI DI TRIESTE

After the Los Cedros ruling. The impact of rights of nature on the social context

Anna Pedrolli

The rights of nature do not only protect non-human subjects, but also introduce into law a holistic paradigm, whose effects affect both humans and non-humans. It is certainly true that the recognition of rights to natural beings, such as the right of respect for their existences and the right of maintenance and regeneration for their life cycles, does primarily concern the well-being and the interests of the natural element itself. Indeed, this is the crucial turn achieved by the rights of nature in environmental law: the attribution of ontological weight to non-human subjects that shifts the balance in the dispute between rights and allows for more effective protection. However, rules still mainly influence human behaviour. Influence that does not end, however, in the more obvious prohibition of destructive practices towards protected nature, but rather induces a deeper transformation of the relationships between human and non-human beings, now placed on the same ontological level. In this socio-cultural impulse, articulates the holistic and ecosystemic dimension of the new law of nature approach.

In Ecuador, on 10 November 2021, the Constitutional Court issued a ruling that recognises the protection of the rights of nature of the Bosque Protector Los Cedros, violated by the granting of two mining concessions by the Ministerio de Minería. The Court has not merely protected the preservation of the biodiversity that animates the forest ecosystem, but it has also promoted the construction of a participatory plan for the management and care of the Bosque Protector Los Cedros, involving the communities that, bordering the protected area, are affected by the forest.

Although the prescriptive and transformative function of the social context is a fundamental element of law, legal discipline does not go beyond the enunciation of the rule, without having the analytical tools to assess its social, inter-relational and epistemological effects. Therefore, the paper starts from this lack, using the methodological tools of anthropology to analyse the impact of the recognition of Bosque Protector Los Cedros rights on the communities affected by the ruling. In the first instance, the effects will be assessed in terms of the practices and meanings that the inhabitants of the communities enact in their relationship with the forest and in their daily lives. Subsequently, the analysis will look at the transformations in the meaning of the conceptual categories brought into play by the ruling such as protección, conservación, manejo and uso sustentable.

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani PIANO NAZIONALE DI RIPRESA E RESILIENZA | ALMA MATER STUDIORUM UNIVERSITÀ DI BOLOGNA | UNIVERSITÀ DEGLI STUDI FIRENZE | UNIVERSITÀ DEGLI STUDI DI TRIESTE

Ecosystemic Rights: Rethinking Environmental Human Rights from a Holistic Perspective

Francesco Gallarati

Despite the widespread acknowledgment of environmental rights in constitutional and international law, pressing environmental issues like climate change and biodiversity loss have only escalated in recent years, indicating a failure of the conventional rights-based approach to effectively address systemic environmental challenges.

A significant factor contributing to this failure is the atomistic nature of traditional environmental rights frameworks. By focusing primarily on individual rights, these frameworks prove inadequate in addressing broader environmental concerns that extend beyond localized impacts. This inherent limitation underscores the necessity for alternative approaches capable of offering more holistic solutions.

In response to these shortcomings, alternative perspectives on the relationship between rights and the environment have emerged, notably from Latin America. For instance, the recognition of nature's rights, as evidenced by Ecuador's 2008 Constitution, represents a departure from anthropocentric viewpoints towards a more ecocentric worldview. However, this approach raises concerns regarding the potential replication of atomistic limitations inherent in traditional environmental rights, as well as the risk that the rights of nature may succumb to conflicting human rights in the balancing process.

Proposing an innovative solution, this paper introduces the concept of "ecosystemic rights". This concept aims to integrate the notion of ecosystem services – the benefits that humans derive directly or indirectly from ecosystems – into fundamental rights doctrine, thereby acknowledging the intrinsic connection between human rights and environmental preservation. Ecosystemic rights recognize that the integrity of natural ecosystems is not only vital for environmental conservation but also essential for the effective enjoyment of human rights. By considering ecosystem services as integral components of human rights, this approach places a duty on the State to preserve the ecosystem conditions necessary to ensure the effective enjoyment of rights.

Drawing on the legal precedent of the 2017 ruling of the Constitutional Court of Colombia on the Arroyo Bruno case, the paper illustrates how the correlation between fundamental rights and ecosystem services can inform judicial decisions. In this case, the plaintiffs – some indigenous communities settled in an area affected by a mining project - did not argue for the violation of nature's rights but rather sought to uphold their own fundamental rights to food, water and health protected under Colombian Constitution. Accepting the plaintiffs' claims, in its decision, the court highlighted the interdependence between indigenous rights and the ecosystem services provided by local biodiversity.

Importantly, the proposed notion of ecosystemic rights does not advocate for the creation of a new category of rights, but instead seeks to recognize the inherent ecosystemic dimension within existing human rights. It reframes human rights discourse to acknowledge that environmental preservation is a precondition for the fulfillment of all fundamental rights, thus avoiding the risk of conflict between human and nature's rights. Moreover, this approach does not necessitate a departure from liberal constitutionalism or a profound revision of constitutional and international documents, but rather calls for an interpretative shift towards a holistic perspective of existing human rights.

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani Piano Nazionale di Ripresa e Resilienza | Alma Mater Studiorum Università di Bologna | Università degli Studi Firenze | Università degli Studi di Trieste

Overcoming capitalist economics and the appropriation of common resources. The role of the constitutionalisation of the rights of nature in Ecuador for a new eco-legal framework

Amilcare D'Andrea

On the one hand, global economic interference and the resulting exploitation of natural resources; on the other hand, state sovereignty and its limits on resource use, limits dictated by the welfare of citizens to ensure the full enjoyment of collective rights, including the right to a healthy environment: in this dynamic search for balance between contradictory phenomena, integral expression of the liquid complexities of the most violent phase of the Anthropocene, the era of capitalism and neoliberalism (Capitalocene), comes the political and legal role of the rights of nature, primarily through the concept of the intersectionality of ecofeminism as a reaction to the violence of productivism and consumerism, toward human and nonhuman minorities in the democratic framework.

In the era of postmodernity, the human ecosystem approach, which must be considered inextricably linked to the law of nature, highlights how the protection of nature and the environment "beyond West" no longer results exclusively from the concept of utility for human beings, for the effects that their degradation could cause only on the rights of other human beings, such as health, life, or personal integrity: the protection of nature and the environment must also integrate consideration of the effects their degradation might cause to the other living organisms with which the planet is shared, equally deserving of protection.

With reference to the innovations of the Ecuadorian constitutional model and considering the transnational principles that have structured themselves since the advisory opinion of the Inter-American Court of Human Rights, number OC-23/17 of 15 November 2017, a new starting point has been marked for Latin American jurisprudence and political systems.

Specifically, through the inclusion of the rights of Nature in the Ecuadorian Constitution, which showed a broader scope than the legal framework of international environmental law, in the context of a growing recognition of cultural pluralism as a legal principle, we intend to highlight the contradictions, and the related difficulties, of the construction of a new ecocentric paradigm, as indicated by the Constitutional Charter, in relation to the protection of private property and the freedom of private economic initiative, which have structured the capitalist economy and the neoliberal paradigm, allowing abuses and exploitations in Abya Yala: the container of, among other things, the evolutionary stages of colonialism.

This chapter draws on the deconstructions of 'deconstructionist' comparative law, moving from the formants evident in Ecuador in relation to the rights of nature and private property/liberty of economic initiative, inside the experimental prototypes of Caring States, Intercultural States, Ecological States.

To do so, I will analyse the relevant constitutional articles and the main cases, starting for example with Constitutional Court rulings such as case No. 1149-19-JP/20, known as 'Los Cedros', in which the conflict between economic activity and rights of nature is most expressed. Then I will concentrate on the role of the Consulta popular in this regard, including a brief analysis of the institution and its socio-political - as well as indirectly legislative - role, as well as the constitutional principles that guide the Court's control and supervision activities. In the final part I will thus assess the impact of

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani Piano Nazionale di Ripresa e Resilienza | Alma Mater Studiorum Università di Bologna | Università degli Studi Firenze | Università degli Studi di Trieste

the valorisation of the rights of nature and the ecosystem approach in Ecuador, and how relevant the radical modification of the neoliberal socio-economic system of reference can be for a real paradigm shift.

The role of jurisprudence, of the "militant" doctrine that has continued to nurture the so-called nuevo constitucionalismo, and the role of legislative power and constitutional reform processes in the perspective of the new directions of environmental constitutionalism are intertwined with the innovative concept of "cultural formant" defined by Silvia Bagni, in relation to the conflicts that are generated - or, simply, illuminated - by the rights of nature, which today represent the engine for strengthening participatory democracy and the necessary contribution of the different constitutional orders to the fight against climate change. Thus, a necessary change in thinking is taking place in the conception of the human-nature relationship within an innovative economic and eco-legal framework.

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani PIANO NAZIONALE DI RIPRESA E RESILIENZA | ALMA MATER STUDIORUM UNIVERSITÀ DI BOLOGNA | UNIVERSITÀ DEGLI STUDI FIRENZE | UNIVERSITÀ DEGLI STUDI DI TRIESTE

From extraction to exclusion: colonial obstacles to an ecosystem approach in Puerto Rico's environmental law

José Arturo Maldonado Andreu (McGill University)

Colonial dynamics impact the livelihoods of the most vulnerable by disrupting their relationship to nature and hindering integral approaches to the environment. The ecosystem approach proposes a legal frame for tackling environmental disequilibrium in the Anthropocene. Nonetheless, in the Global South colonial experiences render this approach potentially insufficient as environmental law is build upon fragmented management practices. In this paper I argue that implementing an ecosystem approach through environmental law in the Global South requires challenging structural legal problems brought by the legacies of colonialism.

In colonial systems, nature is seen as spaces of conquest and appropriation for the extraction of resources, and as places of conservation, excluding traditional community relationships with the environment. This was the case of Puerto Rico. Using natural and human resources, the American sugar industry and the military complex transformed nature and human relations on the island. With the emergence of environmentalism, conservation objectives that excluded people and communities was instilled as the focus of environmental law, severing an already affected relationship between people and the environment. This colonial relationship, directed by the local government, which continuously furthers colonial interests as an agent of the colonial power, has conditioned the ways in which Puerto Ricans relate to the environment, as individuals and collectively. The result is an obstacle to develop an ecosystemic vision of nature that integrates human, environmental and other organism's needs.

My hypothesis is that an ecosystem approach can be used to design environmental law regimes that break with colonial logics and dynamics in places like Puerto Rico. First an ecosystem approach can base challenging state-centered environmental management, which in the Puerto Rican context is reinforced by the persistent occupation of an imperial power that continues to define the island's environmental laws and cause their weak implementation. These factors can also be found in many other current and former territories. The colonial experience makes the implementation of environmental and natural resources laws malleable to the economic necessities of the empire. Regulations, permits, and laws are then based on supporting colonial interests, and applied upon convenience. Therefore, laws protecting the environment become weaker through this lax and inequitable implementation.

Second, an ecosystem approach can challenge environmental laws created with exclusive conservation objectives. Conservation often reflects imperialist views of nature, disconnecting local communities from their climate, practices and worldviews. In Puerto Rico, environmental regulations, shaped by the colonial power, uses exclusive conservation as the main mechanism of regulating the relationship between humans and the environment. Laws, judicial decisions and government action support this paradigm. The US federal government adds another level of regulation and controls important ecological valued lands in Puerto Rico, furthering exclusion from local communities and their interests. To adopt an ecosystem approach to environmental law, we must address the decolonization of these laws. Recognizing colonial legacies is crucial for better meeting the needs of diverse communities living in various ecosystems. In this context, the ecosystem

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani PIANO NAZIONALE DI RIPRESA E RESILIENZA | ALMA MATER STUDIORUM UNIVERSITÀ DI BOLOGNA | UNIVERSITÀ DEGLI STUDI FIRENZE | UNIVERSITÀ DEGLI STUDI DI TRIESTE

approach must confront the historical context of colonialism, to ensure equitable outcomes for both people and nature.

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani PIANO NAZIONALE DI RIPRESA E RESILIENZA | ALMA MATER STUDIORUM UNIVERSITÀ DI BOLOGNA | UNIVERSITÀ DEGLI STUDI FIRENZE | UNIVERSITÀ DEGLI STUDI DI TRIESTE

The relevance of non-human animals in the ecocentric and anthropocentric legal perspective.

Silvia Zanini

It is now beyond dispute that the progressive and unstoppable spread of a sensitivity – also legal – towards non-human animals at national, European and global level is occurring. This trend, centred on the recognition of the intrinsic value of animals, is part of a broader phenomenon of the emergence and spread of a holistic view of the relationship between humans and Nature.

This leads to interesting reflections on the way in which different socio-cultural and legal contexts deal with the issue. In particular, this paper aims to highlight the similarities and differences between anthropocentric and avowedly ecocentric systems with regard to the transposition of this trend.

In order to illustrate this point, the case of Ecuador will be considered, which recognised fundamental natural rights to wild animals as part of Nature (Estrellita Monkey ruling).

This ecocentric approach will then be compared with the emerging European model, which, although more protective, is considerably anthropocentric. To this end, the regulatory and jurisprudential developments in some EU Member States aimed at the legal recognition of animals as sentient beings (including the recent Belgian constitutional reform of 2024) will be analysed.

The objective of this study is to ascertain whether, beyond the disparate visions that inform the systems under investigation, this trend ultimately leads to comparable practical outcomes or, conversely, to divergent considerations.

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani PIANO NAZIONALE DI RIPRESA E RESILIENZA | ALMA MATER STUDIORUM UNIVERSITÀ DI BOLOGNA | UNIVERSITÀ DEGLI STUDI FIRENZE | UNIVERSITÀ DEGLI STUDI DI TRIESTE

Collective property in the “non-occidentalist west”. A case study in Italy.

Rachele Cecchi

This paper argues the importance of decolonization as a common effort crossing the epistemological categories of the Global North and South and the extractivist paradigm on which they are based, with special reference to the idea of land property. The analysis acknowledges the entanglement of colonialism and property which substantiated the construction of property law globally: such “colonial lives of property” (Bhandar) have silenced and made invisible a plurality of alternatives, not only within the so-called “Global South” but also among the Northern (or Western) legal systems. The focus will be on such “non-occidentalist west” (Santos) paradigms embedding alternative conceptions of property (ie: collective property), some of which show ecosystemic characters and convey a deeper relationship between human and nature through the property and the use of land. The aim is to show the existence of a hidden pluriverse whose threads are complexly woven into the broader fabric of western legal systems. The case-study of collective lands in Italy will be analyzed through the lenses of decolonial comparative law (Salaymeh and Michaels): the debate on “alternative ways of owning” (Grossi) will be introduced as well as the current legal regime of law 168/2017 recognising collective lands as the primary legal order of original communities.

Finanziato dall'Unione europea NextGenerationEU | Ministero dell'Università e della Ricerca | Italiadomani PIANO NAZIONALE DI RIPRESA E RESILIENZA | ALMA MATER STUDIORUM UNIVERSITÀ DI BOLOGNA | UNIVERSITÀ DEGLI STUDI FIRENZE | UNIVERSITÀ DEGLI STUDI DI TRIESTE