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Um constitucionalismo integral para o antropoceno*

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An integral constitutionalism for the anthropocene

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Resumo
O Antropoceno é a era geológica que descreve e representa o impacto irreversível da ação humana no meio ambiente. Este conceito-limite revolucionou inevitavelmente a abordagem e a compreensão da questão ambiental. O termo tem assumido forte centralidade no debate público internacional, influenciando as ciências humanas e exatas. A contribuição pretende sustentar como a entrada no Antropoceno exige uma profunda revisitação da relação entre o homem e a natureza, repensando também o conceito de desenvolvimento sustentável numa visão mais ampla, numa perspectiva "integral" que inclua todos os aspectos da vida humana, tanto materiais, como espirituais e sociais. O direito ambiental, para conseguir uma mudança concreta de paradigma face aos desafios do Antropoceno, é chamado a proceder a uma reformulação que enfoque os aspectos éticos e valorativos das questões ambientais, de forma a colocar estas últimas no centro dos debates sobre a soberania, o papel do Estado e da Constituição.

Palavras-chave: constitucionalismo ambiental, constitucionalismo integral, antropoceno, meio ambiente, direito público comparado.

Resumen
El antropoceno es la era geológica que describe y representa el impacto irreversible de la acción humana en el medio ambiente. Este concepto-límite revolucionó inevitablemente el enfoque y la comprensión de la cuestión ambiental. El término tiene asumido fuerte centralidad en el debate público internacional, influenciando las ciencias humanas y exactas. La contribución pretende sostener como la entrada en el Antropocentro exige una profunda re-visitación de la relación entre el hombre y la naturaleza, repensando también el concepto de desarrollo sostenible en una visión más amplia, en una perspectiva "integral" que incluya todos los aspectos de la vida humana, tanto materiales, como espirituales y sociales. El derecho ambiental, para conseguir un cambio concreto de paradigma ante los retos del Antropoceno, es llamado a proceder a una reformulación que enfoque los aspectos éticos y valorativos de las cuestiones ambientales, de forma a poner estas últimas en el centro de los debates sobre la soberanía, la función del Estado y de la Constitución.

Palabras clave: *constitucionalismo ambiental, constitucionalismo integral, antropoceno, medio ambiente, derecho público comparado.*

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Abstract
The Anthropocene is the geological era that describes and represents the irreversible impact of human action on the environment. This limit concept inevitably revolutionized the approach and understanding of environmental issues. The term has assumed strong centrality in the international public debate, influencing the human and exact sciences. The contribution aims to support how entering the Anthropocene requires a profound revisiting of the relationship between man and nature, also rethinking the concept of sustainable development in a broader vision, in an "integral" perspective that includes all aspects of human life, both material and, such as spiritual and social. Environmental law, to achieve a concrete paradigm shift in the face of the challenges of the Anthropocene, is called upon to carry out a reformulation that focuses on the ethical and evaluative aspects of environmental issues to place the latter at the center of debates on sovereignty, the role of the State and the Constitution.

Keywords: *environmental constitutionalism, integral constitutionalism, anthropocene, environment, comparative public law.*

1 Introduction

Welcome to the Anthropocene! The Copernican revolution of environmental law.

The understanding that man's action today is capable, consciously or unconsciously, of conditioning and modifying the terrestrial environment (in all its physical, chemical and biological characteristics), symbolized by the concept of the Anthropocene, has profoundly modified the way of understanding and representing the environmental issue, not only by the exact sciences, but also, and mainly, by the Anthropocene. by the human and social sciences. In fact, although Paul Crutzen's famous provocation at the Cuernavaca Conference in 2000 – "we are no longer in the Holocene" – even though it did not lead to the official recognition of this term, the media, the arts and the social sciences have progressively made it one of the main elements of environmental narratives in the international public debate[1].

The first contribution that the idea of the Anthropocene offers to all the exact sciences and humanities is that it represents a "threshold concept", a watershed that modifies not only the way of visualizing the geological evolution of planet Earth (from the Holocene to the Anthropocene), but also the history of humanity itself, since it takes us back to the living conditions of the last 12,000 years and allows us to read the present, historically in a broader perspective. We have moved from the time of human history (which, in most cases, inquiring about the origin in prehistory) to the time of geological history and planetary history, which span an infinitely longer period. Therefore, it is a matter of thinking about human becoming beyond the mere instrumentalism that characterizes the traditional epistemological paradigm of the social sciences and, in particular, of law, aimed at finding remedied solutions for the present or for the immediate future.

The very concept of sustainable development, understood in its "instrumental"

[1] Crutzen's provocation was formulated at a conference in Cuernavaca in 2000, while the thesis that underlies it was formalized for the first time The *Anthropocene* (Crutzen; Stoermer, 2000, p. 17-18).element.

sense, which sees the protection of the environment as a secondary need and that can only be satisfied from a guarantee of economic development, must be re-examined in order to arrive at a notion of "sustainability" that considers all the components of life – material, spiritual, individual and social –. and that resizes the human being in the natural contexts that make his existence possible. In addition, the human and social sciences, when studying the environment, cannot be limited to the introduction of concepts derived from biology and ecology (indispensable for protecting species and the balances of ecosystems and between ecosystems), but must also adopt the perspective of the earth-system sciences, in a planetary and systemic perspective, to be integrated also into the legal sciences, with the proper balance.

Regardless of validation by official scientific authorities and the debate about its dating ("a difficult choice, but one that does not change the problem", according to Emilio Padoa-Schioppa)[2], the Anthropocene represents, especially for the social sciences, a turning point, a true Copernican revolution, with broad implications for contemporary culture. The reintegration of the fracture between culture and nature implied by the Anthropocene in a way puts the Promethean man of Western modernity back on Earth. If in the past "the human and social sciences described society as separate from the material and energy cycles and detached from the finiteness of the Earth and its life cycles", today society rediscovers its connection not only with nature, but with matter in the broad sense and with energy, and, "at the same time, the natural sciences can no longer be considered as separate and neutral spheres in relation to society" (Pellegrino; Di Paola, 2018, p. 38-41). The social sciences, including law, must therefore reconstruct the sense of an integrality of human experience, capable of simultaneously considering the individual, the social dimension and the biological-natural dimension of man, without falling into the fragmentations typical of modernity and, in our case, of positivism legal. This does not mean, obviously, a return to the past, to the rediscovery of the myth of the good savage or to the search at all costs for cosmogonies and ancient knowledge, but rather the restoration of balance and depth in the historical and practical reflection of the social sciences, recovering a "lost paradigm", following the suggestive reflections of Edgar Morin. For the French sociologist and epistemologist, "what is dying today is not the notion of man, but an insular notion of man, isolated from nature and from his own nature", and, consequently, if "the bell rings death for a closed, fragmented and simplistic theory of man", then "the era of open, multidimensional and complex theory begins" (Morin, 2020, p. 203).

However, the cultural shock of the Anthropocene has not yet completely affected the world of law, even though in the last two decades new interpretative lines have been

[2] In this sense, the precious booklet by E. Padoa-Schioppa (2021, p. 31), entitled *Anthropocene: A new epoch on Earth, a sfida per l'umanità*, which exemplifies in a clear, but not trivial, way the scientific foundations and conceptual framework of the Anthropocene.

developed, which I will address in this exposition. In this context, environmental law is one of the areas most affected, if not the most involved, by this Copernican revolution in the social sciences, with immediate implications that require its reformulation to give centrality to the axiological and deontological dimension within the discipline and to project environmental issues to the center of the great debates on transformations in sovereignty, the role of the State and the Constitution in a *multilevel* law(organized at multiple levels), the new legal subjectivities, the rights and freedoms of the human being – no longer isolated, but integrated. It is, therefore, a matter of developing the constitutional dimension of environmental law and attributing to it its just dignity and relevance.

2 Law and the Anthropocene: A New *Legal* Grammar

What, then, are the effects on the law in the awareness that the problems of the Anthropocene require urgent and effective solutions? In particular, in the field of law, this new awareness takes longer than the processes of dissemination of basic notions about the Anthropocene in the field of exact sciences or other social sciences. This happens both because of the proverbial slowness of the law, in accepting innovations that come from outside, and because an effective, broad and lasting reformulation of legal epistemology requires a lot of time. This is even more true in the field of environmental law, which, in about fifty years of doctrinal elaboration, has not yet been able to fully free itself from the original connotation of an emergency and instrumental discipline in relation to economic imperatives.

From an epistemological point of view, Philippopoulos-Mihalopoulos' reflection is central, underlining how the Anthropocene requires a new grammar to construct an environmental law that can be defined as *Anthropocene*. First of all, the legal perspective, as well as that of the other social sciences, will have to be adapted to the new temporal dimension imposed by the Anthropocene, to the *deep time* linked to the geological and planetary dimensions (solutions that for today cannot fail to take into account a retrospective analysis of the past and a long-term perspective). As this author points out, the focus of law "must be oriented outwards and not inwards, observing humanity and its mishaps from a certain distance", and this requires "a counterintuitive pause that considers and includes topics previously considered irrelevant, futures on a planetary scale, and non-human bodies" (Philippopoulos-Mihalopoulos, 2017, p. 120).

From this perspective, the unveiling of the link between human activities and the chemical and geological transformations of the Earth makes manifest the relationship between man and nature, between man and planetary forces, as an inseparable continuum that makes the historical opposition between anthropocentrism and ecocentrism obsolete. In other words, the Anthropocene makes it clear to us that "our presence on Earth necessarily includes our

'environment', whether it is 'natural' or not; we are always in a single set with the planet" (Philippopoulos- Mihalopoulos, 2017, p. 125-126). From there, a theoretical space opens up, a *grammar of law*, which can contemplate non-human subjects (for example, animals, trees or nature as a whole), not only as *fictiones juris*, but as elements of the *Anthropocene continuum*.

The assumption of the Anthropocene by law will therefore require a revisiting of the major categories of legal science based on the basic nuclei of law: the subjects of law (among which natural and artificial non-human subjectivities are postulated), the rights themselves (through the debate on the rights of nature), but, more generally, towards an improvement of the institutions linked to the conceptual core of *responsibility*. As Kathleen Birrell and Daniel Mathews suggest, "the language of responsibility can help construct new forms of subjectivity sensitive to the consideration of these non-human forces that are becoming increasingly important in the context of the Anthropocene" (Birrell; Matthews, 2020, p. 276).

From this perspective, the Anthropocene implies the transition from the *era of rights* (Norberto Bobbio, 2014), in which man conceives himself as an abstract subject with powers and privileges over the natural world, "the incorporeal, abstract and rational specialist in Cartesian subject-object relations", described by Anna Grear (2015, p. 237) to the *era of responsibility*, in which "normativity and legal subjectivity are reoriented towards the consideration of needs, (inter)dependence and relationality, as values that facilitate ways of sharing places" (Birrell; Matthews, 2020, p. 289). In this new era, the construction of original categories can take place through the comparison between Western law and other legal cultures, linked to different worldviews[3], but also through a rereading that uses the lenses of responsibility, the *topoi* of European legal culture such as the triad *liberté/égalité/fraternité* of the French Revolution (to be interpreted as values that can never be separated and isolated from each other) or of post-World War II solidarity and personalism, as we will see in the final part of this reflection.

With regard to legal institutions for the Anthropocene, it is necessary to reiterate that this new understanding implies the need for a joint and interconnected view of environmental issues as problems of a social and natural nature at the same time. From a multilevel perspective, it implies an institutional involvement of all levels of law (from the local to the national and international sphere), which cannot envision dirigiste shortcuts of global dimensions or environmental leviathans at the international level. The *anthropocene continuum*, therefore, without neglecting any territorial level of political representation, tends to value the constitutional dimension as an institutional space that allows the full affirmation of

[3] AMIRANTE, Domenico. Environmental constitutionalism through the lens of comparative law: new perspectives for the anthropocene. *In fashion*: AMIRANTE, Domenico; BAGNI, Silvia (ed.). **Environmental constitutionalism in the anthropocene**. New York: Routledge, 2022. p. 148-167.

environmental values at the symbolic and identity level and that guarantees, at the same time, a satisfactory degree of stability and flexibility (respectively different in relation to the instability of international law and the mutability of legislation and regulation administrative).

3 The centrality of the principles of environmental law

As for the tools to be used, in the Anthropocene, legal thought will have to transit through a strategic and not instrumental rationality, using methodologies and tools that go beyond the *problem solving approach,* typical of nineteenth and twentieth-century law, substantially dominated by logical schemes of an economic type, inadequate for the overlapping of different planes to which the *Anthropocene continuum refers*.

The Anthropocene therefore highlights the opportunity to privilege the approach to environmental law (and, more generally, law) as a *law by principles*, which I already anticipated in the early 2000s in some writings dedicated in particular to the triad of principles of environmental management (Amirante, 2003). The idea, which is not new (as it refers to studies that took shape at the end of the last century and the beginning of the new millennium), understands that a principled approach to environmental law makes it possible to identify guidelines for legislators and administrators, both to frame the rules to be issued in urgent and emergency cases within a unitary system, and to identify, especially for the benefit of interpreters (judges and administrators), unitary criteria for resolving, in a homogeneous manner, the doubtful or new cases that practice submits to them from time to time. One more reason to believe that, also and especially in relation to the change of perspective imposed by the Anthropocene, the systemic and ordering effect of the principles makes it possible to scientifically establish environmental law as a set of rules of *action* rather than *of position*, that is, as a set of rules of conduct that, instead of directly producing new subjective legal situations, ensures a *rereading* and rearrangement of them, in light of the needs related to environmental imperatives.

From a methodological point of view, in my view, principles are appreciated, above all, for their functioning in different ways in relation to the rules, based on what Giuseppe Limone defines as "strategic rationality". According to Limone, in fact, "strategic rationality, as opposed to parametric rationality", typical of norms, which is expressed by classes of cases, "emerges as a rationality that, far from applying a fixed schema to a set of data whose limits are defined, is capable of permanently altering, in relation to its change, its mode of incidence on situations" (Limone, 2006, p. 49).

In the first twenty years of the third millennium, the diffusion of the Anthropocene thesis gave rise to a triple phenomenon: on the one hand, the widespread application of already established environmental principles (for example, those of the triad of *management*

principles), and on the other, the strengthening of some emerging principles since the end of the century XX and, finally, the elaboration of new principles. Regarding the first phenomenon, it is observed that the principles are increasingly present not only in the jurisprudence of national and international courts, but also in the texts of the environmental constitutions approved or revised in the 2000s, as can be seen, above all, with the inclusion of the *triad* not only in the *Charte de l'environnement* French, but also in some African (Ivory Coast, Somalia, South Sudan, Chad, Mozambique), American (Mexico, Ecuador) and Asian (as in Nepal) constitutions.

With regard to the affirmation of emerging principles, it is worth highlighting, among others, the increasingly widespread use of the principles of non-retrogression in environmental matters and *in dubio pro natura*. The principle of non-retrogression in environmental matters is configured as a kind of meta-principle aimed, above all, at legislators and administrators, as a barrier to any retrogression of environmental protection legislation. This is a principle that originates from a doctrinal hypothesis by Michel Pieur, who, as early as 2012, wondered whether "environmental law can imply intangible rules capable of benefiting from a *stony clause*", which allow the identification of a "non-regressive environmental law, which is, therefore, a right in continuous progress" (Prieur, 2012, p. 6).

In fact, as Prieur points out, the prohibition of retrogression, more than a totally new principle, represents the consecration of an ability of environmental law to defend the regulatory *protection acquis*, present in many international conventions and documents, and also extend it to domestic law, especially in the presence of explicit constitutional declarations on the subject. So far, the highest point of affirmation of this principle can be considered the 2015 Paris Agreement on climate change, which mentions it in several passages, to the point of suggesting (Scovazzi, 2017) its rapid evolution towards the principle of "progression of the environment", since "it has not only an obvious defensive character, aimed at avoiding setbacks, It also has a positive aspect, which should lead to progressive improvements in the level of environmental protection".

Another emerging principle, especially in Latin America, is the one expressed through the Latin phrase *in dubio pro natura*. It is a principle that found its first constitutional enshrinement in Article 395, paragraph 4 of the Ecuadorian Constitution, which provides that: "in case of doubt as to the scope of the legal provisions in environmental matters, they shall be applied in the sense most favorable to the protection of nature." Unlike the precautionary principle, which concerns cases of scientific uncertainty, this principle therefore has a much broader potential for application, as it facilitates the task of legal operators in cases of ambiguity or regulatory gaps, in order to ensure the effective implementation of environmental legislation, providing guidance in cases of legal uncertainty. According to Nicholas A. Robinson (2014, p. 16), this principle is also applicable when "equitable decisions appear to be unbalanced", in order

to identify a solution that best protects nature. The principle *in dubio pro natura* has already been applied, even before its enunciation in the Ecuadorian Constitution, in the jurisprudence of the courts of some Latin American countries[4].

The advent of the Anthropocene as a context of action for environmental law gave rise to the elaboration of new principles, until now salient only in doctrinal terms. The greatest contribution in this regard comes from Robinson's reflections, which are based on a non-ideological critique of sustainable development. Robinson states that while many tools related to sustainable development, such as strategic, impact, and advocacy assessments, remain valid, it is "the very concept of sustainable development that is inadequate for building the principles we need," because "with a Planet Earth that will soon be home to nine billion people, it is not possible to sustain the expectation that everyone can live as resource-intensive nations" (Robinson, 2014, p. 15). Hence the proposal of a new genealogy of principles – such as the principles of biophilia, resilience and prediction – based on the potential assumption of compatibility with almost all legal traditions in the world. The affirmation of the principle of biophilia, present in most ethical-religious traditions, would in fact make it possible to extend the prudential measures used until then for the conservation of nature in protected areas to all environmental law, since "biophilia can motivate human beings to consciously cultivate the life that surrounds them" (Robinson, 2014, p. 20) in all its aspects.

The principle of resilience, already widely used today in the official documents of supranational and national institutions in relation to ecological transition policies, if systematically assumed as a legally binding way to organize human activities, would make it possible to integrate environmental sustainability objectives into economic and territorial planning that today are often examined only in the of implementation, or, in the worst case, in the litigation phase. The principle of foresight would make it possible to insert the long-term perspective needed in the Anthropocene into the rules of day-to-day management and administration and into the norms of economic and social planning, at all levels of the legal system.

On the basis of these considerations, it is important to strongly reiterate that the full affirmation of the principles requires their adoption at the constitutional level, not only through the jurisprudence of the constitutional courts, but also through explicit insertions in constitutional texts, a phenomenon that has begun to be observed more diffusely in the last two decades.

4 An integral constitutionalism for the Anthropocene

If, as I have tried to demonstrate in the course taken so far, the constitutional level presents itself as the most appropriate level to face the challenges of the Anthropocene, we must

[4] Specifically, in Costa Rica and Brazil.

ask ourselves: what form of constitutionalism? But, above all: what can be the consequences of the awareness of the transition to a new geological era on constitutionalism as we have understood and defined it until now? Obviously, the answers to these questions require a collective and long-term reflection, involving different constitutional cultures outside and within the *mainstream* of Western constitutionalism, and thus transcends the space and scope of this exhibition.

Environmental constitutionalism is, in fact, a complex and remarkably differentiated phenomenon, which has achieved a very wide affirmation and diffusion at the planetary level, but which also contains some common traits. As for the first aspect, the quantitative data collected leave no doubt: in 2022, almost 80% (eighty percent) of the world's legal systems (156 out of 193 Constitutions) recognize environmental protection textually in their constitutions, and most States protect environmental values through the jurisprudence of their supreme or constitutional courts, so that the total absence of forms of constitutional protection of the environment can now be considered a rare exception. The sense of urgency that arises from the observation of the impact of human actions on the geophysical and ecological balances of the Earth, amply demonstrated at the scientific level and plastically synthesized by the notion of the Anthropocene, the geological era in which humanity is now aware of being able to determine, for better or for worse, the conditions for its own survival, certainly contributed to this statement.

Among the common characteristics of environmental constitutionalism is, in the first place, the recognition of the latter as a central tool to be able to operate this *paradigm shift* (Ost, 2021) necessary, in the Anthropocene, to ensure the foundations of humanity's life, not only for the present, but also, and above all, for future generations. Closer to the citizens than international declarations and treaties (technical instruments and distant from the common man), constitutions have not only a stronger and more stable normative force than laws and administrative acts, but also a moral and symbolic value capable of rooting changes and adapting them to the development of social cultures. of the legal systems that constitute as fundamental Charters.

The expansion of a true environmental constitutionalism represents, therefore, one more step than the simple insertion of mere references to the environment (the so-called *constitutionalization of the environment),* insofar as it postulates and performs an axiological and structural role for environmental values, through their placement in what can be indicated as *noble* partsof the Constitutions: preambles, fundamental principles of the legal system, primary objectives of state policy, catalogues of rights. The progressive affirmation of environmental constitutionalism has led, therefore, to the prevalence of the *normative formant* over the jurisprudential, which has happened not only in legal systems linked to or inspired by the *civil law* tradition, but also in mixed legal systems and in many constitutional systems in the area of *common law*, so much so that today the few legal systems, even relevant ones such

as Great Britain and the United States, that protect the environment essentially through jurisprudential interventions, represent minority exceptions.

With regard to values, a common feature of most of the constitutions analyzed consists of linking the protection of the environment to the protection of the *future world*, insisting on the necessary projection of environmental norms for the benefit and safeguarding of the interests of future generations. This happens with different formulations and emphases, either through references to the traditional notion of sustainable development, or through a growing declension of sustainability as a characteristic to be associated with social (intergenerational solidarity) or ecological elements, thus marking the transition from the sustainability of development to that of life.

Another common feature of environmental constitutionalism is the recognition of the great principles of environmental law, which are moving from the international and supranational level to the national level, creating a virtuous circle, within the scope of a multilevel environmental discipline, in which the various territorial and legal dimensions are no longer connected by a rigidly hierarchical criterion, but by osmotic processes of *cross-fertilization* (cross-fertilization). As I mentioned, the principles convey environmental values by linking them to general rules of conduct (such as the precautionary principle or the principle *in dubio pro natura*) that allow their applicability to different situations, as well as their adaptability to different legal contexts and mentalities and also ensure their durability over time, helping to create a *sustainable law*.

The historical analysis allows us to identify a qualitative leap in environmental constitutionalism that, from a secondary concern as in its birth phase, has progressively established itself as a central element of many constitutions approved or reformed in the last two decades. In what I have called *the adult phase* (from the new millennium onwards), environmental constitutionalism asserted itself from the base, through a *bottom-up dynamic* understood in a double sense. On the one hand, the driving force comes from constitutional systems belonging to the South of the world, for which the affirmation of a correct relationship between human beings and nature represents a kind of epistemological and political redemption. On the other hand, a new centrality of the environment among constitutional principles goes hand in hand with the democratization of legal systems, the recognition of new forms of social subjectivity, or the rescue of traditional and indigenous communities, in the past obscured by the nation-state of the liberal tradition.

In its *adult phase*, environmental constitutionalism also changes its very nature, from a technical instance focused on the protection of specific goods and interests (environmental heritage, landscape, natural resources), to a transformative instance of constitutions, in a broad sense. A transformation that, by postulating a balanced conception of the relationship between man and nature, is destined to produce significant consequences in

the very way of understanding constitutionalism. The ambition of environmental constitutionalism in the face of the challenges of the Anthropocene is to breathe new life into a constitutional theory in crisis, proposing a perspective of reconstruction of a complete and integral human dimension in which the great values of liberal and democratic constitutions are confused with the inseparability of three components of the human being: in the individual sense, social and biological. This is the *constitutional paradigm shift* that represents the most effective response to the *solution of epistemological and cognitive continuity* created by the Anthropocene.

In this sense, there are those who argue that a full assumption of the consequences of the Anthropocene requires a rereading of the social contract that founds modern constitutionalism, through the affirmation of the principles of responsibility and interdependence between the individual, society and nature. According to François Ost (2021, p. 420), in fact, "what we need today is no longer a Declaration of Independence as in 1776, but a *Declaration of Interdependence"* in which "competitive individualism must make room for the demands of cooperative autonomy". This is the starting point for a complex proposal, theoretical in nature, but loaded with practical consequences*, of a "planetary social contract*", understood not in the unifying and monistic sense of universal or global, but in the perspective inspired by Edgar Morin of the *age planetaire* (planetary era), based on the concept of *interconnection* (Morin; Kern, 1994).

The new social contract must be articulated in eight dimensions: the dimension of its foundations, the spatial dimension, the temporal dimension, the dimension of the object of the contract itself, the dimension of the relationship between rights and duties, the dimension of the nature and type of legal instruments to be used, the dimension of politics and, finally, the dimension related to cognitive and epistemological tools. It is particularly useful, to conclude this reflection, to develop synthetically the eight dimensions of this new social contract. With regard to the foundations of the new social contract, the central and preparatory element is precisely the transition from the liberal individualism of the eighteenth and nineteenth centuries (cyclically resurgent in Euro-Atlantic constitutionalism) to the concept *of the cooperative autonomy* of the person, since today "the individual is not even conceivable outside his social and natural relations with the environment" (Ost, 2021).

With regard to space, we are witnessing a triple recomposition of the coordinates of the nation-state, due to the growing importance of the international level, on the one hand, the local level, on the other, and, finally, the protagonism of extra-state bodies of various types and origins (multinational companies, NGOs, traditional and indigenous communities). These transformations of the normative space require the affirmation of multilevel forms of *law*. With regard to the temporal dimension, it is necessary to consider not only the central role played by the intergenerational solidarity (to be considered now a common feature of environmental law in all latitudes), but

also the necessary redefinition of principles such as sustainable development itself (read from the imperative of conserving environmental resources over time) or the affirmation of other principles, *in primis* the principle of non-retrogression in environmental matters.

On the other hand, with regard to the object of the social contract, I have repeatedly stated that the Anthropocene implies an objective overcoming of the nature/culture distinction: if humanity becomes a geological force, nature ceases to represent a mere object, it becomes a subject that determines policy, so that environmental law ceases to be a technical discipline. peripheral and secondary, and now occupies a central place on the political agenda. This reversal of perspective does not lead to excluding *a priori* the possibility of conferring legal personality on natural (or non-human, more generally) elements, but also to a different view of the concept of liability, which can no longer be declined exclusively as imputation to a subject of the damage caused, but as a "mandate that implies a commitment for the future" (Ost, 2021, p. 429).

Here we come to the dimension of rights, for which the affirmation of the planetary social contract implies a strong expansion of the dimension of duties, which, if *taken seriously,* must be understood not only in relation to individuals, but also to social formations, business subjects and public institutions themselves. As for the peculiar nature of *Anthropocene law*, it should assume a *much* more flexible status and adaptable to the changing conditions of its application, along the lines outlined by the analysis of the structure of environmental law as a principled law. At the same time, legal systems will have the increasing need to interact with alternative forms of normativity, such as social norms and rights of customary or chthonic origin (following the indications of authors such as Glenn, Menski, De Sadeleer).

With regard to the forms of politics, it must necessarily be open to the recognition of innovative institutions and subjects that, without calling into question the requirements of classical representative democracy, will have to integrate and complete them. In this sense, it will be necessary to resort to new forms of consultation and participation of citizens, forms that are even institutionalized, (such as, for example, the French experiences of the *Débat pulic* or the *Convention citoyenne du climat,* or the *prior consultations* in South American countries). In addition, it is also necessary to strengthen the existing instruments of access to justice, which are more easily implemented in many experiences in the South of the world (such as *public interest litigation* in India or popular action in Brazil)[5] and to expand the space for civil society participation, starting from associations to companies and economic operators.

The last dimension of the new social contract, related to the renewal of cognitive and epistemological tools, has been a common thread of this exposition, in which I sought to demonstrate how the evolution of the relationship between law and science in the Anthropocene

[5] On the merits, check out the essay by Maria Sarah Bussi (2022, p. 201-220).

will have to lead to the conscious assumption, by Law, of scientific data not as mere exogenous elements of decision-making, but as structuring elements of the decision-making processes themselves, as is already the case, for example, through the processualization of the precautionary principle. In the words of Ost (2021, p. 436), "in contrast to the scientific arrogance of previous decades, the precautionary policy takes risks seriously" in order to arrive at informed and shared decisions, based on transparent procedures, aimed at assessing the social acceptability of risks.

To retrace the events related to the birth and evolution of environmental constitutionalism means to describe a transformation of the very way of understanding the Constitutions and the State, based not on ideological positions, but on the concern with the primary condition of existence of the human being (and more generally of all the natural species on Earth), that is, life, life, in all its material and spiritual connotations. Thanks to environmental constitutionalism, a *shared responsibility for life is affirmed*, declined in different ways in the various (and often anquistic) juridical-political or philosophical-religious cultures, from *the buen vivir* of the Andean constitutions, to the *ubuntu* of the African ones, passing through the environmental principles linked to *tawheed* and *ahimsa* common to many Eastern traditions, to the protection of the foundations of life and intergenerational solidarity in European culture.

From this common datum, to be cultivated and developed through dialogue between legal and constitutional cultures, an *integral constitutionalism can be developed* in which the protection of the environment is transfigured into a more general principle of biophilia. This should not be conceived as an ideological inversion of the to affirm the value of nature *against* man, but as an acceptance of the complex nature of the human being, or, as Morin said, of his "bio-socio-anthropological" trinitarian nature. According to Morin, the Trinitarian conception of man indicates that "there is an indissoluble relationship between these three themes, because it cannot be said that the human being is 33% individual, 33% society and 33% biology. What can be said is that the human being is 100% individual, 100% social and 100% biological" (Morin, 2016, p. 1-2).

5 Conclusion

In other words, environmental constitutionalism, subsumed in the broader category of integral constitutionalism, based on the realization that the three notions of being individual, social and biological are inseparable and that "one cannot function without the other", will have *to integrate* the two dimensions that informed the great constitutionalist narratives of past centuries, the dimension of eighteenth-nineteenth-century liberal individualism (taken up by neo-constitutionalism) and the social dimension of democratic and social constitutionalism, often declined in a conflicting way in the twentieth century, with the biological-natural dimension, always present in the background, but hidden by the separation between nature

and culture typical of the modern world. It is on the reconciliation of these three dimensions that the challenge of integral constitutionalism is based, on whose success depends the destiny not only of the human species, but of many of the forms of life on Planet Earth, as we have known them in the last millennia.

References

AMIRANTE, Domenico. **Diritto ambientale italiano e comparato**: principi. Napoli: Jovene, 2003.

AMIRANTE, Domenico. Environmental constitutionalism through the lens of comparative law: new perspectives for the anthropocene. *In:* AMIRANTE, Domenico; BAGNI, Silvia (ed.). **Environmental constitutionalism in the anthropocene**. New York: Routledge, 2022. p. 148-167.

BIRRELL, Kathleen; MATTHEWS, Daniel. Re-storying Laws for the Anthropocene: rights, obligations and an ethics of encounter. **Law and Critique**, [*s. l.*] v. 31, n. 3, p. 275-292, 2020. Available at: https://doi. org/10.1007/s10978-020-09274-8. Accessed on: 02 jan. 2024.

BOBBIO, Norberto. **L'età dei diritti.** Torino: Einaudi, 2014.

BUSSI, Maria Sarah. Courting the environment: public interest actions in the global south. *In*: AMIRANTE, Domenico; BAGNI, Silvia (ed.). **Environmental constitutionalism in the anthropocene**. New York: Routledge, 2022. p. 201-220.

CRUTZEN, Paul; STOERMER, Eugene. The "Anthropocene". **Global Change Newsletter**, n. 41, p. 17-18, 2000. Available at: http://www.igbp.net/download/18.316f18321323470177580001401/1376383088452/NL41.pdf#page=17. Accessed on: 02 jan. 2024.

GREAR, Anna. Deconstructing anthropos: a critical legal reflection on 'anthropocentric' law and anthropocene 'humanity'. **Law and Critique,** [*s. l.*],v. 26, n. 3, p. 231–242, 2015. Available at: https://doi.org/10.1007/ s10978-015-9161-0. Accessed on: 02 jan. 2024.

LIMONE, G. Lo statuto teorico dei principi tra norme e valori. *In:* AMIRANTE, Domenico (ed.). **La forza normativa dei principi**: il contribuição del diritto ambienatle alla teoria generale. Padova, CEDAM, 2006. p.33-64.

MORIN, Edgar; KERN, Anne-Brigitte. **Homeland Land**. Milano: Raffaello Cortina, 1994.

MORIN, Edgar. **Sette lezioni sul pensiero globale**. Milano: Raffaello Cortina Editore, 2016.

MORIN, Edgar. **Il paradigma perduto**: che cos'è la natura umana?. Milano: Mimesis, 2020.

OST, François. Le droit constitutionnel de l'environnement: un changement de paradigme?. *In:* COHENDET, MARIE-ANNE (right). **Droit constitutionnel de l'environnement.** Paris: Mare & Martin, 2021. p. 405-438.

PADOA-SCHIOPPA, Emilio. **Anthropocene**: una nuova epoca per la Terra, una sfida per l'umanità. Bologna: il Mulino, 2021.

PELLEGRINO, Gianfranco; DI PAOLA, Marcello. **Nell'Antropocene**: ética e politica alla fine di un mondo. Rome: DeriveApprodi, 2018.

PHILIPPOPOULOS-MIHALOPOULOS, Andreas. Critical Environmental Law in the Anthropocene. *In:* KOTZÈ, Louis (ed.). **Reimagining Environmental Law and Governance for the Anthropocene**. Oxford: Hart Publishing, 2017. p.1-20. Chapter 12.

PRIEUR, Michel. Le nouveau principe de non-régression en droit de l'environnement. *In*: PRIEUR, Michel; SOZZO, Gonzalo (dir.). **La non régression en droit de l'environnement**. Brussels: Bruylant, 2012. p. 5-46.

ROBINSON, Nicholas Andrew. Fundamental principles of law for the anthropocene?. **Environmental Policy and Law**, [*s. l.*], v. 44, n. 1-2, p. 13-27, 2014.

SCOVAZZI, Tullio. Il principio di non-regressione nel diritto Internazionale dell'ambiente. *In*: MARRANI, Daniela. (ed.). **Il contribuição del diritto internazionale e del diritto europeo all'affermazione di una sensibilità ambientale.** Napoli: Editoriale Scientifica, 2017. p.1-8.

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