BIOSPHERE AND CONSTITUTION
I

Pasquale Policastro

From Constitutional Comparison to Life in the Biosphere

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I

Uniwersytet Szczeciński

Pasquale Policastro

From Constitutional Comparison to Life in the Biosphere

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Introduction to the series: Biosphere and Constitution

Keywords

legal systems and legal orders, individual and cosmic manifestation of Life, life of individuals, life of the communities of the surrounding world, constitutional fundamental duty to protect Life of the Biosphere and of the human communities, toward a new approach to the rule of law

Introduction

The formation of legal systems, from the dawn of human civilizations, has taken place with the aim of protecting the manifestations of the existence of human societies, starting with life itself. The development of human self-awareness first led to the realization that our life is part of a larger Life, that of the world in which we live.

The people of early antiquity performed the first acts of interpretation, recognizing a parallel between a fundamental will, which moved the elements, ensured the return of the seasons, animals, and fruits, and their own will. From this basic awareness that their life was individualized – because individual was their being and individual were its needs – they understood that this life was embedded in various levels of other manifestations of Life. First, there was the surrounding world, seen as a totality and as an envelope of many different essences. Then, there was the community, especially the basic social one, through which the life of the species could continue.

The intuition of the existence of a possible isomorphism between the envelope of essences and principles observed in the world and that of communal life – starting from the circle around which they sat to warm themselves and discuss – is the primary intuition that has founded the entire science of law and politics. It is a science because it attempts to maintain those stable relationships and enduring values within the human community, even amidst

constant transformation, which they observed in Life, starting from the celestial sphere above them, the waters surrounding them, and the terrestrial spaces on which they lived.

It is a science also because it seeks to identify general relationships in the surrounding world, through which Life manifests and reproduces, and tries to adapt them to communal life. In this interpretive effort, ritual, recognition of the other, mutual care, play, and organization have a fundamental role. The transition from the ethological to the ethical occurs through the search for a constant analogy with the balance of nature. It moves from the intuition of a structural similarity between the complex circle of Life and the life of one's own community to the search for an efficient analogy.

Thus, we move from the intuition that one lives within Nature and must conform to its many manifestations to survive, to the idea that it is possible to create human relationships that, while reproducing natural ones, conform to what is felt as specific to their community. We proceed from sensing an isomorphism between the human community and nature to constructing a homeomorphism, or a topological analogy. Hence the need to compare these two constructs: that of nature, which we try to approach, and that of society, which manifests in history and lives in law.

From this necessity arose the study of what is auspicious and what appears inauspicious at a given moment, through the interpretation of signs from the surrounding world and their analysis after events. Hence the evaluation and feedback, ranging from forms such as the sacrifice of the sovereign to revolution, government transformation, or recording the progress made in governing the community and the State, leading to the formulation of constitutional principles.

The fundamental problem of public law today becomes critically observing the relationship between the homeostasis of the surrounding world and the order of human societies. The study of the regularities of the biosphere, the study of nature as a bearer of its own mode of life, symbiosis as an evolutionary principle, the development of symbolic language, the protection of the freedom to interpret the existence of the world, the reflection on exosomatic tools and their use, particularly in technological societies, become part of the reflection on our existence in the Life of the Biosphere and in law, in the legal order.

This series thus aims to develop interdisciplinary reflections based on this foundation, serving as a basis and necessary complement to the reflection on the constitution as the fundamental discipline of legal systems conscious of their existence in the biosphere. It emphasizes that their fundamental task is to ensure their actions do not permanently compromise its regularities. In this effort, I thus try to encourage the search for the humanity of law.

In this series, the central problem – namely, the protection of Life in all its forms, as indicated in the title of the first volume – concerns both the protection of the Biosphere and

Constitutionalism understood as a discourse on the indispensable nature of constitutions in the life of human communities. Consequently, Constitutionalism is also called upon to account for the relations between humanity and Nature.

For this reason, whenever I refer to Life understood as a cosmic phenomenon; to the Biosphere as a whole, as the sphere that hosts Life but within which the Noosphere also develops (which I regard as the sphere in which the psychic dimension of all living beings unfolds); to the Semiosphere, in which the ensemble of discourses produced by human beings through symbolic language is manifested; and to the Technosphere, which includes the material and immaterial artefacts generated by humans – I shall write these terms with an initial capital letter.

The same applies when I refer to Constitutionalism in the sense of a discourse oriented toward realizing the conditions that allow individuals and communities, taken as a whole, to be protected in the manifestations of their existence – both in their relations with one another and in their relationship with Nature.

I also ask to be permitted to refer to Nature with an initial capital letter whenever I intend to convey its maternal dimension, as the entity within which Life manifests itself and bestows its gifts upon us.

General Introduction to the volume

1. Aims and Genesis of the Work

The fundamental aim of this monograph is to demonstrate that human dignity is expressed through the biological, psychological, spiritual, and cultural dimensions of human existence, all of which unfold within the regularities of the biosphere. In introducing this volume, I intend to explain the motivations that drove me to undertake this research. I approached legal studies primarily because law addresses the problem of describing reality by creating models through which social reality can be regulated and evolve in a direction that the majority of society finds desirable. However, in delving deeper into these concepts, I realized that they require significant further exploration.

Legal systems do not only affect those who recognize themselves as, and are recognized as, members of these systems. A city that emerges by a river or dominates a strait influences the entire world that must make use of that river or strait. A city that aims to grow in wealth and commerce will inevitably seek to dominate other peoples and territories.

From the beginning of my research, I have believed that this state of affairs is not an intrinsic necessity of legal systems. One of the fundamental problems of law, as I have sought to apply my reflections to the surrounding world, is finding solutions that enable everyone to live in peace, combining each person's opportunities and enjoying common resources. Achieving these goals requires a significant level of self-awareness and ethics in communal life.

This level of self-awareness is essential for successfully addressing common problems and forms the basis of inclusive and effective democratic participation. Achieving these goals cannot be left to a few representatives. It requires the commitment of each individual and necessitates tools that can be understood and implemented by everyone.

The realization of such goals starts from three levels of listening: listening to others, to cultures, and to nature. A fundamental step towards this awareness was my engagement with Polish culture through the connections between the Catholic University of the Sacred Heart, where I studied law, and the Catholic University of Lublin (now named after John

Paul II). Starting in 1987, these connections allowed me to devote myself consistently to research and teaching in Poland.

When I arrived in this country I did not know that the final acts of real socialism were unfolding. One could observe the Polish culture and society's yearning to draw closer to the rest of Europe, of which they felt an integral part. However, one could also observe that there was a social, religious, political, cultural, and organizational sentiment in Poland (as elsewhere), that was unique, yet also an essential part of the entire European cultural substrate.

Many young scholars from other countries who committed to studying and conducting research in Poland in the late 1980s shared the belief that our period of study aimed to reconnect with European cultural roots that were fading or being lost in our own countries. In this reflection, there was a methodological approach suggesting that if we wanted to achieve processes of mutual understanding, which are essential for any possible collaboration, we needed to delve into the roots of European culture.

Burrowing into common roots, shared experiences, and interdependencies with different cultures is fundamental, even from the perspective of considering other forms of international or transnational integration or collaboration. For example, from a European perspective, it is important to consider the history and outcomes of the processes initiated with the establishment of the Council of Europe and the European Communities, as well as other forms of collaboration, while keeping in mind our shared history with various parts of the globe. These common roots and shared history reject the idea of a conflict between cultures and civilizations as a political reality to which we must adapt and in which we seem confined[1]. Instead, it is necessary to highlight that cultures which could do nothing but oppose each other have ultimately fallen and disappeared. A significant example is the confrontation between Greek, Hellenistic, and Eastern Roman cultures and the Persian Empire. After nearly a thousand years of mutual confrontation, both ultimately succumbed[2]. Do we not risk perishing altogether if we do not recognize the need to evaluate our actions based on the pursuit of an ever-greater level of symbiosis between human societies and nature?[3].

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[1] S.P. Huntington, *The Clash of Civilizations?*, "Foreign Affairs" 1993, No. 72(3), pp. 22–49.

[2] G. Ostrogorsky, *The Byzantine Emperor and the Hierarchical World Order*, "The Slavonic and East European Review" 1956, No. 84(35), pp. 1–14, http://www.jstor.org/stable/4204790 (18.08.2024); G. Ostrogorsky, *Geschichte des Byzantinische Staates*, C.H. Beck'sche Verlagsbuchhandlung, München 1963, first printed 1940.

[3] Here, the reference to evolutionary sciences seems appropriate, see L. Margulis, *The Symbiotic Planet. A New Look at Evolution*, Basic Books, London 1998.

Staying within the European perspective at this moment, it is of fundamental importance that each country, while striving to respect its own political and cultural identity, should also endeavor to listen to others, especially those entities with which it has greater interdependence, to open up to dynamic and pluralistic mutual development. The oppositions between cultures, states, and organizations of states seem to be more the result of not having known how to listen to each other rather than an inherent opposition between the cultures themselves. This is particularly relevant considering that today most constitutions and political systems declare their intention to place the human person at the center. It is crucial to base every form of democracy on this fundamental point, which is increasingly being affirmed in discourse but must not remain mere rhetoric.

Regarding the European integration process, having effectively forgotten Africa, despite Schuman's 1950 declarations, did not seem conducive to the cultural and participative development of collaborative processes in Europe even back then. For these reasons, evolving in my constitutional law studies, but always within the broadest interdisciplinary context possible, I initially considered the problem of political communication directed at the common good, which could enliven collaboration between powers and institutions. In this specific type of rhetoric, I found the sense of constitutional justice. Later, I researched a Polish model for overcoming a system based on the concentration of powers in favor of one founded on the separation of powers aimed at respecting rights and some fundamental principles of justice. It was almost a personal satisfaction to encourage collaboration between the Italian and Polish Constitutional Courts, where the former intended to examine the role of dissenting opinions in the latter's judgments. However, since each nation exists not only as a state but also through its own culture and political events, this solution could not find a defined adoption in Italy.

This was the period during which the process of converging legal cultures in Europe led to reflections on the variety of levels at which constitutional relationships in a substantive sense and the principles of constitutionalism were applied. My proposed reflection was to distinguish between multilevel governance, the implementation of shared constitutional principles (multilevel democracy), and a multilevel democracy based on openness and sharing with others in a multilingual and multicultural context.

At this point, three paths needed to be pursued: an educational process aimed at sharing different approaches to the study of law, a comparative study aimed at examining law from the perspective of its relationships with other manifestations of human culture, and the research and practical implementation of principles that allow for a symbiotic coexistence between people, legal systems, and cultures.

First, let us consider the importance of reflections on an inclusive educational process aimed at recognizing others. We pursued this path with the "European Master in Law and Policies of European Integration: European Constitutional Law and Multilevel Constitutionalism". This Master's program attempted to create a community focused on legal education based on listening and, therefore, learning. The studies included student mobility, initially among the four partner universities, and faculty mobility, eventually involving professors from 16 European and non-European universities. Through these European studies, we sought to prepare a European official or expert for a multilevel governance process, conscious of the various legal and cultural perspectives converging in the European integration process. This involved various research projects, seminars, dialogues, subsequent research projects like Menu For Justice, and publications such as "Towards Innovation in Legal Education," edited by me.

Moving on to the comparative study aimed at examining law from the perspective of its relationships with other manifestations of human culture, I owe a significant part of my research to the reflection group "ECONET" (European and Comparative Constitutional Law Network). This group focused on understanding others through legal comparison and studying constitutionalism through the phenomenology of the constitution. Among the reflections that emerged was the study of the constitution through meta-principles, which allowed the foundation of constitutional principles and complementary principles that connect constitutions to other disciplines.

In this context, I formulated the thesis that human dignity, and therefore human rights, are rooted in the biological, psychological, and spiritual existence of the human being. This was a realistic approach to human dignity, consistent with how interdependencies among human beings and societies led to the conception of rights as protection for the manifestations of human existence, going beyond the various cultural formulations of the rights themselves.

In addition to the initial reflections on the biosphere, where all living beings are deeply interconnected, I sought to deepen the concept of the noosphere, the sphere of the psyche of all living beings. This part of the research involved interdisciplinary collaboration with institutions and scholars from various disciplines on Novel Psychoactive Substances, allowing us to consider the relationship between human dignity, human individuality, and the noosphere, even through applied studies. On the other hand, it led to reflections proposed by Paolo Nunziante through the journal "Innovazione e diritto", aimed at conceiving the legal semiosphere as part of the broader semiosphere. This concept, perceived but not fully developed by the Russian Lotman, as the overall space of texts and languages, symbols, and interpretations, opens the path not only to the relationship between language and

symbols, and therefore to the universe of culture, but also to the universe of skills, the development of organs as extensions of human beings.

It, therefore, opens the door to the technosphere as the realm of all material and immaterial tools. Among these tools is the law and the instruments capable of expanding our communication space. Concerning these, the issue of imperfect machines capable of self-repair, discussed by the scientific and technical world starting from Johan von Neumann's seminal contribution, naturally arose. The ideological aspect of this problem is also connected to the development of institutions. Indeed, one may consider economic institutions and constitutionalism among these self-regulating systems.

For about 25 years, I have viewed constitutionalism as a set of necessary regularities, concentrated on three descriptive classes, which we have defined as paradigms of constitutionalism: 1) the relationship between the protection of manifestations of personal existence (rights) and policies for their implementation; 2) the relationship between participation and representation; 3) the relationship between legal norms and their interpretation. If we can reconstruct a coherent legal system within these relationships, regardless of the relative weight of rights or policies, we then consider that a system can be classified as belonging to the genre of constitutionalism.

The regularities that characterize legal systems may be linked to the regularities of the biosphere. One can conceive of a form of constitutionalism that is also based on coherence with the regularities of the biosphere. In this sense, it is useful to consider a descriptive theory of the constitution that can be examined in terms of how it relates to these paradigms and, at a subsequent level, to the regularities of the biosphere. In the study of disciplines foundational to law, we had already anticipated possible sequences of meta-principles, which can obviously be differently ordered. However, given the necessary nature of constitutions, the relationships, or the descriptive paradigms of constitutionalism, appear as a primary class of meta-principles. An additional level could be provided by the ethical question. This could naturally be divided among different conceptions of the relationship between law and morality and the relationship between all moralities. This attempt to address the interaction between different moral perspectives must certainly take into account a reference reality. This reference reality could be construed as our relationship with the regularities in the biosphere. Therefore, the ethical principle, as a principle reflecting different moral positions[4], which in turn reflect different conceptions of consti-

[4] Regarding the relationship between moral positions on ecological matters and ethics, see N. Luhmann, Ökologische *Kommunikation. Kann die moderne Gesellschaft sich auf ökologische Gefährdungen einstellen?*, Westdeutscher Verlag GmbH, 1986 Opladen. English version: *Ecological Communication*, transl. J. Bednarz Jr., The University of Chicago Press, Polity Press Cambridge, Chicago-Cambridge 1987.

tutionalism, is also a principle that calls for observing the biosphere, as Vico's metaphysics had to observe the "order of natural things". In this perspective, however, we cannot consider the biosphere alone, biologically understood, as the final reference point. Certainly, we cannot live without the biosphere, but we must understand the biosphere. Therefore, natural language, with all its historical and symbolic heritage, which was probably constructed to describe the cosmic phenomena in which our existence developed, must serve to explain the biosphere and its processes in a manner comprehensible to ethics, morality, law, and legislation. Practically, the search for gradual levels of foundation of concepts that lead to the construction of legal systems and their subsequent foundation leads to a class of concepts interconnected by relationships that are practically circular. The complementary principles that connect law to other sciences follow similar circular paths. This intersection of elements understood recursively leads to phenomena of hypercomplexity according to Kolmogorov[5]. According to this mathematical approach, every program, and therefore every argument, can be described by an infinite number of strings. However, the relative length of each string always remains confined within a distance given by an integer "M". Since we are dealing with chains of foundational principles and chains of complementary principles of legal arguments that intersect at various levels, a decision space will form among shareable elements. The discussions in legal science on how and through which procedures to use this decision space have been numerous and have led to various conclusions.

Throughout the course of my research, I have always argued that referring to ethics without assumptions that allow the vast majority of citizens to represent themselves and participate in the decision-making process means losing a significant part of the potential implementation of collective decisions. For this reason, the education of consciences brings with it the necessity of internalization. This requires simple activities accessible to everyone, the only ones, in my opinion, that can be implemented generally across the globe. Attention to the biosphere and the positive consequences it brings to people's lives can serve as a prelude to greater and more general conscious participation in decisions concerning individual communities and states, taking into account their relative interdependencies[6].

In this regard, let us move on to the third line of reflection, which is that of research and the practical implementation of principles that allow for a symbiotic coexistence among people, systems, and cultures. The development path I have followed, which includes legal

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[5] I also refer to it as complexity according to Kolmogorov-Solomonoff. See P. Policastro, *Constitutionalism, Comparison, Complexity: Prolegomena on Liberty and the use of Language for a Predictive Theory of Law*, in: *Liberty and Language, The global dimension of European constitutional integration*, eds. E. Castorina, P. Policastro, Giappichelli, Torino 2010. Especially, p. 41 *passim*.

[6] See in particular Chapter V and VI of this work.

education, delving into the theory of the constitution and constitutionalism, and activities aimed at developing initiatives accessible to everyone, thus connects the issue of learning and research with that of the development of civil society starting from the fundamental levels.

These experiences have been realized, always with the support of the University of Szczecin, thanks to various international collaborations. Among the results of these activities, we have, first and foremost, almost 20 years of active support for reforestation, especially in Senegal and Ivory Coast, but also in Mali and Burkina Faso. This support has taken place through volunteers from different countries who, at their own expense, have come together to implement an educational model based on the spirit of service and the care of our common home, the Biosphere, through various African projects, particularly "The Great Green Wall".[7] In these activities, they have developed significant synergies with local institutions and populations. Specifically, they have planted more than 3000 hectares in a region of Senegal affected by transhumance, resulting in a substantial positive impact on the local economy and society. In Ivory Coast, they have contributed significantly to the reforestation of an area crucial for the aquifer that supplies the capital. The interaction among these young people, institutions, civil society, including the cultural sector, schools, and especially local populations, has produced what I define as transnational citizenship.

This approach is of particular interest from the perspective of the politics of law. Taking care of our common home through voluntary and self-funded work activates the participatory process. This way, society contributes to making the care of biosphere processes achievable through means and activities that everyone can undertake, regardless of the economic means available to the community or the state. Even in technologically advanced countries, relying solely on public or private services to care for biosphere processes does not appear inclusive of all world populations. Caring for the biosphere must be everyone's task because the variety of relationships between human societies and the biosphere, in their different characteristics, makes the contribution and experiences of each person fundamental. This perspective is increasingly recognized. From the perspective of the politics of law, it has fundamental importance as it develops grassroots democracy based on sustainability, non-conflict, and care for the common home of all humanity. Therefore, it is suitable for adoption in the vast majority of countries and political conditions.

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[7] See Chapters IV and V, of this work. See also P. Policastro, *Planting Trees to Plant Life. Care of the Common Home and Pedagogy of a Green Heart*, "Educatio Catholica" 2019, Vol. 5(2–3) ("Service Learning"), pp. 141–156.

2. Outline of the Work

The study in question is organized into 8 chapters, structured into three parts. Part I, "Between Comparison and Values" includes Chapters I and II. Part II, "Biosphere as a Constitutional Issue," includes Chapters III through VI. Part III, "On Our Duties Towards the Common Home. Some Proposals", covers Chapters VII and VIII.

The work begins with a fundamental observation: we all live within the biosphere, and life itself, together with the biosphere, must be considered a cosmic phenomenon. Building on this reflection, which we owe to Vernadsky, I assert that since our lives are sustained within the biosphere and by the forces that keep it alive, we cannot properly address cognitive or philosophical problems without acknowledging that our very existence occurs within the biosphere and the cosmic forces at play within it.

Therefore, the fundamental problem in reflecting on our existence – namely, how we should understand and protect our fundamental values and our life in common – must consider that we live in the biosphere, which itself is a cosmic phenomenon. Such an approach, when adequately expressed, aligns with the cultural and spiritual perspectives of much of humanity. Consequently, it is consistent with the idea of an inclusive and participatory democracy, founded on the shared awareness that life thrives through the interaction between myriad living organisms, from the primordial life on our planet to the present day.

Awareness of this interconnection requires the development of cognitive and operational tools compatible with governance processes, implemented with the full participation of all individuals. The harmony between the complexity of life, the fundamental regularities of the biosphere, and the plurality of manifestations of human life forms the basis of biospheric constitutionalism, aimed at establishing a law of symbiosis between humanity and nature.

The first part of the study highlights the impossibility of reducing law to mere language, especially the language of constitutions (Chapter I). Law, as a fundamental manifestation of human societies, must be considered in the context of the biosphere, with its regularities and the complexity of human societies. For this reason, the theory of constitution and constitutionalism must be viewed as an observation of the regularities present in human societies (Chapter II).

The next step involves identifying constitutional policies that overcome the dimension of conflict inherent in human societies, both internally and in their relations with the spaces, resources, and markets surrounding each State or political community. Here, the thesis of inclusive and participatory democracy is formulated, based on simple, comprehensible, and

realizable activities by all, which constitute the foundation for popular sovereignty oriented towards the common good (Chapter III).

Our presence in the biosphere imposes fundamental duties, both individual and collective. Regarding individual duties, they must be understood by everyone and implemented through simple actions directed towards the common good, such as the planting of trees. The reduction of leaf surface area globally, due to an imbalance between technological processes and nature, threatens the biosphere's ability to convert solar energy into chemical energy sufficient to maintain the balance between human societies and the planet. Therefore, the issue of sustainability of our life in the biosphere must be addressed through experiences that allow individuals to become aware of these realities and act accordingly (Chapter IV).

Listening to nature and acting in accordance with it is fundamental. States are not exempt from this discourse (logos), which stems from listening (leghein) to the nature upon which we depend. Chapter V emphasizes the importance of states' duties to recognize the role of civil society actions and to cooperate with other states through various forms of collaboration within a pluralist perspective. This approach is essential for a biospheric vision of relations between human societies, taking into account their complexity and the relationships over time and space between societies and the biosphere.

The next step in our study involves the search for values that support these approaches to common duties, both of individuals and States. Vico's thought, which sees the development of society in a circular framework, proves particularly relevant today for considering the life of human societies within the biosphere. Chapter VI seeks to unite Vico's thought with cybernetic knowledge to establish conscious approaches to the relationships between human societies and nature.

The foundation of a systemic relationship between humanity and nature requires an awareness of natural processes, which must be adequately described to become part of our representation of nature. It is important to emphasize pluralism, as the lack of attention to natural processes can have negative consequences. In this context, law and constitutionalism must foster an increasing symbiosis between individuals, nature, and society.

In this regard, in Chapters VII and VIII, I observe that climate change forces us to consider law from a perspective different from the past. The responsibility of states towards the international community for the management of natural resources and interconnected biospheric processes requires increasing attention. This study seeks to develop an approach that connects law and societies to the need to support biospheric processes. To this aim, pluralism has a special importance.

3. Methods Used and the Main Theses. Acknowledgements

The circulation of ideas has taken place throughout the entire history of humanity and has shaped the interactions between human societies and the flows of the Biosphere. For this reason, listening to nature and to others fosters an ever-deepening awareness of what can be done – including through the law – to care for our common home.

The method of the present work is based on a discourse that is, first and foremost, an act of listening to others. This discourse is thus primarily a search for the manifestations of human existence within their cultural contexts. This inquiry seeks not only to take note of the history of individual cultures but also to explore their interconnections.

Human events have allowed the manifestations of human thought to circulate on the Earth's surface. Over time, the case became the same for migrations, movements, and events in different cultures. They have allowed these ideas to confront each other, giving rise to discourses, even at a distance, in time and space, or to accumulate, like the stories that gave birth, for example, to the Old Testament and many other collections of different natures.

This circulation of ideas and thought across the globe must also be linked with the development of legal and political conceptions. Institutions that are lost in the dawn of human life have led to determining our relationship with cosmic forces, with the surrounding world, and with societies. The circulation and dialogue between solutions and ideas have had different phases, which we could define as phases of separation characterized by a model of symbiosis, which we might call negative, and phases of reunion, with models of cultural but also biological symbiosis, of a positive nature.

The study of these modes in which our human societies relate to each other, carried out through listening to their expressions, shows some correlations with the circulation of elements in the Biosphere and the manifestation of the pressure of life.

Starting from an approach to legal comparison that expands to the search for the common foundations of communal life, we gradually moved towards the search for an awareness of the interdependencies between human societies in the quest to promote a conscious symbiosis between Life in the Biosphere and human life. Vernadsky's studies in this regard appeared profoundly consistent with Lovelock's on the super-Life of the Biosphere and those on symbiosis as an evolutionary principle (Margulis).

The regularities of the Biosphere, and above all the pressure of Life understood as a cosmic phenomenon, as well as the characteristics of life that evolves through processes in which simpler organisms unite and thus give rise to increasingly complex organisms, must be considered through the possibilities of human intervention in a symbiotic manner.

From this perspective, human societies must also address the issue of how to interact with nature. This conscious interaction can become the expression of a right in which humanity does not focus on its own legal system, its own "laws and customs". Instead, starting from its own frame of reference, the legal system is called upon to reflect in a constitutive way on how to support the regularities of the Biosphere. In other words, on how to develop a conscious symbiosis.

The problem cannot be relegated solely to international law, nor left only to the mechanisms of representation. The realization of symbiosis with nature must be implemented in a way that corresponds to the understanding and possibilities of each individual. And it must have a direct and measurable result.

For this reason, the care of forests is fundamental. Indeed, the maintenance of a leaf surface adequately larger than the Earth's surface, and the consequent circulation of nutrients it generates, depends on the production of humus and oxygen, which are fundamental to maintaining the pressure of life on the globe. Therefore, since the care of forests is directly associated with the protection of the pressure of life, it should be considered as linked to the foundational values of constitutionalism such as the protection of life, personal integrity, the ability to derive benefits from natural resources, and the stability of legal relations.

Since all these values are already endangered by the results of human actions, especially within the technological society, these problems must be addressed in a way that ensures maximum participation and efficiency. From this point of view, guaranteeing the constitutional legal personality of forests primarily allows us to legally ensure a principle of relationship with nature that can consider its specificities, maintain the conditions that allow our existence, and provide resources, both material and spiritual.

Moreover, it opens up legislative processes that call on the various perspectives with which society relates to nature to confront each other and seek, through appropriate periodic legislation, ways of symbiosis in space and time, which project each legal system towards the care of the common home and the benefit of other societies and themselves. The research included in this study paves the way for further, in-depth exploration of these problems. From an editorial standpoint, all texts have been provided in English. Where existing and published English translations were available, we have used them. In other cases, we have translated the quotations ourselves.

I am particularly indebted to those who invited me to present preliminary outcomes of the research at their institutions, who engaged in constructive dialogue on its successive stages, and who provided thoughtful comments on earlier drafts, as well as to the reviewer, whose observations were of significant value. The present work could not

have taken shape without the support of the institutions, colleagues, and partners through whom I was able to examine – both analytically and in practice – the challenges of strengthening democracy and the rule of law in the broader context of humanity's existence within the Biosphere.

I also express my sincere appreciation to my mentors; to my University, its former and current Presidents; to the Dean of my Faculty; and to my colleagues and administrative staff, whose confidence in the research, commitment to maintaining an environment conducive to academic freedom, and continual assistance have been essential.

First and foremost, my deepest and wholehearted gratitude goes to the memory of my father, Sergio, and my mother, Maria, for their trust and generosity, which enabled me to dedicate my life to scientific research, education, and the promotion of human and spiritual values in society. My heartfelt thanks also go to my wife, Irina, and to our sons, Sergio, Carlo, and Alessandro, for their love, patience, and unwavering support, sustained throughout many years of work and sacrifice, in the hope that these efforts may support human society, foster its symbiosis with nature, and advance mutual peace.

Szczecin–Salerno, August 15th, 2025

Summary

From Constitutional Comparison to Life in the Biosphere is a monograph that argues for a fundamental reorientation of constitutional law around the realities of biospheric interdependence and ecological responsibility. It presents a comprehensive framework of "biospheric constitutionalism," contending that legal systems must evolve to acknowledge humanity's existence as part of the Earth's biosphere in order to remain legitimate and effective in the 21st century. The work traces an intellectual journey from traditional constitutional comparison toward a new paradigm that integrates law with the planet's ecological regularities, scientific insights, and cultural pluralism. Organized in three parts (Parts I–III) comprising eight chapters (Chapters I–VIII), the book moves from historical and theoretical foundations through philosophical and ethical explorations, and finally to forward-looking proposals for global legal duties. Throughout, it emphasizes that constitutional law – both at the national and transnational levels – must be reconceived not merely as a human-centered enterprise, but as a framework for sustaining life in common within our shared planetary home. Major concepts developed across the chapters include the revival of *limited government* and other checks on power in service of ecological limits, the recognition of *interdependence* (among societies and between humanity and nature) as a core constitutional principle, the idea of a *constitutional law of the Biosphere* that imposes *supranational duties* on states and individuals, the cultivation of *conscious interdependence* and *education of consciousness* to foster an ecological ethos, and the articulation of new *erga omnes* obligations (owed to all) to protect the global environment. What follows is an integrated synthesis of the book's content, organized by its parts and chapters, highlighting these key themes and arguments.

Part I: Between Comparison and Values

Part I: "Between Comparison and Values" introduces the monograph's foundational approach. It situates constitutional law in the context of comparative analysis enriched by core human values, arguing that traditional constitutional comparisons must be expanded

to include the value systems underlying different legal orders. By examining enduring principles such as the common good, peace, human dignity, and human–nature relationships across civilizations, Part I lays a value-centered groundwork for re-imagining constitutionalism in light of our shared existence in the biosphere. In essence, this first part bridges classical constitutional theory with emerging normative commitments to environmental stewardship and interdependence, "setting the stage" for the rest of the book's argument.

Chapter I: The Constitutions from the Past to the Present – Between Theory and Method of Constitutional Comparison. Chapter I lays the philosophical and methodological groundwork for the book's thesis that constitutional law must be reframed in light of humanity's existence within the biosphere. Its central claim is that the *"legal problem"* of how we govern our shared life cannot be separated from the metaphysical question of human existence, and thus law should respond to the *regularities and limits of the planet*. Methodologically, the chapter adopts a historical-comparative approach: it traces constitutional ideas "from the past to the present," expanding a conventional constitutional analysis beyond textual and abstract reasoning to include linguistic, semantic, and systemic contexts. This represents a move away from purely rationalist and state-centric comparisons toward a more experiential and context-aware understanding of law. Key legal insights in Chapter I include a call to revive the principle of *limited government* as a means to safeguard biospheric conditions (resurrecting the classical notion that government power must be constrained by higher laws or principles). The chapter emphasizes *interdependence* – the relationships among societies and between society and nature – as central to constitutional theory. In fact, it introduces the idea of developing a "*constitutional law of interdependence*" that would align rule-of-law institutions with the preservation of life-supporting planetary regularities. By grounding the practice of constitutional comparison in biospheric context and advocating epistemological humility in legal reasoning, Chapter I establishes the value framework and interdisciplinary scope for the chapters that follow. In summary, this opening chapter asserts that any true understanding of constitutional governance must account for the ecological foundations of human life, thereby linking constitutional theory to the Earth's biophysical reality.

Chapter II: Superior Values and the Foundations of Constitutional Comparison – Peace, Symbiosis within the Biosphere, and Transnational Citizenship. Building on the philosophical basis of Chapter I, Chapter II argues that the highest values of constitutionalism must be reinterpreted in biospheric terms. In particular, it posits that principles like justice and the common good – traditionally paramount in constitutional thought – now compel *peace among peoples* and *symbiosis with the biosphere* as guiding ideals. This

represents a reorientation of law toward shared global responsibilities that transcend nation-state boundaries. The chapter examines how different civilizations' relationships to nature and patterns of resource use have historically shaped their constitutional orders. It highlights a contrast between societies that revered nature versus those that pursued an exploitative domination of life and resources, noting that *exploitative paradigms* (such as the modern capitalist model driven by unchecked economic growth and biopower) externalize human and environmental costs and have led to crises. Methodologically, Chapter II extends a comparative constitutional analysis beyond textual interpretation by engaging with history and philosophy – what it terms a "civilizational" analysis. It inquires how core civilizational values (for example, conceptions of the common good, or notions of living well together) might be reformulated in light of biospheric interdependence. Key insights include a critique of traditional constitutional models that treat nature as external to the legal order. Chapter II introduces an "overarching theory of constitution" centered on interdependence and sustainability, suggesting that constitutions should explicitly incorporate principles of ecological balance. It also calls for a new paradigm of *transnational citizenship* rooted in our status as co-inhabitants of a "common home," emphasizing cross-cultural dialogue and mutual responsibility across borders. By proposing a *constitutional law of interdependence* built on shared responsibility, inclusive institutions, and plural knowledge systems, Chapter II links the book's comparative approach to a normative vision of global constitutional ethics aligned with the planet's limits. In sum, Chapters I and II (the entirety of Part I) together establish the fundamental premise that constitutional law, at its core values and methodology, must evolve by embracing human interdependence and ecological stewardship as foundational commitments.

Part II: Biosphere as a Constitutional Issue

Part II: "Biosphere as a Constitutional Issue" delves into the heart of the book's argument by treating the biosphere itself as a fundamental concern of constitutional law. This part (comprising Chapters III–VI) critically assesses the limitations of conventional constitutional paradigms – particularly state-centric, liberal models – when faced with global ecological crises and complex interdependence. Through various analyses (ranging from social conflict and resource dissipation to hegemonic power structures), Part II articulates why a transformation in constitutional thinking is necessary under contemporary conditions. A key concept introduced here is "conscious interdependence," the idea that constitutions and constitutional theory must become *aware* of and

explicitly acknowledge the interconnectedness of all life and the Earth's ecological limits. The chapters in Part II propose elements of a new, more inclusive constitutionalism – one that extends the circle of legal concern beyond solely human interests to include environmental systems and future generations. They emphasize *bottom-up, participatory processes* rather than top-down imposition as the means of achieving this paradigm shift. In essence, Part II reframes constitutionalism itself as an ecological and transnational project, arguing that the survival of constitutional democracy is inseparable from the health of the biosphere. Below is a synthesis of the four chapters in this part:

Chapter III: Constitution and Conflict – Toward a Constitutional Policy Beyond Human and Resource Dissipation. Chapter III examines how constitutional orders manage social conflict and diagnoses the ways in which traditional approaches contribute to the dissipation of both human and natural resources. It argues for an *inclusive constitutionalism* grounded in "conscious interdependence," meaning that constitutional design and interpretation should consciously recognize the interdependent nature of all people and the environment. The thesis of this chapter is that we must *expand the circle of legal concern*—broadening who counts as a subject of rights and what counts as an object of protection—in order to move beyond the current dissipative and hegemonic models of development. The dominant paradigm of *ordo liberalis* (the classical liberal constitutional order buttressed by coercive state power and global legal hegemony) is critiqued as inadequate in an era of deep global interconnection and ecological crisis. Instead of imposing universal solutions from the top down, Chapter III advocates *bottom-up, deliberative transformation*: it suggests that local communities and individuals, once aware of their mutual dependencies, should drive constitutional change in line with shared responsibilities to each other and to nature. The analysis in this chapter ranges from classical typologies of constitutions to contemporary critiques of globalization, using comparative and critical methods to show how "*imaginary freedom*" (a false sense of unchecked liberty) and unchecked concentrations of power can lead to the dissipation of human dignity and environmental integrity. Key insights include reinterpreting constitutional norms through the lens of interdependence – for example, understanding that the effects of laws and the duties of justice extend beyond national borders. The chapter also calls for challenging the *mystique of power* and legal violence in favor of democratic participation and genuine freedom. Ultimately, Chapter III contends that true constitutional renewal can only arise from recognizing every person *and* the biosphere as inherently valuable, linking the resolution of human conflicts with the imperative of biospheric care. This positions interdependence and ecological sanity as prerequisites for peace and conflict resolution in law.

Chapter IV: Biosphere, Policy of Law and Education of Consciousness. Chapter IV continues the inquiry by arguing that nurturing an *awareness of interdependence* within the biosphere is both a moral duty and a constitutional imperative. It posits that even the fundamental concept of human dignity acquires a new *biospheric dimension*: only by recognizing our "being-together" in a common planetary home can we safeguard life in all its diversity. The methodology of this chapter is explicitly interdisciplinary, bridging law with philosophy, theology, and educational theory. The aim is to show that legal systems must actively cultivate an ecological conscience among citizens and institutions. Chapter IV draws on scientific insights (for example, Vladimir Vernadsky's idea of life as a cosmic phenomenon and the genetic interconnectedness of all species) and on ethical perspectives (including Pope Francis's environmental teachings and the philosophies of thinkers like Raimon Panikkar and Bruno Latour). By synthesizing these perspectives, it demonstrates that law and public policy should transcend narrow anthropocentric interests and foster solidarity with *all forms of life*. Key insights of Chapter IV include a proposal that the *fundamental duty* of human societies under law is to protect the "regularities" of the biosphere that make life possible – for example, stable climate patterns and biodiversity. Achieving this, the chapter argues, requires a profound *reorientation of consciousness* across society, which can only be accomplished through deliberate education at all levels (what the author calls an *"education of consciousness"*). Practical avenues for this transformation are highlighted: the chapter emphasizes "biospheric education" in schools and communities, as well as the scaling-up of grassroots initiatives (such as volunteer environmental stewardship and local sustainable development projects) as ways to counteract the forces of biopower and to build community resilience. By integrating cultural pluralism, spiritual ethics, and ecological science into constitutional discourse, Chapter IV enriches the book's overarching argument: it shows that a viable constitutional order must be underpinned by an enlightened, life-centered public consciousness. In other words, without a citizenry educated in interdependence and committed to ecological responsibility, legal reforms risk being superficial; consciousness and culture must evolve hand-in-hand with constitutional norms.

Chapter V: The Law of the Biosphere – Duties of the Nations and Common Good. Chapter V marks a shift to a more overtly legal-institutional paradigm, advancing a vision of constitutional law centered on the *duties* that states and individuals owe to the biosphere as a condition for achieving the common good. Confronting the reality of the Anthropocene (the age of pervasive human impact on Earth), this chapter argues that traditional geopolitics and the model of competitive, Westphalian state sovereignty are obsolete; they must give way to cooperative, biosphere-oriented forms of governance. The chapter's approach

is both theoretical and practical. It reinterprets core elements of public law – such as state legitimacy, the rule of law, and fundamental rights – through what it calls a *"metaphysics of listening to nature"*. This implies that legal legitimacy derives not only from social contracts or democratic consent, but also from whether governance respects the voice and limits of the natural world. Chapter V outlines how constitutional principles might be reformulated to ensure planetary sustainability and peaceful development of all communities. Key insights include a critique of Western hegemonic thought and its legacy of resource dissipation: the chapter traces how the expansion of industrial-technological civilization brought about global inequalities and ecological strain. In response, it proposes a "*common shelter*" perspective, envisioning the biosphere as a shared home that requires collective legal protection by all nations. In this view, even the legitimacy of state power is reframed: sovereignty is no longer absolute freedom of action, but rather *entails biospheric responsibility*. Pursuing the common good, therefore, must extend beyond national borders to include caring for global ecological commons. Chapter V emphasizes pluralism and cultural diversity as strengths in this project – acknowledging that different traditions and each community's unique relationship with its land can inform locally appropriate ways of living within ecological limits. It also stresses that environmental duties are *diffuse*, incumbent upon both governments and citizens, since effective compliance requires widespread social awareness and participation. For example, laws can mandate pollution limits, but citizens and businesses must buy into those norms for them to work. By redefining the rule of law to prioritize human dignity expressed through active ecological citizenship – and by validating transnational cooperation in plural forms – Chapter V provides an institutional and ethical blueprint that connects the book's earlier philosophical arguments to the realm of concrete constitutional transformation. In summary, this chapter sketches the outline of a *constitutional law of the biosphere*: one in which states become guardians of ecological well-being and individuals assume responsibility as ecological citizens beyond the confines of their nationality.

Chapter VI: The Biospheric Principle between Religion, Universal Principles, and the Concept of Law – From Vico to Second-Order Cybernetics. Chapter VI serves as an intellectual bridge between the heritage of human thought and the innovative ideas needed for a biospheric future. It searches for a unifying *biospheric principle* – a set of universal values or a common moral bond – that can guide a pluralistic world society toward sustainability. The chapter undertakes a deep philosophical inquiry, drawing on historical and systems-theoretical perspectives. It revisits the ideas of the Enlightenment thinker Giambattista Vico, particularly his cyclical theory of history and the concept of *religio*

(binding together), and connects them to modern insights like second-order cybernetics (which emphasizes feedback, self-observation, and interdependence in systems). A key thesis of Chapter VI is that "*listening to the biosphere*" as law's metaphysical foundation requires complementing our spatial notions of justice with a reflection on **time**. In other words, legal thought must integrate the long temporal cycles of nature and the lessons of history, not just the immediate spatial distribution of rights and duties. By using Vico's lens, the text explores how a metaphysics of *responsibility* over time could guide societies to recognize duties toward both the Earth and each other. The chapter underscores the importance of *universal values* as a medium for global legal communication: it suggests that the process of secularization in law can be reinterpreted as an attempt to uncover shared moral principles (across different religions and cultures) that can undergird care for our common home. Methodologically, Chapter VI weaves intellectual history with complexity science, illustrating law's reflexive capacity – that is, the ability of legal systems to observe and adjust themselves given that human law-makers are themselves part of the biosphere and subject to its processes. Among the insights of this chapter is a critique of linear, progress-driven conceptions of history and law; instead, it affirms that embracing a cyclic and interdependent view of time could foster what it calls a "*conscious symbiosis*" between humanity and the planet. By proposing a convergence of ethical, scientific, and spiritual perspectives into a pluralistic yet universal framework, Chapter VI provides a theoretical cornerstone for the book's vision of a shared biospheric constitutional ethos. In effect, it offers a philosophical foundation for why and how diverse societies might unite around principles of ecological responsibility, drawing on the deepest currents of human thought to do so.

Chapters III through VI thus collectively expand the scope of constitutional discourse from human-centric and state-centric models to what might be termed **life-centric** or **planet-centric** constitutionalism. Part II demonstrates with both analytical critique and constructive theory that constitutional law must integrate ecological reality, cultural pluralism, and systemic complexity. It maintains scholarly rigor by invoking historical examples and cross-cultural comparisons, even as it pushes the boundaries of constitutional thought into new territory. The takeaway is that midway through the book, the argument has firmly established the need for a paradigm shift: constitutionalism should become *conscious*, *inclusive*, and explicitly oriented toward sustaining the biosphere as the basis for all political and legal life.

Part III: On Our Duties Towards the Common Home – Some Proposals

Part III: "On Our Duties Towards the Common Home. Some Proposals" is the culmination of the monograph, translating the preceding theoretical insights into concrete normative outcomes and legal duties. The phrase "common home" evokes the Earth as the shared dwelling place of humanity and all other forms of life, and accordingly the chapters in this final part focus on articulating the responsibilities of states and citizens to protect that home. Building on the paradigms discussed earlier, Part III contrasts the failing model of uncompromising national self-interest (a non-cooperative geopolitical approach) with a new paradigm of *cooperative constitutionalism* oriented around the global common good. It explores how constitutional and international law might formally recognize *erga omnes* duties – obligations owed to everyone and to the planet as a whole – by grounding those duties in universal values and practical necessity. This part integrates perspectives from philosophy, religion, and complex systems theory (echoing themes of Chapter VI) to give ethical and conceptual depth to these proposed duties. In sum, Part III provides a forward-looking blueprint for how constitutional law could evolve so that human societies live up to their responsibility to care for our planetary biosphere. It contains the book's most concrete recommendations and paints a vision of legal innovation for the future.

Chapter VII: Protecting Life in the Biosphere – Towards a New Generation of Public erga omnes Obligations. Chapter VII applies the book's framework to urgent global challenges, making the case for new universal obligations (*erga omnes* duties) to protect life in the biosphere. It focuses especially on issues like climate change and human displacement (climate refugees), arguing that legal systems must develop proactive duties to prevent and address such crises. The underlying premise is that the stable functioning of the biosphere is a common interest of humanity, and thus safeguarding it is a responsibility owed by all to all. Methodologically, this chapter is profoundly interdisciplinary. It insists that as the natural sciences reveal the conditions necessary for the orderly existence of life, the law must incorporate that scientific knowledge in a systematic way. To that end, Chapter VII outlines a four-step method for jurists and policy-makers confronting planetary crises. The steps include: (1) **describing reality** – obtaining an accurate, science-based understanding of the problem (e.g. the dynamics of climate systems); (2) **identifying what elements need protection** – determining which aspects of the natural or social environment are critical to protect (e.g. atmospheric stability, vulnerable populations); (3) **devising modes of protection** – formulating legal and institutional mechanisms (like treaties, constitutional amendments,

policies) to safeguard those elements; and (4) **assessing their impact** – monitoring and evaluating the effectiveness of those measures and adjusting as needed. This approach embodies a preventive and iterative ethos, aiming to craft legal responses commensurate with the scale and complexity of ecological crises. Key insights of Chapter VII include an *expansive view of the biosphere's legal relevance*. The chapter argues that the biosphere's legal "sphere" should be understood to encompass not just land, air, water, and living organisms, but also the **noosphere**, **semiosphere**, and **technosphere** – that is, the realms of human thought, communication, and technology which interact with biological life. In practical terms, this means law must address interdependencies on multiple levels: within local communities, between states and their citizens, among different nations and regions, and between humanity and natural processes on a planetary scale. Chapter VII highlights, for example, the responsibility of industrialized societies for the vulnerabilities of less-industrialized ones. It describes how one community's technological choices or carbon emissions can render distant regions uninhabitable, thereby creating a chain of causation that law has barely begun to address. To remedy such injustices, protecting the biosphere must become a constitutive element of the legal order – not an optional policy, but part of the fundamental duty of states. The chapter proposes concrete legal principles to support this shift: for instance, formally recognizing a stable climate and healthy biodiversity as *global legal interests*, and expanding the duty to avoid transboundary environmental harm into a more generalized duty to prevent ecological harm to the global commons. In doing so, Chapter VII effectively translates the book's notion of biospheric constitutionalism into normative commitments and nascent rules. It argues that only through shared obligations – backed by law and informed by science – can law fulfill its basic purpose of ordering society in the face of ecological crisis. This chapter, in essence, provides a tangible blueprint for addressing issues like climate refugees, extreme weather, and biodiversity loss under a reimagined constitutional framework that treats these as fundamental justice issues rather than mere policy choices.

Chapter VIII: On the Search for the Telos of a New Approach to Erga Omnes Duties – The Question of Life in Symbiosis with Nature. The final chapter is a concluding synthesis that asks: what is the ultimate aim (*telos*) of reorienting law toward universal duties to the biosphere? In answering this question, Chapter VIII argues that the *telos* lies in guiding humanity toward a form of life in symbiosis with nature. In other words, the long-term purpose of biospheric constitutionalism is to ensure that human societies learn to live in harmony with the Earth's ecological systems, rather than in opposition to them. The chapter observes that there has been a paradigm shift underway in international legal thought over the past decades. As evidence accumulates that human survival (and flourishing)

depends on the well-being of natural systems, the focus of law is gradually moving from the assertion of sovereign rights to the acceptance of shared responsibilities. States, under this emerging paradigm, are reconceived not merely as independent actors with rights over territories and resources, but as **trustees** of humanity and the biosphere. They bear obligations *erga omnes* – duties to refrain from activities that seriously degrade the planet, and positive duties to safeguard the integrity of global life-support processes. Chapter VIII reviews key milestones in the evolution of environmental norms, from the 1972 Stockholm Declaration to the 1992 Rio Earth Summit and beyond, noting how each step expanded the notion of environmental responsibility beyond national borders. This legal-historical perspective illustrates a growing recognition that ecosystems cross political boundaries and that effective protection requires cooperation and new legal concepts of duty. The chapter then articulates a "new horizon" for constitutional law: one that fully accommodates ecological connectivity and complexity. Practically, it advocates an **ecosystem approach** to constitutionalism, meaning that legal frameworks should be consistent with the way ecosystems function – interconnectedly and dynamically. It calls for incorporating diverse knowledge systems into governance, from cutting-edge scientific models (like Earth system science) to indigenous and traditional insights (such as the concept of *vivir bien* or "living well" in harmony with nature). Chapter VIII reinforces the principle that environmental protection cannot remain an isolated domain of law or a mere policy silo; instead, ecological considerations must be integrated into all aspects of development and decision-making (echoing, for example, Principle 4 of the Rio Declaration that environmental protection is an integral part of the development process). It also asserts that the very notion of sovereignty must evolve: sovereignty today implies not just authority, but a responsibility to ensure one's actions do not harm other communities or the global commons. Ultimately, Chapter VIII concludes that a pluralistic yet coordinated constitutional order – one grounded in humility, respect for life, and collective stewardship – is required to achieve the *telos* of biospheric constitutionalism. This would be a form of global constitutional ethos wherein human law aligns with the laws of nature, fostering a way of life in common that preserves the planet's vitality for present and future generations. In essence, the final chapter crystallizes the book's intellectual journey and normative vision: it imagines a world where constitutional law helps orchestrate a symbiotic relationship between civilization and the Earth system.

At the end of Chapter VIII the work includes a program for the implementation of the Biospheric rule of law, underlining the importance of a democracy intermingling society, experience and know-how, with an accurate interplay of the institutions, and the approaches to legislation. In this sense, recognizing the importance of forests may be an appropriate starting point. The author announces that such issues will be developed in a subsequent monograph.

Conclusion

Across its three parts and eight chapters, *From Constitutional Comparison to Life in the Biosphere* presents a tightly interwoven argument for transforming constitutional law in an age of an ecological crisis. It starts by linking classical constitutional principles and comparative methods to the realities of life in the biosphere (Part I), then broadens the conversation to include interdisciplinary insights and ethical imperatives for conscious interdependence (Part II), and finally articulates concrete duties and forward-looking principles for a life-centered legal order (Part III). The core thesis – that constitutional law must be reoriented around biospheric interdependence and ecological responsibility – is clearly articulated and reinforced at each stage. Philosophically, the work draws on metaphysics, theology, and complexity science to enrich legal reasoning; legally, it challenges entrenched doctrines of sovereignty and rights by introducing concepts like a *constitutional law of the biosphere* and obligations *erga omnes* to protect global commons; methodologically, it blends historical comparison with scientific awareness and cross-cultural dialogue. Major concepts are illuminated throughout: the idea of *limited government* is revived as a check against environmental overreach; *interdependence* becomes a guiding principle for understanding law's scope; *conscious interdependence* and *education of consciousness* are proposed as cultural preconditions for any legal reform; and *supranational duties* and *erga omnes* obligations are framed as necessary innovations to address issues like climate change and biodiversity loss that no single state can solve alone. The evolution described in the book is one from a traditional paradigm – where constitutional law is a tool of human governance often isolated from nature – to a new paradigm where law is integrated with the "regularities" of Earth's biosphere, informed by scientific realities and enriched by the ethical wisdom of multiple cultures. In advocating this transformation, the monograph contributes to an emerging field of **environmental constitutionalism** or **biosphere constitutionalism**, making a compelling case that the fate of constitutional democracy and the fate of the planet are inextricably linked. The vision it offers is both pragmatic and aspirational: a call for concrete legal reforms and duties at all levels of governance, and at the same time an invitation to reimagine our collective life in a way that honors the interdependent web of life. Ultimately, *From Constitutional Comparison to Life in the Biosphere* encourages scholars, law-makers, and citizens to rethink the foundations of constitutional law, not only in theory, but in the practice of the society and the institutions, in order to better serve a future of ecological balance and shared humanity.

Part I

Between Comparison and Values

Part I introduces the reader to the monograph's foundational approach, situating constitutional law in the context of both comparative analysis and core human values. It explores how traditional constitutional comparisons can be deepened by examining the value systems (such as notions of the common good, peace, and human-nature relations) that underlie different constitutions. Chapters in this part highlight the need for a broader theoretical lens: they argue that understanding constitutions across civilizations and history – "from the past to the present" – reveals enduring principles and challenges, and that incorporating values like environmental stewardship and human dignity is crucial for a more holistic constitutional theory. In sum, Part I sets the stage by bridging constitutional comparison with normative commitments, laying a value-centered groundwork for re-imagining constitutionalism in light of our shared existence in the biosphere.

Chapter I

The Constitutions from the Past to the Present – Between Theory and Method of Constitutional Comparison

Keywords

limited government, constitutional comparison, biospheric regularities, interdependence, legal semiosphere

Abstract

This chapter lays the philosophical and methodological groundwork for the book's thesis that constitutional law must be reframed in light of humanity's existence within the Biosphere. Its central claim is that the "legal problem" of how we govern our shared life cannot be separated from the metaphysical question of human being, and thus law should respond to the regularities and limits of the planet. Methodologically, the chapter adopts a historical-comparative approach: it traces constitutional ideas from past to present and expands conventional constitutional analysis to include linguistic, semantic, and systemic contexts, moving beyond abstract rationalism toward an experiential understanding of law. Key legal insights include the need to revive the principle of limited government as a means to safeguard biospheric conditions, the recognition of interdependence (relationships among societies and between society and nature) as central to constitutional theory, and the call for developing a "constitutional law of interdependence" that aligns rule-of-law institutions with the preservation of life-supporting planetary regularities. By grounding constitutional comparison in biospheric context and advocating epistemological humility in legal reasoning, Chapter I establishes the value framework and interdisciplinary scope that the rest of the book builds upon.

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1. On the Reasoning Behind Deepening Legal Comparison From and Beyond Constitutional Texts: The political problem and the awareness of our common life in the Biosphere. 1.1. Comparison and know-how in dealing with our life in common: The aims of our societies; Reference to the world and to the people around us. 1.2. Constitutional comparison and a search of the common good: an historical perspective: The honest speech; On the difference between the reasonable exercise of power and misgovernment. 1.3. Collecting material for the study of constitutions as a form of empathy: From the studying of materials to the understanding of problems; Life in common and nature, religion, secular institutions; African and North America parallels; On the contribution of constitution to understanding life in common. 2. From Comparison to Transformation Processes: Constitutions Between Past and Present Realities. 2.1. On the historical perspective on constitution and constitutional thought: The problem of the implementation of values beyond the discretion of changing majorities; Shared ethical values and autonomy of law; On liberty in the modern state. 2.2. Political freedom and moderate government: Towards a balanced mixed government; A moderate government and a comparative approach to law: a path for social harmony; Accommodating commutative justice with common good: towards the rule of law; Citizenship and the common good; On the importance of constitutional language. 3. From the Study of Texts to the Semantic and Semiotic Study of Constitutions: Expanded Comparison. 3.1. Constitution as a linguistic process: Language and reality; The context: biosphere and semiosphere. 3.2. On constitutional texts: Constitutional utterances; On the systemic study of the constitutional context; For a proper understanding of constitution within our common home. 4. For a Constitutional Law of Interdependencies. 4.1. Interdependencies between societies, interdependencies with nature: Existence and law; liberty and language. 4.2. Interdependencies, namely: the manifestations of the existence of the persons and the societies in context: Social values and political values; Transnational, supranational biospheric dimension of law; Comparison and convergences.

1. On the Reasoning Behind Deepening Legal Comparison From and Beyond Constitutional Texts

The political problem and the awareness of our common life in the Biosphere

Life is a phenomenon whose origins remain beyond our full comprehension. What is known, however, is that all forms of life have emerged within the Biosphere. This raises a fundamental question: what is the relationship between the Biosphere and governance of human societies? How might the extensive debates on limited government, which have taken various forms since antiquity, inform our understanding of how human communities can structure their collective life in ways that ensure the preservation of a viable phase of the Biosphere – not only for the present generation, but also for those to come?

The development of an approach to understanding and applying the law, aimed at building a balanced relationship between human societies and the Biosphere, must begin with an analysis of how societies address the fundamental questions of how we live in common, namely the political problem. The reasoning adopted, the underlying values, and the outcomes of this approach – namely, legal principles and texts – play an essential role. The historical perspective on constitution-making is therefore an important preparatory step in the effort to represent the regularities of nature in legal form, while taking due account of biospheric processes.

1.1. Comparison and know-how in dealing with our life in common

The aims of our societies

Any interpretation of the law, whether epistemic in nature or oriented toward operative purposes – such as adjudication or the broader use of legal norms in both institutional frameworks and everyday social interactions – must begin by clarifying what we understand by "law" and the function it fulfills in our lives.[1]

In this perspective, as interdependencies between individuals and communities increase and take on new dimensions, it becomes evident that reflection must focus on how we live together. This includes examining the purposes of our communities, their basic

[1] A preliminary version of this chapter, albeit in Italian, can be found in P. Policastro, *Le Costituzioni tra passato e presente: tra teoria e metodo della comparazione costituzionale*, in: *Le Costituzioni: Un invito alla comparazione. Dal passato al presente. Evoluzione di una ricerca*, ed. E. Castorina, P. Policastro, Giappichelli, Torino 2022, pp. XI–XXVI.

structures in terms of social, economic, and political relationships, and how we understand the processes and principles through which these mutual interdependencies occur, both among individuals and among communities.

From the earliest historiographical records, we observe significant attention to the various aspects of communal life, such as natural resources, climate conditions, customs, and the ways in which human activities were addressed, understood, and improved.

Moving from a descriptive position on the complex webs that develop among these aspects, I then examine how the human mind engages with them. This comparison between what is, what could be, and what might have been if certain solutions had not been adopted, relates to "techne" (τέχνη), which stems from reason and consists in practical intelligence that produces the capacity to act. In acting, progress is made, particularly evident in communities through the relationship between reason and law ("σοφίη" and "νόμος ἰσχυρός"), a relationship that, if used properly, allows for the transition from "πένιη" (a state of need) to "ἀρετή" (well-being or excellence). Thus, while Herodotus saw "techne" as artisanal skill, the Sophists viewed the activities of the mind as "techne."

Reference to the world and to the people around us

In this way, comparison increasingly assumes a character intrinsic to human cognition and to our capacity to relate to the world around us. By transcending the constitutive dimension of civilizations rooted in the archaic relationship between Heaven, Earth, Water, and Fire – whether through natural events such as floods caused by glacial melt at the end of ice ages, major volcanic eruptions, or social events such as revolutions or escapes from slavery – comparison ceases to merely signal a relationship to a past that no longer exists, and instead engages with a past that continues to resonate in history and in language[2].

Comparison becomes a means to understand societies and explore their history, allowing us to draw meaningful conclusions. Among these, the pursuit of the good was paramount, with politics playing a crucial role in this endeavor.

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[2] Interesting remarks on this issue can be found in F. Rendich, *Dizionario etimologico comparato delle lingue classiche indoeuropee. Sanscrito, Greco, Latino*, Palombi editore, Roma 2010, 1st ed. 2005, second revised and enlarged ed. 2007, available also online: http://www.gianfrancobertagni.it/materiali/varia/Franco%20Rendich,%20L'origine%20delle%20lingue%20indoeuropee.%20Struttura%20e%20genesi%20della%20lingua%20madre%20del%20sanscrito,%20del%20greco%20e%20del%20latino.pdf (25.04.2024).

1.2. Constitutional comparison and a search of the common good: an historical perspective

The honest speech

Explicit attention to constitutions begins in Greek culture with a fragment of Pindar (518-438 BC), found in the second of the Pythian Odes, dedicated to the games for Apollo. Specifically, in the second Ode, written in honor of Hiero of Syracuse, who won with his chariot at Python, Pindar writes: "And the man who has honest speech can benefit in every form of government: whether in tyranny, when hoarse masses direct the state, or when governance is entrusted to competent men"[3]. It is important to note that, in this case, individual virtue is regarded as beneficial for every form of power organization. Herodotus (484-425 BC), in his "Histories", describes the debate between Otanes, Megabyzus, and Darius on governance in Persia. Otanes advocated for transferring governance to the people, Megabyzus argued for placing the best people in power, and Darius asserted that monarchy would be the best possible choice. Philological and historical analysis suggests that this debate indicates how the classification among the three modes of exercising power was already known in the late fifth century, and how the Greeks were already describing constitutions in terms of power distribution modes, distinguishing between the reasonable exercise of power and misgovernment[4].

On the difference between the reasonable exercise of power and misgovernment

Examining the basis of the reflections and proposals of the participants in the debate appears worth here. Otanes emphasizes that, under the rule of one, the monarch can act with impunity, which breeds insolence. In contrast, the government of the many is characterized by "the best of qualities," including equality, the random selection of offices, and political accountability. Megabyzus, on the other hand, argues that a tumultuous crowd can become insolent just like a monarch and, moreover, cannot acquire knowledge; he therefore proposes a government of the best. Darius sees monarchy as the best possible form of government: when more people govern, it is impossible to prevent malicious attitudes from

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[3] S.C. Roy, *The Constitutional Debate: Herodotus' Exploration of Good Government*, "Histos" 2012, No. 6, pp. 298–320.

[4] S.C. Roy, *The Constitutional Debate...*, pp. 298–299.

emerging. Instead, when freedom is achieved through the rule of one, it is right to maintain that rule[5].

So, the "techne" of good governance, which emerges in this debate, seems primarily based on specific values: equality, the capability of rulers, and freedom. The importance of these values diminishes the significance of harmful attitudes, such as insolence, conflict among rulers, and malevolence, as well as the reference to the "ancestral" traditions of a people. While we cannot refute the historical-philological opinions that consider the terms of this debate fundamentally Greek and suggest that the discussion itself was crafted by Herodotus, we observe that the discussion on the science of politics, understood as the science of governing is rooted in ethical values in Plato and Aristotle. When it comes to Plato, the myth of Er, presented at the conclusion of his "Republic," serves, in my opinion, as a closing element of the political system developed by the Athenian author. It emphasizes the fundamental post-mortem responsibility of those who have abused governance by becoming tyrants, thereby requiring a serious, thoughtful, but unavoidable choice of life[6]. Aristotle addresses the same issue by starting with the concept of the good. In the Nicomachean Ethics, the study of the pursuit of the good through virtues serves as a prelude to the study of politics. However, from a methodological point of view, the study of politics, according to the Stagirite, requires knowledge of constitutional texts and their functioning. In the conclusion of the Nicomachean Ethics, Aristotle emphasizes the importance of learning through experience and, therefore, the importance of collecting and analyzing texts[7]. In fact, except for the Constitution of the Athenians, we only have knowledge of these works through intermediate sources, which provide their summaries (epitomes)[8].

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[5] Herodotus, *Stories*, ed. A.D. Goodley, https://www.perseus.tufts.edu/hopper/text?doc=Perseus:text:1999. 01.0126 (23.05.2024), 3.80.1-3.82.5.

[6] P. Policastro, *L'ipotesi biosferica tra religio, principi universali e il concetto di diritto. Da Vico alle cibernetiche di secondo grado*, in: *Immaginario e realtà. Percorsi della religione*, ed. A. Rella, S. Valerio, Aga editrice, Alberobello 2018, pp. 295–352. English version in Chapter VI of this monograph.

[7] Aristotle, *Nicomachean Ethics*, ed. H. Rackham, https://www.perseus.tufts.edu/hopper/text?doc=Perseus: abo:tlg,0086,010:1148b:20 (24.05.2024). See at least the first book, containing the aims of the work and the conclusions of the work itself, for example, 1094a, lines 1–20, and 1181b, lines 1–20.

[8] Primarily: Heraclidis Lembi, *Excerpta Politiarum*, ed. and transl. M.R. Dilts, Durham, North Carolina) 1971.

1.3. Collecting material for the study of constitutions as a form of empathy

From the studying of materials to the understanding of problems

The materials collected for the study of the Constitutions hold fundamental importance here. As Raymond Weil pointed out in his comprehensive study of Aristotle's Politics[9], and as other scholars have also observed, the composition of this work gains a layered character over time[10]. In composing the Politics, Aristotle relied not so much on the impressive collection of Constitutions (Πολιτείαι) itself but rather on the materials prepared for it. Therefore, although there are few documents that explicitly reference the texts of the Constitutions themselves – apart from the Constitution of the Athenians – it seems highly plausible that such texts were either written by the constituent legislators of the time or were grounded in important customs[11].

We are not certain how this methodological approach of studying constitutional law and politics through comparison spread over the centuries. However, taking the Middle Ages, we do find the principle of self-limiting government in various documents that can be traced back to the constitutional phenomenon. For this reason, a study of constitutions based on texts must necessarily take into account the historical foundations of constitutionalism.

However, I would like to point out that these trends are not exclusive to the development of constitutions in Europe.

Life in common and nature, religion, secular institutions

Alongside the *Magna Carta* of 1215, which marks the beginning of the present structure of the English Constitution, we also find other important developments. These include the *Assize of Clarendon* of 1166 and the *Charter of the Forest*, which was contempo-

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[9] R. Weil, *Aristote et l'Histoire. Essai sur la «Politique» (collection: Études et Commentaires, XXXI)*, Klincksieck, Paris 1960.

[10] C. Higuett, *A History of the Athenian Constitution to the End of the Fifth Century B.C.*, Clarendon Press, Oxford 1952.

[11] See the references in Plutarch and Pausanias. While Plutarch concentrates a significant part of his attention to customs of undoubtable constitutional meaningfulness, Pausanias presents an interesting picture of the constitutional framework in action. See Plutarch's *Moralia in Fifteen Questions*, IV 263b-351b, with an English translation by Frank Cole Babbitt, Harvard University Press – William Heinemann Limited, Cambridge (Massachusetts) – London 1962 [The Greek Question], pp. 174–249. See Pausanias, *Description of Greece*, https://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.01.0160%3Abook%3D1&force=y (1.07.2024).

raneous with the *Magna Carta*. All of these are key elements of a flourishing constitutional development. The republican governments of the Maritime Republics, the Hanseatic cities, and other systems like that of the Republic of Novgorod (in Russian: Земля новгородская, literally "Land of Novgorod")[12] became part of complex phenomena of constitutional development that saw religious systems evolve alongside secular legal systems. Focusing solely on the latter, Berman, in *Law and Revolution*, identifies feudal, manorial, and mercantile legal systems before tracing the development of urban law and subsequently royal law, with particular reference to Sicily, England, Normandy, and France[13]. In this process, one can observe the development of increasing complexity, which gradually led to a legal framework aimed at ensuring the objective administration of justice and fostering the growth of cities or republics, along with a growing awareness of the coherence of the legal system. This evolution culminated in the institutions of the modern state, through the development of royal functions and the separation of legislation, administration, and jurisdiction.

African and North America parallels

These phenomena should not be considered in isolation but within broader contexts. The Charte de Kouroukan Fouga of 1236, originating in what is now Mali, is of significant interest. Approved after a series of conflicts, it guarantees life and personal integrity, bans slavery, calls for tolerance, emphasizes the duty to care for the family and the common good, and mandates speaking truthfully in the exercise of public responsibilities, all while orally transmitting the rights of the constitutional Charter[14]. Also, the Constitutional Charter of the Iroquois Confederation, known as the "Great Law of Peace", called "Kaianere'kó:wa" in the Mohawk language, which dates back to the 12th century (according to members of the Cayuga nation) or the 17th century, and which would have played a significant role in inspiring the Founding Fathers of the United States Constitution, deserves due attention. Similarly to the African one, this document has also been primarily transmitted

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[12] See M.C. Paul, *Was the Prince of Novgorod a "Third-Rate Bureaucrat" After 1136?,* "Jahrbücher für Geschichte Osteuropas" (Themenschwerpunkt: Neue Ansätze in der Geschichte der internationalen Politik) 2008, Vol. 56(1), pp. 72–113.

[13] H.J. Berman, *Law And Revolution. The Formation of The Western Legal Tradition*, and London, Harvard University Press, Cambridge-Massachusetts-London 1983.

[14] CELHTO – Centre d'Etudes Linguistiques et Historiques par la Tradition Orale (Bureau Union Africaine, Niamey), *La Charte de Kurukan Fuga. Aux sources d'une pensée politique en Afrique*, Harmattan, Paris 2008; B. Feller, *La Charte de Kouroukan Fouga: Puissance du verbe, source d'une pensée politique*, https://www.youtube.com/watch?app=desktop&v=lcLH__gg0u8&t=0s (10.09.2025).

through oral tradition[15]. In this case as well, we find the function of the Constitution as a tool to limit power and as an element that characterizes the formation of constitutional discourse, which becomes a factor of communication transcending cultural differences.

Developing a direct relationship with constitutional texts requires taking into account the historical development of the contributions made by constitutions to legal civilization, not only through their evolution over time, but also in relation to the problems they originally sought to address.

On the contribution of constitution to understanding life in common

The study of the relationship between Constitutions and the concept through which they formulate the main aspects of our life in common, opens to a comparison based on an evolutionary examination. Such examination is also useful for deepening the concept of constitution in a broader sense, beyond written texts, and for identifying the regularities through which human societies organize themselves. Among these are primarily the relationship between constitution and the problem of being, between constitution and nature, between constitution and society, and naturally between constitution and the fundamental understanding of the legal problem.

In addition to these, there are principles through which influences are distributed on social, political, and economic relations. These distributive principles refer not only to the relations between human subjects within societies, between them, or through them but also to the relations between human societies, territory, and biospheric resources.

An important aspect, which constitutes one of the main problems considered in this volume, is the necessary transformation to include among these the principle of distribution of influences between human society and the Biosphere, as an autonomous and constitutive distributive principle of human societies. Therefore, this principle requires adequate implementation without being subject to balancing.

In addition to such principles, there are those that identify the ways in which law manifests itself. Among these are the principle of recognition of subjects deserving of protection, the organisation principle as a principle of public law, and the principle of attribution, according to which the State (but it is the same for pre-state formations) assigns itself functions, being recognized as such through these functions.

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[15] C. Vecsey, *The Story and Structure of the Iroquois Confederacy*, "Journal of the American Academy of Religion" 1986, Vol. 54, No. 1, pp. 79–106, https://www.jstor.org/stable/1464101 (24.05.2024).

2. From Comparison to Transformation Processes: Constitutions Between Past and Present Realities

2.1. On the historical perspective on constitution and constitutional thought

How political power may avoid downfalls? May such reflection permit another on the relation between politics and the care of biosphere?

The use of constitutional elements, concepts, and ethical values drawn from different contexts – along with their resilience, evolution, and transformation over time, across space, and through interaction with diverse cultures – reveals significant connections. Comparing them not only underscores the importance of adopting a broader approach to constitutions, but also invites reflection on how constitutional legacies and knowledge can help deepen our understanding of the relationship between legal practice and humanity's connection with nature.

Like all disciplines that relate to the real life of human societies – shaped by cultural, communicative, and technological dimensions – the study of constitutions also carries a significant historical dimension. One of the key features of this historical dimension is the multiple levels of complexity that emerge in constitutional analysis. Indeed, beyond the relativization linked to the knowing subject – who evolves over time, space, and culture – one must not overlook the fact that the reality of law, the direct object of our inquiry, also evolves in connection with social choices and transformations in ethical, political, and economic perspectives.

A fundamental issue concerning complexity in law relates to how contemporary societies respond, may respond, or ought to respond to the growing impact of human activity on the regularities of the Biosphere. These issues justify the subsequent step of deepening the historical perspective on constitutions.

Already Aristotle, observing the constitution of the Athenians, highlighted how the government exercised by the wealthier subjects could become odious to the majority, and how, through various changes, the constitution of the Athenians managed to adapt the demands of the majority of the population with the de facto power that some subjects were able to exercise. The heart of Aristotle's analysis is based on an examination of whether and how political power manages to assert itself and is capable of avoiding the causes that lead to its downfall, such as misgovernment, arrogance, and arbitrariness in its exercise[16].

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[16] Aristotle, *Politics,* in: *Aristotle in 23 Volumes*, Vol. 21, translated by H. Rackham, Harvard University Press and William Heinemann Ltd, Cambridge (MA) – London 1944, see line 5.1531a, now on "Perseus

The problem of the implementation of values beyond the discretion of changing majorities

This line of analysis has had a decisive influence on the developments of comparison in public law: both in the long journey from antiquity, through the intermediate period, to modernity, and subsequently, when, with the emergence of constitutional and pluralistic democracies in the second half of the 20th century, the central issue of the exercise of power became the implementation and respect for certain values considered fundamental for the entire community and beyond the discretion of changing "majorities"[17].

Note, in this regard, among others, John Rawls, who, in justifying the will of the majority in terms of justice, must make use of multiple assumptions about the rationality, reasonableness, and pluralism of the citizen: qualities that are believed to transfer into the process of law production. Naturally, there are many doubts about the practical significance of this theorization in today's technological and mass communication societies, which raises the question of the relationship between education and good governance, discussed by both Plato and Aristotle, albeit in different terms.

In Aristotle's thought, the reference value was precisely the "limitation or balancing of power", but the Stagirite arrives at this conclusion through an analysis developed on two levels: first, by considering the constitutions that prevail in well-governed systems, and then also by examining any theoretical form considered worthy of esteem[18]. Indeed, Aristotle, while engaging with theoretical conceptions of the state, relates his observations to concrete constitutions. Among the various examples, he refers, among others, to the Constitution of the Carthaginians and that of the Lacedaemonians, to extract the important principle that the competence to legislate or to judge, in certain matters, belongs to pre-established bodies[19]: and this is a fundamental principle of limitation of power. This analysis indeed considers the Constitution as an object: in fact, there is no concern about the extent to which a constitution is embodied in a written document, or in a custom or tradition of governance. This basic realistic perspective today might be seen by considering texts as objects similar to what is meant in the linguistic theory of De Saussure or the Prague

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Digital Library", perseus.tuft.edu, contr. da ultimo (30.01.2022). The Italian version should also be consulted, R. Laurenti (ed.), Laterza, Roma 1997, pp. 189.

[17] Cf. J. Rawls, *A Theory of Justice*, Harvard University Press, Cambridge (MA) 1971. I refer here to "revised edition" from 1999. Some hints at the problems posed, to which we refer from a critical perspective, can already be found on pp. 7–8 *passim*.

[18] Aristotle, *Politics...*, 2.1260b.

[19] Aristotle, *Politics...*, 1.1275b

School[20]. Comparison, which takes into account both imagined and existing models, enriches Aristotle's approach with notions and concepts, signs that emerge in a cultural space, or in a broader semiotic perspective. This latter perspective leads the observer to broaden their outlook: one cannot deny that this analysis supports significant correspondences, such as the "principle of equanimity as the basis of justice in its various manifestations starting from the code of Hammurabi"[21], or that of subjective "good faith"[22] in classical Roman law, leading to the objective "coherence" with the precepts of social rectitude in Justinian law[23].

Shared ethical values and autonomy of law

The reference to entities characterized by relevant features for the law and based on written principles, customs, or transmitted knowledge, on the one hand, allows the law to acquire its own autonomy, for example, in relation to ethics, and on the other hand, to differentiate itself within it. In this sense, the fundamental problem to which a synthesis of written constitutional texts aspires is to try to understand and share to what extent the law develops concepts capable of affirming shared ethical values, regardless of a necessary reference to them in the evaluation, interpretation, and implementation of the law itself.

Regarding more closely what pertains today to the science of public and constitutional law, it must be noted how synthetic concepts have allowed us to address, and at the same

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[20] The approach of De Saussure and the Prague school is based on the relationship between language and text, while the approach founded on the concept of symbol is owed to Peirce and Morris. See *Ю.М. Лотман* (Y.M. Lotman), *О Семиосфере* (On the Semiosphere), published in "Труды По Знаковым Системам" (Sign System Studies), Tartu, 1984. In particular, this essay is contained in Vol. 17. Структура диалога как принцип работы семиотического механизма, pp. 5–23, sp. pp. 5–6.

[21] M.T. Roth, *Mesopotamian Legal Traditions and the Laws of Hammurabi*, "Chicago-Kent Law Review" 1995 Vol. 71(1), pp. 13–39, exp. p. 17 *passim*.

[22] For a concise exposition, see G. Grosso, s.v. *Buona fede (diritto romano)*, in: *Enciclopedia del diritto*, Vol. V, ed. F. Santoro-Passarelli, Giuffrè, Milano; G. Vico, *Principi di scienza nuova, d'intorno alla comune natura delle nazioni. In questa terza impressione del medesimo autore, in un gran numero di luoghi corretta, schiarita e notabilmente accresciuta*, in: *Giambattista Vico, La Scienza Nuova, Le Tre Edizioni 1725, 1730, 1744*, ed. M. Sanna, V, Vitiello, Bompiani 2018, pp. 1029–1030. See also the relevant bibliography in these two positions.

[23] For an institutional analysis of the Justinian compilation, which highlights the attempt to create a compilation capable of transforming existing legislation and jurisprudence in a coherent manner, incorporating the ethical values that Emperor Justinian was inspired by, particularly with the inclusion of *aequitas* "which has Christian content and governs all relationships": *in omnibus rebus praecipuam esse iustitiae aequitatisque quam stricti iuris rationem",* cf. B. Biondi, *Istituzioni di diritto romano*, pp. 40–48, Giuffrè, Milano 1972, *passim*, exp. p. 43.

time simplify, the complexity of the events that have characterised the long transition from antiquity, through the Middle Ages, to the reflections on the modern state. Among these, the mixed government[24], the notions of *gubernaculum* and *iurisdictio*[25], of citizenship[26], of *prudentia mixta*, to which we owe the foundations for peaceful cohabitation in regions characterised by the presence of different religious denominations[27], the concept of natural rights through which, starting from the 14th century, there has been, albeit not without obstacles, a growing recognition of individuals and groups, the reference to reason, with the doctrine of natural law and then of enlightenment, and the overcoming of the same with idealism, which begins a process of searching for law as a phenomenon of strongly inductive nature. In this latter case, the question of "freedom" emerges increasingly necessary and assertive, as well as the appearance of the dignity-freedom pair, with special reference to Giovanni Pico della Mirandola[28], to which is added

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[24] For example, in Aristotle, Plato, Polybius, Cicero, Diogenes Laertius, Thomas Aquinas: for some references, see below.

[25] Here I refer especially to the careful reading that Charles Howard McIlwain gives to Henricus de Bracton's "*Tractatus de legibus et consuetudinibus Angliae*". For a reference see H. de Bracton, *De legibus et consuetudinibus Angliae*, vol. 1, ed. G.E. Woodbine, New Haven: Yale University Press; London: Humphrey Milford, Oxford University Press 1915. When it comes to McIlwain's "*Constitutionalism Ancient and Modern*," an excellent edition of is available online, edited by Liberty Press: C.H. McIlwain, *Constitutionalism: Ancient and Modern,* Liberty Fund, Indianapolis 2008. First published in 1940 by Cornell University Press. Material from the Revised Edition (copyright: 1947 by Cornell University, copyright renewed in 1975); it has been included by permission of the original publisher, Cornell University Press.: https://oll.libertyfund.org/titles/mcilwain-constitutionalism-ancient-and-modern (24.05.2024). For a contemporary edition in English of De Bracton's work, see F.W. Maitland (ed.), *Bracton's Note Book. A Collection of Cases Decided in the King's Court During the Reign of Henry the Third Annotated by a Lawyer of that Time*, *Seemingly by Henry de Bratton,* ed. F.W. Maitland, Vol. I: *Apparatus*, Vol. II: *Text*, Vol. III: *Text,* C. J. Clay & Sons, Cambridge University Press Warehouse, London 1887.

[26] I refer at least to John Fortescue (Fortescue, Sir John. *De Laudibus Legum Angliae: The Translation into English (1775) and the Original Latin Text. With Notes*, ed. A. Amos, J. Smith, Printer to the University, Cambridge 1825), Machiavelli (Machiavelli, Niccolò. *Discorsi sopra la prima deca di Tito Livio (Discourses on Livy)*, Ed. and trans. H.C. Mansfield, N. Tarcov, University of Chicago Press, Chicago 1996. Online in Italian: Wikisource) and Hobbes (T. Hobbes, *De Cive, or The Citizen*, ed. S.P. Lamprecht, Appleton-Century-Crofts, New York 1949. First ed 1651, 1704).

[27] See at least the contribution of Justus Lipsius and Dutch humanism, examined in depth by M. Stolleis, *Staat und Staaträson in der frühen Neuzeit: Studien zur Geschichte des öffentliches Rechts*, Suhrkamp, Frankfurt 1990; Italian edition: M. Stolleis, *Stato e ragion di stato nella prima età moderna,* Il Mulino, Bologna 1998, at least pp. 201–237.

[28] See the comments on this in P. Policastro, *La dignidad de la persona y los principios constitucionales en la época de la globalización*, "Persona i Derecho" (Universitat de Navarra) 2011, No. 64(1), pp. 175–206.

that of representation-democracy developed by Benjamin Constant[29] and Emmanuel Joseph Sieyès[30].

On liberty in the modern state

The fundamental transition, marked by the modern state with the rise of rationalistic thought and the primacy of law, was that of the advent of a conception of the public sphere in which external and relational aspects, the so-called "liberty of the moderns", which Constant analyzes both from the standpoint of fundamental concepts and their manifestations, were supposed to be highlighted and guaranteed by law. In other words, the legal system was meant to confine itself to ensuring certain fundamental liberties and the balance of state functions, without interfering with the internal sphere of the individual.

2.2. Political freedom and moderate government

Towards a balanced mixed government

The foundation of this new consideration of the individual in relation to the exercise of public powers (the so-called political freedom) is realised only in "moderate government," where "power limits power". A necessary condition of this arrangement, as is known, is that the legislative power is not united with the executive power and that the power of judgement is not united with the first two. In other words, there was a need to guarantee certain rights and freedoms, as well as the functioning of the balance mechanisms inherent in "mixed government". Montesquieu, always on the basis of a careful comparative analysis, observed

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[29] B. Constant, *De la liberté des anciens comparée à celle des modernes*, in: B. Constant, *Œuvres politiques*, ed. Ch. Louandre, Charpentiers et Cie, Libraires-éditeurs, Paris 1874, pp. 258–286, also available online: https://ia601305.us.archive.org/15/items/oeuvrespolitique00cons/oeuvrespolitique00cons.pdf (24.08.2025). It must be said, however, that Constant himself had explored several other manifestations of freedom, which are now grouped together in the Fourth Part of the complete works. They are: I. De la liberté individuelle; II. De la liberté religieuse; III. De la liberté de la presse; IV. De la liberté industrielle. The fifth chapter of this part concludes with a very famous speech delivered at the University of Paris in 1819 on the freedom of the ancients compared to that of the moderns, of which we have several editions in Italian also online.

[30] In this regard, see among others M. Albertone, *Le ragioni della rappresentanza politica. Una prospettiva storica*, "Teoria politica. Nuova serie Annali" 2020, No. 10, http://journals.openedition.org/tp/1161 (24.08.2025) as well as M. Goldoni, *La dottrina costituzionale di Sieyès*, Firenze university press, Firenze 2009. This work can also be consulted online at: https://library.oapen.org/bitstream/handle/20.500.12657/34952/341476.pdf?sequence=1&isAllowed=y (30.08.2025). Chapter II in particular appears especially useful for reflections here.

that virtue too should find limits in moderate government[31]. Therefore, the law could not do more than guarantee the manifestation of political freedom. On this basis, the individual, in his manifold interdependencies with the State, would have benefited from his own position, formally tendentiously untouchable in the motivations deriving from his internal conscience. It is, instead, the external dimension, the manifestation of political freedom, which had, from the beginning, primary importance in the public sphere of the constitutional order.

A balanced mixed government is a "systemic value," which can be verified starting from different real types of constitutions. The theory of a moderate government was developed precisely through comparison, both among the existing systems themselves, and by referring to past systems, also trying to use the contributions of general historical knowledge.

A moderate government and a comparative approach to law: a path for social harmony

The theory of a "moderate government" is probably the very first object of comparative activity relevant to public and constitutional law. Aristotle saw mixed government as a real experience that presents various elements of each of the typologies already known to Herodotus[32]. On the other hand, the Stagirite observed how from the mingling of these elements, properly accomplished, a balanced form, suitable for resolving the conflicts of political life at the time there could derive[33]. The third chapter of Plato's "Laws" identifies some important elements in mixed government, such as the simplicity of lifestyle and communication, which results in the tempering of different principles of governance. Furthermore, the rule of philosophers or the use of the concept of responsibility through

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[31] Montesquieu, in Book II – which addresses the relationship between laws that secure political freedom and the constitution – and more specifically in Chapter 4 of *De l'Esprit des Lois*, where he examines the nature of freedom, writes: "Qui le dirait! La vertu même a besoin de limites. Pour qu'on ne puisse abuser du pouvoir, il faut que, par la disposition des choses, le pouvoir arrête le pouvoir. Une constitution peut être telle que personne ne sera contraint de faire les choses auxquelles la loi ne l'oblige pas, et à ne point faire celles que la loi lui permet." Charles-Louis de Secondat, baron de La Brède et de Montesquieu (1758), *De l'esprit des lois*, ed. L. Versini, Éditions Gallimard, Paris 1995 (2 Volumes: Vol I: pp. 1–604; Vol. II: pp. 605–1628.), https://www.archives.ecole-alsacienne.org/CDI/ pdf/1400/14055_MONT.pdf (24.05.2024) [An electronic edition *De l'esprit des lois.* Text of 1758, last version of the text revised by Montesquieu. The spelling has been modernised and the punctuation slightly altered].

[32] See N. Matteucci, *Governo, forme di,* in: *Enciclopedia delle scienze sociali* (1994), https://www.treccani.it/enciclopedia/forme-di-governo_(Enciclopedia-delle-scienze-sociali) (24.08.2025).

[33] See S. Vida, *La politia aristotelica e l'elogio della medietà*, "Montesquieu.It" 2010, No. 2(1), p. 5, https://doi.org/10.6092/issn.2421-4124/5133 (24.05.2024).

the Myth of Er, or the reference to the archaic myth of the shepherd king, appear as references to the relationship between knowledge, wisdom, responsibility, which characterise good governance in Plato's thought[34]. Furthermore, the fundamental problem of Polybius, which demonstrates how the moral decline of rulers led to the fall of Rome, ends up reinforcing Plato's conclusions and shows the ambiguity of the relationship between constitution and ethics, namely whether the constitution should encourage the development of moral virtues, or if ethical choice has some degree of autonomy from the Constitution[35].

As observed, the importance of Cicero's political thought lies in an original contribution that, starting from a comparison with the thoughts of Plato and Aristotle, seeks mixed government as a tool to achieve social harmony[36].

Diogenes Laërtius, in his work "Lives and Opinions of Eminent Philosophers"[37], appears significantly attentive to the issue of governance among the various philosophers presented. In particular, with reference to the Stoics, he states that: "Zeno in his *Republic* and Chrysippus in his treatise *On Government*, but also Diogenes the Cynic and Plato (...) affirm that the best form of government is a mixture of democracy, monarchy, and aristocracy (or government by the best)"[38]. According to Saint Thomas Aquinas, instead, mixed government would have succeeded in preventing the degradation of the respective forms of government. In this sense, Aquinas approaches limited government[39]. The process that unfolds during the Middle Ages presents several reference points that are very useful in

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[34] For some useful references see F. De Luise, *L'età dell'oro e il rovesciamento del mito del buon governo nel Politico di Platone. Una lezione sull'uso dei modelli*, "Plato Journal" 2020, Vol. 20, pp. 21–37, https://doi.org/10.14195/2183-4105_20 (24.08.2025).

[35] For various interesting reflections see, J. Thornton, *La costituzione mista in Polibio*, "Montesquieu.it" 2011, Vol. 3(1), https://doi.org/10.6092/issn.2421-4124/5144 (24.08.2025).

[36] U. Roberto, *Aspetti della riflessione sul governo misto nel pensiero politico romano da Cicerone all'età di Giustiniano*. "Montesquieu.it" 2010, Vol. 2(1), p. 43, https://doi.org/10.6092/issn.2421-4124/5134 (24.08.2025).

[37] The title of the work in Ancient Greek: "ΒΙΩΝ ΚΑΙ ΓΝΩΜΩΝ ΤΩΝ ΕΝ ΦΙΛΟΣΟΦΙΑΙ ΕΥΔΟΚΙΜΗΣΑΝΤΩΝ ΤΩΝ ΕΙΣ ΔΕΚΑ ΤΟ ΠΡΩΤΟΝ". Diogenes Laertius, *Lives of Eminent Philosophers*, vol. 1, trans. R.D. Hicks, Harvard University Press Cambridge, MA; William Heinemann Ltd., London 1959; Diogenes Laertius, *Lives of Eminent Philosophers*, vol. 2, trans. R.D. Hicks, William Heinemann, London; G. P. Putnam's Sons, New York 1925.

[38] *Ibidem*, Lb. VII, Cap. 1, 131: πολιτείαν δ' ἀρίστην τὴν μικτὴν ἔκ τε δημοκρατίας καὶ βασιλείας καὶ ἀριστοκρατίας (But the best form of government is the mixed one, composed of democracy, monarchy, and aristocracy), https://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.01.0258%3Abook%3 D7%3Achapter%3D1 (25.08.2025).

[39] For interesting observations, see S. Simonetta, *Rimescolare le carte. Il tema del governo misto in Tommaso d'Aquino e nella riflessione politica tardomedievale*, "Montesquieu.it" 2009, vol. 1(1), p. 1, https://doi.org /10.6092/issn.2421-4124/5121 (24.08.2025).

this regard. Indeed, Bracton, in his treatise on the laws and customs of England, after emphasizing the importance of legislation for the Kingdom, delineates a sphere of government that consists of ensuring the precise application of the law, or "*iurisdictio*", and another aimed at managing external security, internal security, and administration (*gubernaculum*).

Accommodating commutative justice with the common good: towards the rule of law

In this sense, constitutionalism develops, seeking to create all-encompassing categories for these two dimensions. It is in this perspective, from the coherence of the law present in ancient legislations up to Justinian and the Middle Ages itself, through a reflection on the powers and tasks of the sovereign, which we find in the second volume of Bracton, in the chapter "De libertatibus et quis concedere possit libertates et quæ sint regis", that what would come to be known as the "rule of law" has developed[40].

In the transition from the medieval to the modern era, the work of Fortescue is of fundamental importance when it comes to English law, but with a broad comparative scope, probably stemming from a careful reading of the Aristotelian tradition and its influences on subsequent methodological approaches. He distinguishes between the exclusive domain of the king, known as "dominium tantum regali", and the "dominium regali et politicum", which combines the king's function with the consent (consilium) of the governed. In this way, the law that the king applies in administering justice conforms to the consent of the governed. Thus, the king, in administering justice, is more secure by accommodating the desires of the governed than he would be by acting solely according to his own judgement. At the same time, it is beneficial for the people that justice is exercised according to their wishes. However, it should be added that Fortescue considers this principle as part of a widespread culture in various places, probably referring from memory to historians like Diodorus Siculus[41], and reporting that such a form of governance was known in Egypt, some Arab countries, and the majority of African states. Fortescue's thinking, in its precise temporal context, has sparked interest among many scholars. In particular, Pocock, in his

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[40] See also B. Tierney, *Bracton on Government*, "Speculum" 1963, Vol. 38(2), pp. 295–317, https://doi.org/10.2307/2852455 (16.04.2022).

[41] Diodoro Siculo *Biblioteca storica*, 60-30 B.C., Testo greco a fronte (collana: I classici della BUR), Vol. 1: Libri I–III, ed. G. Cordiano, M. Zorat, Rizzoli, Milano 2004; Vol. 2: Libri IV-VIII, ed. G. Cordiano – M. Zorat, Rizzoli, Milano 2014; Vol. 3: Libri IX-XIII, ed.C. Miccichè, Rizzoli, Milano 2016.

"The Machiavellian Moment"[42], identifies, always through careful comparison between values and political and constitutional experiences, the relationship between limited government and citizenship.

Citizenship and the common good

This observation then serves to focus on the fundamental role of citizenship in the exercise of the fundamental functions of the State, in Machiavelli's Discourses[43], as a result of reflections on Titus Livius, in terms of duties towards the public good, whose fulfillment is essential to its existence. The exercise of these duties takes on a substantive character, such as providing for the defence of the common good, especially in Machiavelli, but also in the payment of contributions necessary for the maintenance of the State, as in Fortescue, who seeks to identify not only the types, but also the measure of these contributions with precision. The study of the Constitution becomes, today, more interdisciplinary and open than ever before.

Thus, underlining the importance of comparison means suggesting that each constitution should be considered within the context of the social, political, and economic relations specific to the conditions under which it came into existence. For this reason, both the historical heritage and the natural context in which constitutional relations are born and develop should not be overlooked.

On the importance of constitutional language

In this way, it also becomes possible to attribute meaning to the "language of constitutions" and, through comparison, to analyse the relationship between constitutional principles and political and ethical values, taking into account the social, geographical, historical, cultural, economic, and political realities – both for epistemic purposes and for constitutional politics.

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[42] J.G.A. Pocock, *The Machiavellian Moment. Florentine Political Thought and the Atlantic Republican Tradition*, Princeton University Press, Princeton 1975.

[43] N. Machiavelli, *Discorsi sopra la prima Deca di Tito Livio,* 1531. For the reference edition see: *Tutte le Opere di Niccolò Machiavelli*, ed. M. Martelli, Sansoni Editore, Firenze 1971. Available online at: https://it.wikisource.org/wiki/Discorsi_sopra_la_prima_Deca_di_Tito_Livio (30.08.2025).

3. From the Study of Texts to the Semantic and Semiotic Study of Constitutions: Expanded Comparison

3.1. Constitution as a linguistic process

Language and reality

The study of constitutions within their historical and linguistic context opens a constitutional analysis to an expanding field of symbolic and semantic references, through the transition from the deduction of concepts to their analysis within a systemic framework.

From this perspective, the system through which we understand the constitution can incorporate conceptual frameworks and observations that enable us to address new challenges related to our understanding of the world around us and to the possibility of adapting to it in a synergistic manner – not by harming the fundamental regularities of the Biosphere, but by placing the knowledge developed thus far in constitutional matters – appropriately expanded – at the service of their preservation. In this sense, expanded comparison broadens the very object of constitutional comparison, responding to the needs of the present.

Starting from constitutional texts, we cannot deny that the language of the Constitution is directed towards understanding reality, becoming aware of the possibilities and counterfactuals of the constitutions themselves, and their related constitutional politics. Law in general, and especially constitutions, are based on a complex process of subsumption and balancing, which begins with the consideration of what reality is. The fact that it is often the people themselves who insistently demand the modification of the status quo, as illustrated very well by constitutional history, does not absolve them of responsibility for the results of the constituent process. The text is important, if only because, starting from the reflections that have supported the development of the current concept of "constitution," it has gradually highlighted significant linguistic correspondences that include principles and general clauses, fundamental rights, models of interpretation, decision-making techniques of supreme and constitutional judges, but above all, the discourses developed in the world of jurists regarding Constitutions. The importance of constitutional texts, however organised and disseminated, stems from some fundamental reasons, which seem to consist of: a search for the meaning of the expressions contained therein; aiding the explanation of concepts; the reconstruction and development of legal discourse, and serving as an element of the reader's learning process. Naturally, these elements intersect at multiple points. The Russian linguist Yuri M. Lotman, who studied the sphere of symbolic language uses, or the "semiosphere," starts from an attempt to overcome the two traditional

conceptions of semiotics through discourse; the famous scholar, founder of the Tartu school, realises that producing, transmitting and consolidating meaning through discourse requires taking into account a network of relationships, which he associates with the concept of "Biosphere," developed almost a century ago by the geo-biophysicist Vernadskiy[44].

The context: biosphere and semiosphere

Semiosphere, inclusive of the legal semiosphere[45], is composed of a set of entities that must be recognized, albeit in their diversity, in order to be interconnected. The first reason concerns the fact that all interpreters seek meaning starting from reference elements in the sensible world, which can be the world of written texts, but also that of "conceptions," "assumptions," and "narratives" that give a certain meaning to the texts. Especially today, where concepts like "rule of law," "democracy," and "judicial independence" have a significant international value. Indeed, they form a basis for "recognition" for admission to various international organizations and for the acceptance of the reasons and proposals of these states in the international communities in which they operate, the linguistic formulations of texts and "expressions" of constitutional significance[46].

The second reason concerns the search, through textual analysis and comparison, to define concepts whose meaning goes beyond a simple normative reference in a given constitution. When translating an expression such as "Parliament", we aim to identify a concept abstracted from the particularities of any single legal system, in order to outline its broader, comparative characteristics. In this case, even reference to etymology can be of great importance. One example here is the Constitution of the United Kingdom, accommodating acts

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[44] V.I. Vernadsky, *The Biosphere*, Complete Annotated edition, Copernicus (Springer Verlag), New York 1998 [first ed. 1926: Биосфера, Ленинград] (Foreword: L. Margulis, M. Ceruti, S. Goluabic, R. Guerrero, N. Ikeda, N. Ikezawa, W.E. Krumblen, A. Lapo, A. Lozcano, D. Suzuki, C. Tickell, M. Walter, P. Westbroek; Introd. J. Grinevald; transl. D.B. Langmuir; revised and annotated by M.A.S. McMenamin). In particular, see Appendix I of this volume, titled *Vladimir Ivanovich Vernadsky (1863–1945) A Biographical Chronology*, compiled by Jacques Grinevald, pp. 151–158.

[45] P. Policastro, *Biosfera, politica del diritto e educazione delle coscienze*, in: *Democrazia e religioni. Libertà religiosa, diversità e convivenza nell'Europa del XXI secolo* (Atti del Convegno Nazionale ADEC, Trento, 22–23 ottobre 2015), ed. E. Camassa, "Quaderni della Facoltà di Giurisprudenza dell'Università degli Studi di Trento" No. 21, Editoriale Scientifica, Napoli 2016, pp. 43–77. P. Policastro, *L' ipotesi biosferica*..., pp. 295–352.

[46] With this, we want to refer to the English term "utterance which, within the field of "pragmatics" is connected to the use of linguistic expressions". See in this regard, first of all J.L. Austin, *How To Do Things With Words. The William James Lectures delivered at Harvard University in 1955*, The Clarendon Press, Oxford 1962, *passim*. However, on pages 2–3, Austin attributes to Kant the role of a pioneer in having observed that the use of words is only apparently descriptive.

dating back over a thousand years, alongside recent formulations that update and extend its spirit[47].

The third reason is that the same texts, or the same expressions of a constitutional nature, are, through their use in various documents, a fundamental element in the reconstruction of legal discourse as a whole, or of the "legal semiosphere".

The fourth reason is that the analysis of constitutional texts – and of law in general – especially when grounded in the historical processes that shape meaning over time, serves as an invitation to reflect on how living and dynamic entities, such as human beings and their societies, can expand the legal sphere of meaning and interpretation in ways that affect both themselves and the external world, including the Biosphere and the living beings that are part of it. It is, therefore, an invitation to critically adapt our understanding of the relationship between law and the world around us. A recursive transformation of meaning takes place – one that involves our relationship with ourselves, with others, and with the Biosphere.

3.2. On constitutional texts

Constitutional utterances

The starting point for the study of constitutions must necessarily involve the texts themselves – that is, the linguistic formulations found in fundamental laws, which, as we have seen, are the product of long processes of meaning-making and interpretation.

Adapting a semantic-semiotic method to comparative study constitutes, in my view, an indispensable foundation for all legal professions – from magistrates and lawyers to corporate and labor consultants, notaries, and public officials. Moreover, it is highly relevant to society as a whole – not only for shaping public debate, but also for fostering identification with a political community, for building relationships with other societies, and for aligning human governance with the regularities of nature. Legal professionals and institutions increasingly face challenges in interpreting and applying norms derived from legal sources that reflect diverse geographical origins and draw on a variety of legal cultures – such as European Union law [48]. This legal system must be assessed not only in terms of resilience of its founding principles and institutions, but also in relation to the ways in which it has evolved

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[47] G. Radbruch, *Der Geist des englischen Rechts*, Adolf Rausch-Verlag, Heidelberg 1947, Italian edition: G. Radbruch, *Lo spirito del diritto inglese*, ed. S. Baratta, Giuffré, Milano 1962.

[48] E. Castorina, *Constitutional Language and European Integration*, in: *Liberty and Language, The global dimension of European constitutional integration*, ed. E. Castorina, P. Policastro, Giappichelli, Torino

in response to pressing challenges: the dynamics of enlargement, the emergence of conflicts at its borders, the risks of economic recessions, global pandemics, and the climate changes associated with transitional phases of the Biosphere.

This contextual assessment relates to an increasingly broad network of relationships that the law is called upon to represent and, at least to some extent, to subsume. This process, however, requires a number of steps.

Comparing constitutional texts – or, more generally, constitutional utterances, whether written or unwritten – immediately reveals expressions that exhibit similar semantic characteristics, such as rights, fundamental rights, law, parliament, government, administration, jurisdiction, and so forth. Recognizing and analysing such expressions may be seen as a first step in a process that leads toward assessing the meaning of constitutional utterances within their respective contexts.

This initial step allows for a deductive development of various constitutional concepts, based on the use of corresponding terms. Differences in perspectives and meanings – which reveal the complexity of deductive description – can be understood as features of parallel existence of living constitutions. These differences may be further clarified through what we might call a second-level theorization, which naturally follows from a semantic-analytical approach to the general expressions found in constitutional texts.

On the systemic study of the constitutional context

An additional step involves the systemic study or analysis of the constitutional context. This stage can lead to a deeper exploration of further aspects, such as modal principles – which define how law is conceived, which subjects and which ambits are protected and how it operates within a given legal system, viewed from an organizational and legal-ontological perspective[49].

A systemic analysis provides a valuable framework for comparison, particularly for the purposes of constitutional policy. Through comparison, it becomes possible to highlight not only the static characteristics of constitutions – those aimed at preserving a particular status quo in terms of goals, distributive logics, or modal principles – but also their

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2010, pp. 111–130. For the Italian version see *Linguaggio costituzionale e integrazione europea*, in: *Scritti in onore di Michele Scudiero*, Vol. 1, Jovene, Napoli 2008, pp. 427–448.

[49] P. Policastro, *Interdipendenze costituzionali e protezione della persona*, in: *Studi in Onore di Luigi Arcidiacono* Pubblicazioni dell'Università di Catania n. 239, new series, Vol. VI, Giappichelli, Torino 2010, pp. 2635–2675.

dynamic aspects, through which fundamental laws seek to transform prevailing principles into forms more consistent with the values a legal system aspires to promote.

A systemic analysis is also essential for understanding constitutional transitions and transformations. At the same time, constitutional analysis must also explore how constitutional concepts may be employed to address events and realities that constitutions have either not yet addressed or have addressed only insufficiently. This points toward an extra-systemic approach to constitutions – one that may require the broader inclusion of meta-constitutional principles, as well as other normative frameworks that expand the domain in which constitutions engage with complementary disciplines.

Thus, having introduced these three important steps of constitutional analysis – which, starting from the texts, progressively embrace both our sphere of thought and the sphere of life – it is necessary, before moving into the next section, to emphasize that these steps correspond to different cognitive dimensions: the deductive, the inductive, and the creative.

For a proper understanding of constitution within our common home

In my view, it would be extremely difficult to introduce new and creative constitutional concepts without first exploring the potential of deduction and induction. Otherwise, we risk generating a significant mismatch between what constitutions are capable of describing and expressing, especially when we seek to approach concepts such as Gaia, Mother Earth, or our Common Home in constitutional terms. The following pages are not intended merely to underline the importance of this expanded approach, but rather to pursue it through the development of an adequate constitutional method.

4. For a Constitutional Law of Interdependencies

4.1. Interdependencies between societies, interdependencies with nature

Existence and law

We cannot fully understand constitutions, nor define their fundamental concepts, without taking into account the system of relationships within societies, between societies themselves, and between each society and the natural resources, flows, and regularities that characterize the Biosphere. Although the development of trade since the modern era has led to a distribution of control over resources that has profoundly affected the regularities of the

Biosphere, the two World Wars and the subsequent political transformations have failed to produce a rule of law consistent with respect for those regularities. This pursuit remains ongoing and requires the capacity to bring the principles of recognition and respect for the human person into closer alignment with an understanding of the functioning of rule-of-law institutions, viewed from the perspective of protecting the regularities of the Biosphere. We may refer to this process as the development of a constitutional law of interdependence.

The study of constitutions is increasingly linked with the study of interdependencies both among individuals and legal systems, and among legal systems or communities[50]. However, the understanding of constitutions manifests through learning, which occurs through the perception of structures, the organisation of collected information into a system, and then the constant improvement of systemic description through a critical approach. This approach, which we owe to the contribution of Paolo Nunziante[51], and on which we focused, particularly in the years 2007-2009, was originally used for the semantic treatment of natural language in the field of law through computer use. It has its own internal logic that can be employed for comparison: it intends to develop a methodology for the progressive identification of a space encompassing all legal discourses, which naturally intersects with the space of all discourses, as envisioned by the Russian linguist Yury Lotman.

Liberty and language

Considering the reflections that led to the publication of the aforementioned volume "Liberty and Language," and which we intend to revisit, the interpretation of the constitution from a linguistic perspective was deemed to start from a certain number of classes of questions, each of which included various subclasses[52]. Each of these questions had to be addressed

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[50] See *Preface of the editors* to: *Liberty and Language, The global dimension of European constitutional integration*, ed. E. Castorina, P. Policastro, Giappichelli, Torino 2010, in particular pp. 11–12: "Although the language of constitutions passes through constitutionalism and its paradigms that allow to compare both diachronically and synchronically the aspects that we may consider to be related with constitutional law, without a study of the complexities arising from the use of natural languages in different legal orders, it is difficult to use the language of constitutional law for purposes directed to consider, in legislation and case law, the interdependencies between peoples, legal orders and societies. The results that emerged led to stress the importance, in a comparative study of constitutional law, of taking into account considerations relating to personal, social, economic and political development, the different semiotic systems of language and their interactions, the motivations and expectations of individuals and groups."

[51] P. Nunziante, *La semiosfera giuridica*, "Innovazione e diritto", 2005, No. 1–2, pp. 3–11, http://www.innovazionediritto.unina.it (30.08.2025).

[52] See P. Policastro, *Constitutionalism, Comparison, Complexity: Prolegomena on Liberty and the Use of Language for a Predictive Theory of Law*, in: *Liberty and Language, The global dimension of European*

considering the relevance of the concepts, starting from scientific literature, legislation, judgments, and other legally relevant documents[53].

Referring to the themes approached in these years, albeit exemplarily, we could suggest that students consider a path that, starting from some elements of a given text, will gradually lead them to studying Constitutions in a more comprehensive manner.

Issues to be considered – drawing inspiration from the available textual data – include the historical and political conditions under which the constitutions were formed and their subsequent evolution. A second point for reflection is how recognition and regulation of rights are achieved, or how existential manifestations of the individual as well as communities are protected, variously articulated and operating in either delimited territorial areas or exhibiting transnational characteristics. Another point of reflection focuses on the structure of public powers, including the organisation of legislation, in its various articulations between the State and its territorial components (such as federated entities, autonomies, regions, etc.). Government activities both from a unitary point of view and in cooperative or independent articulations must also be looked at. So must be informal entities such as pressure groups representing collective interests, transnational corporations, development or aid programs, as well as international financial arrangements.

Of course, one should not overlook the structure of constitutional judicial bodies, be it ordinary and administrative, the degree of their territorial decentralisation, as well as the development of forms of arbitration or mediation. Insight into the institutional position of the judging judiciary, the investigating or prosecuting judiciary, and the question of their independence from political power can be added to these reflections[54].

4.2. Interdependencies, namely: the manifestations of the existence of the persons and the societies in context

Social values and political values

The relationships of citizenship and their content, including in comparison with the status of mere residents, also form the basis for considering how existential manifestations of the individual are protected and implemented, both as individual entities and within various

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constitutional integration, ed. P. Policastro, E. Castorina, Giappichelli, Torino 2010, pp. 15–110, and in particular the appendix: *IV. Appendix. A Project of Comparative Sieve As a Learning Tool For Constitutional Law in a Multilingual Context*, pp. 94–109.

[53] P. Policastro, *Constitutionalism, Comparison...*, p. 94 ff.

[54] P. Policastro, *Constitutionalism, Comparison...*, p. 194 ff.

communities and collectivities of reference. The "political dimension", as a moment of implementation of constitutional principles and rights, connects citizenship to moments of representation and participation: these two aspects of the political process have not only institutional but pre-political characteristics that refer to social consciousness and its dynamics, including transnational ones. It is no coincidence that Article 2 of the Treaty on European Union distinguishes between values common to the Member States (such as human dignity, freedom, or democracy) and values characterizing European society (such as pluralism, non-discrimination, tolerance, or equality between women and men).

Particular attention may be paid to how state entities assign functions and confer competences both to autonomous or decentralized entities and to international organizations. Indeed, although from the perspective of administrative law or international law these phenomena may appear very different from each other, it is necessary to note that the state legitimizes itself towards its own citizens also by performing its tasks through organizational modalities that allow both the exercise of functions as close as possible to the recipients (emphasizing the importance of participatory processes) and the transfer of competences in broader areas, thus being able to address certain issues in a context more suitable to the real extent of these issues.

The community management of natural resources, the signing of the European Convention on Human Rights, the development of freedom of movement, and – through an integrated space of related rights anchored in the common constitutional traditions of the member countries – the progressive formation of the internal market, the establishment of an elected European legislative chamber and the area of freedom, security, and justice, as well as the gradual extension of citizenship rights to foreigners in contact with the Union's legal system represent achievements of considerable significance. Yet they appear limited when confronted with the pressing challenges of our time: from war at Europe's borders to the fight against terrorism, migratory movements, desertification, and the depletion of natural resources and the Biosphere[55].

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[55] P. Policastro, *The Law of Biosphere: Duties of Nations and Common Good*, book for the PhD honoris causa of dr hab. Pasquale Policastro, professor of the University of Szczecin, Alba Iulia 2015. The text of the lecture, albeit with significant modifications, follows the approach the author took in the keynote speech presented at the ninth session of the "Euro-Asian Law Congress" held in Yekaterinburg on 18-1 June 2015 on: "Право и национальные интересы в современной геополитики – Law and National Interests in Contemporary Geopolitics" as well as in our concluding report at the conference "L'Afrique pour l'Afrique: 10 ans de camps internationaux de reboisement consacrés au projet de la grande muraille verte", Università Cheikh Anta Diop, Dakar 20-21 August, 2015.

These elements lead us to observing how, currently, the traditional characteristics of the State, namely territory, population, and sovereign legal system, are evolving in a transnational and supranational direction.

Transnational, supranational biospheric dimension of law

Indeed, when large quantities of raw materials capable of substantially depleting global resources can be extracted from the territory of a state; when gases can be emitted from that same territory in quantities sufficient to contribute significantly to global warming; when such phenomena result from the decisions of a very small part of the world population, allocated in a few countries but capable of affecting the lives of many without taking them into account; when, alongside asymmetric development, serious ideological and political conflicts arise – causing ever larger populations to migrate for social and political reasons, to escape conflict or persecution, or even because of climate change; and when, inevitably, these people carry with them their cultures and existential heritage – certain consequences are bound to follow. Namely, if the concepts of territory and population evolve in a transnational direction, the concept of sovereign legal system likewise undergoes substantial changes. This does not mean that the "state-form" ceases to exist, but it certainly changes, transforms – as indeed has occurred if we consider its evolution from the modalities that have emerged in history: from the city-states and the empires of antiquity, through the Romano-barbarian kingdoms, up to the modern entities established since the Peace of Westphalia[56].

Comparison and convergences

The experiences of African, Asian, and American cultures cannot be overlooked, as they reveal significant convergences with the reality we know today. Indeed, even the achievements that seem typical of modernity – such as freedom of choice emancipated from ideological constraints of communities or equality of all before the law – do not appear to be absolute goals, but rather epochal accomplishments that must be carefully examined and assessed in the practical existence of constitutions formally grounded in the ideas of democracy and pluralism.

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[56] P. Policastro, *The Law of Biosphere...*, *passim*.

Chapter II

Superior Values and the Foundations of Constitutional Comparison – Peace, Symbiosis within the Biosphere, and Transnational Citizenship

Keywords

foundation of the legal problem, natural conditions that permit life, knowledge of nature and knowledge of history, sustainability of cultures and civilizations, competing attitude of human civilizations, symbiotic approach and competitive approach to constitution, classes of constitutional norms

Abstract

Chapter II argues that constitutionalism's highest values must include peace among peoples and symbiosis with the Biosphere, requiring a reorientation of law toward shared global responsibilities. It examines how different civilizations' relationships with nature and resource use have shaped their constitutional orders, highlighting that exploitative paradigms – such as the dissipative, biopower-driven model of modern capitalism– have generated crises by externalizing human and environmental costs. Methodologically, the chapter extends comparative constitutional analysis beyond textual study, integrating historical and philosophical inquiry into how "civilizational" values – such as the common good and mutual understanding – can be reformulated in biospheric terms. Key insights include a critique of traditional constitutional models that treat nature as external (illustrated by the dichotomy between societies that revered nature and those bent on dominating life and resources), the introduction of an overarching theory of constitution centered on interdependence and sustainability, and a call for a new paradigm of transnational citizenship grounded in cross-cultural dialogue and the acknowledgment of our common home. By proposing a "constitutional law of interdependence" founded on shared responsibility, institutional inclusivity, and

plural knowledge systems, Chapter II links the book's comparative approach to a normative vision of global constitutional ethics aligned with the planet's limits.

Contents

1. Law, Values and the Life of Biological Beings: The Problem: Common life within the Biosphere requires mutual understanding; Mutual understanding and comparative law. 2. What Do We Mean by a Constitution When We Deal with a Civilization, and Why the Concept of Civilization Matters for the Long-term Constitutional Problem of Human Impact on Nature: Knowledge of nature; Knowledge of history; History, nature, sustainability; Law exists in context. 3. Biosphere and the Concept of Law: Nature or bare life?; Law and an adequate representation of reality. 4. For an Overarching Theory of Constitution and Constitutionalism. 4.1. For an adequate representation of reality; Law, existence and will; Constitutional law – an overarching experience. 4.2 Nature and history Intermingle: On the aims of societies; The νόμοι (*nomoi*) of the distribution of influences; Transformation, deconstructions, transitions; On the modalities in which law manifests itself; Which subjects are protected by law?; The organizational principle; The principle of recognition; On the topology of the relationship between law and power; Law manifesting the institutionalization of power; Law as a transformative principle.

1. Law, Values and the Life of Biological Beings: the Problem

Common life within the Biosphere requires mutual understanding

The search for a form of common life within the Biosphere – that is, within our shared home – requires, in my view, a dialogue that enables different communities and societies to understand one another, to comprehend the conditions necessary for living together, and to reach agreements that allow for the appropriate use of resources. Tempered government must therefore extend to our relationships with the diverse modes of life within human societies, including our relationship with natural resources. Comparative legal research must, accordingly, highlight the regularities that underpin the proper functioning of human societies, as well as the values that make mutual understanding possible – regarding both individual and collective responsibilities – so that we may live in symbiosis with the Biosphere and with one another.

The legal problem, which must be understood as part of the metaphysical problem – that is, the problem of being – must be addressed by taking into account both the potential of human beings, capable of producing exosomatic artifacts and gathering large amounts of energy, and the planet's capacity to absorb, within its own cycles, the masses of matter and energy set in motion by human activity. Therefore, the essence of law must be connected to our necessary relationship with the Biosphere, within which Life manifests itself.

Law, much like philosophy, is grounded in fundamental problems. We believe that the basic 'legal problem' – essentially how to approach the question of communal life through rules deemed appropriate – primarily concerns the representation of reality[1]. Consequently, the 'legal problem' also involves understanding the impact these rules have on reality. Additionally, it addresses the challenge of improving the law through the application of superior values, such as ethical principles, the principles stemming from constitutionalism, or international and supranational values.

But what is the meaning of these "superior values" and, what is the operational basis for their pursuit? The thesis I will attempt to present within the limited scope of this chapter is that the "legal problem" is both a philosophical and an operational issue. This implies that when we pose the "legal question", we must consider the metaphysics of law. This involves

[1] The chapter is a revised and expanded version of P. Policastro, *Superior Values and the Foundation of Constitutional Comparison: Peace, Symbiosis with the Biosphere and Transnational Citizenship*, in: *Professor Marek Safjan znany i nieznany. Księga jubileuszowa z okazji 70-tych urodzin profesora Marka Safjana*, ed. K. Szczepanowska-Kozłowska, C.H. Beck, Warszawa 2020, pp. 359–363.

concepts concerning how we perceive the law, how we implement it in practice, and how we utilize it to recursively improve the state of affairs.

In this way, we encounter a connection between the normative nature of law and other normative philosophical issues, such as the political problem and the ethical one.

Mutual understanding and comparative law

In order to think about law, one needs to consider how it affects human society, insofar as humans are biological entities whose existence is linked to the natural conditions that permit life. These natural conditions correlate with, among other things, the characteristics of the sun, the orbit and mass of our planet, and the presence of water and life[2]. These factors have shaped the geological characteristics of our planet, allowing for the accumulation of natural resources. Humans, of all the biological beings manifest a spirit-mind-body completion characterised by self-consciousness. This endowment of self-awareness manifests itself in the posing of philosophical problems, the development of a symbolic language, and the manifestation of technical skills. By joining these elements human beings permitted the production of human extensions, called exosomatic organs. These extensions allow humans to take possession and make use of quantities of energy in excess, with respect both to the other living beings and to their own needs. In this way human beings deprive other human beings, including future generations, as well as other living beings, of the energy that the sun gives to earth and natural processes permit it to accumulate in living beings or other resources. For this reason, how we make use of natural resources, which are produced in long cycles, for example the fossil fuels, how we interfere with the reproduction of resources such as wood, or how we pollute the air and the waters making difficult the reproduction of many living beings becomes a paramount problem for ethics, politics and law. Economic research called us, since some time to a more modest kind of life[3]. Even earlier,

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[2] V.I. Vernadsky, *The Biosphere*. Complete Annotated edition, Copernicus (Springer Verlag), New York 1998 [first ed. 1926: Биосфера*,* Ленинград] (Foreword: L. Margulis, M. Ceruti, S. Goluabic, R. Guerrero, N. Ikeda, N. Ikezawa, W.E. Krumblen, A. Lapo, A. Lozcano, D. Suzuki, C. Tickell, M. Walter, P. Westbroek; Introd. J. Grinevald; transl. D.B. Langmuir; revised and annotated by M.A.S. McMenamin). pp. 54–55 *passim*. For an attempt to join the conception of the biosphere, which deeply ranges in human culture, see P. Policastro, *L'ipotesi biosferica tra religio, principi universali e il concetto di diritto. Da Vico alle cibernetiche di secondo grado*, in: A. Rella, S. Valerio, *Immaginario e realtà. Percorsi della religione*, Aga editrice, Alberobello 2018, pp. 295–352

[3] N. Georgescu-Roegen, *The Entropy Law and the Economic Process*, Harvard University Press, Cambridge, Ma. 1971, pp. 21, 278, 307 *passim*. For a more legal approach to the problem see P. Policastro, *Constitution and Conflict. From Energy Dissipating to Renewable Energy Based Capitalist Accumulation as a Path for the European and Mediterranean Transformation*", paper presented in Istanbul, Marmara

first nations, such as red Indians, have been warning for a long time the danger of making a thoughtless use of the gifts that nature gives us. The approaches of life in common in symbiosis with nature deserve thus a growing interest by comparative law[4].

2. What Do We Mean by a Constitution when We Deal with a Civilization, and Why the Concept of Civilization Matters for the Long-term Constitutional Problem of Human Impact on Nature

Knowledge of nature, knowledge of history

The history of human civilization does not provide clear-cut answers to the dilemma between, on the one hand, cultural, scientific, and technological development, and, on the other, the decay and destruction of peoples and resources. Confronting the enigma of history leads us to a recognition that the political problem – namely, the problem of the common good – must be reformulated in biospheric terms, taking into account every person, every living being, the importance of natural resources, and the regularity of the Biosphere's flows. Such an approach also requires a significant effort in terms of constitutional theory and the theory of the State (that is, the theory of life in common).

We have to acknowledge thus, that human beings affect nature and they have done it throughout history. Knowledge of nature is not as precisely conceivable as that of history. Indeed, human beings did not create nature but made history[5]. Thus, the legal problem has, as a prominent task, the duty to address the conditions that allow our societies to dwell

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Universitesi and European Institute 26/04/2012, revised and enlarged version: P. Policastro, *Constitution and Conflict Regulating Regional Interdependencies through Society-based Supranationality as a Path for the European and Mediterranean Transformation*, in: *Costituzione - Economia - Globalizzazione*, *Liber amicorum in onore di Carlo Amirante*, Edizioni Scientifiche Italiane, Napoli 2013, pp. 1467–1493; P. Policastro, *The Law of Biosphere: Duties of Nations and Common Good*, book for the PhD honoris causa of dr hab. Pasquale Policastro, professor of the University of Szczecin, Alba Iulia 2015.

[4] See P. Policastro, *Biosfera, politica del diritto e educazione delle coscienze*, in: *Democrazia e religioni. Libertà religiosa, diversità e convivenza nell'Europa del XXI secolo* (Proceedings of the ADEC National Conference, Trento, 22–23 October 2015), ed. E. Camassa, "Quaderni della Facoltà di Giurisprudenza dell'Università degli Studi di Trento" No. 21, Editoriale Scientifica, Napoli 2016, pp. 43–77.

[5] Vico G, *Principi di scienza nuova, d'intorno alla comune natura delle nazioni. In questa terza impressione del medesimo autore, in un gran numero di luoghi corretta, schiarita e notabilmente accresciuta*, in: *Giambattista Vico, La Scienza Nuova, Le Tre Edizioni 1725, 1730, 1744*, ed. M. Sanna, V, Vitiello, Bompiani 2018. See also Giambattista Vico, *Autobiografia. Poesie. Scienza Nuova*, ed. P. Soccio, Garzanti, Milano 1983.

together within our world. Should we neglect this paramount question, the current foundations of peace established by international society – along with the possible universal content of human rights – risk fading away, together with the rule of law.

History, nature, sustainability

From archaeological findings, from stories passed down through antiquity, and from historical documents, we know that many civilizations did not endure due to their lack of sustainability. Furthermore, we also know that many civilizations either collapsed or underwent severe crises as a result of the systematic appropriation of human and natural resources. Historians have sought to provide explanations for these phenomena, citing cultural features or even offering ethical justifications. Among these features, competition has emerged – particularly in recent times – as a significant determinant of the dominance of Western civilization over others. However, archaeological research also suggests that Indo-European civilizations asserted themselves over pre-existing cultures through mechanisms rooted in individualism and competition.

These considerations confer upon the political problem – that is, the problem of choices aimed at achieving the common good – a universal and intertemporal significance: do we have the right to impose ourselves on others at the cost of destroying other civilizations? Or is such an approach, rather, the very path that inevitably leads to the obliteration of human civilization itself? And, being aware of this history – and of the changes inflicted upon our planet – are we not under a greater obligation than ever before to act and to change the present state of affairs?

Law exists in context

The solutions for change presented in the past and based upon counterposing the capitalist mode of production against socialism, highlighted the problem. However, they did not propose solutions acceptable in the long run. From this part of the thesis we derive that the law is a concept that exists in context, permitted to create rules and based on a sufficient representation of reality. Such rules should connect the contents of norms with the philosophical problems related to the concept of law, such as the ethical problem, the political problem, but also the problem of nature and the problem of life. How we connect such questions give shape to the different kinds of life in common, and thus to different kinds of constitution.

3. Biosphere and the Concept of Law

Nature or bare life?

The question of the political problem and of the constitution may be approached through the dichotomy between those societies which, throughout history, have recognized a primordial role for nature, and those which, instead, have sought to develop an approach to power aimed at controlling bare life and, in parallel, exercising dominion over natural resources – extending it, as far as possible, to the control of natural processes themselves. With the advent of modernity, this approach was accompanied by the near-total dismissal of any consideration for societies that placed their relationship with nature at the center of their existence. The understanding of Life as a cosmic phenomenon, and the awareness of the impact exerted by human societies that have been most successful in adopting a competitive approach toward the Biosphere, compel us to question this dichotomy.

Law and and an adequate representation of reality

The second part of the reflection presented in this chapter, therefore addresses the development of a concept of law capable of adequately representing reality and the persons involved in it. Furthermore, it should also be able to properly take into account the different ways in which people live together. The fact that studies of law have been circumscribed so far, and very often only to the kind of experience in which we live, deems it insufficient for us to adequately represent the life of humans together in the biosphere. Let us take a look here at different kinds of constitutional experiences. Among many we have the example of the constitution of the Iroquois confederation, which was probably produced between the XV and the XVI century CE. Looking at this document, we see that its symbology refers to the life of nature as primordial with respect to the life of societies. This constitution well reflects the life that many groups of people had for millennia, such as the people of the arctic, the breeders of the Tundra, but also many Asian and African civilizations and cultures. We may say that such constitutions represent the life of people who live in symbiosis with nature. Then we have many other constitutions, which represent the kinds of life that compel people to confront each other as well as nature. Many of these nations try to manage conflicts, rather than deal with coexistence and peace. We find many examples of this kind, beginning from the very concept of the laws of Hammurabi, whose aim was to eliminate private feuds. The Constitution of the Athenians is also another example, which, however, concentrates on conflict. A paramount concept that binds these constitutions together is

that of power. We have observed this phenomenon, that is the tendency to control "bare life"[6], since the experiences of constitutional archaeology.

4. For an Overarching Theory of Constitution and Constitutionalism

4.1. For an adequate representation of reality

Law, existence and will

If we wish, in our approach to law, to address the question of the Biosphere as a cosmic phenomenon and of Life – both as a fundamental characteristic of the Biosphere itself and as a cosmic phenomenon and a fundamental value to be protected by law – we must connect the manifestations of our will with those directed to safeguarding the very possibility of our existence, which depends on the regularities of the Biosphere. This inquiry requires that we constantly pose the question of our own being, as a possibility within the Biosphere itself. Yet we cannot raise this question without also addressing the issue of relationships, which have always stood at the center of the legal problem – namely, the manifestation of our collective identity in relation to the external world through the definition of common purposes, the principles governing the distribution of influences, and those defining law by recognizing the subjects to be protected, the domains relevant to law, and the organizational structures adopted – even in cases where the being of our communities gradually merges with the entirety of the Biosphere.

Constitutional law – an overarching experience

The third part of the reflection presented in this chapter, is that, despite the various examples of constitutions – both ancient and modern – and the differences in the ways we live together and relate to nature, constitutional law may still constitute an overarching experience. Such an experience is characterised by three classes of elements, in principle made by norms: 1) the first class consists of norms and declarations that define the aims of each society, the conditions under which it was constituted, and the problems it sought to avoid

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[6] See G. Agamben, *Homo sacer. Il potere sovrano e la nuda vita*, Einaudi, Torino 1995. English version: *Homo Sacer: Sovereign Power and Bare Life*, transl. D. Heller-Roazen, Stanford University Press, Stanford, Ca. 1998.

or overcome by establishing a common form of organization; 2) the second class consists of three kinds (or subclasses) of principles and norms: (i) – those that identify the different parts of society and regulate how relations between them take place; (ii) those that indicate how decisions on specific issues are made; (iii) those that define the relations through which the resources and goods necessary for life are gathered and produced, and the criteria according to which wealth is distributed; 3) the third class of rules concerns how law determines its range of action – through the subjects to which it applies and which it protects, the organization of institutions, its effects on collective life, and the recognition of different groups, whether internal or external to the legal order of reference[7].

The fourth part of these reflections holds that an adequate representation of reality may not be founded solely on the collective perceptions of organized bodies, particularly those with a permanent vocation, such as States. It requires the contribution of everyone. Thus, we may envisage an understanding of state power that originates and remains as limited and constrained within a sphere encompassing the relations between: a) legally recognised manifestations of the persons and policies for their protection; b) participation and representation; c) norms and instruments for their implementation and enforcement[8]. Such relations may not encompass the whole of human; on the contrary, it is human experience which permits us to evaluate whether public activities sufficiently conform to those relations. Individual and social understanding can, in turn, contribute to deepening and improving law.

The fifth reflection I wish to propose concerns the necessity for individual and collective subjects to intermingle. Comparative law, in this regard, is not only a fundamental operational instrument for connecting such experiences but also a means of imagining and developing forms of life in common. Among these is the idea of an "international state," whose meaning – in the present condition of world societies and of our planet – far from being exhausted, requires further reflection and, eventually, the development of analogous typologies, one of which is that of transnational citizenship.

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[7] See P. Policastro, *Constitutionalism, Comparison, Complexity: Prolegomena on Liberty and the Use of Language for a Predictive Theory of Law*, in: *Liberty and Language. The Global dimension of European Constitutional Integration*, ed. P. Policastro, E. Castorina, Giappichelli, Torino 2010, pp. 15–110.

[8] The study of these evolutionary paradigms of constitutionalism began with P. Policastro, *Prawa Podstawowe w Demokratycznych Transformacjach Ustrojowych. Polski Przykład*, Redakcja Wydawnictw KUL, Lublin 2002. For a more complete formulation see, P. Policastro, *Constitutionalism, Comparison...*, pp. 15–110.

4.2. Nature and history intermingle

History and nature intermingle

On this basis, we see that history and nature intermingle. Law is also a phenomenon that exists within history. Therefore, while it is correct to consider the essence of law as a normative phenomenon, it is nonetheless fundamental to consider how a legal order can develop in a way that addresses the historical challenges we face. Taking into account the characteristics of a legal order in general, it is useful to start with those legal orders that are complex enough to regulate a significant part of the existential manifestations and needs of individuals within a society. We will refer to such orders as general legal orders.

A general legal order is structurally composed of three classes of norms: teleological principles (aims of societies), distributive principles, and modal principles (dealing with how law manifests in a society). Viewed from a systemic perspective, such an order can be referred to as a constitution. A constitution typically includes both unwritten norms, such as constitutional habits, and written norms. Thus, a constitution presents both deep semiological meaning and symbolic meaning. The aims of society relate to legal culture, as they pertain to the main motivation for societies to organize in a certain way. Over time, the archetypal, ancestral, divine, or religious sense of community has been replaced by a more reflective outlook on societal conditions.

On the aims of societies

We largely perceive the basic goals of communities and constitutions through the fundamental principles found in the preambles of contemporary constitutions and the general principles included in the first chapters of these constitutions. The Italian concept of "political and ideological principles", related to the first articles of the constitution, offers a synthetic approach to the reflections of the constituent body, which sought to establish a new way of living together. The normative character that constitutions aim to ensure through their provisions should be understood in relation to the aims of a given society. The normative character of a constitution is often tied to the fact that, by approving a constitution, people aim to change the current state of affairs or maintain a state of affairs that emerged after a significant change, turning point, or deep collective reflection. This gives considerable importance to the semiology and semiotics of a constitution.

Indeed, the principles in the French Declaration of the Rights of Man and of the Citizen of 1789, the Preamble of the French Constitution of 1946, and the Preamble and first chapter of the Polish Constitution of 1997 all address the same issues, such

as the principle of equal dignity of workers in the Italian Constitution and the principle of the inviolability of human dignity in the German Basic Law. However, these foundational principles of communities can also be found in other parts of documents that embody a national or transnational constitution.

For instance, when examining the European treaties, it is impossible to fully understand the principles governing the relationships between undertakings, and the broader process that led from the creation of the Common Market to the Internal Market, without considering the historical process that led to European integration. Therefore, the issues of continuity, discontinuity, and the cultural background of constitutions are the societal aims most likely to be observed when studying the legal foundation of a constitution.

The νόμοι (nomoi) of the distribution of influences

Next, we have the distributive principles, which constitute a significant part of the object of law. The concepts of distribution and assignment have been central to the expression of law since the Proto-Indo-European origins of language. From the Proto-Indo-European root "*nem-," meaning to assign, allot, or take, the Greeks derived the verb "νέμω" (némō), meaning to distribute. This is the origin of the Greek word "νόμος", which denotes law and legislation.

We can observe that the relationship with the concept of distribution also appears in the way Greek historians referred to "νόμος" in relation to the districts in Ancient Egypt, which formed during the Neolithic period before the pharaonic government was established. In Ancient Greek religion, Nomos is the "δαίμων" (daimon), the personified spirit of law, whose wife is Eusebeia (εὐσέβεια), the piety related to the gods, and their son is Dike, Justice. The very concept of "δαίμων" comes from the Proto-Indo-European *daimon, meaning provider or divider of fortunes or destinies, stemming from the root *da- "to divide."

Gian Battista Vico, Italian legal and political philosopher, correctly observed that the distribution of fields was related to the clearing of forests. However, tombs of ancestors were located on the margins of these fields. This separation has a specific basis in the nature of law, which mediates between piety and justice. For this reason, it seems natural to consider principles of distribution in the nature of law, influencing society, politics, and the economy.

In this perspective, human beings, both individually and in groups, determine the production and understanding of laws and customs. However, human beings must be understood in the context of the interdependencies they live in: those with nature, which makes their existence possible, and those with others, which shape human existence. Indeed,

humans exist within nature. Humans cannot control nature according to their will, as Descartes suggested, but, as Vico said, they can shape history through their will. History, therefore, is the history of humans living with others but within nature. Not only should the aims of society include this understanding, but the distributive principles should also consider the relationship with reality.

The distributive principles relate to how law affects different realms of life, particularly society, politics, and the economy. The principles of the distribution of influences on society relate to the roles of different subjects within society, such as the roles of elders, families, youth, the relationship between genders, and the roles of collective groups like religious groups, political organizations, and interest groups. The principles of the distribution of influences on politics, on the other hand, relate to how our communities make decisions, allowing for the classification of a plurality of legal orders. This includes the interplay between different state institutions, the role of multilevel governance, and the dynamics between formal and informal power structures.

Transformation, deconstructions, transitions

As we can see, constitutional transformations are phenomena of either deconstruction or transition. The fact that there are periods in which areas of freedom expand and periods in which formal and informal powers consolidate and concentrate is a natural phenomenon when it comes to basic laws. In modern times, European constitutions have undergone processes of expanding the scope of freedoms on several occasions, followed by experiences that may be written or customary, legal, or stemming from moral or cultural factors.

The transformation of reality through law occurs primarily through fundamental structures, which are the aims of societies. These aims are presented in various ways. In antiquity, they could be represented by myths or founding tasks. Today, they are often observed in preambles of constitutions and in goals of general international organizations.

The aims of societies can be realized in different ways and forms. However, their realization begins with a reference community. For this reason, distributive principles, following a tradition that dates back to Vico, are of particular importance. Vico refers to "marriages" to indicate how societies united, to "burials" or "division of fields" to show how the territory of a population, as well as individual domains, were determined, and to "altars," which represent the foundations of the "political" order. We believe this was a brilliant insight, and when considering a legal order, we must first recognize that the problems we observe in reality are considered by society through its social structure and economic structure, and decisions are made through processes characteristic of each political order.

On the modalities in which law manifests itself

However, the representation of problems does not occur solely through the prism of community aims and three classes of distributive principles, specifically: the principle of distribution of influences on society, on politics, and on the economy (production and distribution of goods and services). When characterizing law as a technology, the ways in which it manifests itself have fundamental importance as intrinsic principles of law. In this context, we must examine at least the subjective principle, the organizational principle, and the principle of recognition.

Which subjects are protected by law?

The subjective principle deals with which subjects are primarily protected by law. It influences the relationships between private individuals, collective entities, and institutions. For example, state law has increasingly focused on protecting individuals, developing refined institutions such as direct constitutional appeals. In contrast, the European Common Market law was initially created with businesses in mind, even though it was motivated by an attempt to overcome the identification of the interests of large enterprises with those of states, and it was not unrelated to the protection of individuals. Nevertheless, the neo-mercantile perspective of the primacy of the internal market, combined with monetary stability, has been transferred to the European Union level. For this reason, the subjective principle can be summarized through the juridification of the relationship between the protection of rights (or existential manifestations of the person) and policies for their implementation.

The organizational principle

The organizational principle, on the other hand, focuses primarily on institutions. It may be examined by starting from the relationship between the informal and formal organization of power, the relationship between decentralization and centralization of public functions, and the relationship between participation and representation in the exercise of political power. When it comes to the relationship between formal and informal organization of power, we can refer, among the many types, to that constituted by traditional organization compared to the political organization of power. It is worth considering the case of Africa here, where traditional kings and village chiefs operate alongside state governments. We then have the principle of centralization-decentralization, which refers to territorial distribution, but also to the distribution of power among institutions,

and the representative-participatory principle. The latter can serve as a sort of synthesis to represent concrete cases.

The principle of recognition

Next, we have the principle of recognition, which takes into account the relationship between recognition and separation of objects deemed worthy of protection, both within legal systems and in relations between legal systems. For example, within the former, we have seen that, over time, a growing number of existential manifestations of the person have become objects of constitutional protection, with significant processes of protection of differences and internationalization of rights themselves. On the other hand, there has been a growing interest in transnational matters, such as competition, consumer protection, the environment, and even criminal law. Very often, solutions adopted at the international level have subsequently been constitutionalized. Therefore, the internationalization of constitutional law and the constitutionalization of international law appear to be two parallel phenomena. However, the principle of recognition itself can appear characterized by different degrees and levels, assuming significant intensity in supranational integration processes, such as in the European integration process, where there is extensive jurisprudence and legislation regarding the principle of mutual recognition.

However, it must be noted that a legal system "recognizes itself", and therefore always presents a relationship, often highly articulated and plural, between what it recognizes and guarantees and what is indifferent or "external" to it – this includes both situations occurring within the state's territory and those external to it. The dynamics between the internal and external aspects of a legal system allow us to observe the relationship between the abstract semantic scope of norms and their concrete recognition, identifying the manifestation of the metaphysics of law that we observe through the operational nature of legal principles – particularly, but not exclusively, through judicial interpretation. The relationship between internal and external aspects can be summarized by referring to the relationship between norms and their becoming.

On the topology of the relationship between law and power

These three classes of relationships, which summarize the modal characteristics of law, are essential for defining the topology of the relationship between law and power. They are crucial for understanding how law can limit itself, that is, constitutionalism. In fact, political power, from the perspective of constituted power, manifests itself through autopoietic

characteristics, by which it tends to reproduce itself over time and space. The modal characteristics of law, which we have defined as the relationships between fundamental rights (existential manifestations of the person recognized as worthy of legal protection) and policies for their concrete recognition and protection, the relationship between participation and representation, and finally, the relationship between norms and their becoming, however they are shaped, are elements of constituted power: recognizing a space for rights, policies for their implementation, citizen participation, parties and representative institutions, or the discretion and creative power of judges are issues that make sense within the framework of constituted power, whether expressed in written form and/or through pacts, constitutional customs, etc. Any other juridification of limited power will always be an expression of constituted power. Therefore, we cannot imagine that the typical institutions of constitutionalism can contribute to "closing" the legal system by linking it to the values that are the expression of the ideology of constitutionalism.

Law manifesting the institutionalization of power and law as a transformative principle

Institutions are expressions of power that is articulated and balanced, yet always an expression of an autopoietic soul, which gathers the interests that constitute and recognize the status quo and that supports the current distribution of influences on society, the economy, and politics.

Law opposes the status quo and aims to modify the surrounding reality, including social, economic, and political realities, for two reasons: the majority's need to secure consensus and the ontological nature of law. As for the former, we can see that constituent processes, in order to solicit broad participation and consensus, place their language and declared aims above the interaction between rights, powers, and interests protected at the present moment. Even the process of governance solicits the majority's consensus to address current problems. As for the ontological issue, the function of law is to achieve balance within communities and, potentially, between different communities. Therefore, it will always seek to modify those facts considered "nefarious" for the community. However, the natural incompleteness of law and its natural porosity to power require metaphysics to be coordinated with being and phenomenal reality.

Part II

Biosphere as a Constitutional Issue

Part II delves into the heart of the book's argument by treating the biosphere as a fundamental concern of constitutional law. In this part, the chapters critically assess the limitations of conventional constitutional paradigms (for example, state-centric liberal constitutionalism) when faced with global ecological crises and interdependence. The discussion introduces the concept of "conscious interdependence," suggesting that constitutions and constitutional theory must evolve to acknowledge the interconnectedness of all life and the planet's ecological limits. Through analyses of social conflict, economic "dissipation" of resources, and hegemonic power structures, Part II articulates why a transformation in constitutional thinking is necessary. It proposes elements of a new, more inclusive constitutionalism – one that extends the circle of legal concern beyond the human realm to include environmental systems – and emphasizes bottom-up, participatory processes (rather than top-down imposition) as the means to achieve this transformation. In essence, Part II reframes constitutionalism itself as an ecological and transnational project, arguing that the survival of constitutional democracy is inseparable from the health of the biosphere.

Chapter III

Constitution and Conflict – Toward a Constitutional Policy Beyond Human and Resource Dissipation

Keywords

conscious interdependence, inclusive constitutionalism, conflict and hegemony, participation and dialogue, bottom-up transformation

Abstract

Chapter III examines how constitutional orders manage social conflict and argues for an inclusive constitutionalism grounded in conscious interdependence. Its thesis is that expanding the circle of legal concern – both the subjects of rights and the objects of protection – is essential to move beyond dissipative, hegemonic models of constitutional development. The chapter critiques the dominant paradigm of *ordo liberalis* (the traditional liberal order backed by coercive power and legal hegemony) as inadequate in the face of global interconnection and ecological crisis. Instead of top-down universal solutions, it advocates for bottom-up, deliberative transformation: local communities and individuals, aware of their mutual dependencies, should drive constitutional change in line with shared responsibilities. The analysis ranges from classical typologies of constitutions to contemporary critiques of globalization, using comparative and critical methods to reveal how "imaginary freedom" and unchecked power lead to the dissipation of human and natural resources. Key insights include the proposal to reinterpret constitutional norms through the lens of interdependence (recognizing that legal effects and responsibilities extend beyond national borders), the need to challenge the mystique of power and legal violence in favor of democratic freedom and participation, and the notion that true constitutional renewal must arise from recognizing every person *and* the Biosphere as inherently valuable. In connecting conflict resolution with biospheric care, Chapter III advances the book's argument that legal systems must evolve to protect both human dignity and the planet's integrity together.

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1. Constitution, Subsumption, Crisis

1.1. Framing: constitutions between conflict management and biospheric interdependence

Deliberation, neglected subjects, and the constitutional semiosphere

Any approach to decisions that lead to the formation of constitutions inevitably involves choices which, while generating consensus among some, are not accepted by others. This process gives rise to conflict, which naturally unfolds over time. In this context, I believe that the growing awareness of our interdependence – with one another and with the Biosphere – may, through the prudent exercise of deliberative governance and dialogue, enable us to identify those individuals and groups who have been neglected by the law, and to determine what responsibilities both law and society must undertake in order to develop a constitutionalism that acknowledges the inherent value of every human being and of the resources that our planet provides to sustain life.

The success of the written constitutional form consolidated over time, likely because where no oral constitutional tradition was capable of evolving with the changing times, the written form proved better suited to managing conflict, which often lies at the root of the formation of public law systems. Above all, the written form proved particularly well suited to governing processes of transformation. The different modes of existence of constitutions, in their implementation, relied on the work of professionals trained within their respective constitutional frameworks, whose activities became closely identified with the constitutions within which they were formed and to whose development they contributed. From this also arises the difficulty of transitions, since frames of reference – not only those of jurists but of society as a whole – remain anchored in pre-existing modes of representing reality. Thus, the primary question arises: how should we approach the constitution at a time when it appears increasingly called upon to regulate the relationship between political societies and the Biosphere? From another perspective, the interaction of each constitution with its social, political, economic, and cultural context renders its semiosphere intrinsically linked to the characteristics through which the constitution defines itself.

Therefore, for a comparison that extends not only to relations with societies but also to those with the Biosphere, a useful method – which I have sought to develop over the past twenty years – consists in observing the regularities that emerge from the fundamental structures of communities and using them as a starting point for elaborating a broader vision of our collective being.

Method: reading regularities in community structures

Starting from earlier studies, reexamined in the previous chapters of this work, I have identified three main classes of principles through which the essence of a political community is expressed.

The first class concerns how constitutions reflect the community's relationship with itself.

The second class deals with the principles governing the distribution of influences across society, politics, production, the exchange of goods and services, and the allocation of income and wealth.

The third class relates to the conception of law, the organization of legal processes, the recognition of subjects deserving protection, and the areas to which legal protection extends[1].

These elements constitute characteristics that define every political community, albeit in different ways. The insights and analyses, for example, of Pindar, Herodotus, and the fundamental works of Plato and Aristotle, discussed in the first chapter, show us a constancy in the being of a constitution, but also in its becoming, through necessary relationships. Firstly, between the understanding of the manifestations of people's existence and policies for their protection. Secondly, through the relationship between participation and representation. Thirdly, between norms and their implementation.

1.2. Typologies and limits: from rational models to the current crisis

Three models of constitutional ordering

Naturally, if the being and becoming of a constitution manifest themselves through regularities or paradigms, we may assume that the constitutional semiosphere has its own fabric, its own narrative, which allows us to recognize the constitution as a semiotic structure[2].

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[1] This chapter is the result of a thoroughly new reflection on the problems posed in P. Policastro, *Constitution and Conflict. From Energy Dissipating to Renewable Energy Based Capitalist Accumulation as a Path for the European and Mediterranean Transformation*, paper presented in Istanbul, Marmara Universitesi and European Institute 26 April 2012. P. Policastro, *Constitution and Conflict Regulating Regional Interdependencies through Society-based Supranationality as a Path for the European and Mediterranean Transformation*, in: *Costituzione – Economia – Globalizzazione, Liber amicorum in onore di Carlo Amirante*, Edizioni Scientifiche Italiane, Napoli 2013, pp. 1467–1493.

[2] Ю.М. Лотман (Y.M. Lotman), О. Семиосфере (On the Semiosphere), published on the journal "Труды По Знаковым Системам" (Sign System Studies), Tartu 1984. This essay is printed in Vol. 17. Структура диалога как принцип работы семиотического механизма, pp. 5–23

However, there are certain typologies within the realm of constitutions[3]. The development of societies has over time brought the constitution, in its formal structure, whether written or unwritten, to emerge as the fundamental basis of a society's life. The focus on the constitution in a formal sense has arisen from the growing interest in understanding the very nature of political societies and the relationships between them. The success of the constitution in a formal sense was realized because constitutions aimed to reduce conflict within society. In this sense, the republican paradigm, which was the attribute of ancient Rome, seems to have persisted[4]. Here, I would like to underline three typologies of constitutions which seem to be in line with these aims[5]:

1. The constitution as a rational form to settle the relations within a society and with the surrounding world. In such constitutions, only one rule of reason and one modal rule are affirmed. For example, the Declaration of the Rights of Man and of the Citizen of 1789 is the prototype of bourgeois-liberal constitutions. Similarly, the Declaration of the Rights of the Working and Exploited People of 1948 has been the prototype for socialist constitutions. A rational form of conflict reduction may also occur through a more archaic, though efficient, form of constitution, which we may call constitutions of consolidation. A significant example is the English Constitution, where customs and conflicts managed to develop a legal culture and a system of legal remedies featuring a high degree of consistency with rationally determined principles of justice, although such consistency helped tame social conflict.
2. Rationalized constitutions aim to settle antinomies between interests, permitting the coexistence of interests through a pact. Among such basic laws were the Weimar Constitution, the French Constitution of 1946, and the Italian Constitution of 1948. Both kinds of constitutions share a nominalistic background, meaning that when the idea supporting the constitution – namely, the pact or legal mediation – fades, so does the constitution itself. Such a constitution may risk being interpreted following the constitutional aims and principles, leading to some uncertainty due to rhetorical and argumentative methods. However, they are essential for reducing conflict when there is no agreement on one reason or not enough political force to support it. Therefore, these constitutions

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[3] C.E. Alchourron, *On The Philosophical Adequacy of Set Theories*, "Theoria: An International Journal for Theory, History and Foundations of Science" 1987, Iss. 2, No. 5/6, pp. 567–574. http://www.jstor.org/stable/23912628 (20.08.2025).

[4] N. Urbinati, *Competing for Liberty: The Republican Critique of Democracy*, "The American Political Science Review" 2012, Iss. 106, No. 3, pp. 607–621, http://www.jstor.org/stable/23275436. See pp. 614–615: "As in Cicero's case, social conflict, is the evil to be preempted...."

[5] J.M. Lotman and J. Graffy, *The Origin of Plot in the Light of Typology*, "Poetics Today" 1979, Iss. 1, No. 1/2, pp. 161–84, https://doi.org/10.2307/1772046 (20.08.2025).

are crucial in the pluralistic development of societies, where multiple interests and political reasons wish to share power.

3. Finally, we have hyper-rationalized constitutions, where mediation is not based on a pre-existing pact but on the linguistic formulation of the constitution itself. Such constitutions are more philosophically realistic, making the linguistic formulation very important. For instance, the German Constitution of 1949 appears to be a hyper-rationalized law, a form that tends to spread and is especially suitable for regulating constitutional integration, such as the European one. Both the German Basic Law and the new French constitution show a tendency to regulate matters related to European integration in significant detail. In these constitutions, the process of interpretation makes extensive use of a "reasonableness" approach and balancing techniques, associating the interpretation of the constitution with constitutional "governance."

Subsumption and crisis: representation, accountability, and nature

Here we wish to highlight that the constitutional form is presently marked by a growing crisis. Several factors contribute to this crisis. One of them is the failure in representation and, consequently, the subsumption of reality. Another factor is that these constitutional models were developed within the European historical and social context.

On this issue, the fundamental reflections of Max Weber[6], alongside the following literature, particularly Habermas[7] and other major contributors[8], highlight that the social importance attributed to communal life according to certain principles, especially the freedom of commerce, led to a growing interest in a legal framework that would protect such freedoms. In this way, partly due to the specific inheritance from Roman society, where the role of the lawyer was well established, the training of individuals who

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[6] M. Weber, *Economy and Society*: *An Outline of Interpretive Sociology*, ed. G. Roth and C. Wittich, University of California Press, Berkeley–Los Angeles–London: 1978, pp. 956–1005 (Chapter XI "Bureaucracy"). First German, J.C.B. Mohr, *Wirtschaft und Gesellschaft*, Paul Siebeck, Tübingen 1922.

[7] J. Habermas, *Faktizität und Geltung Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaat*, 5th edition, Suhrkamp, Frankfurt am Main 1992; Italian edition: *Fatti e norme. Contributi a una teoria discorsiva del diritto e della democrazia*, ed. L. Ceppa, Guerini e Associati, Milano 1996. J. Habermas, *Strukturwandel der* Öffentlichkeit*: Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft*, Hermann Luchterhand Verlag, Neuwied am Rhein–Berlin 1962. Italian version: J. Habermas, *Storia e critica dell'opinione pubblica*, Laterza, Rome–Bari 1971, various reprints.

[8] Berman's *Law and Revolution* should not be overlooked for its important historical perspective: H.J. Berman, *Law And Revolution. The Formation of the Western Legal Tradition*, Harvard University Press, Cambridge (Ma.) and London (UK) 1983.

could handle law according to rational criteria, beyond mere cultural traditions, developed from the Middle Ages onward.

We can find this process, rooted, to a significant extent, in the development of law schools during the Middle Ages and in the study of Greek thought within the Arab world[9]. However, the crisis of the Arab World, the Byzantine Empire, and the geographic opening of the sea routes created new conditions for the Western World. The attempt of the Catholic Church to maintain its identity (see the Gregorian reform)[10] facilitated the development of a class of professionals who were not connected with the traditional or religious approach to the regulation of communal life. In this way, the model relating rule of law with free exchange could keep developing.

However, beyond the difficulty of representing, through this approach, the relationship with nature, there is also the challenge of understanding the system's accountability toward society. Furthermore, mutual understanding between the system and the groups that control constitutional interpretation and understanding is hindered by their inherent differences.

This crisis is evident in the difficulty, if not failure, of constitutions – as fundamental documents in the life of communities – to regulate internal and external conflicts. To address this issue, we propose enriching the semiotic space of constitutions with new content. This requires not only opening to the mutual understanding of the different typologies of constitution, but also the enlarging of the space of events that are subsumed in them. The progress of human knowledge makes known a growing quantity of elements, biological, psychological, technical, historical. All these elements complement legal knowledge. A legal reasoning, in all complexity, needs to put together entities and discourse about entities. Thus it does not easily fit into the categories of metaphysics, which may be considered by contemporary logics[11]. Furthermore also including typology differentia-

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[9] See C.I. Beckwith, *Warriors of the Cloisters. The Central Asian Origins of Science in the Medieval World*, Princeton University Press, Princeton and Oxford, 2012.

[10] Berman, *Law and Revolution*....

[11] More on this in C. Alchourron, *On The Philosophical Adequacy*..., p. 573: "in the metalanguage that no element of D contains all the elements of D and hence that D is nor an element of itself. But if we take seriously these statement of the metalanguage and also those of the theory formalized in the object language then we should admit that there are more classes than those admitted by the set theory formalized in the object language and hence that the format set theory is only a theory about *some, but not all sets*. Such a position may justify saying that the builders of the theory were interested only in those classes that are needed for the foundation of mathematics and that this does not entail that they intend to formulate a general theory for all classes. This would be an explicit recognition of a contradiction with what is usually said in the informal presentations of set theories, viz. that the formal theory is concerned with all sets and not with some selection of them. As far as I can see there are two possible routes to overcome this

tion as the makers of a discourse, as Lotman does, shall take into account that each of us changes with the time and that there is an incredible variety of individuals[12]. The present moment, in which the issue of a Super Life is raised, the variety of all living beings may become the source of new legal duties addressed to maintain the equilibria between species and nature[13].

1.3. On the permanent characteristics of the constitution as a form to regulate conflict in the exercise of political power: the paradigms of constitutionalism

1.3.1. Method, scope, and why interdependencies matter

Methodological foundations: historic regularities and comparative law

The choice to seek regularities within legal systems through history forms the foundation of a methodological approach that we consider fundamental to comparative law, adopting a broader perspective than approaches that merely compare systems characterized by strongly analogous structures in terms of political and ideological values. Indeed, the latter perspective fails to fully grasp the meaning of legal institutions, which instead must be sought starting from the activities that characterize each society. In this regard, a study of the regularities that define the very essence of law allows legal processes to be interpreted in terms of interdependencies. This makes it possible to address interdependencies within societies – such as those between the state and individuals, the state and groups, groups and individuals, and between groups themselves – as well as interdependencies between states, communities, and individuals and other actors located outside the spheres where political

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situation: (I) To give up the standard set-theoretical notion of interpretation and to single out a different notion without ontological commitments concerning classes. Raul Orayen is now developing this alternative following certain important ideas of Quine used in his "Methods of Logic" and developed in his "Philosophy of Logic". (II) To give up all set theories which do not include the existence of the universal class, as philosophically inadequate. As I am rather skeptical about the feasibility of alternative (I) so I am inclined to accept (II)."

[12] For the typology of discourse I-I and I-You see Ю.М. Лотман, Автокоммуникация: «Я» и «Другой» как адресаты (О двух моделях коммуникации в системе культуры) in: Ю.М. Лотман Семиосфера. – С.-Петербург: Искусство – СПБ, 2000. – С. 159–165, https://philologos.narod.ru/lotman/autokomm.htm?utm_source=chatgpt.com (25.08.2025). English version: M. Yuri Lotman, *Autocommunication: 'I' and 'Other' as Addressees*, in: *Universe of the Mind: A Semiotic Theory of Culture,* I.B. Tauris, London–New York; Indiana University Press, Bloomington 1990/2001, pp. 20–35.

[13] J. Lovelock, *Gaia. A New Look at Life on Earth*, Oxford University Press, Oxford 1979.

and economic decisions have been made. The ever-increasing number of cases concerning pollution and climate change constitutes a significant example that highlights the importance of this approach for addressing issues related to human societies and the Biosphere.

On the regularities of the legal orders

All the aforementioned types of constitutions serve a connected purpose: guiding the exercise of political power within a suitable framework of values, aims, checks, and balances. Considering the evolutionary processes that have characterized different polities from a comparative perspective, we have observed certain permanent characteristics concerning the families of relations joining the constitutional elements of their legal order. These relations, as we have already pointed out, are the following:

i) The relationship between the legal understanding of the individual subject and the ways in which the law aims to protect its existential manifestations;
ii) The relationship between the participation of individuals in the exercise of political power and the representation of activities to be developed through political power, as well as the representation of individuals and groups in the process of government;
iii) The relationship between legal provisions and the way in which we may interpret them in the form of accomplished norms[14].

1.3.2. From the legal subject to the legal provisions in action

On the legal subject

We will now briefly comment on these relationships. First, there is the relationship between the legal understanding of the individual subject and the ways in which the law aims to protect their existential manifestations. Every legal system is founded on the recognition of certain legal subjects. Over time, the evolution of legal systems has demonstrated a tendency to broaden the scope of this recognition.

The very concept of human rights and the subsequent struggles to overcome all forms of discrimination demonstrate that the progressive recognition of individual and collective subjectivities – and of their mutual relations – reveals an intrinsic connection between the acknowledgement of legal subjects, the existential manifestations deemed worthy of protection, and the policies ensuring their implementation.

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[14] P. Policastro, *Prawa Podstawowe w Demokratycznych Transformacjach Ustrojowych. Polski Przykład*, Redakcja Wydawnictw KUL, Lublin 2002.

Nowadays, issues concerning the recognition and protection of the existential manifestations of people living outside a states' territory – but affected by factors and events occurring within that state or connected to it – are gaining increasing importance. One example is the adoption of policies that enable the punishment of abuses, such as those committed against minors from other countries, through preventive and repressive actions implemented by the home states of the offenders.

Another issue requiring specific political actions concerns the protection against actors operating outside a state's borders yet influencing the rights and freedoms of its population. Consumer rights and the impact of large corporations on the protection of national rights, such as labor rights, are possible examples to consider. In this chapter, I will examine more extensively the problem of neoliberalism, whose effects are difficult to address precisely because of the pervasive influence of large corporations.

A third factor requiring appropriate policies consists of actions not confined to a single country but leading to outcomes generally regarded as harmful to humanity as a whole. For example, the indiscriminate use of non-renewable resources like coal or oil increases carbon dioxide and other greenhouse gas emissions in the atmosphere. Conversely, the indiscriminate use of forest resources slows the process of transforming solar energy into chemical energy, which is essential for the multiplication of life itself as a planetary phenomenon. The issue of policies to protect the existential manifestations of individuals in relation to these activities relates not only to international law but also to the understanding of the legal system through the lens of ethics. Here, it is necessary to introduce the relationship between participation and representation.

On the relationship between participation and representation

As for the relationship between participation and representation, I have described it above as the relation between the participation of individuals in the exercise of political power and the representation of activities to be developed through political power, as well as the representation of individuals and groups in the process of government. Its analysis requires first defining what we mean by the exercise of political power. The latter can be understood in various ways. Franz Neumann, rooted in the time in which he wrote, the 1950s, emphasizes the bilateral nature of power. He adopts a notion of power as the ability to influence society by eliciting emotional and rational responses that lead to compliance with the ruler's commands. The conception we propose is less interested in the debate and democracy within mass societies; instead, it focuses on a society's ability to achieve a result through the application of its individual and collective forces. The participatory moment is

when society unfolds its potential. In this perspective, participation assumes a fundamental constitutional significance. It is all the more important as we see ourselves in nature. However, participation needs to be associated with the representation of the necessary reality. This requires contribution of every part of society and an adequate discussion in parliament, where communities take responsibility for their decisions towards themselves and others.

From the expression to the implementation of legal provisions

Regarding the relationship between legal provisions and how we interpret or implement them as complete norms, it is important to remember that the significance of the deliberative moment is related to the awareness that a society assumes the task of determining and implementing its will on certain issues. Since ancient times, figures like the wise-judge, known in Latin culture as "rex," have emerged. From these figures, legal systems based on the executive role were created, which should be distinguished from those that evolved from the deliberative process. The coexistence of these elements has enabled the creation of complex societies.

The multiple processes leading to the formation of supreme jurisdictional bodies have allowed the law to be manifested through recursive processes. This has enabled the creation of a constitutional identity founded on consensus around fundamental principles. The development of this legal identity over time is demonstrated by the "ius Quiritium," the Justinian codification, "legal customs," and today's collection of supreme jurisprudential principles. This identity is intrinsically linked to discourse and justification[15].

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[15] See the contributions of the lines of thought referring for example to De Bracton, Fortesque, Ockham, Machiavelli, Guicciardini, which have been analyzed by different authors. Among these authors we may at least mention McIlwain, Pockock, Berman, Stolleis, Tierney and several others here. See. B. Tierney, *Bracton on Government*, "Speculum" 1963, Iss. 38, No. 2, pp. 295–317, https://doi.org/10.2307/2852455 (20.08.2024), See esp. p. 305: Bracton started from the assumption of a land ruled by laws, where "(...) a king who undermined the authority of law in general by contemptuously disregarding it undermined the source of his own authority – for "law makes the king." A king who did follow his own naked will without respect for the law could not expect to remain an effective ruler". J. P. McCormick, *Machiavelli against Republicanism: On the Cambridge School's 'Guicciardinian Moments*, "Political Theory" 2003, Iss. 31, No. 5, pp. 615–643, http://www.jstor.org/stable/3595689 (20.08.2024). C.B. Thompson, *John Adams's Machiavellian Moment*, "The Review of Politics" 1995, Iss. 57, No. 3, pp. 389–417, http://www.jstor.org/stable/1408595 (20.08.2024). G.L. Mosse, *Change and Continuity in the Tudor Constitution*, "Speculum" 1947, Iss. 22, No. 1, pp. 18–28, https://doi.org/10.2307/2856199 (20.08.2024). J.P. Sommerville, *English and European Political Ideas in the Early Seventeenth Century: Revisionism and the Case of Absolutism*, "Journal of British Studies" 1996, Iss. 35, No. 2, pp. 168–194, http://www.jstor.org/stable/175798 (20.08.2024); B. Tierney, *Origins Of Natural Rights Language: Texts And*

With this, we want to express that, according to our understanding, any method of studying the relationship between power and law – and the limitation of power through law – ought to begin with the study of these families of relations. By analyzing the state of affairs concerning these families of relations, we can evaluate the different constitutional forms as they appear and are implemented in practice. This analysis serves the purposes of constitutional policy. However, the relations we have been calling the paradigm of constitutionalism are structural relations. They do not fully describe the state of affairs of the system when considered within the entire network of interdependencies.

1.4. Beyond structural relations: reframing constitution–constitutionalism

1.4.1. Diagnosing the crisis

The limits of formal pluralism and the rise of "single-reason" sonstitutionalism

The crisis of the constitutional typologies I have presented lies in the fact that pluralism, when considered formally, does not in itself appear capable of adequately addressing the issue of conflict. Accordingly, while it remains important to study the typologies through which the modalities of consent to constitutions have been determined and to analyze how they influence the aims of societies, the analysis of constitutional law through the classes of relationships considered does not neglect the political processes that led to the formation of constitutions, nor the social objectives, nor the modes through which influence is distributed across the different spheres of collective life. On the contrary, it enables the identification of the causes of conflict inherent in constitutional processes, drawing increasing attention to the possibility of conceiving pluralism from the perspective of the progressive recognition of subjects worthy of protection and of the fields of interest of the law itself, while developing appropriate organizational solutions for this purpose. In this way, by seeking to include the significance of the relationship between constitutions and Life within the Biosphere, a new qualification of constitutional relationships could emerge.

Despite the widespread, almost universal, adoption of constitutional forms (either written or customary), we are witnessing a crisis today, evidenced by a breakdown in the "rule of law". This crisis is manifested in both the hyper-rationalized form of the

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Contexts, 1150-1250, "History of Political Thought" 1989, Iss. 10, No. 4, pp. 615–646, http://www.jstor.org/stable/44797162 (20.08.2024).

linguistic rule of law and the nominalistic form of the "rule of law" as merely "a rule of power constrained by law". This situation leads to the emergence of single-reasoned constitutions, observable in dominant party systems, confessional (or nearly confessional) constitutions, constitutions grounded in ideological or military power, and populist regimes. It can also result in constitutions rationalized through a pact, which are inherently unstable due to the inherent instability of the pact itself[16].

When the understanding of the constitution is expressed in a language that, according to those who adopt it, becomes the very manifestation of constitutional relations – apodictic and not discursive – significant conflicts arise within society, and probably also between societies.

Certain concepts, such as positive law, the ability of law to mediate between different moral attitudes and positions, the secular state (understood in its pluralistic meaning), the social state, and the rule of law in general, are experiencing a growing crisis. There are several examples that illustrate this issue.

Globalization-era stressors and representation gaps (the Arab Spring as a stress test)

As I have previously expressed, I believe that history alternates between periods of expanding freedoms and periods of constraining them. In Europe, and to some extent globally, both in the 20th and 21st centuries, we have witnessed a shift from a period characterized by an expansion of freedoms to one where freedoms have been receding due to attempts to consolidate power.

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[16] The prototype of a constitution based upon political pacts, where the political forces which undertook the pact did not really mean to maintain the terms of the pact, was the Weimar constitution. The German Grundgesetz tried to answer to the instability of the pact-based Weimar constitution by developing the type of the hyper-rationalized constitution, where the legal mediation is centered upon the linguistic formulation of the norm - integrated by argumentative "topoi". The pact-based constitutions normally have a significant importance in all the democratic transitions, but the weakness of the pact is an element, which may delay or even lead to a failure of the democratic transition. See among others D. Grimm, *La costituzione di Weimar vista nella prospettiva del Grundgesetz*, "Nomos. Le attualità nel diritto" 2012, Iss. 2, pp. 1–8. P. Ridola, *La costituzione della Repubblica di Weimar come "esperienza" e come "paradigma"*, "AIC, Rivista telematica giuridica dell'Associazione italiana dei Costituzionalisti" 2014, No. 2, http://www.rivistaaic.it/old_site/sito_rivistaAIC_2010-2018/download/epIV0-E-zQb5m-35duJM3nj8tmSFQbFT8EuPKptlpTI/1_2014_Ridola.pdf (20.08.2024). It must be remembered that certain political agreements, such as the Ebert-Groener Pact, which reduced the political influence of soldiers' and workers' councils in exchange for recognizing the socialist government, were crucial in establishing a political and legal order. Similar political agreements, like those limiting the role of councils in factories and combining freedoms with social rights, were essential to this process. The violation of these pacts hindered the joining of society within the constitutional framework.

In every period of expanding freedom, constitutional frameworks attempt to demonstrate a dynamic character. This involves altering society's self-conception, changing the principles of influence distribution in society, politics (including common decision-making), the production and exchange of goods and services, and the distribution of wealth. These changes may also encompass the conception of law, the principles for recognizing legal subjects deserving protection, the matters to be acknowledged by law, and the organizational principles governing institutions.

Due to globalization, there is a kind of global crisis, the roots of which can also be traced back to the world order following the Second World War. The freedom of commerce favoring the most powerful countries, the replacement of colonialism with dependency, the North-South perspective, the enunciation of important formulations of rights, the opposition between blocs, and modernization policies have created a discordant framework. This framework has allowed various development processes thanks to the often heroic contributions of various politicians. It has been successful particularly where there were classes of politicians capable of formulating and controlling these problems. However, the framework in which the processes of representing the surrounding reality and their subsequent formulation in political terms develop depends on a series of social factors, including the importance given to family, school, and the community in which they live, as well as the propensity to engage in the practice and learning of political life. Naturally, the results of such engagement are measured over time and cannot be based on illusory data, such as media success or otherwise.

The so-called Arab Spring that took place some years ago is a very significant example of this crisis. It clearly demonstrated social intolerance towards existing power structures. However, it did not lead to clear improvements in the practice of constitution and constitutionalism. The several examples that may be quoted lead to the conclusion that the future of positive law, human rights, and democracy appears quite uncertain.

1.4.2. Recasting the analytical framework

From structural relations to substantive constitutional relations

Looking more generally, the crisis that we observe in the constitutional form encompasses the entire achievements of constitutionalism.

In particular, we notice a crisis in the legal understanding of rights, positive law as a potential source of mediation, and legal interpretation. For this reason, it is worth extending our analysis beyond the formal object of constitutions. We should consider not only the formal object of the constitution in a substantive sense but also the object

and the structure of constitutional relations – specifically, the principles governing the distribution of influence on politics, society, and the production and distribution of wealth. We should also consider the way in which constitutions (and individuals) perceive themselves and the legal process.

A meta-method for complex interdependence

The joint study of constitutional types, the formal object of constitutions, and the substantive object of constitutional relations is an issue worth considering from a theoretical viewpoint. Constitutional types can be seen as a meta-concept in relation to the formal object of the constitution, while the latter can be viewed as a meta-language concerning the substantive concept of constitutions. This creates a double chain of relations connecting language-objects with meta-languages. For these reasons, their joint study may provide a solid foundation for developing a comprehensive approach to constitutional relations in a context of interdependence[17], which is a systemic concept[18]. Our understanding of the concepts of "structural," "systemic," and "extra-systemic" is related to the parallel perceptions of the brain by structure, by systemic coordination, and by extra-systemic comparative evaluation. This complexity is increased by linear expressions, such as in a written text, a legal disposition, a piece of legislation, or an interpreted norm, as in the case of a legal decision. We cannot consider anything, including constitutions, without taking into account how we think.

To highlight the importance of defining and studying a substantive concept of the constitution – an area often neglected and not methodologically considered with the necessary attention – it is worth examining constitutional evolutions. In this case, we will consider the events that preceded the crisis which began in the first decade of the 21st century[19].

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[17] See P. Policastro, *Interdipendenze costituzionali e protezione della persona*, in: *Studi in Onore di Luigi Arcidiacono*, Pubblicazioni dell'Università di Catania, No. 239, new series, Vol. 6, Giappichelli, Torino 2010, p. 2635.

[18] See P. Policastro, *Godność człowieka wobec konstytucyjnych wartości*, in: *W poszukiwaniu dobra wspólnego, Księga Jubileuszowa profesora Macieja Zielińskiego*, ed. A. Choduń, S. Czepita, Wydawnictwo Naukowe Uniwersytetu Szczecińskiego, Szczecin, 2010, pp. 613–653. Spanish version: P. Policastro, *La dignidad de la persona y los principios constitucionales en la* época *de la globalización*, "Persona y derecho" 2011, Vol. 64(1), pp. 175–206; P. Policastro, *Constitutionalism, Comparison, Complexity....*

[19] See P. Policastro, *Constitutionalism vs. Economic Analysis: On the Use of Founding Theories and Complementary Theories in Constitutional Interpretation*, "Archiv für Rechts- und Sozialphilosophie" 2012, No. 127, pp. 173–203.

2. The Imaginary Freedom as the Source of Conflict

2.1. From the euphoria of constitutionalism and globalization to the analysis of world conflict

2.1.1. From post-1989 euphoria to a "rule of law without qualities"

Imaginary freedom and normative foundations

A well-balanced constitutional order is based, as we have said, on three classes of norms: those that express the aims of societies; those that articulate the distributive principles governing influence over society, collective decision-making, the production and exchange of goods and services, and the distribution of income and wealth; and finally, those norms that define the modes of being of the law itself – expressed through the objective and subjective domains to which the law is addressed, and through the organizational principles in which it is manifested. These latter aspects are particularly important in accounting for the interdependencies – both internal and external to individual legal orders – that are of fundamental significance, especially in relation to the connection between humanity and the Biosphere. However, the principles that define the aims of societies are no less essential. Their weakening leads to a relationship between constitutional law and the surrounding world that is purely adaptive rather than transformative. For this reason, progress – even in the relationship between society and the Biosphere – remains confined to an imaginary freedom: a freedom that proclaims itself as such, but fails to generate any original contribution to the protection of human life. This Life is understood as the life of each individual, life within social groups, the capacity of each person to represent reality autonomously and choose how to contribute to its improvement, a stable and ethically conscious legal order, and the ability to secure the means necessary to develop the manifestations of one's own existence. Imaginary freedom – a manifestation bound by the genus of biopower – is such precisely because it is incapable of preventing conflict or its gradual intensification over time, as we are currently witnessing.

1989, the "Autumns," and pragmatism without ideology

Beginning in 1989, and later with the end of the Soviet Union, the achievements of Western constitutionalism seemed to acquire global significance. The political transformations of that

period have been described as "The Autumn of the Ideologies"[20] and "The Autumn of the Nations,"[21] reflecting the sense that the transnational quest for freedom was not followed by a clear or shared political program for the post-1989 era.

Unlike the period following 1945, when there were well-defined political programs, the post-1989 era witnessed the spread of a pragmatism without ideology, which ultimately enabled the development of a rule of law "without qualities"[22] – that is, without a political project that seriously addressed the question of interdependencies on a global scale.

This evolution was accompanied by a worldwide trend toward the transnational diffusion of the capitalist mode of production, absent any ideological framework or constraint.

In this way, this mode of production fully revealed its "dissipative" nature, as we will attempt to explain in the following pages.

The transnational diffusion of capitalism did not only mean the spread of commercial freedom. Instead, it brought global relevance to a type of organization and an institutional framework for the economic process that included both novel and continuous elements from the past. The novel element was the transnational aspect. The element of continuity was an approach to production characterized by intense pressure on natural resources and a substantive orientation of research, employment, production, and accumulation toward the weapon industry. This mode of production had already been spreading worldwide for a long time. After 1989, it gained transnational momentum, transforming the economic process qualitatively and increasingly placing it beyond the control of states. In other words, a "rule of law without qualities" developed alongside "a capitalism without constraints."

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[20] For this definition see J. Życiński, *The Autumn of the Ideologies*, first printed in "Krytyka" 1991, No. 34–35. pp. 53–61 (the original title in Polish is *Jesień ideologów* [*The Autumn of Ideologues*]). English version in: *From the Polish Underground: Selections from Krytyka 1978–1993*, ed. M. Bernhard, H. Szlajfer, transl. M. Chmielewska-Szlajfer, Pennsylvania State University Press, Philadelphia 1995, pp. 221–230.

[21] See for example P. Kenney, *Opposition Networks and Transnational Diffusion in the Revolutions of 1989*, in: *Transnational Moments of Change: Europe 1945, 1968, 1989*, ed. G.R. Horn, P. Kenney, Rowman & Littelfield Publishers, Oxford 2004, pp. 207–224.

[22] Compare R. Musil, *Der Mann ohne Eigenschaften*, Berlin, Rowohlt, Vol. I (1930), Vol. II (1933), and Vol. III (1943). English edition: *The Man without Qualities*, transl. S. Wilkins and B. Pike, Alfred A. Knopf, New York 1995.

This gave strength to neoliberal economic approaches, which were conceived within a neoliberal framework[23] for institutional development in international relations[24].

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[23] Regarding the approaches to the neoliberal economic paradigm over time, this paradigm was initially aimed at undermining the authority of economic systems that imposed too many burdens and controls, including planning, as we can see in L. v. Hayek, *The Road to Serfdom*, Routledge, London 1944 (and University of Chicago Press 1944) *passim*. The solution envisioned by the Austrian economist was: "An international authority which effectively limits the powers of the state over the individual will be one of the best safeguards of peace. The international Rule of Law must become a safeguard as much against the tyranny of the state over the individual as against the tyranny of the new super-state over the national communities. Neither an omnipotent super-state, nor a loose association of *free nations*, but a community of nations of free men must be our goal", p. 175. In the second period, neoliberalism was conceived as an approach directed to undermine all the guarantees of the welfare state, and to promote deregulation. The Thatcher approach in Europe (*The Neoliberal Age?: Britain since the 1970s*, eds. A. Davies, B. Jackson, B.F. Sutcliffe-Braithwaite, UCL Press, London 2021, http://www.jstor.org/stable/j.ctv1smjwgq) and the policies adopted in Chile in the Pinochet regime (A. Davis-Hamel, *Successful Neoliberalism?: State Policy, Poverty, And Income Inequality In Chile*, "International Social Science Review" 2012, Vol. 87 (3/4), pp. 79–101, http://www.jstor.org/stable/41887539 (20.08.2024), and later on the approach which characterized the administrative reforms in Europe and their social perception (J.J.B. Mijs, E. Bakhtiari, M. Lamont, *Neoliberalism and Symbolic Boundaries in Europe: Global Diffusion, Local Context, Regional Variation*, "Socius: Sociological Research for a Dynamic World" 2016, Vol. 2 (1–8), DOI: 10.1177/2378023116632538: "The spread of neoliberal policies, politics, and ideologies in the late twentieth century has altered social life at a variety of levels. Specifically, it has reshuffled symbolic boundaries in some societies in ways that have narrowed definitions of belonging and further marginalized the poor, the working poor, and ethnoreligious minorities." p. 5) are some noteworthy examples. In a further stage, neoliberal criticism of the planned economy played a significant role in opposing real socialism and in the economic transformation of Central Europe, as seen in the so-called Balcerowicz Plan. The process of economic transformation through a liberal quick turn, often referred to as shock therapy, laid the groundwork for the integration of Poland and the Czech Republic into the European Union. However, it also contributed to the subsequent economic crisis in Hungary (from Le Monde: October 7, 2022, at 12:48 am – Paris, updated on November 24, 2022, at 5:42 pm: "When Viktor Orban became prime minister of Hungary in May 2010, (...) the country was on the verge of suffocation. Prices were soaring; the currency (the forint) was collapsing; (...). Yet in 2004, when it joined the European Union, economists praised the strength of the "Hungarian miracle." After the fall of the Soviet bloc, Budapest privatized major state corporations and its pension system, opened its banks up to outside capital and implemented a series of measures to attract direct foreign investment, (...). This opening up of the market gave a tremendous boost to growth in the early 2000s, but it backfired with the financial crisis of 2008 when westerners abruptly withdrew their money. Thousands of Hungarians indebted in Swiss francs were ruined (...). "Mr. Orban was elected on the promise to make foreign investors, not citizens, pay for the cost of the crisis," (...) "Correcting the excesses of privatization was a good idea. But to make sure he stayed in office, he gradually concentrated all power and unraveled the rule of law", https://www.lemonde.fr/en/economy/article/2022/10/07/how-nationalist-viktor-orban-took-control-of-hungary-s-economy_5999438_19.html (1.07.2024). Additionally, it was the basis for significant economic inequalities in Russia and other states of the former Soviet Union.

[24] R.O. Keohane, *After Hegemony. Cooperation and Discord in the World Political Economy*, Princeton University Press, Princeton 1984. The author does not deny the importance of the political power of states. However, he believes in the function of states to support the regulation of interdependence. Such functions are related to the ability of polities to mutually adapt and learn, thereby fostering

2.1.2. Neoliberalism, state functions, and the turn to conflict analysis

Liberal vs. neoliberal state; Participation, *arcana imperii*, and international rule of law

The recent emphasis on reflections about neoliberalism necessitates a specific focus on addressing the question in a manner that integrates both political and economic aspects. In this regard, it is important to consider the continuity and differences between liberal and neoliberal conceptions of the state. We must acknowledge that the approach to the liberal state is manifested in different facets. One is the political theory approach, where the concepts of republicanism, democracy, and liberalism are, to a significant extent, suitable to be convergent. As Nadia Urbinati underlines, democracy allows a republican approach to non-domination – through reciprocity and autonomy – to align with the effective exercise of political equality. This concept is related to the effective right to express one's opinion and due process of law. However, the equal power to have an opinion counted as equal and the participation in making or changing the law depend on the contribution of democracy to liberty[25]. Here, however, the possibility of achieving general participatory equality must be considered in depth. Indeed, contemporary participatory projects rarely guarantee equality of opinion without significant institutional attention. Such attention is constantly endangered by the presence of groups of professionals who help maintain control over both decision-making and decision-implementation processes. The importance of such groups has been highlighted not only by Max Weber, but also in historical

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mutually beneficial cooperation (page 30). The work itself, which theorizes complex interdependence, has been widely recognized worldwide. Its conclusion supports the need to regulate interdependence between states. Furthermore, the conception of interdependence is not related to the economic models of general equilibrium, which postulate an automatic function of the market. Instead, it involves a multi-sided causality, where the different parties are bound to mutually adjust themselves. However, in the 40 years following the publication of the book, the development of a process of mutual learning appears difficult to achieve without the participation of the basic element of polities' life, which are the citizens. For this reason, the dilemma between the paradigm that "transnational is anarchic" (proposed by the realist theory of international relations) and the one proposed by Keohane, "international is interdependent," appears outdated. Indeed, there is a need for a civil society capable of developing a supra-national project. For this reason, Keohane's paradigm, proposing a neoliberal approach to international relations, although widely accepted, has not been able to counter the effects of economic neoliberalism, which have increased inequality and reduced the accountability of economic processes.

[25] "Without an equal relationship of power among citizens (the principles of reciprocity and autonomy) and an effective right to express one's opinions (without an equal power to make an opinion be counted as equal and participate in the making or changing of the law), legal liberty and due process of law are not secure acquisitions. This is democracy's contribution to liberty". N. Urbinati, *Competing for Liberty: The Republican Critique of Democracy*, "The American Political Science Review" 2012, No. 3(106), pp. 607–621, http://www.jstor.org/stable/23275436. See, p. 108.

studies such as those of Ernst Kantorowicz. Their influence is further reflected in the differentiation between the "state of prerogatives" and the "rule of law" made by Ernst Fraenkel, which in turn evokes the concept of the gubernaculum emphasized by McIlwain, following the line of thought traced back to Bracton.

Thus, the student of politics and constitutional law may well suspect that such *arcana imperii* could easily jeopardize a living and effective democracy[26]. Indeed, the delicate character of the said participation equality is expressed also considering the fact that legislation also affects people being outside the borders of a country.

This is especially significant because, as Franz Neumann had already emphasized, the liberal state is not a state that minimizes public services, but rather a type of state that directs and measures public services according to the economic interests to which it gives priority. It then seems rather a historic construction based on the development of classes that placed free trade at the core of their interests. Therefore, the liberal state, within all its variety, has been able to develop very complex services, such as police forces to quell internal

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[26] See the relevance of Tacitus's sentence for the constitutional process: *Annales*, II, 36 (https://www.thelatinlibrary.com/tacitus/tac.ann2.shtml?utm_source=chatgpt.com, 20/08/2025): "Et certamen Gallo adversus Caesarem exortum est. nam censuit in quinquennium magistratuum comitia habenda, utque legionum legati, qui ante praeturam ea militia fungebantur, iam tum praetores destinarentur, princeps duodecim candidatos in annos singulos nominaret. haud dubium erat eam sententiam altius penetrare et arcana imperii temptari. Tiberius tamen, quasi augeretur potestas eius, disseruit: grave moderationi suae tot eligere, tot differre. vix per singulos annos offensiones vitari, quamvis repulsam propinqua spes soletur: quantum odii fore ab iis qui ultra quinquennium proiciantur? unde prospici posse quae cuique tam longo temporis spatio mens, domus, fortuna? superbire homines etiam annua designatione: quid si honorem per quinquennium agitent? quinquiplicari prorsus magistratus, subverti leges, quae sua spatia exercendae candidatorum industriae quaerendisque aut potiundis honoribus statuerint. favorabili in speciem oratione vim imperii tenuit" (And a conflict arose between Gallus and Caesar. Gallus proposed that the elections of magistrates should be held every five years and that the legates of the legions, who previously served in the military before becoming praetors, should now be designated as praetors. The princeps (emperor) was to nominate twelve candidates each year. There was no doubt that this opinion penetrated deeply and tested the secrets of power. However, Tiberius, as if his power was being increased, argued: It would be a heavy burden for his moderation to select and defer so many candidates. It was barely possible to avoid offenses when selecting candidates annually, even though the prospect of imminent selection provided consolation for those rejected. How much hatred would arise from those projected beyond five years? How could anyone foresee the mind, household, and fortune of each individual over such a long period? Men become arrogant even with annual designations: what if they were to hold office for five years? This would multiply the magistracies fivefold and subvert the laws that established specific periods for exercising the industry of candidates and for seeking or obtaining honors. With a speech that seemed favorable in appearance, he maintained the power of the empire), English Translation: Cornelius Tacitus, *Annals*, in: *The Complete Works of Tacitus*, The Modern Library, New York 1942), trans. A.J. Church, W.J. Brodribb, ed. M. Hadas, Perseus Digital Library ed. Sara Bryant https://catalog.perseus.org/catalog/urn:cts:latinLit:phi1351.phi005.perseus-eng1 (16.08.2025).

protests, or armies and fleets to seize spaces, resources, and markets[27]. Neumann points out that this approach concerned not only England but also at least Germany. Moreover, Neumann refers in this regard to the division of powers as adopted by Locke[28]. Neumann refers to the distinction contained in Chapter XII of Locke's Second Treatise on Government, where, when addressing the issue of the separation of powers, he refers to the legislative power in a manner familiar to us today. However, he considers the executive power in a way that also includes jurisdiction. Foreign power, on the other hand, is defined as federative power. In this sense, the evolution of these phenomena can allow us to reflect on the deep reasons behind the project of international organization in Europe. In fact, on the one hand, we must take into account the 1952 Treaty of the European Defense Community, which provided for the approval of a definitive organization in place of said Community once the Treaty was ratified, which never happened due to France's opposition[29]. If we take into account neoliberalism, we see that these trends aimed at developing supranational structures and organizations have indeed persisted. In fact, even von Hayek, writing in 1944, while manifestly attempting to criticize the excessive constraints on the economic

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[27] F. Neumann, Ökonomie *und Politik im zwanzigsten Jahrhundert*, "Zeitschrift Für Politik" 1955, Iss. 2, No. 1, pp. 1–11, http://www.jstor.org/stable/24221003 (20.08.2025). English translation F. Neumann*, Economics and Politics in the Twentieth Century*, in F. Neumann *The Democratic and the Authoritarian State*, ed. H. Marcuse, The Free Press, Glencoe, IL. 1957 available on line in the Internet Archive.

[28] J. Locke, *Two Treatises of Government. In the Former, The False Principles and Foundation of Sir Robert Filmer, and His Followers, Are Detected and Overthrown: The Latter, Is an Essay Concerning the Original, Extent, and End, of Civil Government* (1690), in: *The Works of John Locke*. A New and Corrected Edition in Ten Volumes. Vol. V. London: Printed for Thomas Tegg; W. Sharpe and Son; G. Offor; G. and J. Robinson; J. Evans and Co.; Also R. Griffin and Co. Glasgow; and J. Gumming, Dublin 1823.

[29] Article 38 §1. Within the time limit provided in the second paragraph of this article, the Assembly shall study: a) the constitution of a European Defense Community Assembly, elected on a democratic basis; b) the powers that would be vested in such an Assembly; c) the modifications that might need to be made to the provisions of this Treaty relating to other institutions of the Community, particularly to ensure appropriate representation of the States. In its studies, the Assembly shall be guided notably by the following principles: The permanent organization that will replace the present provisional organization shall be designed in such a way as to constitute one of the elements of a future federal or confederal structure, based on the principle of the separation of powers and, in particular, comprising a bicameral representative system; The Assembly shall also study the problems resulting from the coexistence of different European cooperation bodies already created or that may be created, in order to ensure their coordination within the framework of the federal or confederal structure. §2. The Assembly's proposals shall be submitted to the Council within six months from the date the Assembly takes office. With the Council's opinion, these proposals shall then be transmitted by the President of the Assembly to the Governments of the Member States, which, within three months from the date they receive them, shall convene a Conference to examine the said proposals (original in French). *Traité instituant la Communauté européenne de défense (Paris, 27 mai 1952).* Full text (PDF), Centre Virtuel de la Connaissance sur l'Europe/University of Luxembourg, https://www.cvce.eu/content/publication/1999/4/9/2af9ea94-7798-4434-867a-36c4a256d0af/publishable_fr.pdf (28.08.2025).

process, especially through planning, advocated for the importance of an "international rule of law". His emphasis on the importance of an unrestrained economy and an international rule of law appears consistent with Locke's approach to federative power, and at the same time with the freedoms of movement within the European Union, which go hand in hand with the centralization of power in the Union's institutions.

Systemic effects, rising conflicts, and a research agenda on remedies

The increased importance of neoliberal solutions also affected the relationship between the constitutional form and the substance of power. These relationships began to develop towards creating a space of power that tended to be systemically homogeneous, despite political, social, and economic differences between states. This tendency manifested in a decrease in the power of states and a growing importance of large corporations and stock exchanges. These elements paved the way for the appropriation of wider economic spaces. Supporting such appropriation became the duty of states with sufficient economic, political, and technological resources. The pursuit of this aim was to maintain the international authority of these states as well as the consensus of corporations and capital markets. This has resulted in the emergence of growing conflicts that we still see today. In this perspective, the problem involves the challenge of how to develop a constitutional policy that can overcome the growth of conflicts while simultaneously supporting peace.

If we go a little back in time, we see that the late 1980s saw the development of a global euphoria concerning the belief that the end of the opposition between the world's great powers would lead to a "Pax Americana" founded on globalization. However, we may underline that, throughout all the first decade of this century and somehow earlier, we have been observing growing lines of reflection in the literature, speaking not only of the coming to an end of the "Pax Americana", but also of the inner difficulties to develop and maintain hegemony in contemporary world. As a matter of fact, the first decade of the 21st century[30] showed that various significant conflicts emerged and developed worldwide, while others from the past persisted[31]. The development of hostilities as a byproduct of globali-

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[30] See for example, S.E. Lobell, N.G. Jesse, and K.P. Williams, *Why Do Secondary States Choose to Support, Follow, or Challenge?*, "International Politics" 2015, No. 2(52), pp. 146–162, DOI: 10.1057/ip.2014.50. The authors underscore the difficulty of offering a definitive answer, given the diversity of political possibilities and constraints, including those associated with the participation of international organizations, p. 154 *passim*.

[31] Even though we may see that efforts are constantly made not to show that conflicts develop. See V. Hawkins, *Stealth Conflicts: How the World's Worst Violence Is Ignored*, Aldershot, UK, Ashgate 2008; reissued Routledge, Abingdon & New York 2016. I am referring to the 2016 edition accessible

zation has been particularly highlighted in reference to the wars in Iraq and Afghanistan, and later with the uprisings in Mediterranean and Arab countries. These antagonisms are not the only ones that have been manifested and developed worldwide. They are associated, to some extent, with significant crises in world economies, along with threats to energy, water, and resources. Adding to these crises is the difficulty in addressing such problems within the realm of international relations.

For this reason, shifting from studying the standards that permit growing globalization to studying the causes of conflicts and ways to overcome them appears extremely appropriate today. The problem relates to the fact that the dualism of constitutionalism and economic globalization does not eliminate the causes of conflict, which are deeply rooted in its object. Here, we aim to reflect on the importance of controlling natural resources to prevent them from becoming the object of many conflicts.

Taking this into account, I would like, at least initially, to address in this chapter the question of what remedies might be available from the perspectives of constitutional law, international law, and international relations. Various aspects of this problem will be examined in the subsequent chapters of this work. I will also seek to determine whether certain new projects of supranationality may prove helpful, in what ways, and to what extent.

2.2. From criticism of interdependencies from a single perspective to conscious interdependence

2.2.1. Diagnosing the problem: self-interested interdependencies and systemic dissipation

Self-interested interdependencies, biopower, and entropy

One of the roots of the conflict inherent in political systems does not lie in the fact that states have failed to take interdependencies into account. On the contrary, the problem

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online at: https://www.routledge.com/Stealth-Conflicts-How-the-Worlds-Worst-Violence-Is-Ignored/Hawkins/p/book/9780754675068?srsltid=AfmBOorlsGt_GMY7yfdZYoVNPxbbjs80DGIi4BbgsSRLA6NBpAsVt5hu (30.08.2025). The author complains that there is a failure to take the scale of the conflicts into account (p. 4), and tries to analyse the reasons connected with the problem (p. 6). The comments related to this work show that, in the age of communication, it is hard to explain conflicts, in a way that may be understandable to the people. The question of the selective use of the obligations of the States "erga omnes" (P. Picone, *Comunità internazionale e obblighi «erga omnes»: studi critici di diritto internazionale*, 3rd ed., Jovene, Napoli 2013) but see also the recent Advisory decision of the ICJ on climate change and its approach to *erga omnes* principles), as well as the need to highlight the objects of the conflict remain, however, out of the scope of the said reflections.

arises from having considered them exclusively from the perspective of their own well-being, thereby laying the groundwork for a persistent conflict. The appropriation of goods from many parts of the world has led, as a result, to the enrichment of a few and, consequently, to the non-utilization – and thus the waste – of natural resources, since they have been employed for the benefit of only a small portion of humanity. The capital accumulation generated by such unbalanced exploitation has, over time, exacerbated inequality, rooting its causes not only in economics but also in politics and society. The growing emphasis on the dissipative character of international relations – from political, economic, social, and cultural perspectives – has strengthened the influence of biopower. In this regard, Foucault has offered significant reflections on the *ordo liberalis*. However, the concentration of power that accompanies such dissipative approaches is tied to the attempt to preserve those influences over time. The real danger is that this attempt will continue to generate conflict and the dissipation of natural, cultural, political, economic, social, and human resources, resulting in an increase in entropy at the expense of self-organization (Georgescu-Roegen). For this reason, the introduction of the concept of conscious interdependence represents an attempt to restore to Constitutionalism – as examined in many of my previous works – its transformative character. On this occasion, I choose to write it with a capital "C," placing the law in the service of protecting the manifestations of human existence and improving the relationship between human societies and nature within the Biosphere.

Origins of globalization: financialization, Eurodollars, and resource pressure

One of the main reasons for the failure of globalization is its origins. The globalization process began in the period following World War II with the creation of a world divided into blocs that were interdependent, at least economically. The developments from the second half of the 1970s, particularly the Soviet Union's need for increased foreign trade, along with the rise of over-the-counter financial transactions, enabled the widespread use of so-called "Euro dollars" in financial operations carried out overnight[32]. The consequences that unfolded over time included, first of all, another major wave of financial detachment from real economic processes, comparable to some extent to the Great Depression

[32] G. Burn. *The State, the City and the Euromarkets*, "Review of International Political Economy" 1999, Iss. 6, No. 2, pp. 225–261, http://www.jstor.org/stable/4177309 (1.08.2025). We may find several considerations on the relation between this process and neoliberalism in: A. Davies, *The Roots of Britain's Financialised Political Economy*, in: *The Neoliberal Age?: Britain since the 1970s*, ed. A. Davies, B. Jackson, F. Sutcliffe-Braithwaite, UCL Press, London 2021, pp. 299–318, http://www.jstor.org/stable/j.ctv1smjwgq.21 (1.07.2024).

following 1929[33]. Secondly, they led to an increase in capital concentration at trans-national and regional levels, despite the claimed liberalization processes. This tendency favored a further strategic abstraction of the accumulation model from energy and resource constraints. As a result of the growth of a global-capitalist mode of production, there was an almost uncontrolled anthropic pressure on energy and raw material resources.

2.2.2. Conflict layers and historical trajectories

Levels and drivers of conflict: economic, political, cultural

The said developments led to the rise of conflicts at various levels and of different kinds. Among them, we should take into account the conflict between traditional leading economies and new world-leading ones for industrial development and energy use. The second level of conflict, for the control and procurement of raw materials, energy, industrial structures, and inexpensive labor, although it has ancient roots, continued to develop in the new model of neo-liberal transnational economic processes. The third level of conflict relates to corporate expansion.

These conflicts have been caused by three main factors: the economic factor, the political factor, and the cultural factor. All these factors, however, are very closely interconnected, as evident from an analysis of their mutual interdependencies in a historical perspective. Indeed, looking simply at how different constitutions designed, one can see that they are based on formulations that acknowledge a high level of recognition of rights and liberties. Despite these constitutions referring to international acts or philosophical concepts of a universal nature, the relevant states continue policies aimed at controlling vast economic spaces, both to secure resources and to procure markets for their products. In this

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[33] See among others P. Temin, *The Great Recession & the Great Depression*, "Daedalus" 2010, Iss. 139, No. 4, pp. 115–124, http://www.jstor.org/stable/25790431 (1.07.2024). See p. 118: "The Great Depression and the Great Recession were both caused by policies derived from (...) theories from the eighteenth century, hard-headed policy-makers either assumed or tried to recreate the idealized conditions described by Hume and Smith. These policy-makers ignored both the growth of economies of scale in modern economies and the work of behavioral economists that has shown that people do not behave as *homo* œconomicus. Their efforts produced the new economy of the 1920s and the Goldilocks economy of recent decades that turned into booms and busts. Was it inevitable that these economic expansions would end badly?". See also p. 123: "The second lesson is that there are strong pressures for unregulated capitalism that only abate in the face of sharp economic downturns like the Great Depression. We avoided another Great Depression by luck – the election cycle – and skill. Marx was correct when he argued that tragic history repeats itself as farce: we now have the oxymoronic Great Recession after all the fears of Great Depression II. Keynes was right, too; discredited economic theories – and the gold standard mentality – continue to dominate the actions of even "practical" men and women.

perspective, the prevailing model of industrial production has been leading to an almost uncontrolled use of natural resources and raw materials. This process has been developing with time. It has been gradually involving a growingly uncontrolled use of natural resources, as well as of human and thus of social resources. These phenomena need to be examined in depth, as historiography often focuses on the phenomenon of history as something eminently human and characteristic of social aggregates. However, if we consider the interdependencies, seemingly insignificant phenomena have had consequences that we cannot ignore. For example, the demand for beaver pelts in European markets contributed to an increasing vicious cycle in the relationship between society and nature[34]. Seen from a global perspective, also the end of slavery did not mean the end of social uneasiness caused by it[35]. Instead, we saw an industrialization process on a global scale. A further related development is that the control of economic spaces has become somewhat disconnected from securing raw materials for domestic production and sales. Instead, it has become more abstract. The states pursuing such aims of global control are thus involved in a process where a significant portion of the value from yearly production has been accrued to activities related to research, investments, and production for the military industry.

European integration, imperial legacies, and external economic control

This section will address the political factor. World-leading polities, especially those in Western countries, have focused on implementing constitutionalism principles in their internal relations. However, the periods of peace in Europe – for example, from the Vienna congress until World War I, and again from the end of World War II until the outbreak of hostilities between Russia and Ukraine, however defined – were also marked by the global expansion of the influences of industrial countries' influence[36]. The process of European integration has also revealed growing shortcomings in its external relations. In particular, it has shown significant incoherencies that call into question the consistency of its external policies. Indeed, while the competition policy addressed to consequently eliminate the attempt to appropriate natural resources as a cause to warfare, starting from States which contributed to creating the European Communities, the conditions in which the formerly

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[34] L. Sefton Mac Dowell, *An Environmental History of Canada*, UBC Press, Vancouver 2012, pp. 30–31.

[35] See for all, G. Myrdal, *An American Dilemma. The Negro Problem and Modern Democracy*, Harper & Brothers, New York–London 1944.

[36] K. Polanyi, *The Great Transformation*, Farrar & Rinehart, Inc., New York – Toronto 1944, especially pp. 231–232, where the author argues, providing some evidence, that labor, land, and money should not be regulated by the market.

colonized areas have been left have not been taken into account. Neither has what has been the external result of the conflicts, the decisions and the policies that arose in Europe in "The Age of Empire"[37]. Among them were the politics of great spaces and international hegemony, the rise of nationalism and its international spillovers – including, among others, the controversial context surrounding the creation of Israel and the ambiguities associated with the beginnings of decolonization. In the perspective of the constitution, all this approach appeared to be somehow justified within Locke's approach to the federative power. The end of WWI has not been accompanied by sufficient reflection on the causes, intrinsic to the construction of the State and the relations between the State and the society, which led to warfare. And this, notwithstanding the warnings coming from the academic world[38]. The attempt of European States to exercise their hegemony, joined different political, legal, commercial approaches. Among them we had the freedom of commerce, which permitted the development of unequal terms of trade. The system of capitulations regulating the economic relations between the Ottoman Empire and Western powers permitted, through commerce, the exercise of political control.[39] Together with this we had the support of the big projects of infrastructure development, where foreign debt has been used to execute political control. Such policies influenced significantly the last periods of the Ottoman Empire[40]. A fundamental issue in this context has been the communicative approach used to justify activities that, in reality, did not promote the political, social, and economic realities with which the empires came into contact. Already during the Mercantilist period, we see signs of a disadvantageous development in trade between Western powers and the Ottoman Empire (as well as China). In this way, Western countries began to specialize in production, while others, starting with the Ottoman Empire, began to specialize in raw materials. When it comes to Africa, the Berlin Conference and the International African Association contributed to masking the aim of gaining power over resources under the pretext of supporting the development of colonial countries within the Empire.

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[37] See E. Hobsbawm, *The Age of Empire 1875-1914*, Widefield & Nicholson, Great Britain 1987.

[38] J. M. Keynes, *The Economic Consequences of the Peace*, Mc Millan, London 1920.

[39] However, we shall take into account that different kinds of States exercised their influence in a different way. See M. Bulut, *Reconsideration of Economic Views of a Classical Empire and a Nation-State during the Mercantilist Ages*, "The American Journal of Economics and Sociology" 2009, Iss. 68, No. 3, pp. 791–828, http://www.jstor.org/stable/27739796 (20.08.2024). See p. 814. The Ottomans also did not use state income to finance internal growth in manufacturing, particularly since their funds were being swallowed up by the wars.

[40] See also the Egyptian case.

2.3. From control of large areas to attention to dialogue between regions

2.3.1. Hegemonic public law vs. life-oriented constitutionalism

Hegemonic control, dissipative use of the Biosphere, and self-organization

The attempt to control vast territories, beginning in the modern age, went hand-in-hand with the development of a hegemonic form of public law. The institutionalization of such tendencies finds its rationale in the interests that were consolidated through the occupation of these large spaces. The principles of the rule of law, by contrast, have sought – at least to some extent – to overcome the hegemony of interests by linking the need for stability and continuity in protecting certain fundamental manifestations of human existence – which constitute the foundation of Constitutionalism – with the transformations necessary to ensure that such manifestations are guaranteed to all, that is, to the generality of persons. The introduction of the concept of the dissipative use of Biosphere resources implies that resource utilization occurs in a way that obstructs the tendency toward the self-organization of Life, understood as a cosmic phenomenon, and therefore of human life as well. The concept of self-organization, a defining feature of Life, enables the counterbalancing of any process that transforms the resources of the Biosphere – as the product of Life's work – into free energy. However, while Life, through the energy of the Sun, succeeds in generating self-organization, we must also consider the existence of another source of energy which – as far as we know – is original in nature, although it shares common elements with the psychological dimension of all living beings (Teilhard de Chardin). This is the human soul, which plays a fundamental role in law, as it gives rise to those impulses that enable human societies to develop their own capacities for self-organization. For this reason, the hegemonic features of public orders and the extreme inequalities of wealth associated with them form part of a dissipative use of public law and therefore cannot be considered consistent with constitutionalism.

Inclusivity, transnational dialogue, and recognition of interdependencies

By contrast, a rule of law oriented toward ensuring that the fundamental manifestations of human existence – as developed throughout the history of Constitutionalism – are protected and respected for a significant portion of humanity can play a vital role in overcoming the dissipative tendencies of public law, while at the same time enhancing each individual's potential to contribute to the common good. Hence, the development of institutions must assume the most inclusive character possible – even from a transnational

perspective – fostering a dialogue that affirms the subjective importance of each person as a prerequisite for the broader recognition of the interdependencies between human societies and the Biosphere.

2.3.2. From imperial control to inter-regional dialogue

Colonial legacies, nationalism, and post-war hegemony

The idea of taking exclusive control over a large economic area in the modern age, already known to the Spanish Empire through its control over Latin America, later evolved into a privileged relationship expressed in the form of partition. Within this framework, the close connection between economic dependence, political dependence, trade specialization, and the transformation of terms of trade in favor of European countries developed into a form of institutionalized social control that went beyond slavery. The Black Codes and indigenous laws served precisely to institutionalize social dependence. From this perspective, even instruments such as nationalism, along with the nationalist and ethnic sentiments and intolerances that emerged in Europe, were used to consolidate the extra-European power of the continent's states.

The end of World War II, along with the purported halt to nationalism, not only preserved significant Western control over former colonies but also extended that control beyond the guarantees provided by international law. Hegemonic processes inhibited the emergence of any political class or project that was both aimed at and capable of ending colonialism. These factors contributed to multiple sources of conflict. On one side, Western culture pursued an approach based on domination and hegemony; on the other, newly independent countries were searching for their own identities. The former colonial status of subjugation persisted, preventing genuine engagement with native cultures and societies. The dominant language and conceptual frameworks remained those of the colonizing powers. The study of different African approaches to governance, which could have greatly facilitated mutual blending and cultural communication, was either neglected or confined to the field of anthropology.[41] Severe repression has occurred whenever an actor

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[41] See for example S. Ouédraogo. *The Study Area*. in: *New Actors and Land Acquisition around Lake Bazèga, Burkina Faso.* International Institute for Environment and Development, 2006, pp. 3–11, http://www.jstor.org/stable/resrep16515.4 (1.07.2025) where it studies the power of the Mogho Naaba, the traditional ruler of the area related to the capital of Burkina-Faso. The importance of such actors in political mediation has only recently been clearly highlighted. See E. Bertrand, *Mobilization, Negotiation, and Transition in Burkina Faso*, US Institute of Peace, 2021. http://www.jstor.org/stable/resrep30843 (1.07.2024).

appeared to endanger the colonial powers, with stereotypes being constructed to support this effort[42]. In this approach, important legal and cultural contributions have been neglected[43]. So have political contributions, such as those made by the populations of the French colonies and the colonies themselves to France's war efforts in World Wars I and II. In this sense, we can see that Western society has prioritized expressing itself over listening, as Heidegger highlights[44]. His reflection suggests that without seeking to understand the other person and their culture, there is a deficit in our thoughts about being itself. The phenomenology of post-colonial life provides evidence that even the tragedy of World War II did not teach us the must to recognize the indispensable core of human dignity, understood both as a fundamental characteristic of individuals and within their communities, such as families, social groups, nations, and states. The one-sided and transnational nature of exchanges, which allowed colonial states to maintain hegemony over their former colonies, the mixed character of certain institutions, such as the West African currency, and the flows of people moving from former colonies to richer countries, fueling various abuses and crimes, are evidence of the dissipation of natural, financial, and human resources. The scholarly literature has been warning us also of the variability of approaches of European countries towards other countries, for example the Ottoman Empire. Such a discretionary use of the "federative power," to say it in the terms of Locke, does not pass the tests needed to respect on a transnational level, the constitutional values involved.

Inter-Regional Independent Authorities (IRIA) and the Turkey case

We may give different examples of common projects, which could be developed in a way, which highlights a higher level of mutuality. Years ago, in the context of attempts to develop fair grounds of cooperation between the European Union and Russia, I proposed a general model of Inter-Regional Independent Authorities (IRIA), aiming at developing

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[42] J. Bowman, *Reconstructing the Past Using the British Parliamentary Papers: The Anglo-Zulu War of 1879*, "History in Africa" 2004, Iss. 31, pp. 117–32, http://www.jstor.org/stable/4128521 (20.08.2024).

[43] See the Kouroukan Fouga constitution or the collection of the Fulani stories by Hampate Ba, which show many aspects in common with the Bible narration, and which may be the ground for a common study on the phenomenology of religion. S. Noël, *La charte du Mandé: reconfigurations textuelles et mémorielles*, "Afroglobe" 2021, Iss. 1 (1), pp. 72–105.

[44] For more precise quotation of the issue of logos-leghein in the reflection Heidegger on metaphysics, see below.

a consciousness of the interdependencies[45]. The first characteristic of such authorities is that they ought to have a mixed composition, between experts and politicians. The second characteristic is that such authorities ought to be regional, joining two-three countries that share similar key issues. The regional character permits shared problems to be highlighted. The third characteristic is the fact that the said authorities collect information and prepare reports. Such reports ought then to be handled to parliaments, governments, and supranational organizations. The fourth characteristic of such Inter-Regional Independent Authorities, is that their aim, once adopted, ought to be to encourage mutual understanding of the state of affairs, taking into account the differences. In this way their action supports parallel legislation addressed to solve given problems, not processes of harmonization as such. IRIA's approach is not to uphold and maintain anyone's values or interests but to attempt to understand one another in the context of the common goods and the common responsibility that we are called to share. In this sense one may talk of a supranational project, where IRIA's aim is not to support a supranational governance, but to adopt a common method of looking beyond one's local or national perspective. In this sense a new federative vision may emerge based upon inclusion of others.

IRIAs may help European democracy by collecting information from contact points between different legal cultures. The quantity of documents that may emerge from relations between countries such as France, Germany, Italy, or Poland and, for example, Turkey, can help overcome the challenge of considering all these relationships from a geopolitical perspective. Integrating the present institutional framework with IRIAs would offer a completely different perspective on processes like the strategic alliance with Turkey.

The strategic cooperation between Western countries and Turkey began with the Truman Plan and developed further with Turkey's admission to NATO. Other elements include the alliance with Great Britain and the formation of the Central Treaty Organization (CENTO)[46]. Turkey's membership in the Council of Europe and its present cooperation

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[45] P. Policastro, *Governing Conscious Interdependence: Inter-regional Independent Authorities as Regulatory Proposal for the Relations between European Union and Russia*, [Интернет-журнал] "Вся Европа. ru" 2009, No. 11 (38), http://www.alleuropa.ru/governing-conscious-interdependence-inter-regional-independent-authorities-as-regulatory-proposal-for-the-relations-between-european-union-and-russia (26.05.2024).

[46] C. Göktepe, *The "Forgotten Alliance"? Anglo-Turkish Relations and CENTO, 1959-65*, "Middle Eastern Studies" 1999, No. 35 (4), pp. 103–129, http://www.jstor.org/stable/4284041 (1.07.2025). See also A. Menderes, *Iraq-Turkey: Pact of Mutual Co-operation*, "The American Journal of International Law" 1957, No. 51(2), pp. 502–505, https://doi.org/10.2307/2195747 (1.07.2025).

with the European Union also play significant roles[47]. Its presence in various geopolitical arenas should also be taken into account.

In this complex scenario, attention tends to shift towards geopolitical aspects. This means that the literature of different countries often focuses on contrasts with Turkey regarding geopolitical resources. Naturally, from Turkey's perspective, the issue of ensuring growing political influence becomes prominently highlighted[48]. What really suffers from this perspective is the human factor. Cultural, religious, and identitarian aspects are emphasized instead of fostering frank dialogue, and this situation is exploited to reduce democratic freedom. Turkish people, who emigrated long ago as affordable labor forces, are also instrumentalized in the process.

At the same time, the same rhetoric is used to overlook several phenomena that undermine the possibility for different parts of Turkish society to enjoy true and free development in their territory. Among these factors are:

A) Large water users in Turkey, including growing urban agglomerations, acquire significant quantities of water. This deprives the entire national territory of the resources needed to support natural processes, generating migrations, increasing urban pressure, and creating opportunities for biopower.

B) A significant portion of Turkey's Mediterranean coast is reserved for international tourism within economic enterprises driven by foreign capital. This factor, in reality, excludes the local society from business and enjoyment, and should be compared to the former "Capitulations" that characterized economic relations between European countries and the Ottoman Empire. This situation is highly problematic for respecting human dignity, human freedom, and people's sovereignty, as it excludes nationals from enjoying a significant part of their national territory.

C) The increasingly frequent forest fires, even in the context of climate change, are instrumentally used for this purpose.

In any case, underlining the geopolitical problems over people's participation is often accompanied by significant concentrations of political power.

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[47] I.O. Kaboglu, *La Turquie et l'Union Européenne. Le défi de cinquante ans d'association renforcée pour une adhésion en suspens*, in: *Liberty and Language. The Global Dimension of European constitutional integration*, ed. E. Castorina, P. Policastro, Giappichelli, Torino 2010, pp. 401–419.

[48] Limes, the Italian journal of geopolitics, dedicated its 2023 issue No. 7 to Turkey's efforts to reinforce its geopolitical position. *Limes. Rivista italiana di geopolitica*, "Il Gran Turco" 2023, No. 7.

3. Projects of Supranational Development and the Dissipation of Natural and Human Resources

3.1. Projects of supranational transformation

Conscious interdependence: aims, distribution, and legal modalities

The political and constitutional significance of the concept of conscious interdependence needs to be examined in light of contemporary political reflections and their references to the political thought of the past. The approach to constitutional theory that I am proposing is based on three classes of norms, which are worth recalling: the aims of a community; the principles governing the distribution of influence within society, politics, and the economy; and the principles through which the law expresses the modalities of its own manifestation. These modalities are primarily related to the subjects and spheres deemed worthy of legal protection. Conscious interdependence thus leads to an expansion of both the range of persons recognized by the law – a matter of increasing importance given the degree of development in contemporary technological societies – and the material scope of legal protection, extending it to include the regularities of the Biosphere. It should be emphasized, however, that in this approach, legal attention to transnational relations does not negate the importance of the aims pursued by individual societies. On the contrary, conscious interdependence requires that such aims take proper account of the responsibility arising from the fact that actions carried out within a given legal order have effects not only on nature as a whole but also on individuals situated outside that legal order. In this sense, awareness of interdependencies – as expressed through the modes of being of the law – when included among the aims of society, ultimately influences the constitutional principles of distribution. These characteristics make it possible for constitutions to evolve from below, through bottom-up processes. This evolution is not possible when the aims of societies are tied to a mystique of power, aimed at concealing particular interests under the appearance of legality, or when the modalities of law exclude certain subjects – such as the inhabitants of colonized regions, those under hegemonic influence, or those affected by the exploitation of natural resources and the resulting harm to the Biosphere. The positions of the theorists under consideration – including Negri and Hardt, Polanyi, and Fukuyama, along with their historical predecessors – in my view, fail to pay adequate attention to freedom, due to their excessive focus on theoretical constructions such as *ordo liberalis*. Although such frameworks are often criticized and their cessation advocated, this is frequently done through alternative forms of mystique of power. What is lacking is a proper recognition of the importance of the gradual development of processes

guided by individual freedom and awareness – which instead represents the core of the conscious interdependence approach I am proposing, and whose implementation strategies will be developed in the following sections of this study. I would also like to emphasize that the approach based on conscious interdependence, by avoiding recourse to a mystique of power, also refrains from relying on the concept of law as violence.

Supranational perspective without supranational governance; Critiques of Negri/Hardt

I now wish to further develop my thesis that a supranational project may not necessarily include the development of supranational governance. Instead, a supranational perspective on our common problems may lead to a broader awareness of our interdependencies. In this context, we need to criticize three main theories that address the issue of supranationality in the mutual dynamics of different world societies. The first is the theory of the "posse", which refers to the capability of social multitudes to transform biopower-centered capitalism. The second is Polanyi's theory that labor, land, and money should be removed from the market as an institution. The third is Fukuyama's approach, which supports liberal democracy and the free-market economy as a new level of communal life for world societies.

Negri and Hardt's approach to the "posse" seems unachievable due to the lack of mutual recognition among the diverse elements of the multitude. Present societies are highly complex and multicultural, comprising urban, rural, and indigenous communities. Each society has different worldviews and distinct characteristics. Societies that appear to coexist closely often rest on very different values. Frequently, societies in close proximity are divided by conflicts, sometimes quite violent ones.

Negri and Hardt's references to Bacon's notion of *inventio*, Campanella's concept of *amor*, and Spinoza's idea of *potentia* are rooted in sophisticated philosophical concepts. Do these concepts have intuitive relevance to general world societies? Some constitutions recognize tribal or indigenous realities. However, it is uncertain whether such recognition forms the basis for genuine political dialogue among all societal segments and whether, on this basis, they can contribute to a supranational project that transcends cultural, ethnic, religious, and lifestyle boundaries.

We may agree that some parts of societies in different countries and cultures, with a certain degree of political engagement, may have projects transcending such differences. The problem is whether these projects can be implemented in reality. Revolutions, when based on the search for material control over others, are dissipative. They destroy

ideas, energies, and material goods. They lead to the shedding of blood, and very often even to kinds of genocides. We may agree with the notion that law is based on violence, but we aim here to find a path that can allow us to overcome this condition[49]. The subversion of legal orders or of the consciousness underlying them, gives rise to processes where violence and illegality become institutionalized. They produce a rule of power to be distinguished from the rule of law, which is backed by Constitutionalism. The attempt to destroy a conception of law, imposing a new one by force, does not necessarily mean to destroy the roots of the former one. The project of supranationality aiming at a revolution of this kind, seems to be very dissipative of human and natural resources.

Polanyi, neoliberal transformation, and uneven globalization

Polanyi states that the correct approach to the market principle requires the economic system to be considered as a whole and as a historically specific social organization. My statement that "Neoliberal capitalism" seemed to appear as the hegemonic aspect of the capitalist mode of production after the 1980s, is based on the historical path related to its development. Capitalism, a feature of the West European and American mode of production, developed through a well-documented history. This history may lead to acknowledging the interest of Polanyi's theory, in the sense that it shows that labor relations in Western economies placed them beyond the market interplay. Indeed there were claims in the period between 1870-1970 that the rate of profit in the Western economies remained stable, and its level was considered constant[50]. Such stability was specific for a given institutional frame, and would not hold for all world economies, in particular the socialist one. As verified for Poland: the part of the produced income accrued to salaries substantively diminished in the years 1954–1990.

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[49] Jacques Derrida, *Force of Law: The 'Mystical Foundation of Authority'* [*Force de loi: Le 'fondement mystique de l'autorité'*]," trans. M. Quaintance, "Cardozo Law Review" 1989-1999, Nos. 5–6(11), pp. 920–1045. (Bilingual French–English, symposium "Deconstruction and the Possibility of Justice"). W. Benjamin, *Zur Kritik der Gewalt*, in: W. Benjamin, *Gesammelte Schriften*, ed. T. W. Adorno, G. Scholem, Suhrkamp Verlag, Frankfurt am Main 1977, pp. 179–203. English version, Critique of violence, in: W. Benjamin, *Selected Writings*, Vol. 1, 1913-1926, The Belknap Press of Harvard University Press, Cambridge, Ma.–London (UK) 1996, pp. 236–252, in particular p. 244. For a further reflection see Chapter XII.

[50] L.L. Pasinetti, *Structural Change and Economic Growth. A Theoretical Essay on the Dynamics of the Wealth of Nations,* Cambridge University Press, Cambridge 1981 (1st ed.). On page 79 and with more detail in footnote 14 on the same page, the author claims that the rate of profit in the period 1870–1970 in the USA economy remained stable.

The major institutional changes which took place from the early 1970s and which involved some interaction between Soviet capitals and Western economies[51], enhanced by the possibilities offered by computers, showed the beginning of a process of economic globalization. These changes intensified and with time led to a deep transformation in the world financial services by the end of the 1980s.

The end of the socialist planned economic model and the opening of socialist economies to western corporations yielded a profound and generalized reduction of the part of the income accrued to salaries.

In this way neoliberal capitalism involved a global mobility of capital, a growing corporate concentration of capital, and an increased role of the economic corporations in political power. In this process of global capital concentration, corporate models also became influenced by the strong concentrations, which were a feature of socialist economies and countries which had not developed a liberal mode of production within a constitutional state.

This situation, together with the diffusion of neoliberal capitalism, was therefore far from homogeneous. For this reason, the approach which the neoliberal world economy may have been led by to a global revolution[52] appears far from precise. The significant transformation of the production process on an international scale[53] led to a further globalization of the *ordo liberalis* and consequently of biopower. Most of this transformation took place within an internationally[54] anchored order. The approach according to which the "state form" has been replaced by the "market form"[55] appears plausible when viewed from the perspective of the transformations that occurred in Western constitutional states[56].

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[51] G. Szegö, *Il sistema finanziario. Economia e regolamentazione*, McGraw-Hill Libri Italia, Milano 1995, shows synthetically the development of the Euromarkets, as needed for the international trade, dating this process as early as in the 1950s. I have been pointing out that, the information revolution has been leading this process to develop as one of the sources of the process of globalisation. P. Policastro, *Lo sviluppo internazionale di aziende mediante aziende. L'integrazione della Polonia nella dinamica delle economie industrializzate: prospettive per l'Italia*, ISCONA-CNR, Roma 1995.

[52] M. Hardt, A. Negri, *Empire*, Harvard University Press, Cambridge (Ma.) 2000.

[53] L.L. Pasinetti, *Structural Change...*, See Chapter XI, International Economic Relations.

[54] L.L. Pasinetti, *Structural Change...*, See Chapter XI, International Economic Relations.

[55] C. Amirante, *Dalla forma stato alla forma mercato*, Giappichelli, Torino 2010.

[56] G. Teubner, A. Beckers, *Expanding Constitutionalism*, "Indiana Journal of Global Legal Studies" 2013, Vol. 20, No. 2, 523–50, https://doi.org/10.2979/indjglolegstu.20.2.523 (20.08.2024). See p. 524 "Today, the great constitutional conflicts are not only about the state constitution but also about the many constitutions within global society. The battlefields are the global constitution of the finance economy, of science and technology, and of the new digital media. Postmodern society is exposed to expansive, even totalitarian, tendencies of a variety of partial rationalities: monetarization, commodification, scientification, juridification, and medicalization. This is where Michel Foucault's 'capillary power' creeps in from the different disciplines within society, not just from the old 'capital power' of the state. It finds

3.2. Levels of conflict and dissipation of human, political, economic and natural resources. The fault of recognition between social groups

Purpose, partial pacts, and crises of recognition

The elements that could lead to a renewed approach to coexistence – one capable of improving the relationship between human societies and the Biosphere – must be expressed in a way that is understandable and actionable by the general public. For this reason, the question of a society's ultimate purpose must also be given proper focus. While such a purpose can serve as an element of social identity, it rarely encompasses society as a whole – unless it becomes the object of authoritarian imposition. At the same time, we cannot overlook the fact that strong impulses toward change may emerge within society – though, as Bruno Latour[57] observes, such impulses have not clearly materialized in relation to climate change. Therefore, even if broad societal calls for transformation may arise in response to major crises, constitutional development pacts are rarely inclusive of society in its entirety.

Not even constitutional concepts can serve as universally unifying foundations. Time inevitably challenges such forms of mediation. The core issue, then, is that constitutional crises are ultimately crises of recognition of the Other. When such crises unfold within a legal order, political processes may provide a basis for seeking a rebalancing of recognition – despite the difficulties inherent in doing so. The issue becomes even more delicate when collective actions – of the kind that arise historically – manifest in the non-recognition of the subjective positions of individuals and groups who cannot easily be represented within a given legal order or system of legal orders. As a result, the collective tendency to continue exercising hegemonic positions – while masking them under various pretexts – inevitably leads to scattered tensions and conflicts, precisely due to a widespread demand for recognition of the Other. The attempt to preserve the status quo by controlling the intensity of such conflicts creates a rupture between biological life, as a manifestation of self-organization, and social life, as a manifestation of disintegration. The political problem, then – considering the existence of the entire human species within the Biosphere – requires a profound awakening of consciousness and the formulation of new institutional solutions.

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its constitutional reaction in Jacques Derrida's concept of the 'capillary constitutions' within the many discourses in society".

[57] B. Latour, *Facing Gaia: Eight Lectures on the New Climatic Regime*, trans. C. Porter, Polity, Cambridge, UK; Malden, MA. 2017.

Limits of "posse" and constitutions as pacts

My critique of Antonio Negri (and Hardt) on the concept of *posse* begins from the premise that the notion of *inventio* – which we owe to Bacon[58] – the concept of *amor* from Tommaso Campanella,[59] and that of *potentia* from Baruch Spinoza[60] all possess a character that is difficult to reconcile with the pluralism that is essential for the dissemination of new political concepts, particularly those that link humanity to our common home, the Biosphere. Such new political concepts must be able to be shared across differences. Otherwise, the shared commitment to the care of the Biosphere – as an integral part of Constitutionalism – fades away. In fact, the concepts presented by those authors are primarily descriptive in nature. From a practical perspective, they may indeed suggest certain conclusions, but these are perceptible mainly to those who already have a deep interest in the reflections of the aforementioned thinkers. This kind of almost "initiatory" relationship does not provide the best foundation for achieving a general call to care for the Biosphere. Moreover, these concepts are deeply rooted in the historical context of each of the major thinkers to whom Negri refers in developing his idea of *posse*. Even when creativity in thought is based on "intuition," it still requires observation in order to come into existence and become real. For this reason, our study considers it essential to anticipate and design practical activities that are inclusive and accessible to all.

The critique of the Constitution presented in this chapter is based on the fact that both the liberal constitution which, since the Enlightenment, has sought to develop a rational order and the rationalized or "hyper-rationalized" constitutions are all the result of a historical process. These constitutions originate from an understanding of the insufficiency of previous legal systems concerning values deemed fundamental, leading to constitutional transformation. Furthermore, as we have emphasized, these constitutions arise from a pact.

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[58] B. Vickers, *Francis Bacon and the Progress of Knowledge*, "Journal of the History of Ideas" 1992, No. 3(53), pp. 495–518, https://doi.org/10.2307/2709891 (20.08.2024).

[59] N. Abbagnano, *Campanella: la metafisica*, in *Storia della filosofia*, vol. 2, *Il pensiero politico medievale e rinascimentale: dal misticismo a Bacone*, Gruppo Editoriale L'Espresso, Novara 2006 (first ed. 1946–50), esp. 684, Cecilia Motzo Dentice di Accadia, "Campanella, Tommaso," *Enciclopedia Italiana* (Rome: Istituto della Enciclopedia Italiana, 1930), https://www.treccani.it/enciclopedia/tommaso-campanella_(Enciclopedia-Italiana) (1.07.2025).

[60] L.C. Rice*, Emotion, Appetition, and Conatus in Spinoza*, "Revue Internationale de Philosophie" 1977, No. 119/120(31)(1/2), pp. 101–116, http://www.jstor.org/stable/23944184 (20.08.2024). D.H.B. Kwek, *Power and the Multitude: A Spinozist View*, "Political Theory" 2015, No. 2(43), pp. 155–184, http://www.jstor.org/stable/24571661 (20.08.2025).

The concept of a pact always refers to a specific object, limited to the events of the community that constitutes itself through a founding agreement. Therefore, even if the constitutive moment is based on participation, the nature of this pact is always relative to the part of society that fully adheres to it and participates in it. Additionally, the nature of this pact is also relative to how society relates to the surrounding world. Society constitutes itself, sometimes with limits imposed by other states or societies, but primarily by looking inward at itself.

In this sense, the constitution becomes a constitutive moment of sovereignty – but it is the sovereignty of the state, not popular sovereignty. Or at least, it is not a form of popular sovereignty compatible with the modern concept of the human being as the fundamental subject of rights.

Today, the fundamental subject of rights ought to be each human person, regardless of where they live or their physical, cultural, or social condition. Consequently, there is an increasing requirement for the law to consider the relationships between different human societies, as we also emphasize later.

Representation gaps, migration examples, and biopower – conflict spiral

The impact of human societies on the world we inhabit manifests not only a collective dimension but also a social one. Yet, each society exerts this impact in its own particular way. For this reason, Negri and Hardt's reference to Francis Bacon's concept[61] of "inventio," which unites pure and applied science, should be appreciated[62]. The application of this principle seems to relate to Bacon's geometric (or structural) approach to reality and his innovative method of induction, which combines deduction which replaces traditional deduction

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[61] A. Levi, "Bacone, Francesco," *Enciclopedia Italiana*, Rome: Istituto della Enciclopedia Italiana, 1930, s.v. "Bacone, Francesco", https://www.treccani.it/enciclopedia/francesco-bacone_(Enciclopedia-Italiana) (10.09.2025).

[62] B. Vickers, *Francis Bacon*... In his work Vickers widely refers to A. Pérez-Ramos, *Francis Bacon's Idea of Science and the Maker's Knowledge Tradition*, Clarendon, Oxford 1988. He obviously refers to Francis' Bacon *New Organon (Novum Organum)*. Although Vickers seems to refer to Francis Bacon, *The Works of Francis Bacon*, ed. J. Spedding, R.L. Ellis, D.D. Heath, vol. 3, Longman, London 1858–74, it appears easier to consult F. Bacon, *The New Organon*, ed. L. Jardine, M. Silverthorne, trans. M. Silverthorne, Cambridge University Press, Cambridge 2000. In the *Novum Organum* Bacon describes the reciprocal interaction of theoretical and practical enquiries, commenting that "these two directions, the one active and the other contemplative, are one and the same thing; and that which in operation is most useful, that in knowledge is most true" (IV, 121). It follows that Bacon regarded pure science and technology not as two distinct pursuits but "as one single and indivisible enterprise". See B. Vickers, *Francis Bacon*..., p. 514.

with a systematic process supported by analogy and intuitive insight. It is through these means that legal and constitutional relations exert their influence on society as a whole and on the global sphere[63].

However, when a Constitution is established, the deficit of representation (and of the representation of reality) ensures that the gap between a Constitution as a set of social, political, and economic relations structured within it, and the reality of human life produces a conflict inherent in the Constitution itself. This conflict arises because, in the exercise of Constituent power – which is not necessarily confined to the period of drafting and approval – there are those who are more or less represented. Additionally, there are those who, through their participation, manage to achieve more significant results than others in shaping the structure of constitutional relations.

The interaction between different degrees of representation and the representation of individual and social subjects, as well as the efficiency of participation, is at the root of this conflict. It should be noted that this deficit in representation and participation extends to all those affected by the constitutional relations in question. The same applies to the issues that are the subject of constitutional relations.

It is true that the development over time of the constitutional types we have highlighted has occurred in different phases. In the first phase, freedom and equality were emphasized in a formal sense. Subsequently, the substantive aspect of these freedoms was considered. In the further development of constitutions, freedom and equality were highlighted as the possibility of acknowledging differences and identities.

This linguistic claim, which I have attributed to hyper-rationalized constitutions, clashes with the relationship between the semantic capacities of constitutional language and the understanding of the reality of the populations forming the social base reflected in a given constitution. It appears complex, even for a post-industrial society living in an advanced communication system, to represent identities and human needs that develop beyond its experience, and thus beyond its ability to adequately represent such situations.

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[63] See B. Vickers, *Ivi*, p. 516: "As Bacon put it, 'there is no proceeding in invention of knowledge but by similitude' (III,218). In Bacon's ars inveniendi analogy is 'indispensable' (261) and 'a crucial and defining trait of Baconian induction' is 'the patterns of reasoning whereby hypotheses are reached' (262). Induction is for Bacon a hypothetical procedure 'because each Form is tentative: an opinab-ile' as he puts it in the Novum Organum (244 n.). Induction is an 'open-ended and self-correcting' process (263), because 'the material (re-)instantiation of the effects does not preclude the successive reformulation of the very axioms that point to and are directions for such effects' (267). Bacon's method has a built – in flexibility that makes it open to correction in the light of experience, a two – way movement responsive to the process of discovery. In the course of elimination Baconian *inductio* uses 'deductive steps, mostly falsificationist,' giving it a character which is simultaneously inductive, deductive, and intuitive or analogical (268)".

Migration examples and legal recognition challenges

In this regard, it may be observed that law and politics struggle to represent – both to themselves and to society – conditions that force people to migrate to other countries to escape ethnic persecution, only to suffer the stigma of clandestine transit. This is true even in cases where the ties between the country of origin and European countries are rooted in former colonial relationships.

However, the exercise of power cannot be seen as a spontaneous issue; it must always be linked to the effects of such exercise over time and the ties established between societies. Among the identities in question are those of entire social groups who have emigrated from their country of origin as so-called guest workers and, after many years, seek their collective identity in the country they live in, where they are sometimes still denied citizenship.

As is well known, international law struggles to recognize rights for migrants who are denied even the most basic forms of protection for their existence in their country of origin. At the same time, domestic law and internal policies often face difficulties in understanding the conditions of populations in severe economic and political distress – those who seek solutions to their problems by migrating to countries that were once colonial metropolises, or to neighboring states that possess considerable wealth but that, through their links to other societies in economic hardship, seek to exert hegemony over the latter.

The case of waves of migrants to Europe from places where colonialism withdrew without developing a dialogue aimed at tolerance (such as in the conflict between Tamils and Sinhalese in Sri Lanka), Turkish workers who emigrated to Germany and have resided there for generations, now seeking a legitimate collective social and political identity, or migrations from Mexico to the United States, are just the tip of the iceberg of conflict that develops in the network of interdependencies created by contemporary states.

Biopower–conflict spiral and resource dissipation

Polanyi pointed out that the long periods of peace on the European continent among hegemonic states saw numerous conflicts in various other parts of the world. The cause of these conflicts can be traced to the attempt to make biopower not only increasingly global – thereby surpassing the limits that Orwell had conceived for the "proles"[64] – but also

[64] R. Shah, *Urban Panopticism and Heterotopic Space in Kafka's Der Process and Orwell's Nineteen Eighty-Four*, "Criticism" 2014, No. 4(56), pp. 701–723, JSTOR, https://www.jstor.org/stable/10.13110/criticism.56.4.0701. D.M. Zehr, *Orwell and the Proles: Revolutionary or Middle-Class Voyeur?*, "The Centennial Review" 1983, No. 1(27), pp. 30–40, http://www.jstor.org/stable/23739376 (20.08.2024).

increasingly subject to control through the levers of the *ordo liberalis*. For this reason, the development of research, innovation, investment, employment, production, trade, and capital accumulation – all with the strategic aim of expanding national influence over resource-supplying areas and the "markets" for processed products – has become a driving force of biopower, which remains an intrinsic characteristic of power itself.

A system of this kind, in order to exist, must concentrate a large part of its productive processes on armaments. Regional conflicts provide the basis for the application of every strategic solution produced and developed from the perspective of hegemonic powers. The dissipation of human, cultural, social, and natural resources that accompanies the relationship between biopower and conflict also manifests itself as dissipation of political resources. Scientific literature has clearly highlighted that empires that fought against each other for centuries eventually succumbed. This was, for example, the fate of the Byzantine Empire and the Persians.

At present, it seems unlikely that the participants in various conflicts can recognize each other as victims of biopower. The logic of identity-based opposition within global capitalism does not easily allow for such mutual recognition. The absorption of social conflict into ethnic conflict, which occurs in many cases, further hinders this recognition and, consequently, reinforces dissipative processes – not only on the human, social, and economic levels but also in relation to natural resources and political dynamics. Therefore, without the pursuit of values and methods that reflect the social, political, and legal condition of each individual, values that are simultaneously shared, it does not seem possible to make use of the philosophical tools inherited from the past unless they are integrated with a perception capable of addressing the needs of contemporary societies.

3.3. Unsustainable economies, unsustainable societies

3.3.1. Biopower, institutional control, and the case for pluralism

Biopower, institutions, and control of bare life

The idea that biopower may lie at the root of conflict and of the rupture of Life as self-organization can, however, appear almost tautological unless we clearly identify the behaviors and actions that actually give rise to its manifestation. All activities that assume that collective life – through organization – can achieve goals unattainable by individuals alone inevitably involve the creation of institutions aimed at controlling bare life. The central question, then, becomes: which activities concern the individual as such, beyond any possible

organizational structure? The most evident answer is motherhood and care. Therefore, setting aside attempts – as already denounced by Orwell, among others – to subsume motherhood itself under mechanisms of biopower, it is precisely the effort to place centralized processes of production – of goods and services – above the individual human capacity to observe and care for natural processes that generates the perceived need to control bare life. This control becomes all the more consequential when such an approach to community management proves unsustainable, whether politically, economically, or socially.

From "posse" to pluralism: updating Renaissance references

The previous paragraph attempted to highlight that, if the root cause of the conflict is not addressed, the constitutional framework alone is incapable of breaking the vicious cycle between power and biopower. To overcome this obstacle, it is necessary to make possible spaces of freedom effective. As we have seen, the logic of "posse" fails to tackle the problem precisely because it is based on political reflections produced within a framework, such as that of the Renaissance, which sought to achieve better control over nature. These reflections, therefore, were not sufficiently attentive to the variety of expressions of being within culture, or at least not to the level that one would expect today.

This approach can be adopted when, as Negri and Hardt probably do, it is assumed that the problem of biopower is primarily rooted in capitalism. The perspective that today emphasizes the importance of pluralism is different because it does not address the issue of determining which political system is most suited to addressing the human condition. Instead, it focuses on how to develop synergy between different priorities, forms, and modes of organizing communal life. This involves both identity choices and the structure of social, political, economic life, and their self-organization.

This effort may yield a culture of sustainability grounded in coexistence. Its importance lies in the fact that the major conflicts of the past – between the old regime (l'Ancien Régime)[65] and the revolutionary order, between capitalism and socialism, between the Stalinist rule and the communism of the Cultural Revolution, or between colonialism and the worldview of traditional cultures – have not, in principle, produced satisfactory outcomes. New systems have emerged, but much of what previously existed has been lost.

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[65] Alexis de Tocqueville, *L'ancien régime et la révolution* [1st ed. 1856], Les Éditions Gallimard, Paris 1952, [collection: idées édition électronique a été réalisée par Jean-Marie Tremblay, bénévole, professeur de sociologie au Cégep de Chicoutimi], https://gallica.bnf.fr/ark:/12148/btv1b8622134v (1.07.2025).

Pluralism, for a jurist who regards human dignity as intrinsic to our existence, constitutes a fundamental means of moderating the power and control that arise when we form – or even simply acknowledge the existence of – groups. The reference to Bacon's "inventio," Campanella's "amor," and Spinoza's "potentia" urges us to broaden our horizons and seek out the other, including the multitudes. This latter concept, rooted in theology, recalls the translation of "pro multis"[66] – debated even in recent times – and, by its very history, invites an open interpretation of the multitudes. Such an interpretation requires deep analysis and a pluralistic approach that is not only political, legal, and cultural, but also takes into account the relationship between humanity and nature.

When considering the legal perspective, power, in the sense of a call towards the common good, becomes action only when the differences and needs of others are accepted, including those related to the place where they live in and their particular social situation. This is why the Renaissance approach, to which Negri and Hardt refer through Bacon, Campanella, and Spinoza, must be updated to take into account the conception these three authors have of the relationship between humanity and nature. Campanella, in fact, aspires to subjugate nature[67], while recognizing the sensitivity of things or natural entities[68]. Bacon speaks of conquering nature[69]. Spinoza, on the other hand, in his ethics, emphasizes that our relationship with nature is functional, meaning it should be adapted in any way that is considered useful[70]. Such views cannot serve as the basis for a political project aimed at self-awareness of our life together with others and, all together, with nature.

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[66] See the *Letter from Cardinal Francis Arinze on the Translation of Pro Multis*, https://www.usccb.org/prayer-and-worship/the-mass/order-of-mass/liturgy-of-the-eucharist/letter-from-cardinal-arinze-on-the-translation-of-pro-multis (1.07.2025).

[67] N. Abbagnano, *Tommaso Campanella*, in: N. Abbagnano, *Storia della Filosofia*..., Vol. 2, p. 675.

[68] *Ivi*, p. 676.

[69] N. Abbagnano, *Francesco Bacone*, in: N. Abbagnano, *Storia della filosofia*..., Vol. 2, p. 729.

[70] B. Spinoza, *Ethics*, J. M. Dent & Sons Ltd., London; E. P. Dutton & Co. Inc., New York 1910, fourth part on Human Servitude, or the strength of the emotions. See IV Appendix XXVI: "Save men we do not know any individual thing in nature in whose mind we may rejoice or which we may join to us in bonds of friendship or any other kind of habit: and therefore whatever exists in nature besides man, reason does not postulate that we should preserve for our advantage, but teaches us that we should preserve or destroy it according to our various need, or adapt it in any manner we please to suit ourselves. pp. 195–196. See also G. Kober, *For They Do Not Agree in Nature: Spinoza and Deep Ecology*, "Ethics and the Environment" 2013, No. 1(18), pp. 43–65, https://doi.org/10.2979/ethicsenviro.18.1.43 (20.008.2025). See in particular p. 60 which refers to the said text.

3.3.2. Markets, neoliberal diffusion, and sustainability accounting

Polanyi, Foucault, Neumann: land-labor-money and monetary governance

It becomes, therefore, useful to develop reflections on the insufficiency of market economies, especially when they are attributed a characteristic of self-regulation. In this regard, Polanyi, at the end of his profound historical-sociological analysis of economic processes, observes that, after the blind development of the economy for about a century starting from the second decade of the 19th century, this concept needed to be revised if humanity was to avoid destruction. He indeed emphasizes that the organization of the economy based on the pursuit of self-interest is completely unnatural.

Other scholars who critically examine liberalism (and neoliberalism), such as Michel Foucault, have noted that this superstructure, namely the organization of the liberal order, constitutes one of the foundations of biopolitics, a concept that refers to the exercise of political power aimed at controlling bare life.

In fact, Polanyi's analysis continues by noting that the market in the 19th century did not emerge spontaneously but was the result of even violent interventions by the States themselves. In this sense, Polanyi's analysis appears consistent with the observations of Franz Neumann.

Polanyi also reflects on the fact that, in historical evolution, three elements seem to emerge or were becoming independent from the market during the period in which he was writing. These three elements, closely linked to the productive factor, are: land, labor, and money[71]. All three are of great interest to the discussion here. The economic analysis developed by the Cambridge School in the UK (and by the Catholic University of Milan) has indeed highlighted that between 1870 and 1970 there was a significant trend towards stability in the ratio between profits and salaries[72], most likely due to exogenous causes beyond simple market forces, and related to a particular type of pact between capital and labor in industrialized economies.

However, it is important to consider that the technological development, which accompanied this pact between capital and labor, was also linked to an attitude of the more industrialized countries, which showed the intention of withdrawing from colonization processes to exploit the resources of the previously colonized countries without any obligation deriving from being a colonizing power.

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[71] K. Polanyi, *The Great Transformation...*, p. 251.

[72] L.L. Pasinetti, *Structural Change and Economic Growth...*.

Regarding land, Polanyi emphasizes that there are tendencies to keep land outside of market exchanges, referring to various modes of relationship between the territory and active units and organizations, such as the farm, the cooperative, the factory, the commune, the school, the church, parks, nature reserves, and so on. In reality, the author could also have referred to other concepts, such as civic uses, considering, for example, the experiences of some countries including Italy, Portugal, Switzerland, Spain, and others[73]. At present, this issue has increasing importance, ranging from matters like ancestral lands[74], communal lands, and extending to current issues on the rights of Mother Earth and the various interpretations of the concept.

The tendencies to remove money from market relations is perceived in economic analysis as being based on the theory of production, assigning it the role of "numéraire" in the economic process. This implies an action of governance over the money itself. At the same time, the tendency towards the independence of reserves or central banks appears as an attempt to maintain the balance of transactions outside the control of governments. The issue becomes extremely delicate in highly interdependent economies. For this reason, although the governance of money tends to be managed by a central bank endowed with certain guarantees of independence, these banks themselves are part of the process through which economies are governed.

Neoliberal diffusion, territorial pressures, and testing for unsustainability

The process of economic liberalization, supported by neoliberal theorists, particularly from the Chicago School, has spread globally, driven by the need for states to exercise control over resources and markets. In this context, there has been a sort of reemergence of the tendencies seen during the division of spheres of influence, determined by the predominant use of the Dollar, the Pound, the Franc, the Mark, or the Yen in transactions. The tendency to rely on the market has led to the decentralization of production processes, privatizations, and, at times, drastic changes in worker protections. Alongside these elements, the supposed overcoming of the division of the world into blocs has stimulated migrations, while also highlighting regional conflicts.

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[73] M. Motta, M. Piccolo eds., *O domínio de outrem: posse e propriedade na Era Moderna (Portugal e Brasil)*, vol. 1, São Luís, EDUEMA, Guimarães: Nósporcatudobem, 2017 M. Motta, M. Piccolo eds. *O domínio de outrem: propriedade e direitos no Brasil (séculos XIX e XX)*, vol. 2, São Luí,: EDUEMA, Guimarães Nósporcatudobem, 2017.

[74] H.M.G. Ouedraogo, *De la connaissance à la reconnaissance des droits fonciers africains endogènes*, "Études rurales" 2011, No. 187, pp. 79–83, URL: http://journals.openedition.org/etudesrurales/9388; DOI: 10.4000/etudesrurales.9388 (1.09.2025).

The rise of the market has, in a certain sense, also endangered the communal management of territory. The call to competition has indeed pushed the need to compete, even putting territories at the disposal of entrepreneurial initiatives. The occupation of large areas of urban or suburban land, driven by the demand for the development of mass tourism industry, is one example. Another example is the subdivision of areas of high natural value, promoted by the leisure industry.

There are some questions to be asked here: have production processes in many cases become unsustainable? I understand unsustainability as those productive systems that, for their reproduction, absorb more value than they are able to produce. In economic theory, value is seen as linked to the cost of production, taking into account all the cycles necessary to produce the respective goods and services.

From a legal perspective, the issue should be presented differently. Not only the cost of production must be considered, potentially calculating all the cycles that lead to the realization of the final good, but also the exchange value. If the sum of all exchange values is not greater than or at least equal to the total production cost, fundamental goods for society, such as the protection of life, the rule of law, freedom, and property, are put at risk. The failure of businesses, in fact, endangers these goods.

The constitutional perspective related to value must consider natural resources and their relationship with the surrounding environment. As for non-renewable resources, consideration must be given to the possibility that waste can be absorbed by biospheric processes. For renewable resources, their capacity to reproduce must be considered so that they can adequately contribute to maintaining the balance of the biosphere while simultaneously meeting demand.

4. For an Inclusive Constitutionalism

4.1. Foundations and rationale

Conscious interdependence and equal protection

Conscious interdependence gives rise to an inclusive approach to constitutionalism. This inclusiveness seeks to ensure equal protection for the manifestations of each human being's existence, while also attending to the regularities of the Biosphere. The process of governance oriented toward this goal need not change in its essence, but it does require a broader participatory dimension

Solidarity and bottom-up constitutional development

The concept of inclusive constitutionalism is based on the idea that, despite the pluralism of legal systems and living conditions across different parts of the world, the awareness of interdependence – with others, with different societies, and with the Biosphere itself – influences constitutional development, making it possible from the bottom up. In this sense, the articulation of the essential manifestations of human existence – including the relationship between the representation of reality, representation and participation in its governance, and the relationship between law and transformation – need not be conceived as oriented toward global government, but rather as a response to the challenge of global responsibility. This entails, first and foremost, the duty of solidarity with others – not only by seeking to alleviate their suffering, but also by addressing the underlying causes that produce it.

4.2. Operational pathways and institutional learning

Working within existing systems: forests and agriculture

Therefore, when facing the challenges associated with the phase transition of the Biosphere, the most effective solutions can generally be found within existing legal systems, rather than imposed from outside. Improved forest management, for example, not only promotes transformation of the solar energy into chemical energy through the work of nature, but also leads to a restructuring of employment patterns, allowing labor to be distributed more evenly across the territory. Such an approach inevitably generates an emulative effect in countries where, until now, the resources of the Biosphere have been excessively exploited.

The same applies to basic agriculture: reducing the dominance of large corporations involved in the international timber trade or mass food distribution will not necessarily result in a decline in overall savings or investment, but may instead allow for a more equitable distribution of these resources.

Mutual recognition, complexity, and participatory democracy

An inclusive constitutionalism must take into account the elements we have mentioned, through processes of mutual recognition of the various institutional forms. Automatic adjustment processes, on the other hand, represent attempts to limit the complexity of biospheric processes. Institutions, however, must recognize that we live within nature. The learning process that derives from this existence will lead the law to evolve and

modify itself through recursive processes of verification and improvement of our relationship with nature and with others.

Furthermore, the emphasis on participatory policies and approaches, which are manifested in activities that are understandable and achievable by everyone, becomes the foundation for an inclusive democracy. The next chapter of this study will address the relationship between law and the biosphere, from the perspective of educating consciences necessary to achieve a biospheric democracy.

Chapter IV

Biosphere, Policy of Law and Education of Consciousness

Keywords

interdependence awareness, education of conscience, human dignity, multiculturalism, solidarity, biospheric ethics

Abstract

Chapter IV contends that nurturing an awareness of interdependence within the Biosphere is both a moral and a constitutional imperative. It posits that human dignity itself acquires a biospheric dimension: recognizing our "being-together" in a common home is essential to safeguarding life in all its diversity. The chapter's methodology is interdisciplinary, bridging law, philosophy, theology, and education theory to argue that legal systems must cultivate an ecological conscience. It draws on scientific insights (Vernadsky's idea of Life as a cosmic phenomenon and the genetic interconnectedness of all species) and ethical perspectives (from Pope Francis's encyclicals to the philosophies of Raimon Panikkar and Bruno Latour) to show that law and policy should transcend parochial interests and foster solidarity with all forms of life. Key insights include the idea that the fundamental duty of human societies under law is to protect the "regularities" of the Biosphere that make life possible (e.g. climate stability, biodiversity), and that achieving this requires a profound reorientation of consciousness through education at all levels. The chapter highlights practical avenues for this transformation: it emphasizes "biospheric education" and the scaling-up of grassroots initiatives (volunteerism, local sustainable development projects) as means to counteract biopower and build community resilience. By integrating cultural pluralism, spiritual ethics, and ecological science into constitutional discourse, Chapter IV enriches the book's overarching argument that a viable constitutional order must be underpinned by an enlightened, life-centered public consciousness.

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1. Why Law, in Dealing with the Problems of Multiculturalism, Has to Engage Other Sciences – In Particular Philosophy

1.1. Human dignity and surrounding reality

The importance of multiculturalism lies in the fact that differences among human cultures allow us to perceive reality from multiple perspectives – more effectively than from a single viewpoint alone. The unequal distribution of natural resources, along with the uneven development of cultures and civilizations, also generates obligations of solidarity. These obligations are better addressed collectively, through dialogue that draws upon diverse cultural perspectives. When such obligations of solidarity are not respected, conditions of exploitation, biopower, and hegemony arise – which, when left unchecked, carry the seeds of conflict. An awareness of mutual interdependence can represent an important step forward. The spheres of religion (as seen in the encyclicals and other writings and documents of Pope Francis), theology (Panikkar), and philosophy (Latour) have all highlighted this opportunity. For this reason, the study of the Biosphere and its regularities may be of great significance for the law.

Being together and multiculturalism

The awareness of our being-together with others in the Biosphere – our common home – calls for the development of a discourse that transcends the boundaries of individual cultures and the particular interests embedded in diverse forms of social coexistence. The identity of both individuals and communities remains essential, for it is through an awareness of interdependence that we come to recognize a constitutive and inalienable aspect of human dignity: the pursuit of an autonomous and independent understanding of reality. Such a pursuit is necessary to foster care for the regularities of the Biosphere, and thereby to safeguard Life itself, along with the many expressions of human existence across the various places people inhabit and the communities to which they belong.

Law and consciousness

At the centre of these reflections one needs to consider right (jus) as the emanation of our consciousness in a dimension, which is common to all humanity and that we may say "spherical"[1].

The spiritual dimension of the human being, his attraction towards God, namely the absolute, both in the expressions of his own consciousness and in his practical activities, has always been at the center of interest of many scholars. Its importance may not be neglected also within the comparison and the confrontation with other secular perspectives.

The development of the modern theory of fundamental rights is an undeniable merit of canon law science[2]. We owe to it the transition from a Roman law conception of rights, such as the prerogative of commanding the use of a good, to a conception of rights as ideal goods inherent in the person, which attribute to the person the exclusive power to act for purposes intended as a manifestation of such rights. It seems to me instead that the transition from the conception of the consciousness of the ancients to the freedom of consciousness of modern passes through the position of more general problems, characteristic of the philosophical reflection in the proper sense, first of all the reason why human being exists and has been placed in the universe[3]. In this sense, I would like to point out, in this contribution, how much the question of law lies among the great problems that philosophy puts into place. This objective can be reached only when we recognize a sufficiently general dimension in human experience to the legal issue, and that is precisely the purpose of the studies that led to this chapter.

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[1] For a preliminary version of the reflections included in this chapter see P. Policastro, *Biosfera, politica del diritto e educazione delle coscienze*, in: *Democrazia e religioni. Libertà religiosa, diversità e convivenza nell'Europa del XXI secolo*, Proceedings of the National ADEC Conference, Trento, 22–23 October 2015, ed. E. Camassa, "Quaderni della Facoltà di Giurisprudenza dell'Università degli Studi di Trento" No. 21, Editoriale Scientifica, Napoli 2016, pp. 43–77.

[2] B. Tierney, *The Idea of Natural Rights. Studies on Natural Rights, Natural Law and Church Law*, 1st edition, Atlanta 1997; Italian edition: *L'Idea dei diritti naturali. Diritti naturali, legge naturale e diritto canonico 1150–1625*, Bologna 2002. Form my reflections on the subject see Proceedings of the Conference held at Örebro University in 2004: P. Policastro, *A New Garment for an Old Question: 'A Clash between Man's Rights and Citizens' Rights in the Enlarged Europe?'*, in: *Nordic and other European Constitutional Traditions,* ed. J. Nergelius, Leiden–Boston 2006, pp. 61–92.

[3] P. Policastro, *La dignidad de la persona y los principios constitucionales en la* época *de la globalización*, "Persona y Derecho" 2011, No. 64(1), pp. 175–206.

Right as a philosophical question

Thus, I aim to translate right from the realm of society to the more general ambit of philosophy, and not just philosophy of law. This transition seems necessary if we want to consider not only the interdisciplinary approach but also multiculturalism, which are the focus of this book. In fact, I would like to point out that multiculturalism is central when asking to look into essential problems to our life, such as cosmological, naturalistic, moral and political issues. The importance of these issues necessarily leads to the search for solutions that can be shared in a multicultural context. With a personal reflection, I would like to say that multiculturalism is a topic that is very dear to me. My scholarly life has been articulated, in fact, between different countries and cultures, first and foremost the European one. In this regard, I believe that the different areas of integration in Europe must be seen as a multicultural construction that is necessarily consistent with that of the Christian heritage that joins our continent to Asia from Cadiz to Vladivostok: this has been, in fact, the extension Space of the Council of Europe. At the present moment, the huge crisis, which has been leading to the breaking of this space through war-like hostilities, does not mean that such common heritage shall be neglected. However, it also demands a reflection trying to find other paths. The study of the consistency between the problems posed by legal culture in the evolution of socialist constitutions up to their democratic transition, crowned by the admission to the Council of Europe and in many cases also in the European Union, interested me for almost thirty years[4]. The non-linearity of these processes, the crises of some of them, the continuous emergence of new transitions makes them always of great interest, from a theoretical point of view, to the practical one, and from a comparative point of view[5]. I must acknowledge a debt of gratitude also to Asian and Japanese culture in particular, through which I have been able to approach the relationship between the phenomenology of spirit and nature. Finally, my life as a scholar and teacher takes me to Africa, where I am interested in some experiences that link the search for universal spirituality and the development of a transnational citizenship based on values such as sharing common responsibilities towards our planet.

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[4] P. Policastro, *Prawa Podstawowe w Demokratycznych Transformacjach Ustrojowych. Polski Przykład*, Redakcje Wydawnictw KUL, Lublin 2002. The title of the monograph in Italian is: *Diritti fondamentali e transizioni democratiche. L'esempio polacco*.

[5] P. Policastro, *L'espace constitutionnel Pan-Européen et Mediterraneen et nouvelle supranantionalité*, "Anayasa Hukuku Dergisi/Journal of Constitutional Law/Revue de droit constitutionnel" 2012, No. 2, pp. 314–366.

1.2. Multiculturalism and enlarging the ambit of legal comparison

On the importance of generalization

The study of the problems mentioned has motivated me over time to overcome the attempt to bridge the gap between a study to legal comparison not limited to the study of similar systems but widened to very different systems[6]. I have undertaken this line of research not only to consider the circulation of ideas, but also to demonstrate the usefulness of a more comprehensive method for addressing the problems of the contemporary world. These problems are linked not only to the destruction of the natural conditions that make our existence possible, but also to the fact that humans often display behaviors that ultimately lead to their own destruction. The difficulties of these situations must be addressed by humanity together, beyond individual states, regional international organizations or cultures. For example, the unrest we witnessed some years ago in the Middle East – and whose underlying motives seemed to surface in the attacks that made Europe bleed – was not, in my view, a revolt against the biopower of nation-states[7], nor an attempt to mobilise the multitudes against the image of globalised capitalism[8]. Nor does it not seem to me to have been the manifestation, even indirectly, of a power that, after the phase of the authoritarian state, becomes totalitarian, and turns disturbingly against its own citizens[9]. Furthermore,

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[6] I developed these reflections on expanded comparison starting from my lectures for the doctoral program at the "Department of Law of Civil and Economic Relations in Comparative Legal Systems – Dipartimento di Diritto dei Rapporti Civili ed Economci nei Sistemi Giuridici Comparati" at the University of Salerno within the framework of the "Rientro dei cervelli – Retun of the Brains" initiative during the academic years from 2004/2005 to 2007/2008. The research project was titled: "The Transformation of the System of Sources of European Constitutional Law, between Constitutionalism Paradigms, Fundamental Principles, and Cognitive and Interpretative Methods. For a Multilevel Constitutionalism that serves as a Foundation for a Multilevel Democracy, in the Processes of Globalization, Reform of the European Union, Transformation of the Constitutional Law of Member States, and Enlargement of the Union." As part of my lectures, I developed, among other things, the concept of "expanded comparison". Some developments of these concepts can be found in P. Policastro, *Constitutionalism, Comparison, Complexity: Prolegomena on Liberty and the Use of Language for a Predictive Theory of Law*, in: *Liberty and Language, The Global Dimension of European Constitutional Integration*, ed. P. Policastro, E. Castorina, Giappichelli, Torino 2010, pp. 15–110; P. Policastro, *Interdipendenze costituzionali e protezione della persona*, in: *Studi in Onore di Luigi Arcidiacono*, Pubblicazioni dell'Università di Catania, No. 239, new series, Vol. 6, Giappichelli, Torino 2010, pp. 2635–2675.

[7] M. Foucault, *Sécurité, territoire, population. Cours au Collège de France, 1977–1978*, Seuil, Paris 2004. Annotated English version of these lectures with the title: M. Foucault*, Security, Territory, Population. Lectures at the Collège de France,* ed. M. Senellart, A. Fontana*,* Plagrave McMillan, New York 2008,.

[8] M. Hardt, A. Negri, *Empire*, Harvard University Press, Cambrigde, Ma. 2000.

[9] H. Arendt, *The Origins of Totalitarianism,* Harcourt, Brace and Company, New York 1951. Italian version: *Le origini del totalitarismo*, Edizioni di Comunità, Torino 1999.

new and deeply troubling forms of unrest continue to emerge in the region, most tragically in the Gaza Strip. Indeed, the struggles for external hegemony pursued by certain states and political units – often invoking nationalist arguments – reveal self-destructive tendencies, even in those European countries where the social state seemed, at least for a time, to have mitigated some of the effects of economic inequality. The increasingly aggressive absolutism of international capitalism manifests itself in attempts to control ever-greater existential spaces, to secure raw materials, outlet markets, and social control, often appearing to profit from armed conflict. Countries with a high manufacturing development pursue this objective to a particularly significant extent. A similar dynamic can be observed among the wealthiest producers of raw materials – such as oil – who attempt to control international migration to their own advantage, thereby transforming it into a destabilizing and, at times, contagious phenomenon[10]. In this context, there also emerges a tendency to support or enable forms of terrorist violence, sometimes carried out by individuals or groups living within (or at the margins of) industrial societies, which – as noted above – benefit from high standards of civil liberties and social rights. This, in turn, generates social pressures directed toward increasing control and restricting freedoms. Such a combined outcome is fostered by an almost complete lack of socially shared cultural experiences – aside from alienating ones, often mediated through social networks – and is further aggravated by destructive behaviours, including the widespread abuse of dangerous substances such as New Psychoactive Substances[11].

Legal policy towards the danger of self-destruction of human societies

Faced with such problems, it is evident that the response of humanity must be combined: it is necessary to unite and not to separate further. To do so, we need a methodology of law and social action which can demonstrate a real transnational character. For space reasons, I cannot discuss these phenomena in detail. However, the search for solutions that allow for adequate protection of the biosphere or the development of an existential consciousness capable of addressing the disintegrating and destructive trends of the present moment requires the development of new cultural and educational proposals. These proposals, to

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[10] P. Policastro, *Constitution and Conflict. Regulating Regional Interdependencies through Society-based Supranationality as a Path for the European and Mediterranean Transformation*, in: *Costituzione – Economia – Globalizzazione. Liber amicorum in onore di Carlo Amirante*, Edizioni Scientifiche Italiane, Napoli 2013, pp. 1467–1493.

[11] P. Policastro, *Enhancing Police Skills in New Psychoactive Substances* – Grant Agreement JUST/2013/ISEC/DRUGS/AG/6429 WS 1 Output 1.10. *Legal and Forensic analysis. Intermediate Report*, University of Szczecin, December 2015.

be properly considered, require a sufficiently complex and multicultural legal policy. A legal policy that can address current problems in their multiple connections and be shared. For this reason, it is our view that it is necessary to consider the law from a perspective different from the current one. To this end, in the following sections of this chapter, I will first illustrate the characteristics of the biosphere, based on the chemical and geological studies that we know. Then, I will formulate a "biospheric hypothesis" that may be useful for subsuming the factual elements found in biology and geology into a theory of the state. I will not be able to develop such a theory even in outline here, but instead, I will investigate how the subsumption of the legal problem of the biosphere can influence the way we approach both moral and political issues. By the latter, within the scope of my reflections, I mean the problem of configuring the concepts and principles that allow us to better include the observations made by geochemistry on the biosphere in the organization of public order, in order to better achieve the common good. The moral problem is understood here as evaluation of both individual and public choices, taking into account the importance of the biosphere itself. In this way, I will try to introduce the problem of nature into my reflections on the relationship between ethics and politics, in other words, nature's existence and necessity.

Let us now consider what the biosphere consists of and why law and morality should reasonably take it into account.

2. The Biosphere and its Importance for Law and Morality

2.1. Life as a cosmic phenomenon and law

All forms of life are genetically interconnected

One of the most significant connections between law and morality can be developed from the insights of scholars who have studied the Biosphere, beginning with Vernadsky, the first to examine it systematically. Vernadsky argues that once life emerged, it shaped the very structure of our planet. At the same time, he acknowledges that we do not know how life originated or where it came from, and therefore it may be regarded as a cosmic phenomenon. He also maintains that all forms of life are genetically interconnected. For this reason, even when we place society at the center of our attention, we cannot overlook the function of life as a cosmic phenomenon, its importance for the functioning of the planet – and thus for ourselves – or the fact that we are all intrinsically connected with one another, in a bond that traces back to the very emergence of life itself.

On the importance to connect Biosphere and law

My proposal to include the biosphere in law starts from the observation that the Russian-Ukrainian geochemist Vladimir Vernadsky presented, almost a century ago (1926)[12], to the scientific community. In a brief summary, the term biosphere was coined by the Viennese geologist Eduard Suess (1831–1914) to indicate the place on the Earth's surface where life resides. Since then, the concept has been used in various ways. Vernadsky's approach, as noted by the most revered and recent commentators (1990)[13], is based on three empirical generalizations. Firstly, that life manifests itself on a planet that is spherical in one part, its outer portion, which holds it like a shell. Secondly, all the characteristics of the Earth's surface are initially influenced by life. Finally, over time, the influence of living matter on the planet becomes more intense, leading to an increasing number of parts of the Earth being incorporated into the biosphere.

2.2. Empirical generalisation, regularities and law

Empirical generalizations instead of hypotheses

Vernadsky himself attached great importance to the fact that his study is based on empirical generalization and not on a hypothesis. "An empirical generalization," Vernadsky pointed out, "is based on facts collected as part of a research program that does not go beyond factual limits and does not take into account the conformity between the conclusions reached and our representation of nature. Therefore, there is no difference between an empirical generalization and a scientifically recognized fact". It is important to highlight that the scholars who provided the English edition of Vernadsky's text, representing the Gaia hypothesis school according to which the Earth would have its own life, did not refute this methodological hypothesis and instead themselves emphasized the importance of these empirical generalizations.

According to Vernadsky's observations, once life appeared, it determined the geological conformation of the planet itself. In fact, this observation was the first, in the field of geological sciences, to draw consequences from the fact that the earth had a spheroid shape, and this has important and immediate consequences in the theory of the state. Furthermore,

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[12] V.I. Vernadsky, *The Biosphere, Complete Annotated edition*, transl. D.B. Langmuir, Copernicus (Springer Verlag), New York 1998 [1st ed. 1926: Биосфера, Ленинград]. All quotations from the author given in Italian have been translated by me from the English edition given here.

[13] I specifically refer to the introduction of Lynn Margulis and colleagues.

according to Vernadsky, life presents itself as "an indivisible and indissoluble unity, in which all parts are interconnected both with each other and with the inert part of the biosphere"[14]. However, even "the inert part of the biosphere is largely a creation of life"[15]. Vernadsky also points out that "living organisms have always been born from living organisms throughout the entire course of geological history, they are all genetically interconnected, and solar radiation cannot be converted into chemical energy without a previous living organism"[16]. Vernadsky doesn't even attempt to explain the origin of life; he simply observes that "the appearance and development of life on Earth is clearly a phenomenon of cosmic nature".

Life as a cosmic phenomenon

With this, he intends to refer, as noted by his commentators[17], to the interdependence between Earth's internal environment and the environment of the cosmos, which generates a continuity between Vernadsky's approach and the contemporary Gaia paradigm approach of "geophysiology" which attempts to connect "biological organization the order of nature, the balance of nature's economy, self-regulating systems, processes of equilibrium, steady states and geochemical cycles"[18]. Vernadsky also emphasized that his observations are not capable of explaining where life comes from and how it originated. He further added that asking this question does not make much sense, given the current state of observations in his scientific field. He therefore refers to religion and philosophy, or the disciplines that are capable of validly addressing the cosmogonic problem. Regarding this observation, the first question we ask ourselves is whether the law is capable of addressing this issue. The answer seems to be negative, but in order to articulate it, we must first ask ourselves: what is the fundamental problem, in a philosophical sense, that law poses? Does law have a scientific nature that allows it to be related to reflections like those of Vernadsky and subsequent ones like those referring to the "Gaia" paradigm? This obviously depends on the definition of law that we are able to present[19]. In my opinion, therefore, law arises

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[14] V.I. Vernadsky, *The Biosphere...*, p. 148.

[15] V.I. Vernadsky, *The Biosphere...*, p. 88.

[16] V.I. Vernadsky, *The Biosphere...*, pp. 88–89.

[17] V.I. Vernadsky, *The Biosphere...*, pp. 39–40.

[18] V.I. Vernadsky, *The Biosphere...*, p. 31.

[19] For a more general reflection on the relationship between law and other sciences, both in terms of metatheories and theories complementary to law, see P. Policastro, *Constitutionalism vs. Economic Analysis: On the Use of Founding Theories and Complementary Theories in Constitutional Interpretation,* in:

and develops as a set of coordinated tools that primarily regulate the life of a community and its internal and external relations.

Biological, social, ethical life

This life is primarily biological, but it is also a life of individuals driven by moral purposes, who form and develop various societies, and who are called not only to self-organize and make decisions, but also to distribute available resources. In this sense, biological life is considered by law primarily as social life. It is social life that produces law, as a set of common purposes, principles through which individuals, differently aggregated, organize their mutual recognition, the way in which they coordinate the manifestations of their existence, establishing areas in which different subjects can act and operate, the rules of this common action and operation, and constituting institutions of different kinds aimed at coordinating and organizing society in pursuing collective goals. The organization of family, worship, power, internal and external defense, the priorities we establish as collective goals, are fundamental elements of legal systems. They are not unrelated to moral values and judgments or to the question of what is good to do, what is lawful, what is appropriate to do. At present, the most recent institutional theories base law on a deontology of morality[20]. Even theories concerning the relationship between legal systems and the production of norms, such as "legisprudence", significantly rely on moral issues[21]. In the past, it was instead the myth that identified the space of morality within the order of the city. Let it suffice to remember the laws of Antigone: reverence for the dead and duties towards fathers and family transcend even the power itself, which cannot dispose of them.

Interdisciplinary Research in Jurisprudence and Constitutionalism, ed. M. Anderhein, A. Aaken, S. Kirste, P. Policastro, Franz Steiner Verlag, Stuttgart 2012, pp. 173–203; in: "Archiv-Für Rechts- und Sozialphilosophie" (ARSP) 2012, No. 1 (Special issue containing the proceedings of the "Special Workshops" coordinated by the editors at the XXIII World Conference of IVR, Kraków 2007), pp. 173–203.

[20] M. La Torre, *Law as Institution*, Springer, Dordrecht–Heidelberg–London–New York 2010, especially the conclusions suggesting that in law there cannot be "deontology" without ontology (p. 260).

[21] L.J. Wintgens, *Legisprudence. Practical Reason in Legislation*, Ashgate, Farnham–Burlington 2012. The concept of the legisprudential duty of the legislator, which influences the very conception of the validity of the law (from a legisprudential perspective), can indeed only be seen from the perspective of the bounded rationality of the legislator (p. 305). This rationality is open to control and refutation on legalistic grounds, and therefore has a moral character, at least in a weak sense.

3. Law of the Biosphere and Human Dignity

3.1. Human dignity appears rooted in the biological (psychic and spiritual) nature of human being

Our life can take place with a certain stability, only through the regularities that make it possible

The perception of the Biosphere has been associated with a revolution in the scientific field, as noted in the preface to the collected works of Vernadsky. However, Vernadsky's thought must be situated within a broader intellectual tradition, one that perhaps finds its roots in the vitalism of Western philosophy and allows us to highlight the original principles that characterize Life. The development of scientific and philosophical reflection has shown that all living beings possess a psychic dimension – a noosphere – which manifests itself through instincts and ethological traits that are more or less complex (though no less remarkable). This dimension extends to include an impulse to distinguish good from evil and to produce tools – that is, exosomatic organs – capable of developing symbolic languages. These languages make it possible to reproduce, in material form, a significant portion of the noosphere, shaping it through artistic communication, literary narratives, and philosophical inquiry that allow us to consciously – and therefore critically – situate ourselves in the world we inhabit. The development of such capacities enables the creation of material and immaterial artifacts of virtually infinite complexity. Yet the fundamental issue remains: our existence is possible, and relatively stable, only through the maintenance of the regularities that make its manifestation possible.

The fundamental duty: respecting the manifestations of human existence

The fundamental duty of human societies – which, in our view, coincides with the imperative to respect the essential manifestations of human existence, as enshrined for instance in the great declarations of rights – is the protection of those regularities that allow being to manifest itself through the pluralities expressed in the Biosphere: biodiversity, multiculturalism, and the uniqueness of every living being, both human and non-human. Our critical reflections on the concepts expressed in political philosophy, especially those connected to the psychic dimension of our collective existence, are not aimed at rejecting them. Rather, they seek to propose a new approach to coexistence – one that may emerge from an awareness of our profound interdependencies within the Biosphere.

Anchoring our dignity to the duty of preserving biosphere

But then we must pose a further question: should the foundation of power rest on a moral choice (as in Plato)[22], on an ontological necessity (as in Aristotle)[23], or on a realist, objectivist principle rooted in history (as in Machiavelli)?[24]

Are any of these choices permissible in the current order of things, or should we seek another one? Could the observations of Vernadsky first, and later of the Gaia paradigm school, be helpful for these purposes? It seems to me they could be, because life, without which, according to the Russian scientist, the problem of the Earth and our existence could not be even posed, appears to be a gift. Or rather, a good that is indispensable and invaluable, given to us without us asking for it, and which must be preserved for future generations for what it is: namely, the most precious good. Therefore, would it not be appropriate to anchor the morality of law to a more realistic hypothesis than nominalist, namely to the duty to preserve our biosphere? Could we not define appreciating this gift as the most important manifestation of human dignity here, making proper use of it, governed by law, evaluated through morality, examined through discourse, and preserved through technique? (And yet, if one believes that what exists has been created, could not the most important manifestation of human dignity be to give thanks to the Creator of all this – see Pope Francis: Laudato Si'?)[25].

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[22] Indeed, Plato's *Republic* (Plato, *The Republic*, ed. G.R.F. Ferrari, trans. T. Griffith, Cambridge University Press, Cambridge 2000) centers on a fundamental issue, namely that it is always better to be just than unjust. Furthermore, as Abbagnano observes, the highest point of philosophy, for Plato, is "the utilization of all the knowledge that the philosopher has been able to acquire for the foundation of a just and happy community" (original in Italian). N. Abbagnano, *Storia della filosofia,* Vol. I: *Il pensiero Greco e Cristiano: dai Presocratici alla scuola di Chartres*, Gruppo Editoriale l'espresso, Novara 2006 (reference edition: Torino, 1993), p. 190.

[23] Which stems from the fact that the Stagirite aims to find the most suitable constitution for all cities, so that this constitution is feasible and can easily adapt to all peoples. He seeks to achieve this through a critical analysis of the various existing constitutions. See N. Abbagnano, *Storia della filosofia*..., Vol. I, p. 286.

[24] See N. Abbagnano, *Storia della filosofia*, vol. II, *Il pensiero medievale e rinascimentale: dal Misticismo a Bacone*, Gruppo Editoriale l'espresso, Novara 2006. According to Abbagnano, it is "the unity of political judgment and historical judgment that constitutes the fundamental characteristic of Machiavelli and makes him the first political writer of the modern age" (p. 474) – original in Italian.

[25] Francis, *Laudato si'* (Encyclical Letter, 24 May 2015), *Acta Apostolicae Sedis* 2015, No. 107, pp. 847–945; English trans., *"Laudato Si': On Care for Our Common Home*," Holy See, https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html (16.09.2025). A substantial part of the encyclical is centered around thanksgiving, which must therefore be capable of inspiring a new way of life. Using ecumenical references reinforces the exhortative nature of the encyclical to give thanks for the gift of life and creation through a way of life that respects the world around us. The reference to Saint Francis of Assisi, his disciple Saint Bonaventure, the predecessors of Pope

Abandoning the autonomous conception of law to root law in reality

This approach would first of all have the merit of proposing a concept of dignity that is based not only on power and freedoms, as proposed by Pico della Mirandola or as connected to the respect for fundamental rights. These rights would be understood as limits and fundamental guidelines for every political power, as indicated by the 1948 Universal Declaration of Human Rights and other documents that accompanied the season of constitutional and international law culminating in this Declaration. The second merit of this construction would be to connect dignity not only to individual rights, but also to duties: of the individual, of the States, and of other public entities, primarily international organizations.

This analytical perspective could also be subject to criticism. The first would be of a philosophical-legal nature. Indeed, it does not seem certain why an ideal or idealistic characterization of the individual, or a hermeneutic conception of the human person, should be overcome, abandoning also the autonomy of law, in favor instead of a pragmatic conception of dignity, based instead on the activity of the subject. A second objection would be that the freedom of human conscience, which in the development of philosophical thought has assumed an increasingly absolute existential dimension, manifests itself in reality only through language, which is a product of the human mind. Instead, the third objection would concern the observation that technological society would be able to replicate the conditions for human life and development, and in some respects even consciousness itself, through the development of artificial intelligence.

The response to the first objection would consist precisely in the need to include a plurality of cultures in the formulation of the function of law and the paradigms of constitutionalism. This step has gradually led us to overcome an ideal conception of the individual and also a hermeneutic, or representative, notion of the human person. Instead, by gradually adopting a conception aimed at considering the manifestations of the biological and spiritual life of the individual, something we have done roughly starting from the five-year period of 2005–2012[26]. With regard to the object of legal protection, I initially deemed it necessary to acknowledge that individuals, as human beings, express their existence within diverse cultural contexts. However, it is only thanks to specific biological and naturalistic conditions that the human species has come to exist as we know it. Therefore,

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Francis, and especially the Eucharist in which "the whole cosmos gives thanks to God" (§ 236) strengthens the exhortation to the utmost extent possible towards respecting the fundamental moral duty to give thanks for creation, which should motivate a change in lifestyle.

[26] P. Policastro, *Interdipendenze costituzionali*..., pp. 2635–2675.

anchoring dignity on a duty and circumventing the principle of legal autonomy[27], means considering the philosophical question of "know thyself – Γνῶθι σεαυτόν" (which today could be seen as the interaction between the knowing subject and the known reality, or language as a manifestation of being), which leads to making every expression of our knowledge and will disputable. Individuals and communities exist and progress over time through trial and error, and therefore a scientific conception of law cannot ignore that there is both an end and an inviolable limit, that is respect for the world around us of which every individual, and at the same time person, is a part.

As for the second objection, the answer can be sought through an explanation that identifies how the development of consciousness itself, and thus our freedom, is the result of life itself and therefore its development on Earth. In fact, Vernadsky himself emphasises that the multiple relationships between the development of life and geological development allow for increasingly complex life forms, whose manifestations of life exceed simple reproduction.

3.2. Vital functions, self-awareness and law

On the internal dimension of living beings – self-awareness and noosphere

These observations intersect with those of the anthropologist and Catholic philosopher Teilhard de Chardin, who actually developed a theory of life in which, in addition to external elements, living beings have an internal dimension that determines their development and transformation. In this process of transformation, those functions develop which Vernadsky himself would have considered as vital and going beyond reproduction and, more precisely, concern the relationships between living beings and the surrounding world[28]. Teilhard de Chardin attempted to delve more deeply into this phenomenon, indicating that in the development of living beings, biological characteristics less constrained by their features would have allowed transformations towards life forms with a more complex "psychic" dimension. Thus, the sphere of the psyche, "the noosphere," developed alongside the bio-

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[27] And this is not only because the law is heteronomous, as the validity of a norm depends on the state of affairs at the time it is created and must be enforced (see M. La Torre, *Law as Institution*..., p. 251, but also – on the interaction between the subject and reality, see P. Policastro, *Constitutionalism*, *Comparison*...., pp. 30–31 *passim*).

[28] V.I. Vernadsky, *The Transition From the Biosphere To the Noösphere*, excerpts from *Scientific Thought as a Planetary Phenomenon (1938)*, transl. W. Jones, "21st CENTURY" Spring–Summer 2012, p. 18 *passim*.

sphere itself. The combined development that united more complex external forms with a more advanced psychic dimension allowed certain species of "homo" to embrace self-awareness, namely the ability to direct their activity of understanding the external world towards themselves[29], and to make reasoned, or reasonable, use of it. This self-awareness is embedded in the "noosphere." Indeed, self-awareness does not only allow for the transmission, production, and recall of information, which are considered basic functions of intelligence by semiology[30], but it also facilitates a stand that every representation of such information carries within it the awareness that these do not constitute the entirety of those necessary to understand and interact with the surrounding world in all its aspects.

This characteristic is a constitutive element of self-awareness: it is manifested in the development of symbolic language, including verbal language, art, and myth. Indeed, all living species interact with the external world, and various species communicate with each other in sometimes complex and sometimes human-like ways. The consciousness of being a member of a species, in terms of mating or caring for offspring, is there. However, this consciousness can also be manifested in some animal species in very interesting ways, as we often see on YouTube, like the gentle sloth passing a flower to its instructor[31]. The lioness caring for a baby wildebeest[32], chimpanzees embracing after being released from captivity[33] or a gorilla family taking care of a child who fell into their enclosure at the zoo[34]. Manifestations that we find today on YouTube reproduce myths known from antiquity, such as the dolphin of Arion[35] or the lion of Androcles[36]. But it is only self-consciousness that

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[29] P. Teilhard de Chardin, *The Phenomenon of Man*, Harper Perennial, New York 1959, p. 165.

[30] Y.M. Lotman, *Universe of Mind. A Semiotic Theory of Culture* (Introduction U. Eco), I.B. Tauris Publishers, New York 2000 (1st ed. USA 1990), p. 2.

[31] https://www.youtube.com/watch?v=4a-6yPwOsWk (28.05.2024).

[32] https://www.youtube.com/watch?v=QnKO6Ylc_uc.

[33] https://www.youtube.com/watch?v=mW_pK-b5YW0 (28.05.2024).

[34] https://www.youtube.com/watch?v=SLDf01oYSHI.

[35] Herodotus, *The Histories*, 1.23–24, trans. A.D. Godley, in: *The Persian Wars*, vol. 1: *Books I–II* (Loeb Classical Library 117; Harvard University Press, Cambridge, MA.; William Heinemann, London 1920), online at LacusCurtius, University of Chicago, https://penelope.uchicago.edu/Thayer/E/Roman/Texts/Herodotus/1a*.html (25.08.2025). Italian version, Erodoto, *Le Storie*, vol. 1, ed. A. Colonna, F. Bevilaqua, UTET Editori, Torino 2014, pp. 23–24, also available online at: https://www.antiqvitas.it/doc/doc.erod.4.htm (28.05.2025).

[36] A. Gellius, *Attic Nights* 5.14, trans. J.C. Rolfe, in: *Attic Nights*, vol. 1: *Books I–V* (Loeb Classical Library 195; Harvard University Press, Cambridge, MA.; William Heinemann, London, 1927), online at LacusCurtius, University of Chicago: https://penelope.uchicago.edu/Thayer/E/Roman/Texts/Gellius/5*.html (17.08.2025). Italian version: A. Gellio, *Notti Attiche*, ed. G. Bernardi-Perini, UTET Editori, Torino 2017, I, Lb. V, 14

allows us to address the cosmological, moral, and political problem consciously. The phenomenal reality transcends us and eludes our knowledge and control, and therefore, our knowing experience requires interpretation even before communication and memory.

Self-awareness and the self

Moreover, a great scholar of the problem of freedom, Isaiah Berlin, emphasizes the presence of a "noumenal" self[37] that neither external force nor wickedness nor even torture can touch[38]. But this deep existential self, manifested in the self-awareness of the human being, constitutes precisely their dignity, which lies at the root of their freedom. Moreover, self-awareness enables communication not only among humans but also with other living beings. Agriculture and animal husbandry have allowed humans to control the proliferation of plants and animals, instrumental to their purposes. Systems of communication with animals have allowed living in symbiosis with them or domesticating them. Structures external to plants have been developed, facilitating their growth (such as greenhouses), or, as in the case of bees, enabling constant activity in favor of humans. On the other hand, as biology itself has observed for almost a century, humans have developed artificial structures that have significantly enhanced what we perceive, magnified the effects of our activities, preserved and processed available information, and, ultimately, adapted and corrected our decision-making processes to our needs[39].

Life, dignity and law: self-organization and the common good vs. entropy

Among the adaptive and corrective structures produced by human beings, we have the law: in this regard, theoretical biology itself raises the question of which institutions and organizations, which behaviors and moral systems can function well under the living conditions we

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[37] I. Berlin, *Two Concepts of Liberty*, lecture given in 1958 and published in: I. Berlin, *Four Essays on Liberty*, Oxford University Press, Oxford 1969. I refer to the Italian version of the essay here: I. Berlin, *Due concetti di libertà*, Elementi Feltrinelli, Milano 2000, p. 30.

[38] Like Tommaso Campanella, who resisted torture. To appreciate the Calabrian philosopher›s presence of mind, one should at least read the torture reports themselves, https://www.iliesi.cnr.it/ATC/testi.php?tp=2&vw=&iop=Congiura&pg=248&pt=1,08 (28.08.2025). The printed text of reference is L. Firpo, *Il supplizio di Tommaso Campanella: narrazioni, documenti, verbali delle torture* Roma, Salerno Editrice, 1985. Among the online resources, we have, thanks to Progetto Gutemberg, L. Amabile, *Fra Tommaso Campanella la Sua Congiura, i Suoi Processi e la Sua Pazzia: Narrazione Parte I, Narrazione parte II* Napoli, Morano 1882; Vol. I https://www.gutenberg.org/cache/epub/56890/pg56890-images.html (30.08.2025); Vol. II https://www.gutenberg.org/ebooks/48332 (30.08.2025).

[39] A.J. Lotka, *Elements of Physical Biology*, Williams and Wilkins Company, Baltimore 1925.

have in the Universe[40]. At the same time, economic analysis[41] emphasizes that these organs enhancing human activities allow interference with the same mechanisms that unite geology and biology in the context of the biosphere. Indeed, solar energy allows, within the biosphere, the concentration of free energy, producing resources that humans can use in various ways: solar energy, combined with the internal purposes of living beings, reduces the overall entropy of the earth. Now, human intervention, considered historically, has either appropriated resources in such a way as to worsen living conditions in some parts of the planet, or has appropriated resources, such as oil, produced over very long cycles, in a few years, or has made the reproductive mechanisms of living beings less efficient, for example through pollution of the seas or the disruption of the food chain. This intervention takes on indiscriminate characteristics. The Romanian economist Georgescu-Roegen calls for a more parsimonious use of resources and a more modest standard of living[42]. On the other hand, biological science itself has indeed emphasized how consciousness itself needs precise biological conditions to exist. Understanding this makes it necessary for us to learn about the kind of life that is in harmony with the pattern of nature[43].

Therefore, we cannot fail to recognize in dignity a radical foundation that belongs to the very conditions that allow life. Freedom, therefore, follows from this dignity: it emanates from it and cannot be exercised outside the immanent duties of self-awareness of our own dignity. Instead, it is the choices we are called to make that require communication of reality possible through language. These choices must be limited not only by moral considerations but also through law and other elements of societal stabilization (internal and external). Taking into account the relationships discussed here, self-awareness needs language to manifest itself externally, but it is not resolved in it.

Technological society or language as a technology?

Moving on to the third objection, namely that the technological society may appear capable of replicating the conditions that allow life, we must first consider that this society itself is the product of the relationship between consciousness and communication. The development of communication would not have been possible except through symbolic language, which has allowed the development of art, technique, and the addressing of various problems,

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[40] A.J. Lotka, *Elements of...*, p 387.

[41] N. Georgescu-Reogen, *The Entropy Law and the Economic Process*, Harvard University Press, Cambridge, Ma. – London 1971, p. 278 *passim*.

[42] N. Georgescu-Reogen, *The Entropy...*, pp. 21, 307 *passim*.

[43] A.J. Lotka, *Elements of...*, p. 387 passim.

such as the cosmogonic, naturalistic, moral, and political ones. Among the elements of the technological society, as has been suggested, there is law, which serves as a means through which the processes by which we conduct communal life in our environment are to be adapted and corrected. The adaptation and correction of the processes taking place in our societies, if approached within the framework of the biosphere and the noosphere in which we live, require a general linguistic understanding of the respective phenomena. In this regard, the Russian linguist Lotman addressed the problem of the structural identity between human intelligence and the systems of symbols that have been produced by culture, starting from the mechanisms of the generation of meaning. Lotman's research purpose, that is to demonstrate how the world of symbolic language interacts with the world of consciousness[44], leads to identifying the semiotic space necessary for the existence and functioning of languages, not the sum of different languages[45]. Lotman calls it the "semiosphere", relating it to the biosphere. Among the various languages, there are boundaries but also transitions that lead to them connecting with each other. Thus, natural languages and various types of literary languages intersect through the work of the interpreter and allow consciousnesses to communicate. Sociology and political theory have addressed the issue of this transition between languages, explaining it through the use of expressions believed to have the same function in discourse in different natural languages, which is a structural approach[46], or from a reasonable approach to some key concepts in politics such as positive freedom and negative freedom[47]. Instead, semiotics has focused more on the search for structures of literary discourse such as the vertical discourse of the I-I type, or the horizontal discourse of the I-Thou type, or considering types of dual or circular discourse. The semiotic approach to language structure can be associated with the duality between norm and institution in law, which from the perspective of neural perception may be associated with the perception of structural data, which are then ordered in the mind as a system[48].

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[44] Y.M. Lotman, *Universe of...*, p. 2.

[45] Y.M. Lotman, *Universe of...*, p. 2.

[46] J. Habermas, *Faktizität und Geltung Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaat*, Suhrkamp, Frankfurt am Main 1992 (ed. 5); Italian edition: *Fatti e norme. Contributi a una teoria discorsiva del diritto e della democrazia*, ed. L. Ceppa, Guerini e Associati, Milano 1996, pp. 369–371, where the Frankfurt author considers, for example, that some fundamental concepts – that is, certain basic structures of the cognitive and argumentative process – such as "truth, rationality, foundation, and consensus [...] play the same role in all languages and in all linguistic communities" (p. 370).

[47] I. Berlin, *Due concetti...*, pp. 76–77.

[48] Лотман Ю. М. (Y.M. Lotman), Автокоммуникация: «Я» и «Другой» как адресаты (О двух моделях коммуникации в системе культуры) in: Лотман *Ю. М.* Семиосфера. – *С.-*Петербург*:* Искусство – *СПБ, 2000. – С. 159–165,* https://philologos.narod.ru/lotman/autokomm.

However, while the notion of norm prevails in terms of structure, in the concept of institution it is the concept of language boundary that appears to be accentuated.

Reasonableness, empathy, creativity and education

Therefore, to fully utilize the relationship between the space of consciousness and the semiotic space, it is necessary to seek concepts that, apart from the structure of the various languages of the semiosphere, may have a systemic character and have an inclusive tendency with respect to the entire semiosphere. The systemic characteristic of the semiosphere can be captured by reasonableness, empathy, creativity, and education. These four systemic elements, all of which have a transitional character between the different boundaries of the languages themselves, allow us to address the issue of the development of the sphere of tools produced by humans from the perspective of predicting the purpose they serve and their possible use. Therefore, the development of machines, however complex and capable of self-repair even indefinitely[49] or even replicate themselves, does not relieve the manufacturer of the machine from the obligation to foresee and verify what is inherent in the functions of the machine itself. Therefore, the freedom to create artefacts, since it can potentially endanger the balance of the biosphere and the noosphere, as we are actually observing with contemporary networks of information gathering tools, which however are managed by humans, jeopardises the very sphere of free consciousness.

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htm?utm_source=chatgpt.com (25.08.2025). English version: Y.M. Lotman, *Autocommunication: 'I' and 'Other' as Addressees,* in: *Universe of the Mind: A Semiotic Theory of Culture,* I.B. Tauris, London/New York; Indiana University Press, Bloomington 1990/2001), pp. 20–35.

[49] J. von Neumann, *Probabilistic Logic and the Synthesis of Reliable Organisms from Unreliable Components*, in: *Automata Studies*, eds. C.E. Shannon, J. McCarthy, Princeton University Press, Princeton, 1956; see also J. von Neumann, *Theory of Self-Reproducing Automata*, ed. A.W. Burks, University of Illinois Press, Urbana–London 1966, see p. 73 *passim*. The author and his editor point out that biological life is able to correct errors that take place in its development, which computers do not seem to be able to do, and this indicates a completely different approach to the problem of complexity. Therefore, Neumann thinks of a new kind of machine, equipped with memory, that is able to check which parts should be made and reproduce them (p. 82). These observations seem straightforward in the age of 3-D printers, which actually carry out the indications of this and other authors. However, they indicate that reproduction, and thus the regulation of events concerning human life, must refer to the patterns of biological life itself. See, P. Policastro, *Constitutionalism*, *Comparison*…., p. 30 *passim*.

4. Biosphere, Human Consciousness, and the Politics of Law

4.1. Towards a natural contract

Human actions affect the surrounding world

A growing awareness of our life within the Biosphere – when it becomes not only theoretical but also practical – can lead to increasingly meaningful communication between human societies and the Biosphere itself. This idea, which resonates with Michel Serres' notion of a "natural contract," often finds confirmation in everyday experience. For instance, when someone lovingly tends to a previously neglected garden, pollinating animals often return and an ecosystem begins to form (even if within just a few square meters) – one marked by a high degree of collaboration among all living beings, including humans. From such simple gestures, cultural revolutions have emerged. Consider, for example, the recognition of the relationship between a seed and a plant: the ability to isolate a single event within the complexity of nature gave rise to one of the most transformative events in human history – the agricultural revolution. Experiences like these form the basis of all collective learning and are fundamental to the development of a genuine awareness of biospheric interdependence. Indeed, the complexity of such relationships challenges the limits of science itself. Mathematical models based on topological descriptions of interdependence reveal just how difficult it is to represent the countless homeomorphisms that occur within the Biosphere. This section, therefore, opens a reflection on the question of grassroots democracy, understood as the duty, opportunity, and possibility for each person to contribute to a growing awareness that it is indeed possible to act in ways that improve our relationship with the Biosphere. The problem of democracy from below is, in fact, one of the central issues in our research on constitutional politics aimed at improving the relationship between humanity and the Biosphere. Emerging legal institutions being developed in this context – such as that of transnational citizenship – should be thus regarded with the utmost interest.

Self-awareness, symbolic language and tools as a problem of politics of law

At this point, we need to develop three interconnected notions. The first of them is that the nature of human self-awareness, represented by human dignity, results in the production of a language from which deep communication arises, not only among humans but also with the biosphere itself. Second, through the use of symbolic language, we can create tools – both material and immaterial, including law – aimed at enhancing human perceptions and outcomes, and at improving the capacity of human life to be controlled

and adapted to external conditions. Third, the use of these tools can endanger the very balance of the biosphere itself.

These considerations give rise, especially today, to the problem of the politics of law, of how to educate consciences to develop a language, a technique, and a law capable of maintaining and restoring the balance of the biosphere. Indeed, personal education is also an education in reasonableness and empathy, as well as in the creativity necessary for seeking new solutions to present problems. Education in our approach to the Biosphere – one that includes the Noosphere, the Semiosphere, and the Technosphere (which also encompasses the sphere of non-material techniques, including law) – is characterized by the fact that it must be able of transcending the boundaries between different semiospheres. In fact, in a biospheric approach, education cannot be imagined as limited to the needs and perspectives of a single state or some of them. The approach to the duties that express human consciousness toward the Biosphere can only be transnational. It must also be transcultural, capable of overcoming the horizons of different individuals and populations , of states, regions, and cultures. Finally, it must be able to reconcile the perspectives of different legal systems. For this reason, a politics of law can reasonably be articulated within an ecumenical and inclusive perspective toward the biosphere, through the anticipation and definition of models for the fulfilment of duties.

In this sense, the path outlined by Michel Serres[50] – integrating nature into our understanding of life in common – can guide contemporary society, provided we remember that the duty to care for nature ultimately rests with all of us.

4.2. Biospheric solidarity

Spirit of service and demand of the youth to take care of their own world

In recent years, I have followed with interest one of the many activities in which individuals and organisations seek to address the problems arising from climate change and the dangers to peace and security that they bring with them. It is an activity of young people from different countries, especially Africans, but also Europeans and others from various continents, who, coordinated by an NGO, the "Fondation Coeur Vert", have decided to voluntarily undertake reforestation as part of the Great Green Wall. The Great Green Wall is a project of the African Union, particularly of the Community of Sahel-Saharan States,

[50] M. Serres. *Le Contrat naturel*, François Bourin, Paris 1990. English version: *The Natural Contract*, trans. E. MacArthur, W. Paulson, A. Arbor, University of Michigan Press 1995.

which was launched in 2005, mainly at the initiative of the then Presidents of Nigeria, Olusegun Obasanjo, and Senegal, Abdoulaye Wade[51]. The priorities of the project are to slow down desertification, act against climate change, poverty, instability, and the resulting migratory flows. Among the methodologies of the project is the involvement of local populations, promoting various forms of activism including multifunctional gardens cooperatively managed by women from the villages. Obviously, in addition to national and local administrations, many non-governmental organizations and individuals have wanted to meet these needs. My interest in the activity of the youth I have just mentioned is precisely because the action model they have developed appears consistent with one of the main theses I have presented in this work: namely, that a fundamental manifestation of human dignity is the assumption of duty, for individuals and communities, to take care of the balances through which the surrounding world can adequately develop and renew resources without disorder. Consistently with this assumption, the youth have requested, from the outset of the Great Green Wall project, to be able to intervene entirely voluntarily, picking up the costs of transportation and of the camp itself. Many young people have thus flocked from various parts of Africa, Europe, and other parts of the world for this activity, saving for months or even years. In this regard, it should be noted that the drive of the youth has a very positive impact on both administrations and local populations, who are indeed motivated to participate in the project.

Positive purpose, freedom and pluralism to recover Biosphere

The Great Green Wall, an action which involves eleven Sub-Saharan African states, from Senegal to Djibouti, encounters some coordination difficulties. Decision-making processes are often very slow; moreover, the conflict between political forces generates a constant attempt to channel every possible benefit into the achievements of the ruling party. This approach undoubtedly compromises the fairness of the process itself. The Great Green Wall project in fact attempts to overcome a form of life that is poorly organized, based on semi-nomadic pastoralism. Long transhumance inherently generates significant economic losses, which do not allow for land cultivation and thus variation in diet, nor do they allow children to attend school regularly. They also generate conflicts among shepherds who intersect on different grazing lands. Therefore, the contribution of young people becomes decisive when the productivity of their work is such that it effectively allows local families to observe an increase in their income, resulting from reforestation activities. Thanks to

[51] A. Dia, R. Duponnois, *Le projet majeur africain de la Grande Muraille Verte*, Marseille 2010.

this, the families themselves are able to adopt a better form of collective life organization from the perspective of the resources available. By expressing this and using the concepts developed by Rawls, the contribution of the young people makes the distribution of rights and obligations deriving from mutual collaboration more effective[52]. In fact, the aims of the youth to contribute to rebuilding harmony between humans and nature add a positive purpose to coexistence.

This positive purpose is an element through which the young participants in reforestation reinforce the fundamental motive of the local populations, which is to work towards obtaining dignified living conditions. These improved living conditions allow for a higher level of negative freedom and thus facilitate the search for security in living conditions. Here it must be observed that a higher level of negative freedom fits into a context of pluralism, which as Berlin observed, is the foundation of the conception of life in common in modern societies[53]. Indeed, life institutions in the villages, although coordinated within the framework of the Great Green Wall project, propose themselves as an alternative model of life compared to that of the large African cities, which are attracted to the model of industrial societies and consumerism. On the other hand, this alternative way of life appears capable of addressing the dangers of influences from criminal lifestyles, whose inspiration from religious "fundamentalisms" appears highly dubious. Instead, accepting to live outside of an orderly social coexistence can become an obligatory solution only when escaping extreme poverty becomes the predominant need, as it happened to the shepherds of Barbagia[54].

By contrast, local communities acknowledge the young people's own commitment and, as a result, gain confidence in the public administration.

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[52] J. Rawls, *A Theory of Justice*, Harvard University Press, Cambridge, Ma. 1971, see Chapter 1, § 2; Polish edition: J. Rawls, *Teoria Sprawiedliwości*, transl. M. Panufnik, J. Pasek, A. Romaniuk, PWN, Warsaw 1994. Introduction to the Polish edition by John Rawls, pp. 17–23. See also the revised edition of 1999.

[53] I. Berlin, *Due concetti...*, p. 76.

[54] F. Cagnetta, *Banditi a Orgosolo*, Ilisso Edizioni, Nuoro 2002 (1st ed. Firenze 1975), *passim*.

5. Education of Consciousness and Biospheric Dignity

5.1. On the education of consciousness in a context of interdependence

On our awareness of interdependence

In this section, I continue to reflect on some of the key issues necessary for transforming our awareness of interdependence within the Biosphere and for developing democratic institutions from the ground up. We emphasize here the importance of education in fostering an understanding of interdependence – not only to support emerging processes of symbiosis driven by innovation, but also through the recovery of traditional knowledge. Such knowledge is essential to the evolution of our ways of life and social relationships in alignment with the care for and preservation of the regularities of the Biosphere. The development of these possibilities requires a conscious engagement with educational processes, from the earliest levels to the most advanced, so that the design of new approaches to life in common (see, for example, the notion of design in Pablo Escobar) can emerge from the imagination and creativity of each individual (see Pasinetti).

For a transnational citizenship: knowledge, skills, competencies

Having sensed these phenomena, which in my view demonstrate the development of a transnational citizenship based on values such as shared responsibility towards the biosphere, we have both sought to delve into the issue of the educational methods adopted by the participating youth, and to thoroughly document their activities and the impact of these on society by producing a documentary. Additionally, I have engaged my students from the University of Szczecin in these activities, as well as our partners such as the Autonomous University of Barcelona (esp. Prof. Teresa Freixes)[55] and the University of Sfax (esp. prof. Néji Baccouche)[56], as well as, of course, Cheikh Anta Diop University in Dakar, Senegal (esp. Prof. Ibrahima Ly)[57] given the importance of Senegal in the development of the Great Green Wall and also because most of the reforestation activities I have studied have taken place in this country.

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[55] Department of Constitutional Law and Political Science, "Jean Monnet" Chair ad personam in European Constitutional Law.

[56] Former Dean and Director of the Doctoral School, Faculty of Law.

[57] Former Director of the Laboratory of Environmental and Health Law.

The involvement of universities, especially European universities, was motivated by two reasons: firstly, the reforestation carried out by the youth resulted in motivating both the public administration and the village societies to participate in various activities of the Great Green Wall. For this reason, in the interaction between these three groups, we observe the development of a transnational citizenship. This element is of particular importance for the European integration process, where it becomes increasingly important to seek activities that can create a common spirit and, above all, a common practice of citizenship. Secondly, consideration was given to the fact that in Europe, the learning process requires the development of outcomes in the form of knowledge and know-how – in other words, the skills, and the abilities to perform required tasks, that is, competencies. Competencies, in our view, are of particular importance because they entail operating within a group and consciously knowing how to control, coordinate, and influence the work of others in situations involving various unpredictable elements, ultimately fostering substantial authority within one's professional environment[58]. The development of skills, in educational processes, often requires, alongside formal education processes, also informal education, which may be conducted in the classroom or elsewhere[59]. However, reflecting on the issue, the question of skills presents substantial challenges because these consist, in reality, in the application of one's theoretical knowledge and problem-solving abilities to contribute to a group result. Therefore, skills need to be considered not only in abstract terms but also concretely, that is, regarding the real problems that participants in learning processes will face in the workplace. Familiarizing young people with tackling issues that are crucial for society and developing methodologies suitable for these purposes means, therefore, developing skills that go in the same direction as the development of the demand for professionalism.

The importance of reference models

With the above in mind, the voluntary action of African youth and their friends from various continents immediately caught my attention. In fact, this action, through the development of transnational citizenship of skills, is aimed at addressing the problems of areas affected

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[58] European Parliament and Council, *Recommendations of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning* (text with EEA relevance), OJ C 111, 06.05.2008, pp. 0001–0007.

[59] P. Werquin, *Recognising Non-Formal and Informal Learning: Outcomes, Policies and Practices,* OECD Publishing, Paris 2010). Available at: https://www.oecd.org/en/publications/2010/04/recognising-non-formal-and-informal-learning_g1ghaff6.html (31.07.2025).

by climate change and high social and economic instability, developing an action that appears stabilizing, even from a political perspective. The action of the groups of young people I have studied contributes to increasing wealth, social stability, and the development of public services. It produces goods for the communities, thus helping to increase the possible level of justice, regardless of the distribution of these goods among the populations of the Great Green Wall. By carrying out these activities in support of the administration and populations of the villages, participating young people have the opportunity to develop professionalism that is aligned with the most important needs of the current world. An education process oriented towards these goals could well be centered on the biosphere as ecumene.

For these reasons, I considered this activity particularly worthy of study and sought to deepen my understanding of its organization and functioning, beginning with the example of good practice provided by the African Association of Sukyo Mahikari. The young participants prepare for reforestation through a form of service-learning that cultivates a sense of responsibility toward the wider community and the environment. Throughout the year, they engage in experiential activities such as environmental clean-ups, the revitalization of degraded urban areas, support for elderly and socially disadvantaged groups in accessing medical care, assistance for young people seeking educational opportunities, promotion of basic "local food" agriculture, and non-competitive sports initiatives fostering social inclusion. Through these activities, youth groups across different countries develop specific skills and competencies within an educational framework oriented toward service to nature and society. This approach promotes individual growth through active contribution to the collective. This pedagogical dimension should also be understood as a proposal addressed to the wider society: a form of grassroots democracy in which each person undertakes tasks that improve the relationship between humanity and nature, as well as relations among individuals and groups, through actions accessible to all.

5.2. For a biospheric dignity

Differences within the Biosphere and a variety of actions for the common good

The results of this educational approach, which manifests itself as informal education in the process of lifelong learning, are significant when it comes to reforestation activities. In fact, over a period of 10 years from 2005, the young people of the African Association of Sukyo Mahikari, with an average participation of 180 young people from various African and non-African countries, all self-financing, have planted approximately 1,000,000

trees in total, chosen by the National Agency of Senegal (and other countries where reforestation activities were carried out), which is 100,000 trees per year. The plants chosen for reforestation in Senegal included acacias, which allow local populations to extract gum arabic. Each annual camp takes place in August, when the rainy season is advanced, and aims to plant plots of approximately 300 hectares, benefiting two or three villages of about 60–70 people each. Once fenced, the plots immediately provide grass that herders can cut and use as fodder for the dry season. In this way, they can avoid long transhumance journeys that force their families to follow them. By adopting a sedentary lifestyle, women can undertake various activities, such as horticulture, then trading the surplus. Their role as income producers increases their importance in family units.

The Great Green Wall is, in fact, a project of considerable importance for women's emancipation, within a lifestyle that retains many traditional features. In fact, it is precisely the productivity generated by the activities of these young volunteers that has the potential to serve as a driving force for development. Indeed, a plot of about 300 hectares with 80,000 local acacia trees, once mature, can produce approximately 120,000 kilograms of gum arabic. At an average low price of around EUR 1.5 per kilogram, this amounts to EUR 180,000. Divided among three villages, this represents EUR 60,000 per year. Assuming an average of 60 inhabitants per village, this activity may yield an additional per capita income of EUR – an increase of roughly USD 1,100 per person in a country where, in 2010, per-capita income stood at USD 1,810. The difficulties the project has faced – arising from political constraints, the COVID-19 pandemic, and above all the effects of climate change, which now delay the rainy season until late August and September – must not obscure its results. Although this shift prevents young volunteers from contributing during their summer holidays, the social development emerging from interactions among local communities, especially the schools, groups, and institutions involved in reforestation, continues to demonstrate the project's potential.

A functioning democracy in the making

Notwithstanding its difficulties, the project contributes to grassroots democracy and to forms of self-directed development in harmony with the biosphere. Moreover, it enables the pursuit of a supranationality rooted in the shared values of individual groups. These values, such as caring for the biosphere, are promoted without imposing invasive ideological or cultural superstructures.

The reflections presented below further elucidate the arguments outlined above.

6. From a "Best Practice" to a Policy of Law Based on the Positive Manifestation of Consciousness

6.1. On the political meaning of a best practice addressed to support resilience

Social engagement, synergy and resilience

The connection between various forms of volunteer activity and local development initiatives has, over time, acquired increasing diversity and significance. In terms of their role in expressing a form of liberty grounded in a self-determined representation of reality, these activities have demonstrated notable success. They also provide a foundation for the emergence of transnational and transcultural forms of social communication aimed at improving the relationship between humanity and the Biosphere. The outcomes of such communication contribute to the development of economic circuits that are partially independent of the dominant models of production and exchange typical of technological societies. As basic material needs are more effectively met, the capacity to provide essential public services – even in less developed areas – increases, and the overall resilience of communities is strengthened. It is therefore not the scale of each individual initiative that should be emphasized, but rather the potential for such activities to be replicated on a global scale. This may represent a decisive step toward overcoming the structures of biopower and advancing a more mature awareness of how to improve our shared life and our relationship with the Biosphere. The spirit of service that animates these activities should be recognized as a meaningful contribution to grassroots democratic processes, as it reflects both a sense of freedom and a conscious commitment to the care of the common good.

The increase in wealth observed in villages following the initiatives of the youth I studied provides, to some extent, a means of measuring the impact on both the Biosphere and society of the awareness-raising process for the common good – as developed through the educational efforts of the youth of the African Association of Sukyo Mahikari, and subsequently by the youth of the Fondation Cœur Vert. This observation may serve as a starting point for assessing whether sensitizing young people to the common good – and involving them in participatory, informal educational activities aimed at practical outcomes – can, within a pluralistic context of differing worldviews, religious beliefs, and political perspectives, be regarded not only as a "best practice," but also as a genuine instrument of legal policy.

Sustainability also means obtaining more than we employ – from the economic to the legal perspective

In this regard, it may be useful to resume the brief examination from the economic perspective, begun above. The organisation of a reforestation camp involved the youth's self-financing with a total contribution of around EUR 50,000, which is the average cost of each camp, and did not require additional services from the public administration beyond those it already provides within the framework of the Great Green Wall. The plots reforested by the youth are then fenced off to prevent animals from entering and destroying the plants. Local populations first benefit from the grass, which they can cut and use as fodder for their animals, and later from the collection of gum arabic. Grass is crucial because it can be stored and serve as a reserve for the dry season. This allows the populations to avoid long and risky transhumance, during which many animals perish. By contrast, the collection of gum arabic begins when the trees reach maturity – typically by the tenth year after planting – and continues for at least twenty years from the first harvest. Considering gum arabic alone, in each of these approximately week-long camps, the youth plant an average of 100,000 trees across plots of about 300 hectares. From each such plot, the beneficiary populations may derive at least EUR 180,000 in annual income from gum collection. Thus, taking into account only gum arabic, an initial expenditure of roughly EUR 50,000 by the youth an annual income of EUR 180,000 over a period extending from ten to thirty years after planting. If this youth contribution is regarded as an investment for the benefit of rural communities, its internal rate of return can be estimated at over 3.1%. Naturally, this must be added to the benefits derived from grass collection, the lower costs resulting from the absence of transhumance, the benefits from the possibility of horticulture, those obtained by sending children to school (which are well measurable over the investment's lifecycle), and finally the advantages for the state, deriving from the fact that plants capture carbon dioxide (CO_2)[60]. Moving to the macroeconomic level, this volunteer activity seems to generate an economic cycle and therefore income production and distribution, separate

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[60] See for example Y. Pan et al., *A Large and Persistent Carbon Sink in the World's Forests*, "Science" 2011, No. 6045(333), pp. 988–993, https://doi.org/10.1126/science.1201609; G.-J. Nabuurs et al., *Chapter 7: Agriculture, Forestry and Other Land Uses (AFOLU),* in: *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the IPCC*, ed. P.R. Shukla et al., Cambridge University Press, Cambridge 2022, pp. 747–860, https://doi.org/10.1017/9781009157926.009; J.D. Saphores, B. Bakshi, *Forests, Biodiversity Conservation, and the Kyoto Protocol: Challenges and Opportunities*, *Founding Conference of the Francophone Network on Energy and the Environment (MONDER)*, 10–13 June 2001, Paris. See the extensive bibliographies contained in these contributions. At the European project level, see *Quality of Life and Management of Living Resources*, *Silvoarable Agroforestry For Europe (SAFE)*, *European Research contract* QLK5-CT-2001-00560, which presents an approach very

from that of industrial economies. Indeed, it appears to be an income production cycle typical of agricultural and pastoral economies, where the public administration provides essential public services. In this economic circuit, the civil society is integrated into the income-wage cycle alongside the state. In fact, with these reforestation activities, civil society intervenes in the conjuncture by developing an intervention that generates income and employment in the long term.

Furthermore, this type of intervention is able to create the necessary conditions for security and peace. From this point of view, it would be highly appropriate if this "best practice," supported by the youth of the African Association of Sukyo Mahikari, could be considered akin to a true legal policy, in which the driving force of development becomes civil society: "Plant species are regenerating in Widou Thiengoly thanks to transnational citizenship" wrote the "Le Soleil" newspaper of Dakar after interviewing me[61].

Transformative education to work in a group on key problems of society

From an educational perspective, and particularly in the context of lifelong learning, we must first observe that developing one's individuality through the educational process and putting it at the service of the group means developing a competence highly sought after by businesses and institutions. In my opinion, the utility of this competence is cross-cutting; it is important for every profession. In particular, it is useful for lawyers and public administration employees, as the amount of information to be processed and utilized continues to increase for these professions. In fact, employing such a methodology in courses on European Union law both at the University of Szczecin and within the European Master in Law and Policies in European Integration: European Constitutional Law and Multilevel Constitutionalism[62] produced absolutely satisfactory results.

The Master programme has been implemented in partnership with the Autonomous University of Barcelona, the University of Milan, the Montpellier 1 University, and the University of Szczecin. Together we developed, from the 2009–2010 academic year to the 2014–2015 academic year the first and, so far, only second-cycle law degree program with a joint title in Europe. During this Master's program, we developed and made use of several methodologies designed for trans-cultural learning. We refined them at various institutions and

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similar to that developed within the framework of the Great Green Wall, https://cordis.europa.eu/project/id/QLK5-CT-2001-00560.

[61] Le Soleil, Dakar, "Les Especes végetales se règenerent à Widou Thiengoly grâce à la citoyenneté transnationale", 17.09.2014, p. 14.

[62] In every case, the results have been absolutely satisfactory.

universities throughout Europe and elsewhere, since the programme had 16 partner universities. We also applied such transcultural methodologies to undergraduate (both in general universities and universities of applied sciences) and MA students, impacting about 2000 young people, while training doctoral students as instructors.

In other degree programs, where we applied the methods developed in the said Master studies, we have observed an increase in students' productivity, a remarkable improvement in their skills of synthesis and ability to work in groups, as well as a significant enhancement in their results. Furthermore, the increase in students' engagement stemmed more from their greater motivation than from a deliberate increase in their workload. In this sense, we have seen that the inclusion of informal education methods (aimed at fostering a sense of participation with one's individuality in the common good within a work group) alongside formal education in a university course is not only possible but also desirable. The relationship between formal and informal education, developed in this way, can be the subject of further reflection in the field of education policy. By way of example, students in a typical European Union law course who follow the methodology I have had the opportunity to develop – combining formal instruction, legal clinics, and legal communication training – are not only able to understand and apply the concepts introduced in the course, but also to work with and analyse at least 60–100 fundamental decisions of the Court of Justice of the EU and 50–70 regulations and directives[63]. Furthermore, the online seminars held regularly with the directors of schools and training centers in the regions where I have participated in and studied the societal approach to afforestation have, over the years, evolved into laboratories of pedagogical innovation and grassroots democracy. Based on the integration of formal teaching with informal discussion, they are now receiving growing recognition from state authorities.

6.2. Good practices and the rule of law

Democracy and the rule of law in the making through service

From an institutional perspective, regarding the respect for human rights and transnational citizenship, I have assessed the possibility of incorporating the "good practices" observed within the broader framework of the rule of law. This was done through field interviews

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[63] For the development of the method itself, see: P. Policastro (ed.), *Towards Innovation in Legal Education*, Eleven International Publishing, Utrecht 2013. In particular: E. Castorina, P. Policastro, *Towards a Supranational Dimension of Citizenship Through Knowledge, Skills and Competence: From ECONET to the Great Green Wall*, pp. 89–96, Chapter 12

and by observing over the past 5 years how the reforestation practice I have closely studied evolved, including in comparison with other experiences. In order to consolidate this study, I proceeded, with my university resources, to produce a documentary film, which was directed by an independent filmmaker and journalist at Radio Szczecin in Poland[64]. I provided the scientific supervision of the film. From a methodological point of view, it must be said that I limited myself to introducing the director, in a very general way, to the issue of reforestation processes that I had observed and to the scientific importance of some of the elements I had noted for transnational constitutional law and educational processes. In no case did I suggest questions for the director to ask the interviewees, and all the interviews were conducted without any request for or payment of fees.

The film in question is titled "The Great Green Wall: Africa to Africa"[65] and was based on approximately 23 hours of interviews with young participants in reforestation camps, public administration staff (both central and district-level), and local populations[66]. Limiting ourselves to presenting only those moments and outcomes of the interviews that are especially relevant for this study, it is useful to begin with the first one, which illustrates the educational method used with the youth – namely, the cultivation of an attentive attitude toward their own work and that of others. In this way, they can intervene when necessary to ensure a smooth and efficient progress of the activities. The results of this education in the spirit of service have been well recognized, both by the public administration and by the local populations. In fact, some workers at the nursery where the plants for reforestation were prepared noted that "These young people have different habits than ours, they are not our relatives, and we do not even have the same religion, but their work is the same and is equal to ours: we all desire development, we all want to improve our living conditions"[67]. I would like to point out how important these statements are. In fact, they demonstrate maturity and sound judgment, an open mind, and a practical spirit, qualities that I have also observed, both in the interview with the president of the "multipurpose garden"[68] and with the head of the village of Alzegou[69]. I had the opportunity to inter-

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[64] Ms. Małgorzata Frymus, who also handled the film editing. The photography was managed by cameraman Mr. Łukasz Nyks. The translation of the interviews conducted in African languages, mainly Wolof and Pular, was done by Mr Amadou Sy.

[65] https://www.youtube.com/channel/UCFDWiEZWPVPW129UCu0geHw, World PeaceLab Channel, where one can also see the following filmography.

[66] The filming of this movie took place in the summer of 2012.

[67] Mr. Moctar Dabel Ka.

[68] Mrs. Seynabou Niang.

[69] Mr. Aliou Fall.

view several people in the area of 'Mbar Toubab – Widou-Thiengoly (between the municipalities of Syer and Keur Momar Sarr) where the filming of the movie took place and I had the opportunity to confirm such observations.

One interview was with Mrs. Seynabou Niang, President of the multipurpose garden, which engages about 150 women in horticulture practice and constitutes an important food reservoir for families, allowing them to diversify their diet and reduce diseases caused by malnutrition. Furthermore, as I have already emphasized, the members can sell the surplus at the market, thus becoming income producers and gaining importance in their families. Mrs. Niang pointed out how the opportunity to work together is important for the personal and professional lives of the associated women: thanks to the multipurpose gardens, they have been able to learn many things, and while going to work, they can talk to each other, confide in each other, and help each other if necessary.

The Great Green Wall has enabled all this, and the women are grateful for the education they have received. They are thankful to the youth because they realize their essential contribution. The president of the multipurpose garden "deeply thanks God for this." Mrs. Niang informs that thanks to the tree planting, the air, which was almost unbreathable due to dust, has become healthier.

The head of the village of Alzegou confirms all this. He confirms that their economic neediness also stems from the fact that for many years they could no longer practice rubber collection because the acacia trees had disappeared due to fires and desertification. He expresses a strong desire for development and progress, talks about replacing straw houses with brick houses, and is glad that all the boys and girls in the village go to school and make progress: "we are aware that our poverty is caused by lack of education," he says. He greatly appreciates the contribution of the young volunteers to the Great Green Wall, and confirms that this project is linked to a new approach to rural life management. However, he added that he would like to do more and would appreciate, as an informal power, being more informed to contribute more to the development of the Great Green Wall.

Reconstruction and regeneration of society and nature

Here, the voluntary contribution of young people becomes an essential moment in the development of a social environment favourable to constructive and participatory democracy, to a "societal citizenship"[70] which is transnational, because it arises from the awareness –

[70] P. Donati, *La cittadinanza societaria*, Laterza, Roma–Bari 1993.

especially among young people – of the reconstruction of the world and of nature[71]. This is a matter that must involve everyone, regardless of where we live. "For me, these activities are important because so far we have thought about destroying nature: now we think about rebuilding it," says Olivier Merle, a French citizen living on Réunion Island. Anne-Lise Badiane, a ministerial official from Senegal, says, "It is important to rebuild nature because the food, homes, and clothes we wear come from nature; without nature, we can have money, but we cannot live". The spiritual motivation behind this activity is clearly observed, but it is inclusive, selfless, and active. Just as the education method proposed by the youth of the African Association of Sukyo Mahikari values the individuality of each person and puts it at the service of all.

The spirituality that characterizes the social action of these young people, manifested in a spirit of service directed towards the common good, motivates different parts of society to a positive attitude and urges the public administration towards indicative paths of applying the principle of subsidiarity. Polish law student Zofia Olejnik, who participated in reforestation for the first time in 2012, finds the justification for their results in the "positivity" of the proposed actions. "This project," she says in the film, "is already succeeding: there are young people, the plants are growing, society, the economy, and its structures are developing". The motivations proposed by the youth, therefore, appear to include and value the contribution of each individual. They tend to become common heritage, uniting in multiplicity.

A federative principle of symbiosis

Different organizations have been following the examples of the youth of Sukyo Mahikari and Fondation Cœur Vert, created to expand on a wider scale the activities initiated by the previous organization. Among them are the secular scouting youth of Senegal ("Éclaireurs") and the local schools where the afforestation has been taking place. All these organizations, together, develop a new, inclusive bridge between different models of education and civil engagement. The African Union, after carefully observing the approach adopted by the young people of the African Association of Sukyo Mahikari, has expressed interest in applying this educational methodology and organizational model to reforestation initiatives across the various countries participating in the Great Green Wall. This

[71] From the interview with Mr. Lluis Sebastià, from Luxembourg, in the documentary "Great Green Wall".

process of diffusion reveals the transition of this youth activity from a "good practice" to a meaningful element within the policy of law.

Towards a political spirituality

The question we must ultimately ask is how to justify the transition of this methodology of social action – from a circumscribed practice grounded in shared, inclusive responsibility for the world and in the values of the spirit of service, and recognised as an undeniable example of good practice – to a broader perspective of legal policy. To address this issue, one must consider the values associated with this reforestation activity. One must verify whether the activity discussed here can be seen solely as the manifestation of a good educational model and an efficient organization from the perspective of practical results, or whether the spirituality that characterizes the motivations of the participants in the activities in question[72], understood as a positive manifestation of human conscience, may be seen as a new and significant paradigm of political action. This paradigm would be realized by attributing to positive liberty a dimension that transcends the limitations of compulsive associative structures – such as those of the state – without necessarily denying them. In this sense, we may ask whether this universal spirituality could be interpreted as a form of "political spirituality" capable of effectively overcoming the biopower of states, as described by Michel Foucault[73]. The French scholar, in fact, had thought that given the attempt of biopower to control the existential manifestations of the individual by regulating the habits of citizens through power structures, only alternative habits related to mass spirituality could overcome these constraints. Indeed, Foucault was confronted with the evidence that a model of power that tended to control the potential conflict between the individual and power with violence had reached full expression in the fundamentalist revolution in Iran, creating a new institutionalized violence that the individual could not repudiate precisely because it was included in deeply rooted habits, including religious ones. Foucault did not revise his views in response to this criticism or to the evidence already available – evidence to which further confirmation would soon be added, namely that the Iranian regime had begun employing instruments characteristic of authoritarian states. In this regard,

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[72] F. Louveau, *L'écologisme d'un mouvement religieux japonais au Sénégal. De la guérison à la gestion de l'environnement par Sukyo Mahikari*, "Cahiers d'Études africaines" 2011, No. 4, pp. 739–768; F. Louveau, *Un mouvement religieux japonais au cœur de la pluralisation religieuse africaine. Logiques de distinction et de mimétisme de Sukyo Mahikari (Côte d'Ivoire, Bénin, Sénégal)*, "Politique africaine" 2011, No. 123, pp. 73–93.

[73] M. Foucault, *Sécurité, territoire...*, *passim*.

concerning Foucault's theory, it must be observed that since the State, through the organization of communal life manifestations, tends to control the development of the individual themselves, this constitutes another evidence of the fact that the constitutional form itself evolves as a means of managing conflict. And therefore, it is precisely civil society, through positive action, that has the task of overcoming conflict and building peace and dialogue, without denying the role of states[74].

The spirituality observed in the activities of the youth discussed above manifests important characteristics and potentials in this regard. It appears as a spirituality that harnesses the contribution of each individual without coercion, thus looking towards the common good beyond the boundaries of states, cultures, and interests. It seeks lasting and efficient solutions that, as manifestations of the dignity of the human person from a transnational and biospheric perspective, allow for the overcoming of biopower by instead developing a bio-dignity through positive manifestations of consciousness. These manifestations can take various forms, but the fundamental motivation to combat conflict through a spirit of service, and a positive approach towards shared responsibility for the world, developed also through the education of consciences, appears not only morally important but increasingly necessary for political and social action. This justifies their interest in terms of the politics of law.

[74] P. Policastro, *Constitution and Conflict…*, *passim*.

Chapter V

The Law of the Biosphere – Duties of the Nations and Common Good

Keywords

Anthropocene, duties to nature, common good, cooperative constitutionalism, cultural pluralism, supranational integration

Abstract

Chapter V advances a new paradigm of constitutional thought centered on the duties that states and individuals owe to the Biosphere as a condition for the common good. Confronting the reality of the Anthropocene, it argues that traditional geopolitics and competitive state sovereignty must give way to cooperative, biosphere-oriented forms of governance. The chapter's approach is both theoretical and practical: it reinterprets core elements of public law (state legitimacy, the rule of law, fundamental rights) through a "metaphysics of listening to nature", and it outlines how constitutional principles can be reformulated to ensure planetary sustainability and the peaceful development of all communities. Key insights include a critique of Western hegemonic thought and its legacy of resource dissipation (tracing how the expansion of industrial civilization produced global inequalities and ecological strain), and a proposal for a "common shelter" perspective in which the Biosphere is seen as a shared home requiring collective legal protection. In this view, the very legitimacy of state power is reframed: sovereignty entails biospheric responsibility, and the pursuit of the common good must extend beyond national borders. The chapter emphasizes pluralism – acknowledging that diverse cultural traditions and each community's relationship with its territory can inform locally appropriate ways of living within ecological limits. It also stresses that duties to the environment are *diffuse* – incumbent on both governments and citizens – since effective compliance depends on widespread social awareness and participation. By redefining the rule of law to prioritize human dignity expressed through active ecological citizenship, and by validating transnational cooperation in plural forms, Chapter V

provides an institutional and ethical blueprint that connects the book's philosophical arguments with real-world constitutional transformation.

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1. The Public Law of the Biosphere and the Transformation of Life in Common

Awareness, rule of law, duties towards nature

Since we originate from nature and live thanks to it, our relationship with the natural world must be placed at the foundation of our understanding of law. For this reason, the approach adopted here does not merely integrate or superimpose certain aspects of the human–nature relationship onto existing legal systems in response to the contingencies of contemporary technological societies. On the contrary, it is grounded in a metaphysics of listening and understanding nature, beginning with the individual's direct observation of the natural world. Accordingly, this approach seeks to be inclusive of methodologies that regulate human–nature relations without being shaped by the complex web of techniques characteristic of technological societies. From this perspective, duties toward nature and society play a fundamental role in both the interpretation of constitutional institutions and the very conception of constitutionalism. Such duties pertain to both States and individuals. Their diffuse character is justified by the recognition that it is neither realistic to expect States to fulfill their obligations toward the Biosphere with ease, nor possible to demand such fulfillment in the absence of a shared and conscious social awareness – capable not only of understanding how to contribute to this process, but also of translating that understanding into practice. In this way, the common good is promoted within a dimension that transcends national boundaries, without diminishing the significance of actions undertaken at the level of communities and States.

Within this framework, the concept of the rule of law assumes a meaning in which human dignity is expressed through active participation and becomes inclusive of a plurality of organizational and technological approaches. Among these, particular importance is accorded to those that are simple and thus accessible to large segments of the global population. In light of the foregoing, transnational and supranational cooperation should likewise be recognized as both possible and desirable, within a framework of plural forms capable of reflecting the richness of cultures and the specific relationships that each territory maintains with nature and natural resources.

1.1. Anthropocene, interdependencies and the Biosphere

How to legally understand humanity's impact on the Biosphere

The development of awareness that we inhabit a Common Home – the Biosphere – requires not only an in-depth reflection on the evolution of civilizations, culture, and history, but also a careful consideration of how such awareness ought to be reflected in legal relations, particularly within the realm of public law. From this perspective, the awareness of our existence within the Biosphere can be linked to the emergence of a new legal consciousness, through a methodological approach aimed at clarifying the obligations of States, communities, and individual subjects.

The present historical moment is characterized by unprecedented difficulties and turmoil[1]. These challenges can be attributed to the significant impact humans have had on the world around us, which has overwhelmed natural feedback mechanisms. Consequently, alongside the evolution of our planet, which unfolds over geological eras, human activities have profoundly impacted the Earth. This era is known as the Anthropocene. Although the discussion about when this period – intertwining human history with the history of our planet – began is both interesting and vivid, we suggest focusing here on a civilization issue. Specifically, the transformation of the planet seems to have been driven, to a significant extent, by the development of Western civilization and the widespread adoption of its techniques and values worldwide. This matter, however, may deserve a more in-depth reflection.

On the corrosive legacy of hegemonic thought

The hegemony of Western civilization worldwide began with the geographic expansion of its influence at the end of the 15th century. It reached peaks during the process of industrialization, through the two World Wars, and continues today with the process of globalization and its associated crises. The end of globalization may not mean the end of the approach to power characteristic to the Western World. When it comes to the geographic

[1] This chapter, although with deep modifications, follows the approach presented during my "keynote speech" at the 9th Session of the Euro-Asian Law Congress, Yekaterinburg, 18–19 June 2015 on "Право и национальные интересы в современной геополитики – Law and National Interests in Contemporary Geopolitics" as well as duting my concluding speech at the Conference "L'Afrique pour l'Afrique: 10 ans de camps internationaux de reboisement consacrés au projet de la grande muraille verte", University Cheikh Anta Diop, Dakar, 20-21 August 2015. The paper has been presented in a more developed form in October 2015, when I received an honorary doctorate (PhD h.c.) from the "1st December 1918" University in Alba Iulia, Romania.

expansion of influence of the European civilization, we must acknowledge that it led to widespread mortality in the Americas due to the importation of diseases and resulted in a shift of economic power toward Western nations, manifested through the ideology of mercantilism. This was followed by the forced migration of slaves from Africa, a continuation of the earlier waves of slavery toward the East, which began with the Islamic conquest of Africa.

These economic changes were legally accompanied by the development of the concept of the freedom of the seas. The latter, based on the unrestricted ability of states to engage in hostilities at sea, played an important role in the political and institutional consolidation of national states, beginning with merchant states. The seas, as communication routes between different worlds – different continents – became arenas where hostility was the norm. Hostility between states became a paramount perspective in international relations and contributed to the consolidation of the European state form. The order established by the Congress of Vienna, for instance, sanctioned the attempt of a land-based empire, France, to develop, while excluding the influence of a sea-based empire, namely Britain.

Moreover, vast territories could also become domains of force, as demonstrated by the development of European colonialism and the expansion of the United States to the West. The concept of freedom of the seas, viewed within the context of state competition, which was also manifested as competition within states, ultimately contributed to the evolution of fundamental rights as a competitive process.

Common shelter vs. hegemonic thought

The geographic expansion of European influence also led to significant demographic transformations. The process of industrialization could only take place within a global economic framework, which differentiated the world into regions producing raw materials and those primarily producing manufactured goods. This differentiation widened the distribution of income from international trade, with countries rich in natural resources becoming increasingly impoverished in terms of income distribution. Globalization has exacerbated these tendencies, contributing to the precariousness of labor. Western civilization has been the primary driver of this process for many years.

In this chapter, I aim to show:

1. How considering the Biosphere as our common shelter, in all its components, can help us view law as a tool to guarantee planetary sustainability and a peaceful development of all nations, societies, and individuals.
2. Wow this perspective helps define the duties of states if their legitimacy is to be seen in the pursuit of the common good.
3. In this new approach to public law, we can establish a framework for our personal obligations toward the communities and the world in which we live.

The analysis will begin with an approach to the transformation of the elements of classical state theory, considering the importance of the biosphere as the essential framework for our existence. After briefly illustrating a substantive theory of the constitution, I will then examine cooperative forms of communal life as a generalized approach to political issues, suitable for the contemporary world.

1.2. The transformation of life in common

For a new theory (and practice) of life in common

The spheroidal shape of the planet, its rotation and revolution around the Sun, and, above all, the presence of Life give rise to a set of physical, biological, and systemic regularities that characterize the terrestrial environment. The protection of these regularities constitutes a necessary condition for safeguarding human dignity and other fundamental values of the person – values that transcend the territorial boundaries of States and are embedded within the global legal framework of the Biosphere and its flows. In this sense, it becomes necessary to envision a transformation of life in common. In this perspective, active participation and service to the common good – rooted in the territorial context of each individual and every community – acquire essential legal significance, as a concrete expression of collective responsibility for life on the planet.

The transformation of the social, economic and political relation requires a formulation of a new theory of life in common. The essential elements of the state shall take into account the fact that in the present state of affairs we are all interconnected in a clear and present way.

The following table presents a synthetic reference to them as it accommodates the present state of affairs and the need for a change in the paradigm:

Table 1. Reality and transformation

Present state of affairs		**Transformation of the paradigm**	
Classical theory of the State elements of the polity (State)	**Activities of the State in the classical (modern) approach**	**Transformation of the theory**	**Activities of the polities**
Territory	External and Internal Security – right to life, freedom and property	Biosphere – the round form of the planet requires a common responsibility	Human dignity protected assuring adequate and general conditions for life
Population	Citizenship – representation – Participation: see also liberté, egalité, fraternité	Transnational citizenship Universal Principles; Spirit of service; Biosphere as the common house – Obligation to achieve the transnational common good – for the States and the individuals	The sphere of consciousness and the sphere of the language require new approaches to communication processes – practical activities which may show the change of paradigm
Legal order	Sovereignty: States "Superiorem non recognoscentes"; see also Staatsräson or Illusory Democracy; International cooperation sometimes quasi – constitutional, but often non cooperative	Law of the interdependencies; Necessity of cooperative transnational integration	Policies addressed to the protection of the existential manifestations of the person; a wider representation of the individual and common needs; Global justice
Consequences	Hegemony of the: states, cultures, societies, corporations; Dissipation of natural resources, poverty, inequality, wars, migrations, tensions	Pluralism of the forms of associated life – proportionality in the forms of cooperation – Sustainable natural and social environment resources – Peace	Cooperative integration – New institutional developments – Education – Protection of the pluralism of the forms of life – IRIAs for parallel legislation

A new approach to the role of the jurist based upon an empathic attitude toward human relations

Before addressing the core of the problem, I would like to present some methodological considerations. As we already considered, the active approach to our duty, as discussed above, stems from a participatory call that is inherent to our dignity. This participatory call has three fundamental constitutional consequences, which can be summarized as follows:

1. It serves as the foundation for a new approach to constitutions and human rights, based on the general obligation of human beings to care for the biosphere as our common shelter and to care for others as a means of living without antagonism and in peace;
2. It provides the basis for a new approach to transnational and supranational integration, better suited, as we will see, to the variety of legal and political conditions that exist worldwide;
3. It forms the foundation for a new approach to the role of the jurist, one that aligns with an empathetic attitude toward human relations.

1.3. Framework of analysis – a theory of constitution and constitutionalism for comparative law purposes

Epistemic and operational efforts aimed at fostering mutual understanding

Since coexistence within the Biosphere requires epistemic and operational efforts that foster mutual understanding among subjects from different cultures and operating within diverse state structures and systems of governance, such efforts should be oriented toward recognising a shared condition and adopting a cooperative approach grounded in inter-normative dialogue and the joint construction of normative responses. From this perspective, law is called upon to recognize that adaptation to life in common within the Biosphere presupposes an awareness of the existence of spaces for dialogue and the pressing need to develop spaces for justice. The former unfold along the axis of identity and coexistence, addressing the reconciliation of cultural differences and political affiliations. The latter develop along the axis of existence and transformation and concern the capacity of legal systems to evolve in response to the emerging demands of biospheric coexistence. This conceptual framework highlights the relationship between the constitution in a substantive sense – as the expression of the being of a political community – and constitutionalism, understood as a dynamic process oriented toward becoming, which, through values structured as fundamental paradigms, shapes the very configuration of constitutional relationships.

Taking care of the biosphere should be viewed as a fundamental public, collective, and individual obligation – one that could foster peaceful coexistence among human societies. To achieve this, we see the need to develop new forms of supranational integration or transnational cooperation that are more attuned to current global realities and, accordingly, to rethink the role of the jurist. Pursuing these aims has profound legal consequences, as they affect the constitution in its substantive dimension.

We understand the constitution to encompass the following three categories of rules:

a) the aims of societies;
b) the principles governing the distribution of influence over society, government (politics), and the economy (including production, exchange, and the distribution of income and wealth);
c) modal principles, which explain how the law reflects reality, incorporates the subject, recognises the objects it seeks to protect, and interacts with them.

The participative principle, when applied to transnational and supranational integration, enables us to safeguard the common good from a holistic perspective aligned with constitutional principles. In previous chapters, I have referred to this approach to constitutionalism – rooted in an awareness of our interdependence within the Biosphere, our common home – as Constitutionalism with a capital "C." I have also referred to it as inclusive constitutionalism.

From community to society and back

Starting from the notion of a reference community, I have previously observed that the concept of community can be understood as self-contained, whereas the transition from community to society occurs when society becomes aware of its interdependence with other individuals and with surrounding communities or societies. I am, of course, aware that a genuine awareness of interdependence with the world around us requires a sufficiently broad approach to public law. This does not mean, however, that in developing this awareness of mutual interdependence, the concept of community loses its meaning.

In gradually approaching this challenge, I have over time developed a conception of the constitution and of constitutionalism that may offer a useful framework for engaging with legal reality in the most inclusive way possible.

In this perspective, I construe constitutionalism as a balanced approach to:

i) The relationship between human rights (defining which existential aspects of a person's life are protected within a legal order) and policies for their implementation;
ii) The relationship between participation and representation;
iii) The relationship between legal rules (as they are produced) and the manner in which they are applied with time.

The relationship between constitution and constitutionalism can be examined through the following table:

Table 2. Constitution, justice, constitutionalism

Substantive elements of a constitution	**Justice in the dynamic sense**	**Paradigms of constitutionalism**
Aims of a community	Participative attitude	Relation between human rights and policies for their implementation
Principles distributing the influences (on society, politics, economic process)	Common good	Relation between participation and representation
Modal principles – determining the binding character of law	Representation of reality	Relation between legal rules, and the way in which they are applied

Due to space limitations, I cannot thoroughly describe my approach to the relationship between constitution and constitutionalism. However, in this contribution, I would like to emphasize the dynamic character of this relationship. By this, I mean that the interaction between constitution and constitutionalism should typically lead to changes in the substantive constitutional framework. Therefore, such interaction may be defined as justice in a dynamic sense.

Justice in a dynamic sense

The achievement of justice in this dynamic sense can be seen as a process through which constitutional relations are progressively improved by means of:

a) an individual participative attitude;
b) a collective attitude aimed at pursuing the common good;
c) an institutional attitude focused on accurately representing both the subject of legislation and the subject of legal decisions.

As for the latter – namely, the institutional attitude focused on the full and thorough representation of reality – I would like to stress its decisive importance for the legal process. Understanding this issue should not be limited to the pluralism of political positions among representatives and their interactions. It must involve a deep analysis of the factual situation on which potential normative solutions can be tested, selected, and, after enactment, reviewed and, if necessary, amended. A better representation of reality can aid both the formulation and correct application of the law.

This approach requires not only consideration of relationships within societies and between individuals, but also a broader focus on the biosphere and the care for its inherent

order. In this way, the formulation of law aims to protect the essential expressions of human existence. Thus, law shifts from merely expressing the general will to expressing the common good.

This shift implies rethinking the notion of the general will, beginning with the obligation of each individual – and each community – to recognize that our lives are shaped by a particular state and phase of the Biosphere. In the current historical moment, it is increasingly clear that human impact on the Biosphere is perceptible – not only in natural and ecological terms, but also in geological terms. For this reason, it is especially important for the general will to be aware of these interdependencies.

From this awareness – which must be consciously cultivated and taught – emerges a will that manifests itself across various levels, starting from the most basic one. It enables the expression of values such as a spirit of service, awareness, and care for life within our common home.

This will is gradually transformed – through institutions such as citizenship, including transnational citizenship, and other forms of participatory engagement embedded within legal systems – into a general will that is fully conscious of the common good, of our interdependence with the Biosphere, and with one another. In this sense, through continuous improvements and adjustments, the realization of the common good becomes possible.

From citizenship to values and common-good constitutionalism

This approach allows for the protection of human rights based on a participatory model, which can be described as combining two core values: the *spirit of service* and *care for the Biosphere*, our common home. Such a framework appears fully compatible with domestic constitutional law in general and provides a promising path for implementing international legal instruments – for example, the Stockholm Declaration of 1972, the World Charter for Nature of 1982, or the Rio Declaration of 1992. It also aligns with a growing ethical consensus in which *Laudato Si'* has played – and will continue to play – an unquestionable role. Such elements justify the following reflection, whether political power can be legitimately justified as a manifestation of this spirit of service. In this perspective, the protection of human rights arises from a general obligation of service that concerns both individuals and communities.

Values transcending the communities and merging in the Biosphere – communication and signs

This analysis focuses on a new approach to supranational integration, a perspective justified by the challenges and complexities of our current times. However, this approach requires a legal education and a civic attitude grounded in empathy. Only on this foundation can participatory processes and a new model of supranational integration help achieve better protection of the human person.

To simplify this reasoning, one must recognize that the constitution cannot be equated solely with what is written in constitutional texts. This is not to deny the importance of written documents, but rather to avoid underestimating the role of habits, social practices, and the interpretive work of jurists. In other words, we must acknowledge the significance of the *legal semiosphere*[2] – a concept derived from Yury Lotman's theory of the semiosphere, which emphasizes the boundaries and irregularities inherent in communication. These irregularities arise from the difference between each individual's idiom and the meaning they intend to convey. This semiotic dimension, in turn, must be linked to the idea of the *noosphere*, as developed by Vernadsky and Teilhard de Chardin – perhaps even more explicitly than Lotman himself suggests.

If we conceive of signs as relational entities (as in de Saussure)[3], as functions of interpretation (as in Peirce)[4], or as cultural constructs (as in Lotman)[5], we must also confront how symbolic actions influence the world as a whole (Morris's pragmatic dimension)[6]. Lotman contrasts the Peirce–Morris line with the Saussure/Prague line[7] and insists that "the

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[2] P. Nunziante, *La Semiosfera giuridica*, "Innovazione e diritto" 2005, No. 1, Art. 2. https://www.innovazionediritto.it/la-semiosfera-giuridica.

[3] F. de Saussure, *Cours de linguistique générale*, ed. Ch. Bally, A. Sechehaye, in collaboration with A. Riedlinger, Arbre d'Or, Genève 2005 (the first French edition of *Cours de linguistique générale*, Payot, Lausanne & Paris 1916) English version: F. de Saussure, *Course in General Linguistics*, ed. Ch. Bally, A. Sechehaye, in collaboration with A. Riedlinger, trans. Wade Baskin, Philosophical Library, New York 1959 (first English version).

[4] Ch.S. Peirce, *The Essential Peirce: Selected Philosophical Writings*, vol. 2 (1893–1913), Indiana University Press, Bloomington 1998.

[5] Ю.М. Лотман (J.M. Lotman), *О* Семиосфере (On the Semiosphere), "Труды По Знаковым Системам" (Sign System Studies), Tartu, 1984. In particular, this essay is contained in Vol. 17. Структура диалога как принцип работы семиотического механизма, pp. 5–23. I will refer here to the English version by J. Lotman, W. Clark, *The Semiosphere*, "Sign Systems Studies" 2005, No. 31), pp. 205–229.

[6] C.W. Morris, *Signs, Language, and Behavior*, Prentice-Hall, New York 1946.

[7] J.M. Lotman, *On the Semiosphere*..., p. 208 ("the semiosphere is the semiotic space, outside of which semiosis cannot exist"), p. 206.

semiosphere is the semiotic space, outside of which semiosis cannot exist"[8]; "only within such a space is it possible for communicative processes and the creation of new information to be realised."[9] He adds that the "ensemble of semiotic formations precedes ... the singular isolated language," and "without the semiosphere, language not only does not function, it does not exist."[10] The boundary of the semiosphere "transforms external non-communication into communications,"[11] a cultural filtering that Lotman explicitly frames by analogy with Vernadsky's biosphere/noosphere.[12] In particular, he notes that just as life on Earth gives rise to the biosphere – continually transforming inert matter – the collective capacity for human thought participates in this cosmic process. However I do not agree that the noosphere occurs when human rational activity acquires a dominant role in the process of continuous transformation of the intert matter[13]. Indeed, human rational activity has generated very deep transformations of the ecosystems, but has also produced important examples of symbiosis. For this reason, I argue that a kind of communication between humanity and the Biosphere may be very important

Understanding the relationship between humanity and the Biosphere as a communicative dynamic between humanity and the living world – based on listening and conscious feedback – leads us beyond the traditional model of a social contract[14]. Instead, it points toward an awareness that our existence is made possible by Life itself, as a cosmic phenomenon, and by the regularities of the Biosphere.

Signification and signs beyond human language

Furthermore, we must also consider forms of signification that arise beyond human language – such as signals in animal behavior or meteorological phenomena. While we are able to interpret such signs to a limited extent – for example, when reading the reactions of domesticated animals like horses – we cannot claim full understanding. Nevertheless, these are forms of communication that participate in broader semiospheric processes, even if only partially accessible to us.

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[8] *Ivi,* p. 208.

[9] *Ivi,* p. 207.

[10] *Ivi,* p. 219.

[11] *Ivi*, p. 211.

[12] *Ivi,* pp. 207–208.

[13] *Ivi,* p. 207.

[14] M. Serres, *Le contrat naturel*, François Bourin Éditeur, Paris 1990. English transl.: *The Natural Contract*, transl. E. MacArthur, W. Paulson, University of Michigan Press, Ann Arbor 1995.

These aspects ought to be deemed essential components of all philosophical problems of a normative character – namely ethical, political, and legal problems – rather than peripheral to them.

We argue, therefore, that a method of constitutional analysis focused solely on written texts overlooks the core political question: how best to organize communal life. This issue, which underpins both the construction of public law and the rationale behind constitutional design, must ultimately be linked with the broader problem of justice – a concept that transcends domains and is equally central in private law.

The political problem–the semiosphere and the Biosphere

The political problem – how we organize life in common – has historically been addressed through theories of legal order and power. Yet if we accept that constitutions are not merely written texts but part of a broader semiosphere, embedded in social practices and shaped by our position within the biosphere, then the relationship between law and power must be re-examined in legal-ecological terms. Constitutionalism, understood in this expanded sense, becomes a framework through which political power is continuously interpreted, balanced, and legitimized – not only among human communities, but also in relation to the natural systems that sustain them. This calls for a constitutional practice capable of integrating listening, reciprocity, and restraint – principles drawn not only from democratic tradition but from the awareness of our interdependence with the living world. It is in this sense that justice, law, and power must be rethought together: within an ecology of meaning, responsibility, and shared life.

Table 3. Elements of a constitution, space of confrontation, paradigms of constitutionalism

Elements of a constitution	**Space of confrontation (problem of justice)**	**Paradigms of constitutionalism**
Aims of a polity	Non cooperative: the search is of identity has a singular character	Relations between rights and policies to implement them
Principles of distribution of the influences on: society, polity, economy	(Rule of exception – non cooperative vs. rule of law – cooperative)	Relation between participation and representation
Modal principles involve the recognition of legal subjects and domains of interest, the normative strength of both law and custom, and the organizational principle that underlies institutions committed to justice and other public functions	Cooperative: international treaties and conventions, transnational cooperation	Relation between legal norms and ways in which they are interpreted applied or implemented

The interaction between the elements of a constitution as they function in practice and the principles of constitutionalism compels a decision whether we favor a cooperative role of law – that is, a rule of law – or a rule of power. This distinction leads to my thesis: reducing law to mere power is not only unnecessary but also unjustified, particularly when legal relations within the context of the interdependencies that define our existence are taken into account.

2. The Thesis: The New Paradigm of the Political Problem: Non-cooperative vs. Cooperative Forms of Life in Common

2.1. Geopolitical vs. biospheric approach to supranational cooperation

The awareness that our life, and the manifestations of our existence, unfold within the Biosphere constitutes, in itself, a value that transcends local, national, and state communities, without thereby diminishing their political or operational significance.

In this perspective I aim to show that the development of new and differentiated forms of approach to the common existence not only aligns well with the foundations of the United Nations but also enhances their effectiveness. Indeed, the Charter of the United Nations, following the direction set by the League of Nations, sought to move away from the classical geopolitical model based on the division of spheres of influence across the globe. Instead, it called for legally founded cooperation. This regional cooperation is encouraged both by the Charter and the overall stance of the United Nations.

In this context, it is important to distinguish between activities focused on maintaining peace *strictu sensu* and those of "peacekeeping," which aim to prevent the development and escalation of conflicts. The process of European integration, as well-documented historically, began and evolved as a means to eliminate the causes of conflict. Although, in later stages of its development, the European Union began participating in actions directly aimed at maintaining peace, the creation of a supranational order to achieve peace – while studied in the context of European integration – requires increasing attention.

This need for focus arises from one of the main insights of this chapter: new developments in understanding international cooperation taking into account that we are all bound in the Biosphere, may provide original and effective support for peace without resorting to force. The spread of new patterns of supranational integration or transnational cooperation could contribute significantly to eliminating the causes of conflict, a task of utmost importance in these troubled times.

The presentation of this argument requires various clarifications and explanations, which I aim to outline briefly below.

2.2. The obsolescence and the danger of the paradigm of geopolitics

On the failure to acknowledge that Earth's resources are not infinite

Human beings inhabit space, while their cultures and civilizations unfold over the course of history. The succession of climatic, civil, and social transformations – whether short- or long-term – linked to natural or human events, together with the evolution of communication and deliberative processes, challenges the concept of spatial division in favor of an awareness of mutual interdependence. I will briefly present here the traditional approach to geopolitics, as well as the more recent perspective known as "critical geopolitics"[15]. In my view, the traditional approach to geopolitics is not only obsolete but also dangerous, particularly in the age of technological society[16]. Indeed, from this perspective, we see that in the name of their global interests, dominant states often set aside the rule of law in favor of persuasion, dissuasion, and force[17]. The traditional approach to the biosphere fails to recognize that the planet we live on is a common good for everyone, dependent on delicate mechanisms that maintain the equilibrium of all its parts. Therefore, a fundamental flaw of the traditional approach to geopolitics is its failure to acknowledge that the Earth's resources are not infinite[18]. It also overlooks the fact that the processes shaping our planet are inherently irreversible[19]. The exercise of political, economic, and social power can indeed jeopardize the conditions necessary for our survival.

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[15] K. Dodds, M. Kuus, J. Sharp, *Introduction: Geopolitics and its Critics*, in: *The Ashgate Research Companion to Critical Geopolitics*, ed. K. Dodds, M. Kuus, J. Sharp, Ashgate, Farnham 2013.

[16] K. Dodds, M. Kuus, J. Sharp, *Introduction...*, esp. the framing of critical geopolitics versus classical/state-centric traditions; see also G. Ó Tuathail, *Critical Geopolitics: The Politics of Writing Global Space*, University of Minnesota Press, Minneapolis 1996.

[17] G. Ó Tuathail, *Critical Geopolitics...*, especially in relation to discursive construction of threats and authorization of exceptional practices; cf. S.Dalby, *Critical Geopolitics: Discourse, Difference, and Dissent*, "Environment and Planning" 1991, No. 3, pp. 261–283.

[18] J. Rockström et al., *A Safe Operating Space for Humanity,* "Nature" 2009, No. 461, pp. 472–475; and *Planetary Boundaries: Exploring the Safe Operating Space for Humanity*, "Ecology and Society" 2009, No. 2(14), art. 32.

[19] V. Masson-Delmotte, P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, B. Zhou (eds.) *IPCC, 2021: Summary for Policymakers*, in: *Climate Change 2021: The Physical Science Basis*. https://www.ipcc.ch/report/ar6/wg1/chapter/summary-for-policymakers (25.08.2025).

Traditional geopolitics vs. critical geopolitics

Furthermore, in my view, the traditional approach to geopolitics does not sufficiently consider the numerous lessons provided by the history of civilizations. Beyond this, it appears incapable of addressing the complex web of interdependencies that characterize our current global and technological society.

Critical geopolitics, on the other hand, focuses on the spatial dimensions of human relations. However, even in doing so, it tends to maintain an abstract approach to the fundamental conditions in which we live[20]. Therefore, we can apply the same criticism to these newer approaches as we do to classical geopolitics. However, it it important to note that some recent perspectives in geopolitics show a tendency to center human relations on our relationship with the Biosphere. In summary, my critique of both traditional and critical approaches to geopolitics is that they adopt a non-cooperative approach to the political problem.

2.3. The political problem, the common good, and the Biosphere–law nexus

Dignity and cooperation – within politics, beyond politics

Since all living beings have a psychological dimension, human beings do too. The complexity of the functions performed by human beings allows us to recognize, at the highest level of human functioning, the presence of a soul and – within the context of legally relevant functions – a notion of dignity. However, an observation of the functions carried out by all living beings throughout the development and evolution of the Biosphere reveals that they, too, manifest a certain form of dignity, related to the fulfillment of their own functions. From this perspective, the complexity of the existential expression of human life ought to be directed toward the sharing of its potential for life in common within the Biosphere – sharing that contributes to the realization of the common good, by virtue of the distinctive role played by human societies.

A central part of my thesis is the assertion that addressing the political problem at both national and transnational levels requires a cooperative attitude. In this context, it is crucial to study the relationship between the Biosphere and law. There appears to be a significant

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[20] *The Ashgate research....*

parallel between the concepts developed in geopolitical analysis and those in constitutional-political analysis.

New lines of amity?

Carl Schmitt's reflections on international law, particularly his exploration of the relationship between land and sea in *Der Nomos der Erde im Völkerrecht des Jus Publicum Europæum* (1950)[21], may be read as an attempt to limit the scope of war, yet they prove clearly insufficient. His conclusion that "Historically speaking, new amity lines are on the agenda. But it would be unfortunate if they were to be achieved only through new criminalizations" remains unresolved. The pressing question is what kinds of new "enemies" might emerge within such a framework. This approach reflects a traditional view of geopolitics, whereas critical geopolitics aligns more closely with the reflections of Michael Hardt and Antonio Negri in *Empire*[22].

Hardt and Negri highlight, among other things, the emergence of a power that transcends states and affects people's lives. This "biopower," a concept whose formulation and development have been influenced by Michel Foucault[23], exists within the framework of the *Empire* (See Hardt-Negri) but, like the Roman Empire, also signifies its decline. It cannot be adequately described using state-centric categories. The police-based solution to supranationality, following Hobbes's model, and the balance-of-power approach aimed at global constitutionalism, following Locke's paradigm, are both insufficient.

Between hierarchical and systemic power

Instead, the power that emerges is a blend of hierarchical power, as described by Kelsen[24], and systemic self-reproducing society and legal order through structural couplings as described by Luhmann[25]. The production of such interactions, both operative and structural, relate the system to power. Such connection is manifested within the institutions of the

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[21] C. Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, trans. and annot. G.L. Ulmen, Telos Press Publishing, New York 2006; original German edition – 1950.

[22] M. Hardt, Negri A., *Empire*, Harvard University Press, Cambrigde, Ma. 2000.

[23] M. Foucault, *Naissance de la biopolitique. Cours au Collège de France (1978–1979)*, ed. F. Ewald, A. Fontana, M. Senellart, Hautes Études Gallimard Seuil 2004.

[24] H. Kelsen, *General Theory of Law and State*, trans. A. Wedberg, Harvard University Press, Cambridge, MA. 1949, copyright 1945.

[25] N. Luhmann, *Law as a Social System*, trans. K.A. Ziegert, Oxford University Press, Oxford 2004; esp. Chapter X and XI.

capitalist economy, though in a society of control where power is distributed throughout the people and the "ganglia of the social structure"[26]. Power is exercised by assigning it a value that is universal and timeless. This power is wielded through machines that, in turn, alienate human beings. Its focus is the production and reproduction of life itself. When power penetrates so deeply into society that the latter becomes virtual, events can no longer be mediated by the state through civil society. Indeed, the manifestations of power take on an extreme character of both "plurality" and "singularity"[27]. In this process, a new proletariat is formed. The proposed solution is the pursuit of a new struggle by the "multitudes," involving the re-appropriation of an ideology that unites philosophy and language, and ultimately, of their constituent power[28].

I cannot discuss all the arguments presented here, but I wish to indicate that, from my perspective, both the approach and the proposed solution appear unsatisfactory. One theoretical reason is that this framework fails to generate tools capable of moving beyond the traditional boundaries of the "theory of the state." The concept of constituent power articulated seems to be tied to the same theological foundations of natural law used by Abbé Sieyès, according to whom: "La nation existe avant tout, elle est l'origine de tout. Sa volonté est toujours légale, elle est la loi elle-même. Avant elle et au-dessus d'elle il n'y a que le droit naturel" (The nation exists before everything; it is the origin of everything. Its will is always legal; it is the law itself. Before it and above it there is only natural law)[29]. Furthermore, ongoing conflicts – in Russia and Ukraine, in the Middle East, and beyond – tend, as critical geopolitics shows, to treat populations as pawns manipulated by others rather than as agents expressing the foundational popular will on which public law rests. These cases call for a conception of power not reducible to conflict.

The culture of being and its crisis

My core reason for criticizing these two theories – among others – is that they do not adequately integrate the metaphysical – and, by extension, the psychological and spiritual – dimensions of human beings and, to some extent, of living beings more broadly. In both Schmitt and Hardt–Negri, analysis is framed within immanent, this-worldly accounts of power and production rather than a metaphysical or spiritual

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[26] M. Hardt, A. Negri, *Empire...*, p. 24 *passim*.

[27] *Ivi*, p. 103.

[28] *Ivi*, p. 47.

[29] E.-J. Sieyès, *Qu'est-ce que le Tiers-État?* Édition *critique, précédé de l'Essai sur les privilèges, avec une introduction d'Edme Champion*, Société de l'Histoire de la Révolution Française, Paris 1888, p. 67.

anthropology. In Schmitt, the concepts of the political and sovereignty tend to narrow the horizon of legal order to the self-assertion of a collective "we" over an enemy; internally, law risks being reduced to decision[30]. In such a perspective, human dignity – as a fundamental attribute that ought to be recognized – loses traction across groups and with heterogeneous subjects such as communities, other living beings, and the natural world. In Hardt and Negri, the self-referential character of Empire is pushed to a high point: wealth creation tends toward biopolitical production that fuses economic, political, and cultural dimensions, a tendency that acknowledges no boundaries in time or space; Empire thus appears as an order that effectively suspends history[31].

In contrast, I advocate an anthropological perspective that defines the human being by what it is, not merely by what it has or controls – a distinction developed by Erich Fromm[32] and foreshadowed in Meister Eckhart[33], in which humanity is understood as humility and an openness that leads beyond the passions toward God[34]. This "culture of being" resonates with Renaissance humanism – especially Pico della Mirandola[35] – who grounds dignity in the human capacity to become, to shape one's own being, rather than in possession; dignity is thereby linked to choice, will, and the freedom that flows from personhood[36]. Renaissance thought is crucial here. Bernardino Telesio argues that nature constitutes an autonomous order, independent of human imagination and desire; it resists arbitrary imposition and must be taken as it is[37]. At the same time, the action of God must be acknowledged as absolutely universal[38]. Here human sensibility is fundamental: according to Telesio, it is through sensibility that the human being connects with nature and belongs

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[30] C. Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. G. Schwab, MIT Press, Cambridge, MA. 1985; first German edition: 1922; C. Schmitt, *The Concept of the Political*, expanded ed., trans. G. Schwab, University of Chicago Press, Chicago 2007, first book edition: 1932.

[31] M. Hardt, A. Negri, *Empire...*, *p. xiv*.

[32] E. Fromm, *To Have or To Be?,* Harper & Row, New York: 1976.

[33] Hochheim 1260 – Avignon? 1328.

[34] M. Eckhart, *The Complete Mystical Works of Meister Eckhart*, trans. and ed. M. O'C. Walshe, rev. with a foreword by Bernard McGinn, The Crossroad Publishing Company [Herder & Herder], New York 2009, pp. 561–562.

[35] Mirandola 1463 – Florence 1494.

[36] G. Pico della Mirandola, *Oratio de hominis dignitate*, Brown University "Pico Project", https://www.brown.edu/Departments/Italian_Studies/pico (2.09.2025).

[37] Cosenza, 1509–1588.

[38] N. Abbagnano B., *La filosofia naturale. Telesio* in: *Storia della filosofia,* Vol. 2. *Il pensiero medievale e rinascimentale: dal misticismo a Bacone*, Gruppo Editoriale L'Espresso, Novara 2006 (reference edition: Turin 1993), p. 639.

to it[39]. Let us move toward an ecology of the Biosphere grounded in attentive listening. Metaphysics, then, is not abstract; it conjoins listening to nature with our being within it. For Bruno, God is the universal intellect – "the first and principal faculty of the world" – and the immanent artisan of nature; acting within matter, he is not multiplied by the multiplication of things. Hence Bruno affirms the universal animation of beings, reviving ancient doctrines that regard nature as a vast living animal[40]. We therefore stand between Gaia and the Biosphere, where listening to nature springs from love of it – one of the Renaissance's defining traits[41]. By contrast, Tommaso Campanella[42] moves decisively toward modernity, despite his interest in magic, insofar as he seeks to dominate and subjugate nature[43]. Indeed, in Bacon as in Descartes, philosophy was not to be merely speculative but also practical, enabling human beings to make themselves "masters and possessors of nature": being in nature turns into possessing nature[44].

From personalism to the present approach to the being in society

The shift from a culture of possessing to a culture of sustaining nature and society makes it possible to bring together modernity and tradition. It is also, in a certain sense, aligned with personalism. Mounier sees the person as a subject who liberates – and, in liberating himself, also frees nature. In this process, nature is the precondition of human life, which the person transcends without negating. Thus the history of nature becomes part of the history of humanity, since from the dawn of life on Earth the elements and their formation and growth have prepared today's developments[45]. The human being is thus aware of its life within nature. In Maritain, the spirit of service moves common life beyond conflict; given his view of the human as embodied in nature, this is compatible with a cooperative stance toward the natural world[46]. Gandhi's civic ethics of self-rule and constructive work, grounded

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[39] *Ivi,* p. 644.

[40] N. Abbagnano, *Bruno e la religione della natura*, in: N. Abbagnano, *Storia della filosofia*..., p. 655.

[41] *Ivi*, p. 652.

[42] Stilo 1568 - Paris 1639.

[43] N. Abbagnano, *Campanella: la conoscenza di sé*, in: N. Abbagnano, *Storia della filosofia*..., p. 679:

[44] N. Abbagnano, (Descartes) *L'unità della ragione* in: N. Abbagnano, *Storia della filosofia,* Vol. 3: *Il pensiero moderno: da Cartesio a Kant,* Gruppo Editoriale l'espresso, Novara 2006 (reference edition: Torino 1993).

[45] E. Mounier, *Le personnalisme*, Presses Universitaires de France, Paris 1949. The work can be found in: E. Mounier, Œuvres, Vol. III, 1944–1950, Éditions du Seuil, Paris 1962, pp. 443–444 *passim*.

[46] J. Maritain, *The Person and the Common Good*, "The Review of Politics 8" 1946, No. 4, pp. 419–455, esp. 423, 431, 437, 450.

in the fulfilment of duties, in the search for harmony through awareness of unity, and in simple living in harmony with nature, offers an important approach to non-conflictual being[47]. In the same vein, Amadou Hampâté Bâ's Sufi-inspired account of community presents being as grounded in love and non-violent self-mastery, and proposes tolerance and reconciliation as its social form[48]. Literary approaches such as the ethics of compassion in Russian literature are also worth considering. An important locus for a "quality of being" grounded in empathy is Dostoevsky's *The Idiot*, where Prince Myshkin embodies a non-retaliatory, listening compassion[49]; Kurosawa's *Hakuchi* (*The Idiot*, 1951) translates this ethic to film. In contemporary Catholic social teaching, Pope Francis's call that "unity prevails over conflict" and his appeals to fraternity and care for our common home point in the same non-conflictual, empathetic direction[50].

Another important approach is the one of European pragmatism to life in common. Spinelli and Rossi, with the contribution of Colorni, wrote a Manifesto for a free and united Europe[51], with a pragmatic aim to overcome national ideology and conflicts. In this sense the federal program tries to show that a rational and critical spirit demands that the roots of the conflicts be combated. The federal approach to Europe has been the most well-known and successful proposal to the problem. Indeed, also Churchill's[52] and French foreign minister Schuman's[53] approach to Europe seemed to adopt a similar perspective, although somehow affected by national ideology. However, one shall recognize that the colonial history of the authors in question shared with Spinelli and Rossi a feeling that not only the human being, but the social being and the cultural being manifested an existence that went beyond nations. This became particularly evident

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[47] M.K. Gandhi, *Hind Swaraj; or, Indian Home Rule*, Navajivan Publishing House, Ahmedabad 1938, *passim*.

[48] A. Hampâté Bâ, *Vie et enseignement de Tierno Bokar: le sage de Bandiagara*, Éditions du Seuil, Paris 2004.

[49] F. Dostoevsky, *The Idiot*, trans. R. Pevear, L. Volokhonsky, Vintage, New York 2003, esp. Part I, chapters 5–7 (Marie episode); Part III, chapters 5–8 (Ippolit).

[50] Evangelii gaudium (2013), §§226–230; Laudato si' (2015).

[51] A. Spinelli, E. Rossi, *The Manifesto of Ventotene: For a Free and United Europe. A Draft Manifesto*, CVCE/ University of Luxembourg 1941, https://www.cvce.eu/en/obj/the_manifesto_of_ventotene_1941-en-316aa96c-e7ff-4b9e-b43a-958e96afbecc.html (19.08.2025). Original text: A. Spinelli, E. Ross*, Per un'Europa libera e unita. Progetto d'un manifesto (Ventotene, 1941). Istituto di Studi Federalisti "Altiero Spinelli"* (19.082025).

[52] W. Churchill, *Address given by Winston Churchill*, Zurich, 19 September 1946, CVCE.eu by UNI.LU, transcript of the speech delivered at the University of Zurich, 19 September 1946.

[53] R. Schuman, *The Schuman Declaration* (Paris, 9 May 1950), CVCE.eu by UNI.LU, text of the declaration delivered in the Salon de l'Horloge, French Foreign Ministry, 9 May 1950 (19.08.2025).

in the approach of Józef Tischner, who sought to prevent national conflicts by calling on all parts of society to engage in dialogue as a form of solidarity. The recognition of other persons as beings, along with the broader acknowledgment of a shared national and cultural identity, made the proposal relatively successful[54].

Habermas's approach seems rather pragmatic; following the constitutionalization of the process of European integration, it invites people to dialogue basing upon "constitutional patriotism". However, in this case the being appears to shift in the communication and language reality. This approach does not allow for a foundation of the essence of law, which requires posing the question of how we can live in common, but it delivers the possibility to bring the metaphysical problem of law and of collaboration between peoples and legal orders, within the political discourse[55].

For this reason, the study of the discourse becomes of growing importance. This is seen in Lotman's cultural-semiotic account of the semiosphere as the prior cultural space within which communication is of special significance. Indeed, through this approach more information may be highlighted and new information emerges[56]. A similar stand is presented in Morris's take on pragmatics linking sign-use with conduct and effects[57].

My effort to move beyond a conflict-centered perspective is motivated by an understanding of human dignity, which finds expression in the willingness to make one's resources available to others. This orientation leads to a theory of political power centered on the provision of services for the common good.

Anchoring law in the shared needs of humanity

The reason I focus on the biosphere is to ensure that law remains anchored in the objective, namely the shared needs of humanity. Without safeguarding the biosphere, the environment that sustains our lives may deteriorate. As ecosystems change, the likelihood of wars over resources, large-scale migrations, and natural disasters increases. In such a context, where people are driven by the need for survival, a materialistic attitude could ultimately

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[54] J. Tischner, *Etyka solidarności*, Znak, Kraków 1981. English version: J. Tischner, *The Spirit of Solidarity*, trans. M.B. Zaleski, B. Fiore, Harper & Row, San Francisco 1984.

[55] J. Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. W. Rehg, MIT Press, Cambridge, MA. 1996, esp. pp. 492–501, 151–152, 170, 188–189, 466 above.

[56] J.M. Lotman, *On the Semiosphere*..., esp. p. 219.

[57] C.W. Morris, *Foundations of the Theory of Sign*s, International Encyclopedia of Unified Science, Vol. 1, No. 2, University of Chicago Press, Chicago 1970 (first edition: 1938), available at archive.org. See also C.W. Morris, *Writings on the General Theory of Signs*, Mouton, The Hague 1971. pp. 42–48 (sec. "Pragmatics").

lead to individuals surrendering their existence to power, as described in Hardt and Negri's concept of "biopower."

Furthermore, my approach is justified by the belief that confining law to merely supporting the interests of one party in a legal relationship weakens its role as an autonomous tool for preventing conflicts and guiding our actions toward the common good.

2.4. Toward a new cooperative supranational approach

Biospheric rule of law vs. biopower

If one wishes to implement the principle of the rule of law in a substantive sense, one must take into account the reality of our shared existence within the Biosphere and the relationship between natural resources and common life. An increasing reliance on resources, accompanied by the growing concentration of technological and organizational structures, ultimately serves to reinforce biopower – that is, the influence of such structures over bare life. In this regard, it is important to consider that the concept of the Anthropocene can also be associated with the control of unqualified biological life (that is, life reduced to mere existence), exercised through the institutions of biopower, particularly those of technological society. This control risks extending to the entire system of living beings, potentially influencing even the fundamental regularities of the Biosphere. From this arises the interest – also within constitutional theory – in reflections such as those of Georgescu-Roegen, which underscore how the self-organization of the Biosphere may be endangered by a mode of resource use that fails to recognize the fundamental legal significance of observations and affirmations according to which humanity originates from nature.

On the importance of the state for conceiving and implementing supranational values

The development of my thesis considers the implications of my approach for supranational cooperation processes as well as trans-regional forms of cooperation between different areas of integration. While the importance of choosing appropriate transnational forms of cooperation is emphasized, this does not diminish the political significance of the State. Instead, it acknowledges that the development of life, both biological and social, should be viewed as a dynamic process characterized by its current state as well as its potential for transformation.

In this context, the statement by Altiero Spinelli and Ernesto Rossi in "Il Manifesto di Ventotene" that "a European federation is the only conceivable guarantee that relationships with American and Asian peoples can exist on the basis of peaceful cooperation" should be understood in light of the fact that human-organized life is also a process, where new elements emerge and others fade away[58]. As a brief commentary on this statement, it is worth noting that in the transition from antiquity to modernity, certain structures of the ancient state persisted for a significant period and did not immediately vanish with the emergence of the modern state. While history has indeed seen periods where new trends emerged and developed rapidly, it is essential to recognize the importance of the coexistence of diverse forms of social organization and the differentiation among them.

Consolidation of powers vs. freedoms

We can say that in some periods we observe the expansion of freedom, while in others we see the consolidation of certain positions of power[59]. However, this does not mean that when certain positions of power consolidate, freedoms become less important. On the contrary, especially in such moments, we witness a proliferation of theoretical reflections and political initiatives aimed at exploring the essence of freedom and the limits of political power. Conversely, when freedoms expand, important questions arise regarding the possible limits of such expansion and the consequences of ongoing transformations. Mainstream political and constitutional theory – even after the transformations of 1989 and the subsequent constitutional developments and crises, whose illiberal nature has been described in various terms – continues to reflect a monistic approach. This approach is grounded in the rule of law, conceived more as an ideal type than as an adaptive framework capable of responding to crises with innovation and renewal.

In this view, the "rule of law" tends to be treated as an abstract and apodictic paradigm. Even when it declares aims such as the protection of the natural environment, it often fails to integrate them into a dynamic legal structure. As a result, despite the increasing importance of environmental issues in public discourse, philosophy, and religious thought, constitutional systems frequently struggle to address them effectively. Rather than acting as listening instruments that adapt to emerging realities, constitutions often remain declarations of principle, unable to systematically incorporate new ecological imperatives.

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[58] A. Spinelli, E. Rossi, *Manifesto di Ventotene*....

[59] P. Policastro, *On the Descriptive and the Prescriptive Nature of the Constitution. Constitutionalism and the Legitimisation of the Constitution in the Practice of its Implementation*, in: *The Theory and Practice of Legislation. Essays in Legisprudence*, ed. L.J. Wintgens, Aldershot, Ashgate, 2005, pp. 162–186.

This tendency should be critically examined. It overlooks the fact that law inherently confronts the question of nature's supremacy over human beings – without being able to fully resolve it. The challenge is thus twofold: it lies both in the inertia of societies to respond quickly to environmental signals and in the limits of legal systems themselves.

Nature and international law

While instruments such as the 1982 World Charter for Nature – which states that "Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems"[60] – clearly articulate this relationship, they have not led to significant developments in international law. Similarly, the 1972 Stockholm Declaration (framed around the "human environment")[61] and the 1992 Rio Declaration (Principle 1: "Human beings are at the centre of concerns for sustainable development")[62] employ formulations that retain important ambiguities

In addressing these challenges, law must seek viable solutions for coexistence. By this, I mean that legal frameworks should take into account the complex interdependencies at stake. Not only do domination and hegemony in the postcolonial world hinder the protection of fundamental aspects of human existence, but so too does the rise of technological and post-national societies dominated by large corporations. These forces contribute to profound imbalances that affect both human communities and natural systems. From this perspective, expanding constitutional attention toward the Biosphere appears entirely legitimate – as I shall gradually demonstrate. This necessitates a pluralistic approach, particularly in finding better modes of coexistence with nature. This requires an adequate approach to the political problem. In this perspective, I have expressed my criticism of Carl Schmitt's solution, which reduces the political problem to the friend-enemy dichotomy, even in the sphere of transcontinental relations. Similarly, I take a critical view of the solution proposed by Antonio Negri and Michael Hardt, who attempt to reduce the global political problem to class struggle.

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[60] United Nations General Assembly, *World Charter for Nature*, 28 October 1982, A/RES/37/7, Preamble, recital (a): "Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems...".

[61] United Nations, *Declaration of the United Nations Conference on the Human Environment* (Stockholm, 5–16 June 1972), A/CONF.48/14/Rev.1, esp. Principle 1 and the title phrase "human environment."

[62] United Nations, *Rio Declaration on Environment and Development*, Rio de Janeiro, 1992, A/CONF. 151/26 (Vol. I). Principle 1: "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature".

I do not intend to deny the importance of deliberation and decision-making processes, nor the value of integrating them into a well-tempered system of governance. In principle, all the various institutional and political solutions that have emerged over time – through social, political, and economic evolution – deserve to be considered carefully, even if only to be critically examined.

However, even when I express support for such models, they must not be treated as absolute unless there is sufficient evidence regarding their impact on broader interdependencies – those that extend beyond the state system or, in the case of the European Union, beyond supranational structures. Such evidence should not be drawn solely from the assumptions of a single scientific discipline, theory, or modeling framework. Rather, it must incorporate insights from political processes and institutional decision-making.

In other words, the significance of any solution aimed at resolving problems related to coexistence on a finite planet can only be fully grasped when viewed from multiple perspectives – while giving institutional factors their due importance. I aim to gradually develop this thesis in the present and following chapters.

Communal life, bioeconomics, biopower

Since the phenomenon I wish to examine is the communal life of societies – specifically, the political problem as it unfolds within our common home, the Biosphere – I cannot do so without reflecting on the very meaning of life itself. From an economic point of view, the renowned Romanian economist Nicholas Georgescu-Roegen raised the issue of how to develop an economic model that would allow human civilization to exist without depleting the planet's resources. His approach, which he called bioeconomics[63], emphasizes placing what we now call sustainability at the heart of economic thought.

This vision bears little resemblance to the concept of biopolitics, which concerns the extension of power over the biological life of individuals – as discussed by thinkers such as Foucault, Agamben, and Hardt and Negri. Instead, I propose that the sustainability of ways of life in symbiosis with nature may represent a way to liberate ourselves from biopower.

Georgescu-Roegen's approach has gained significant support outside the field of economics, notably among scholars who developed the Gaia hypothesis (such as Lovelock)[64]

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[63] S. Ferrari, Éthique *et bioéconomie chez Nicholas Georgescu-Roegen*, "Cahiers d'économie politique" 2021, No. 79(1), pp. 213–242, https://doi.org/10.3917/cep1.079.0213 (20.08.2025).

[64] See J. Lovelock, *Gaia. A New Look at Life on Earth*, Oxford, Oxford University Press 1979, p. 117 and its reference to the limits posed by entropy. See also J.M. Gowdy, *GAIA and Technological Utopianism:*

and Stephen Jay Gould, whose research made substantial contributions to evolutionary theory[65]. We consider this approach fundamental, even though it has not yet been embraced by mainstream economics, as it addresses an issue deemed crucial by various scientific perspectives. This issue involves identifying the best conditions for the flourishing of human life on Earth. Since I see no reason to dismiss the relevance of this approach to law, I consider my interest in it legitimate, especially given that I am not aware of any other legal scientific approach that treats this issue as a key problem.

Georgescu-Roegen advocates reorienting the economy toward a viable model by reducing waste, curbing excess, and addressing unsustainable disparities in living standards. He underscores a strong connection to rural life as part of this vision. This perspective offers a compelling argument in support of my objective: to emphasize both the importance of pluralism and differentiation in proposed integration processes, and the universalist foundation of nations' duties toward the common good – duties that arise from these very principles.

2.5. A holistic transnational transformation of law: toward a new foundation of constitutionalism

Human dignity and the relations between humanity and the surrounding world

Human dignity is also expressed through participation in shaping our relationship with nature. Life, through the energy of the sun, transforms that energy into chemical energy – an operation which, within the context of the Biosphere, gives rise to phenomena of self-organization. The dignity of human beings is further manifested through their actions directed toward the surrounding world. In particular, human actions are characterized by the use of exosomatic organs, through which humans can consume energy and resources at a rate faster than the Biosphere's capacity to regenerate them. In light of this general problem, a cooperative and inclusive attitude at the transnational level appears necessarily called upon to play a fundamental role.

It is crucial to consider the substantive and institutional implications of the principle just discussed for the development of my thesis. As I have emphasized in my general

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Comment on De Gregori, "Journal of Economic Issues" 1987, No. 1(21), pp. 473–476, http://www.jstor.org/stable/4225845.

[65] S.J. Gould, *The Golden Rule – A Proper Scale for Our Environmental Crisis*, "Natural History" 1990, Vol. 99, pp. 24–30, as quoted in: J. Gowdy, S. Mesner, *The Evolution of Georgescu-Roegen Bioeconomics*, "Review of Social Economy" 1998, Vol. LVI(2), pp. 136–156, especially: p. 151 footnote 10.

reflections, the participatory approach – aimed at pursuing the common good through transnational cooperation – affects the entire spectrum of constitutional norms. This participatory orientation is itself an expression of human dignity. Consequently, the objectives of international treaties, the constitutional elements embedded within those treaties, and national constitutional rules (including goals, distributive principles, and modal principles) must be taken into proper account. Moreover, the effects of transnational and supranational policies should be assessed through the lens of constitutionalism.

For this reason, I believe it is appropriate, at this stage of the analysis, not to examine the influence of this participatory orientation on each constitutional rule individually, but rather to evaluate these developments in light of the broader paradigms of constitutionalism. As previously noted, cooperative supranational integration can help overcome the conflictual foundations upon which many traditional constitutions were historically built.

Participation, nature, constitutionalism

Nevertheless, directly taking the biosphere into account may open the way for meaningful connections between law and the evolutionary path of the human species. This perspective could prove crucial in determining the most effective patterns of institutional development.

Let us begin with a very general definition of law: a discipline that regulates how societies define their goals and how they seek to achieve them in practice. These goals are intrinsically linked to survival and development – not only in relation to internal and external social, economic, and political challenges, but also in response to natural and climatic challenges. This underlying motivation has led humans to develop not only physical tools, but also non-material ones – among them, law – to coordinate action and regulate coexistence.

One of the factors that drives contemporary societies toward conflict is the tendency to use natural resources solely to pursue their own ends.

As Georgescu-Roegen emphasized, these resources are unevenly distributed and unequally appropriated[66]. Such resources feature a low entropy, since they derive from long processes of transformation of solar energy into chemical energy. Once used, however, such resources create different waste, in the form of matter and energy, which are difficult to be used[67]. This capacity of human beings arises from the fact that, unlike other living beings, they do not rely solely on their bodily organs (endosomatic organs) but also on external

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[66] N. Georgescu-Roegen, *Inequality, Limits and Growth from a Bioeconomic Viewpoint*, "Review of Social Economy" 1977, Vol. XXXV(3), p. 361.

[67] N. Georgescu-Roegen, *The Entropy Law and the Economic Process*, Harvard University Press, Cambridge, Ma. 1971, pp. 21, 278, 307 *passim*.

tools and devices (exosomatic organs) designed to enable greater accumulation and utilization of resources without depleting their personal energy. In this regard, Georgescu-Roegen builds on the work of theoretical biologist Alfred Lotka[68]. Consequently, the struggle for life, which characterizes all species and is focused on securing easily consumable resources, manifests itself for humans in various forms of conflict. While Georgescu-Roegen refers to social conflict, we can also argue that war – regardless of its origin – is ultimately directed toward the appropriation of natural resources. This occurs through the appropriation or control of resource sources in the form of wealth funds, or through the flow of wealth, as seen in market exchanges[69].

Law is one of the exosomatic tools that enable the appropriation of natural resources. Humans have produced legal systems to organize their collective needs and services, ensuring both internal and external security as well as the adequate protection of their legal assets. As a result, highly sophisticated external tools, such as the State, have evolved. However, the historical use of these exosomatic tools has led to significant resource dissipation. Warfare and the control over people and territory to secure natural resources have resulted in large-scale destruction of spiritual, cultural, and material resources.

Legal and political values vs. The Anthropocene

The tools I seek to address in this state of affairs – often referred to as the "Anthropocene", which reflects the intrinsic relationship between humanity and nature – must be sophisticated enough to address human needs across different nations and cultures. Moreover, these tools must motivate individuals, societies, states, and international organizations to reduce energy dissipation in the form of unnecessary and dangerous conflicts by adopting a cooperative attitude. The development of such tools through law should aim to foster the free and independent awareness of individuals and their communities, guiding them toward cooperation. This cooperation must stem from personal experience and a deeper consciousness, rather than from social engineering or mechanisms tied to the control of bare life. Indeed, the conflict inherent in such mechanisms often leads to further dissipation of resources.

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[68] A.J. Lotka, *The Law of Evolution as a Maximal Principle*, "Human Biology" 1945, Vol. XVII, p. 188, as quoted in N. Georgescu-Roegen, *The Entropy...*, p. 307.

[69] N. Georgescu Roegen, *Inequality, Limits...*; P. Policastro, *Constitution and Conflict Regulating Regional Interdependencies through Society-based Supranationality as a Path for the European and Mediterranean Transformation*, in: *Costituzione - Economia - Globalizzazione*, *Liber amicorum in onore di Carlo Amirante*, Edizioni Scientifiche Italiane, Napoli 2013, pp. 1467–1493. Now, in a modified version in Chapter 3 of the present work.

Based on the proposed arguments, it is legitimate to evaluate the impact of these legal tools on reality through the lens of constitutionalism, as the paradigms of constitutionalism are designed to balance law with values essential to our existence. Therefore, I will focus on select legal tools that could best promote cooperative transnational and supranational behavior. These include:

1. Policies aimed at rebuilding coexistence in areas where economic and social exploitation has led to extreme natural and social impoverishment, thereby enhancing the protection of individuals by reversing the trend of resource dissipation.
2. Policies designed to facilitate communication between different levels of government and between institutions of various societies, ensuring the development of parallel and coherent legislation.
3. Policies aimed at promoting global justice, with a particular emphasis on legal education to raise awareness of the benefits of a cooperative attitude.

The importance of this task lies in the fact that these policies should be implemented regardless of the economic means of each community.

Learning, adapting, constitutionalism

The fundamental consideration behind the choice of such institutional development is that the evolution of the human species is boasts a marked learning ability, allowing us both to adapt and to modify our environment. This learning ability suggests an isomorphism between the biosphere and the network of synapses in the human brain. This isomorphism is significant not only for knowledge but also because it suggests that humans can positively influence entropy in the biosphere. With this in mind, we aim to investigate and analyze the principle of cooperative transnational and supranational integration, both on its own and in its components.

The ability to comprehend the biosphere, to include it in our consciousness, may enable us to create mechanisms that support the processes through which the biosphere can regenerate and develop resources with low entropy. Such processes, when implemented through law, would effectively become "exosomatic organs 2.0", allowing us to reach a new level of human coexistence. To explore the potential development of these tools, we must analyze how the biosphere, through the evolution of our consciousness and communication, relates to our technosphere and how this relationship can become a central focus of legal studies.

Recapitulating:

Table 4. Non-cooperative (geopolitical) and cooperative (biospheric) approach to the global order

Structure of the Problem	Reference Paradigm	Proposed Paradigm
The Problem: a legally sustainable global order	Paradigm 1: Geopolitics (classical and critical approach)	Paradigm 2: Biosphere addressed attitude
Scholars' position in the theory of the public law	Carl Schmitt (Der Nomos der Erde), Michael Hardt and Antonio Negri (Empire)	Pasquale Policastro – The Constitutional Law of Biosphere (the present chapter)
The fundamental scientific assumption on sovereignty	Common life made possible through power: law stems from an exceptional power (a paradigm, which is very strong – see Kelsens' Grundnorm)	Common life made possible through services addressed to the common good: law aims to regulate human interdependences with nature and others. See the differences with "Leistungstaat". We aim at participative services accessible independently from the economic conditions of the States
The fundamental scientific assumption	Supranational power through control of big spaces (along lines of friendship – enmity) Supranational power as biopower (power-exercised human life – see also M. Foucault)	New kind of supranationality: Cooperation beyond national borders according with differentiated and pluralistic patterns as an expression of a fundamental duty of the nations (and of the individual) to address the common good
The fundamental anthropological assumption	Materialism: existence as a form of having (Haben: see E. Fromm) – the societies pursue, together, material goods. Conflicts based on resources	Spiritualism: existence as the manifestation of being – Sein: see E. Fromm, of the innate dignity of human beings
Conception of human rights backing the theory	Rights are assumed as analogous to property (see Tawney): consequence the more rights I have the better it is; this is an excluding theory of rights	Rights as a manifestation of the protection of the various expressions of human existence (see P. Policastro in Studi Arcidiacono)
Time frame reference	Modernity – post modernity	All evolutionary patterns of the planet
Space frame reference	Nations that are in the condition to display power may also exercise power	The common good is addressed to all the nations
Critical points	An abstract theory of power, of law and of rights, which is not sustainable	The need to postulate an inner change of the human person
Relation of each paradigm to other theories	Monistic – the implementation of the paradigm depends on power	Pluralistic: the implementation of the paradigm depends on necessity

3. The Analysis: Biosphere, Common Duties, and Pluralism

3.1. On the paramount legal importance of the Biosphere

Life in common and law require the Biosphere

The legal question would have little meaning if there were no Biosphere capable of generating patterns of regularity sufficient to sustain the development of life – and, in particular, of human civilizations – especially considering the difficulties that such development has faced since its very origins, as evidenced by studies in paleontology, paleoanthropology, and archaeology. It must be acknowledged that our existence is not an end in itself and therefore requires an environment in which life can be sustained – an environment that we are indeed capable of modifying, though not necessarily in ways that are favorable to human life. It is true that the Cartesian call for a science directed toward "techne" – that is, practical know-how aimed at addressing the immediate needs of human society – has led to significant technical progress. Yet this has come at the cost of raising increasingly complex problems, which now threaten the very regularities of the Biosphere – figuratively, the womb within which human life and culture can unfold. If individual awareness of these dynamics is indeed essential, our shared existence within the Biosphere calls upon both States and legal thought to engage in a deep and adequate reconsideration of their responsibilities.

I would now like to develop my argument by posing a few questions: Do we truly need to consider the biosphere when discussing the relationship between human beings and space? To what extent is this relationship legally relevant? What is the connection between the biosphere, which seems to be a naturalistic concept, and the common good, which is more evidently tied to collective choices within a polity?

The classical approach to geopolitics, as seen in the work of Carl Schmitt, did not account for the possibility that land, sea, and air might be interconnected in a system-based network that sustains life. Similarly, Hardt and Negri's approach focuses on the appropriation of human life by power (biopolitics) but does not address the conditions that allow life to exist and thrive without disorder, conflict, or unnecessary scarcity.

The role of law in establishing borders vs. the Biosphere – Vernadsky and Kuhn

The legal and political principles that have traditionally underpinned geopolitics have emphasized the role of law in establishing borders and delineating spheres of influence, considering power in an abstract way. The argument that these conceptions neglected the Biosphere because it is a relatively new concept, formulated by Vladimir Vernadsky in the early

20th century, is unconvincing. Rather, this neglect seems to result from a long-standing trend of thought that views the Earth's resources as objects of appropriation rather than as common wealth to be respected and managed for the benefit of all people, both present and future generations.

Even the most recent approaches to geopolitics, such as those considered by Rifkin, acknowledge the existence of the Biosphere primarily as a policy objective – albeit an important one – rather than as a foundational reality. The recognition that we live within the Biosphere has not yet led contemporary theories to internalize the fact that we live thanks to the Biosphere. This understanding is not merely an assumption but, in my view, a fundamental starting point for any legal analysis and thus deserves an appropriate legal framework.

To provide a concise summary of Vernadsky's contribution to the concept of the Biosphere and its importance for law, we should begin with the notion of scientific revolution as proposed by Thomas Kuhn[70]. If we can demonstrate that understanding the Biosphere as a dynamic concept encompassing all the space of our Earth constitutes a major scientific revolution, then we have strong grounds to argue for its significance in the legal realm. This argument may be supported by showing that the Biosphere and its components include many essential dimensions of human existence, which are closely related to the expression of human dignity.

As has been noted, Vernadsky was the first scholar to draw the conclusion that life occurs within a self-contained sphere[71]. These conclusions may be seen as laying the groundwork for a holistic approach to law that connects the various components of the biosphere with legal interdependencies.

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[70] T.S. Kuhn, *The Structure of Scientific Revolutions*, 2nd ed., enlarged, University of Chicago Press, Chicago 1970, International Encyclopedia of Unified Science, vol. 2.

[71] V.I. Vernadsky, *The Biosphere*, Complete Annotated edition, Copernicus (Springer Verlag), New York 1998 [first ed. 1926: Биосфера, Ленинград] (Foreword: L. Margulis, M. Ceruti, S. Goluabic, R. Guerrero, N. Ikeda, N. Ikezawa, W. E. Krumblen, A. Lapo, A. Lozcano, D. Suzuki, C. Tickell, M. Walter, P. Westbroek; Introd. J. Grinevald; transl. D.B. Langmuir; rev. and ann. M.A.S. McMenamin). See Foreword p. 15.

3.2. The dynamic consciousness of the Biosphere and the law of interdependencies

Three levels of interdependence – choices and transformation

Our life takes shape and unfolds within the Biosphere. It is therefore necessary to consider at least three levels of interdependence. The first, and most fundamental, is the interdependence between human societies and the Biosphere, which constitutes the very precondition for life. The second level concerns the legal dimension of interdependencies among human societies, broadly understood to include norms, customs, and social practices, insofar as they reflect an awareness of the bond that links humanity to the Biosphere. The third level refers instead to forms of interdependence that develop in the absence of such awareness. This level concerns, in particular, technologically advanced societies and the actors who participate in them – including, to a significant extent, conglomerates of transnational corporations and those forms of economic relations – such as certain types of trusts – which largely escape the regulatory reach of nation-states, contributing to the opacity and fragmentation of legal responsibility at the global scale. It must also be acknowledged that communities and political societies not organized around the dominant model of technological society represent, from both demographic and territorial perspectives, a significant portion of humanity and of the planet's inhabited surface. Yet these realities often remain invisible to global information systems, as they do not attract major investment flows, require complex corporate or administrative structures, or rely on technologies in the form of machinery or standardized industrial processes. In this context, the dissemination of knowledge and the development of individual awareness assume central importance. It is, indeed, individual choices that form the basis for a gradual transition toward techniques and behaviours more attuned to the dynamic processes of the Biosphere – within a perspective of symbiosis and coexistence.

Primary interdependence – on the necessity of a dynamic coexistence within the Biosphere

This approach, from my perspective, should be based on the fundamental consideration that there exists a class of interdependencies that are primary. These primary interdependencies are essential because they underpin our very existence; without maintaining a proper dynamic equilibrium within this realm, our life may not be sustainable at all. Therefore, we refer to this class as the primary interdependencies. In this context, the aim of secondary interdependencies – those produced through law, agreements, deliberation, habits, and

customs – should be to allow human societies to live in harmony with the primary interdependencies. Equilibrium should be construed here as a set of relationships between law and the events that occur in the Biosphere, where the impact does not produce conflicts with the biosphere's realms and does not cause disorder, while still allowing for actions that reasonably take advantage of the dynamic mechanisms within the biosphere. These mechanisms, as we will see, are not solely related to natural resources.

The Biosphere itself is a dynamic concept that encompasses all classes of primary interdependencies. As highlighted by Vladimir Vernadsky, the concept of the Biosphere links the appearance and evolution of life with the geological formation of the Earth. Life not only facilitated the emergence of elements that, in chemical composition, fed the process of life's development, but also, through its evolution, created increasingly complex forms of interaction between living organisms and our planet. This process ultimately led to the development of human beings.

This development occurred as a result of the evolution of the Biosphere and the emergence of a sphere of consciousness – the noosphere. Vernadsky envisioned the development of the noosphere as a continuation of the Biosphere's evolution. His reflections on the former found support in the works of the Catholic philosopher Pierre Teilhard de Chardin[72].

Coexistence in the Biosphere and a common level of consciousness

The development of a common sphere of consciousness is evident from the migrations of human species, the occupation of land and the development of cultures and organized forms of life and civilizations. These developments followed a path of progress that, though formulated differently across cultures, yielded similar results that link the biological sphere to the sphere of consciousness. This similarity in the path of evolution led humans in different places to address fundamental questions: the first principle, the political problem, the ethical and economic problem, and the technological problem, arriving at similar, if not entirely analogous, solutions.

In this way, the conception of law developed and produced remarkable results. It addressed not only questions of measurement but also of the correct functioning of the legal process – *fides* – and moral obligations that prevail over civil law, such as Antigone's obligation of piety towards her deceased relatives. These obligations include not only individual duties but also collective ones, such as the duty of hospitality, which was violated

[72] P. Teilhard de Chardin, *The Phenomenon of Man*, Harper Perennial, New York 1959.

by the inhabitants of Sodom and led to the city's destruction. There are also the duties of states to avoid war, often seeking resolution of controversies through magistracies and other forms of settlement.

From all these convergences, basic communication between world cultures has developed. However, the reason communication became so significant is that it occurred through both convergences and divergences, which emerged from the interaction between cultural, social, and individual consciousness within the noosphere. The fact that individuals recognized certain analogies with others allowed for the emergence of a sphere of communication, whose main challenge was to consider the complexity of each individual's position. Of course, there were also exceptional states of mind that fell outside this communication. But the existence of this sphere of communication through signs, which undoubtedly existed, required an effort to study the structure of these texts, as the linguist Yury Lotman – who developed the concept of the Semiosphere – did.

Communication evolved further as society became more complex in terms of organization, economy, and technology. Different world societies developed and maintained distinctions in organization, technology, and ultimately law. For this reason, following the path of Alfred Lotka and Max Weber (particularly his work "Economy and Society"), I propose considering the existence of the "technosphere." In earlier stages of my research, I also referred to this as the "oikonomosphere," which involves various forms of organization and technological specialization that characterize reality. All these elements represent evolutions and integrations of the Biosphere.

3.3. Biosphere and law in a holistic perspective

Adaptation to reality and transformation of our life

The recognition of the interrelationships between humanity and the Biosphere, as well as among human societies themselves, must be grounded in an understanding of the biological and psychological dimensions of human life. These intimately connected spheres reveal the essential manifestations of human existence: self-awareness, the capacity for symbolic language, and the conscious use of language to express complex forms of relationship. They also illuminate the dual movement through which human beings seek not only to adapt to the surrounding world but also to shape it according to their needs.

Approaching law from the perspective of interdependencies requires careful attention to the sphere in which all human life takes place. Preserving this sphere is an objective inherently tied to the common good. A holistic approach to the Biosphere represents

a scientific revolution and, as such, should be recognized and incorporated into law. There is, in fact, a close relationship between legal revolutions (Berman) and scientific revolutions (Kuhn). For the sake of clarity, I will present the relationship between the Biosphere, its components, and law in the synoptic table provided below

Table 5. The Biosphere and its emanations: implications for law

Biosphere and its Emanations (extended or enlarged biosphere)	**Implications for law**
1	2
The concept of the Biosphere, introduced by Suess in 1875 and further developed by Vernadsky in 1926, for the first time recognizes the Earth as a round entity with all its implications. According to this approach, it is life that creates the chemical equilibrium of the planet, allowing for the development of increasingly complex forms of life. However, human beings also have the potential to disrupt the biosphere by interfering with the connections that enable its self-development. This concept is considered foundational to a scientific revolution in the sense described by Kuhn and is strongly supported by proponents of the Gaia hypothesis	The Biosphere is a network intimately connected with the existence of life on our planet. As such, its preservation must be a top priority. The law of the Biosphere should be a foundational element of constitutional law. The existence of a territory capable of sustaining life, the life of societies, and the peaceful coexistence of legal orders depend fundamentally on the conditions of the biosphere. Therefore, a key constitutional goal should be the preservation of the Biosphere. This objective impacts the distribution of power within government, society, and the economy, and it also influences how we approach law, particularly in terms of global justice
Georgescu-Roegen emphasized that a chemical equilibrium, characterized by low entropy, represents a high degree of internal organization. If this equilibrium is disrupted, entropy increases, making the energy of the Biosphere less usable and potentially destroying the conditions necessary for life. Building on the work of biologist Alfred Lotka, Georgescu-Roegen further highlighted that humans enhance their power by developing exosomatic organs – tools and technologies that facilitate the appropriation of low-entropy chemical elements and biological organisms for our use. However, this process leads to a transformation that increases entropy, thereby reducing the ease with which this energy can be utilized	Georgescu-Roegen (1976, pp. 33–34) proposed a modest standard of living as a solution, along with the abolition of weapon production, the reduction of waste, and the curtailment of overproduction of manufactured goods. Although still a minority view, his line of thought is gaining increasing interest among scholars. Georgescu-Roegen's paradigm of bioeconomics thus serves as a check and balance against the dynamics of mass society, offering a counterpoint to biopower, a concept first introduced by Michel Foucault and later analyzed by Michael Hardt and Antonio Negri
According to Teilhard de Chardin, the evolution of nature and human beings reveals both an inner and an outer dimension. The inner dimension reflects an animated force, encompassing both spiritual and psychic power	The dignity of the human being, which stems from the power of self-consciousness, cannot be considered in isolation from the inner dimension of the rest of the Biosphere and its subjects

1	2
The inner force driving evolution aims to concentrate adaptive abilities, which initially led to the development of performance capabilities. This process eventually gave rise to intelligence. With the emergence of intelligence, a sphere of consciousness began to form – a hypothesis on which both Teilhard de Chardin and Vernadsky concur	The sphere in which intelligence is produced and manifested is the clearest expression of human dignity. Preserving the spiritual dimension of human life ensures the continuation of the world's capacity for knowledge and the awareness of existence, as well as the ability to communicate that awareness
Alongside the development of the sphere of consciousness, the sphere of communication also emerged. This sphere of communication allowed people to share ideas and issues with one another. The Russian linguist Yury Lotman developed a theory of literary communication starting from the circularity of myth. The circularity of myth demonstrates its potential to encompass the entire noosphere. However, as myths evolve, they adapt to forms of horizontal communication through the literary patchwork	The expressions of consciousness need to evolve into discourse. Such discourse, though it may present similar structures – as seen in the literary patchwork (Lotman) or legal reasoning (Beckwith) – conveys content that arises from the distinct existential situations of different subjects. Therefore, the more a community develops its existential manifestations, the richer the spheres of consciousness and communication will become
The technosphere develops through the creation of exosomatic organs (Lotka) produced by humans. These exosomatic organs allow humans to concentrate easily accessible energy from the biosphere and utilize it. Law is one such exosomatic organ	According to the Romanian economist Nicolae Georgescu-Roegen, the development of exosomatic organs gives rise to social conflict. In my view, it is evident that power stems from these exosomatic organs. When one considers not only material exosomatic organs but also immaterial ones, one can trace the biological origins of political power. For this reason, it is essential to examine political problems in relation to the paradigms of constitutionalism

Understanding the scientific characteristics of biology and its evolution suggests that law, too, should be adapted to maintain a kind of homeostasis – specifically, by avoiding conflicts and disorders among the various elements of the Biosphere, as briefly discussed earlier.

For example, the principle of maximizing production, as outlined in the statutes of the International Monetary Fund, has evolved within the context of globalization. In this scenario, the protection of workers, particularly regarding job security and wage levels – elements that were once integral to global consciousness – now risks being permanently undermined.

Similarly, the obligation to host refugees, a duty once well-codified in global consciousness, appears to be losing its legal significance alongside increasing waves of migration. This raises a fundamental question: how can we preserve such principles within the global consciousness? Moreover, how should law interact with the spheres of consciousness,

organization, and technology to challenge the assumption that we can produce goods without limit, thereby safeguarding the Biosphere?

On the purpose of law and the management of interdependencies

Recognizing that law can impact the Biosphere, in the broad sense presented, is to acknowledge that the purpose of law is to manage interdependencies. Indeed, there are various types of interdependencies. First, we have interdependencies between individuals – both within a given country and between those residing in different countries. Private law and commercial law are key areas for studying these interdependencies, while public law governs interdependencies between legal orders and individuals, manifesting in regulations on fundamental freedoms, rights, and public services.

We also observe interdependencies between individuals and states (or legal orders), such as when specific companies or small groups of individuals influence state policy or when larger groups of individuals develop common claims. It is essential to recognize that interdependencies can also occur between individuals outside a given community and the community itself. For instance, African fishermen are affected by European Union's fisheries policy. Conversely, there are interdependencies between non-residents and a community, such as between foreign professionals and consumers in a particular country. Communities regulate these interdependencies through rules of private international law.

Finally, there are interdependencies between legal orders, which are regulated by public international law and international economic law.

4. Biosphere, Supranationality, Transnationality

4.1. Biospheric approach and supranational coexistence and cooperation– time, space, and complexity

Awareness of our life in common within the Biosphere and democracy

The awareness of life in common within the Biosphere, as it is progressively expressed through the adoption of modes of conduct that increasingly take into account the interdependencies between the Biosphere and human societies, constitutes a concrete manifestation of an expanding degree of democracy. Indeed, the growing individual awareness of the need to recognize the relationship between humanity and the Biosphere – when translated into participatory attitudes – contributes to raising the level of democratic life. If we

consider the relationship between individual participation in the improvement of human–biosphere relations, the development of democratic processes, and the fulfillment of States' duties with regard to sustainability, we may envision the emergence of a cooperative approach capable of transcending national interests, without diminishing the importance of communities and States. In this perspective, a tendency toward supranational cooperation may develop, without necessarily replicating the legal features that characterize the European integration process.

Each process of supranational collaboration tends, in fact, to take shape according to its own specific motivations and normative structures, formed by the cultural, social, and ecological context in which it emerges.

I would like to discuss a specific legal issue related to the need for law to maintain the dynamic regularity of the Biosphere in its complexity – specifically, the fundamental duty of states to direct their actions toward peace, as enshrined in the Charter of the United Nations. This Charter also provides the opportunity for states to contribute to peace through the development of international regional organizations.

The duty of law and legal orders to preserve the regularities of the Biosphere

In this context, I emphasize that an approach to law should consciously address the prevention of disorder, conflict, and ensure sustainability with respect to the Biosphere, in both a narrow and broad sense. The ability of states to contribute to peace by developing regional – and we should add, trans-regional – organizations should evolve into a specific approach to the states' "erga omnes" obligations. This obligation should include the duty to develop organizational forms that collectively contribute to the global common good, understood as the dynamic equilibrium of the extended Biosphere.

International cooperation organizations (integrating or not) and trans-regional agreements between such organizations would thus create a new form of supranationality, defined by its orientation toward our common good, which is the Biosphere.

The cooperative attitude – foundation and limits of a well-tempered integration

The approach to supranational cooperation integration can be seen as corresponding to the approach to the Biosphere. Just as the concept of the Biosphere has been developed with an understanding of its spherical characteristics, the concept of supranational integration that I propose is based on the law of interdependencies. However, considering the realm of interdependencies that characterize both the Biosphere and law, we must

recognize that the political challenge of achieving the common good requires a cooperative approach. It should be proportional to the legal environment in which it operates. As we have observed, the extended concept of the Biosphere also includes the spheres of consciousness, discourse, and law and technology. In a holistic approach to the Biosphere, law cannot focus solely on the interdependencies between individuals and the legal orders in which they reside. It must also consider that the legal orders of different communities affect individuals and communities beyond their borders. Additionally, non-state actors, such as corporations, can have a global impact on states and individuals. For this reason, legal theories, like knowledge in general, tend to circulate globally.

Pluralism and supranationality

Therefore, no singular path to supranationality, such as the one manifested in the process of European integration, may be proposed. On the contrary, the high degree of complexity involved in integrating different areas of competence within the European Union may be difficult to implement without first developing complex political and institutional solutions, along with adequate processes of legal adaptation. These processes must address fundamental categories of legal complexity, such as space, time, and organization (technology). For example, in the process of European Union integration, it is well known that the EU operates on the principle of conferral of competences. According to the Treaty on the Functioning of the European Union, there are five types of competences: exclusive competences, shared competences, competences related to the coordination of economic and social policy, competences for defining foreign and defense policy, and competences to support and complement state activities without harmonization.

Introducing such a range of competences all at once presents challenges, particularly when considering the complete process of legal enactment and implementation, which is influenced by the categories of legal complexity: space, time, and organization (technology). Regarding space, we must consider the geographic diversity within the European Union. The EU is composed of different states, each with its own government and unique forms of consensus and accountability concerning policy development and participation in European integration. The Treaty on European Union, enacted after nearly 50 years, introduced the principle of respect for constitutional identity to account for these spatial differences. However, the proper implementation of this principle requires deeper political and legal reflection.

Requirements of democratic integration – pluralism and consensus

Within the space of European integration, there are also differences in economic models and levels of development, which the integration process only partially addresses. The consensus on European integration varies depending on the differing political and economic expectations of each state. These complex factors influence the treaties' modalities, in terms of aims, protected legal goods, and the legal nature of adopted solutions, all of which must account for the spatial differentiations, both static and dynamic, within European integration. Spatial differences are acknowledged by the EU's agricultural policy, regional and social policy, and monetary policy, the latter of which – an exclusive competence – is extended only to countries that use the Euro.

Example: the time dimension of the European integration process

In the context of the temporal dimension of the European integration process, we may observe that European law is founded on several significant legal instruments related to time. These can be divided into three main categories: original time-related elements, substantive elements, and institutional elements. The original category relates to the structure of European integration law as a process, differentiating it from the development of national states. We see these elements in the general principles common to the constitutional traditions of Member States, widely used by the European Court of Justice (now the Court of Justice of the European Union) to grant legal authority to European policies. We also see them in the jurisprudence of the European Court of Human Rights, which has recognized them as general principles of European law, formulated over time. Today, however, these principles appear to be somewhat in crisis, likely due to the European Union institutions' efforts to assert their autonomy. This trend also influences the other two classes of time elements.

The substantive class of time elements

The substantive category encompasses all aspects related to time that affect treaty implementation. The institutional category includes autonomous institutional solutions that enable integration processes to occur over time. When it comes to substantive timing solutions, we can differentiate between original elements and derivative ones arising from treaties and secondary legislation. We also have institutional elements deriving from treaty-conferred powers, such as the concept of timing in policy development, which has been a key normative aspect in the structure of the Treaty establishing the European Economic Community

(1957)[73]. Then we have transitory periods, of which the most important has been determined in Article 8 of the 1957 EEC Treaty[74]. Another fundamental use of transitional pe-

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[73] *Treaty establishing the European Economic Community* (Rome, 25 March 1957), https://www.cvce.eu/en/obj/treaty_establishing_the_european_economic_community_rome_25_march_1957-en-cca6ba28-0bf3-4ce6-8a76-6b0b3252696e.html (04.06.2024), Article 3. "For the purposes set out in the preceding Article, the activities of the Community shall include, under the conditions and with the timing provided for in this Treaty: (a) the elimination, as between Member States, of customs duties and of quantitative restrictions in regard to the importation and exportation of goods, as well as of all other measures with equivalent effect; (b) the establishment of a common customs tariff and a common commercial policy towards third countries; (c) the abolition, as between Member States, of the obstacles to the free movement of persons, services and capital; (d) the inauguration of a common agricultural policy; (e) the inauguration of a common transport policy; (f) the establishment of a system ensuring that competition shall not be distorted in the Common Market; (g) the application of procedures which shall make it possible to co-ordinate the economic policies of Member States and to remedy disequilibria in their balances of payments; (h) the approximation of their respective municipal law to the extent necessary for the functioning of the Common Market; (i) the creation of a European Social Fund in order to improve the possibilities of employment for workers and to contribute to the raising of their standard of living; (j) the establishment of a European Investment Bank intended to facilitate the economic expansion of the Community through the creation of new resources; and (k) the association of overseas countries and territories with the Community with a view to increasing trade and to pursuing jointly their effort towards economic and social development".

[74] *Treaty establishing...*, Article 8.1. "The Common Market shall be progressively established in the course of a transitional period of twelve years. The transitional period shall be divided into three stages of four years each; the length of each stage may be modified in accordance with the provisions set out below. 2. To each stage there shall be allotted a group of actions which shall be undertaken and pursued concurrently. 3. Transition from the first to the second stage shall be conditional upon a confirmatory statement to the effect that the essence of the objectives specifically laid down in this Treaty for the first stage has been in fact achieved and that, subject to the exceptions and procedures provided for in this Treaty, the obligations have been observed. This statement shall be made at the end of the fourth year by the Council acting by means of a unanimous vote on a report of the Commission. The invocation by a Member State of the non-fulfilment of its own obligations shall not, however, be an obstacle to a unanimous vote. Failing a unanimous vote, the first stage shall automatically be extended for a period of one year. At the end of the fifth year, the Council shall make such confirmatory statement under the same conditions. Failing a unanimous vote, the first stage shall automatically be extended for a further period of one year. At the end of the sixth year, the Council shall make such a statement acting by means of a qualified majority vote on a report of the Commission. 4. Within a period of one month as from the date of this last vote, each Member State voting in a minority or, if the required majority vote has not been obtained, any Member State, shall be entitled to require the Council to appoint an Arbitration Board whose decision shall bind all Member States and the institutions of the Community. The Arbitration Board shall be composed of three members appointed by the Council acting by means of a unanimous vote on a proposal of the Commission. If the Council has not, within a period of one month from the date of such requirement, appointed the members of the Arbitration Board, they shall be appointed by the Court of Justice within a further period of one month. The Arbitration Board shall appoint its Chairman. The Board shall give its award within a period of six months from the date of the vote by the Council referred to in paragraph 3, last sub-paragraph. 5. The second and third stages may not be extended or curtailed except pursuant to a decision of the Council acting by means of a unanimous vote on a proposal of the Commission. 6. The provisions of the preceding

riods in the Treaties of European integration was the introduction of the Euro. Transitional periods also play a key role in the enlargement process. Additionally, the use of future tense modalities is evident in the determination of a common security and defense policy. Regarding time aspects stemming from secondary legislation, directives specify precise time periods for their implementation. Recommendations are also included in EU law and have an effect over time. In contrast, regulations and decisions must be applied immediately. This distinction allows us to clearly differentiate between law that is immediately binding and law that becomes binding through a process that unfolds over time. Furthermore, European legislation often includes provisions that require the revision and updating of the text within a specified period.

The institutional, technological and organizational class of time elements

The temporal elements related to the institutional aspect are linked with the Union's powers to advance its competencies. The existence of institutions with such powers is crucial for the Union to fulfill its duties over time. The presence of deliberative bodies, the European Commission with autonomous powers of control, and permanent jurisdictional powers constitute the institutional dimension of European integration over time.

The organizational and technological elements in the enactment and implementation of European integration legislation are evident in the careful impact assessments that analyze the need for a given law, the search for possible normative solutions, the best way to implement legislation in Member States, and the feedback from its application. The significance of organization and know-how is also reflected in the European integration process's emphasis on the concept of a knowledge-based society, which has led to the development of an e-governed sphere for proposing new laws, debating, and exercising control.

The different qualities of competences manifest a level of complexity that may well be called horizontal. The interaction between each type of competence with the dimensions of time, space, and technology reveals vertical complexity. Together, these indicate the systemic complexity of European legal integration.

However, the existence of integration processes depends on a true impact on specific constitutional goods, in their internal and external dimensions, related to the extended

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paragraphs shall not have the effect of extending the transitional period beyond a total duration of fifteen years after the date of the entry into force of this Treaty. 7. Subject to the exceptions or deviations provided for in this Treaty, the expiry of the transitional period shall constitute the final date for the entry into force of all the rules laid down and for the completion of all the measures required for the establishment of the Common Market".

Biosphere. Therefore, we can also envision integration processes within a framework that begins with a much less complex structure than the one described above.

4.2. Pluralism, qualitative differentiation, and a new supranationality – on the need for a cooperative approach

Embracing legal and cultural differences

In addressing the question of supranationality – understood as the expression of a cooperative disposition that takes shape through the fulfillment of individual and collective duties aimed at improving the relationship between humanity and the Biosphere – it is essential to recognize that such processes, in order to be genuinely universal, must be capable of acknowledging and embracing the legal and cultural differences among participants, as well as their specific relationships with resources, territory, and technology. The development of cooperative supranationality may thus begin even through modest forms of transnational cooperation.

For these reasons, we believe that a new approach to supranationality should be based on two fundamental principles: pluralism and mutual qualitative differentiation. This approach would involve developing various supranational integration models, each tailored to the capabilities of the states involved. The primary goal is to contribute to peace within the framework of states' duty to maintain the proper functioning of both natural and social processes within the Biosphere.

A proper approach to supranational integration must consider how collaboration between states fosters the cooperative resolution of mutual problems, given that our existence takes place within the Biosphere. Therefore, we should not only recognize that integration processes can differ in both quantitative and qualitative terms, but also understand the importance of starting with a manageable scope.

Overcoming difference – some reasons to prefer pluralism over technocracy

When we talk about quantitative differences, it is well known that integration can be effectively pursued through a limited number of policies, rather than by immediately attempting more ambitious initiatives involving numerous policies. The European integration process, for instance, began with a single, focused aim: to create a common market for coal and steel. This focus proved successful in overcoming tensions between former enemies. Although the European Defence Community Treaty ultimately did not come

into force, the early stages of European integration achieved its aims by creating a simplified governance structure to address specific issues related to key commodities like coal and steel. In this sense, the supranationality project was successful because it demonstrated the possibility of establishing a rudimentary legal framework that allowed for the cooperative resolution of issues that had previously caused tensions and wars. This realization opened up a range of complexities, although it sought to implement a kind of economic equality through rules on fair competition.

The development of the EEC Treaty further expanded integration by encompassing a diverse range of markets, including industrial commodities, agricultural commodities, and the labor market (which was also of interest to the European Coal and Steel Community). The evolution of the principle of non-discrimination based on nationality reflected the belief that a supranational legal structure was indeed possible. However, this structure initially excluded states that were formerly colonies. Association treaties and other forms of cooperation did not truly advance the conception of a fundamental universalism that could arise from pluralism and qualitative differentiation in supranational integration. By this, I mean the tendency for integration processes to support the development of other forms of integration, demonstrating the belief that some common problems could be solved through a supranational project.

The importance of the state vs. the foundational character of peoples

The question remained as to what the source of a supranational project should be – whether it should arise from decisions made by states or from the approach of individuals and populations recognizing their own interdependence. Even at the level of European integration, the principles of direct effect and primacy of European law, the principle of European recognition, and the respect for human rights stemming from the common constitutional traditions of the Member States were gradually integrated within a framework increasingly centered on affirming its own identity. This was evident in the growing attempts to control more activities of the states and to consolidate consensus within those political forces that succeeded in fostering better mutual cooperation within European institutions. This dual effect maintained a concept of law as an expression of force, in the perspective of Walter Benjamin, while also producing a destructuring, akin to Jacques Derrida's view, revealing the weakness of the concept of supranationality emerging from a construction that ostensibly aimed at supranationality. Indeed, the joining of policies and concentrating decision-making has gradually shown that such a process has not been supported by the development of a growing awareness among individuals and societies of their common and

interdependent existence. Instead, it has fostered a triad of national approaches focused on national interests, integration approaches centered on their own consensus, and governance beyond politics driven by business interests, nonetheless affecting the lives of both European and non-European societies.

On the reasons which may cause the loss of confidence toward European integration

These approaches have rekindled the dangerous idea that governance could be split into governance based on law and governance based on prerogatives backing the interests at stake, joined by autonomous governance of the interests themselves. Given the importance of European societies in the developments that led to the present world order, such results generated a domino effect. The first manifestation has been a general loss of confidence in supranationality, understood as a means to transcend national interest through a principle shared by individuals and society. The second was the reemergence of geopolitics-based approaches to governance, which still have relevance. This is exemplified by the concept of strategic depth, used by Russia and the Soviet Union during the Napoleonic Wars and World War II. The strategic depth of the English Commonwealth and France was instrumental during World War II. Today, France's strategic depth extending to Africa still plays a significant role in European integration. Similar approaches are evident in Russia's and China's attempts to dominate large parts of Africa by controlling human and natural resources. The "America First" (later MAGA) policy and U.S. exceptionalism further deteriorate the notion that humanity shares common problems.

A new supranational approach may arise based on even modest activities, such as those of civil society addressing the regularities of the Biosphere – for example, planting trees for the common good. This could demonstrate a widely shared consciousness that we face common problems related to our life in the Biosphere and that we can work together to address them.

Chapter VI

The Biospheric Principle between Religion, Universal Principles, and the Concept of Law – From Vico to Second-Order Cybernetics

Keywords

universal principles, Vico's *New Science*, complexity (second-order cybernetics), *religio* (binding value), moral responsibility, law and time

Abstract

In Chapter VI, the book turns to the quest for a unifying *biospheric* principle – a set of universal values or common bond – that can reconcile humanity's historical development with the temporal rhythms of nature in legal thought. The chapter conducts a deep philosophical inquiry, drawing on Giambattista Vico's cyclical theory of history and on modern systems theory to argue that law must integrate both the spiritual insights of tradition and the scientific understanding of feedback and interdependence. A key thesis is that "listening to the Biosphere" as law's metaphysical foundation requires complementing spatial notions of justice with a reflection on time, thereby connecting the long cycles of nature with human legal evolution. Through Vico's lens, the text explores how a *metaphysics of responsibility* can guide societies to recognize duties toward both the Biosphere and one another. The chapter underscores the importance of *universal values* as a medium for global legal communication: secularization is reinterpreted as an effort to uncover shared principles that transcend individual religions and can undergird care for our common home. Methodologically, it weaves intellectual history (examining the concept of *religio* or "binding" in Vico's *New Science*) with insights from second-order cybernetics, emphasizing law's reflexivity – i.e. the capacity of legal systems to observe and adjust themselves, given that the human "observer" is both part of the Biosphere and a product of history. Among the chapter's insights are a critique of linear, hegemonic conceptions of progress

and an affirmation that embracing a cyclic, interdependent view of time could foster a "conscious symbiosis" between humanity and the planet. By proposing a convergence of ethical, scientific, and spiritual perspectives into a pluralistic yet universal framework, Chapter VI provides a theoretical cornerstone for the book's vision of a shared biospheric constitutional ethos.

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1. "The New Science" of Giambattista Vico and the issue of "religio"

Subsuming biospheric processes into conceptual forms intelligible to human societies and accessible to legal and political systems

The critique of the concept of constitution understood in non-cooperative terms (from an international perspective) – and, consequently, the attempt to establish a connection between constitution, constitutionalism, and the law of interdependence, as developed in the previous chapter – was grounded in the recognition that we live within the Biosphere. As a result, the protection of the fundamental values of constitutionalism, and of life itself as foremost among them, cannot be confined to the experiences of politically organized communities conceived as identities, as geopolitics tends to do.

I justified this critique by highlighting the failure of such approaches to account for the fact that all human societies coexist within a limited and spherically closed space – the Biosphere – which sustains life through patterns and regularities already revealed by geobiophysics a century ago. Acknowledging these elements compels us to rethink law and the political question in general terms, intrinsically linked to our relationship with the Biosphere.

Listening to the Biosphere, to living beings, and to the human communities that inhabit it – which we have posited as the metaphysical foundation of law – nonetheless requires that reflection on space be complemented by reflection on time. Understanding human existence within the broader life of the planet thus becomes central. It becomes necessary to explore methods and approaches capable of connecting the temporal dimension of Nature and the Biosphere with that of human history and civilization.

On this basis, it is possible to attempt to subsume biospheric processes into conceptual forms intelligible to human societies and accessible to legal and political systems. In this direction, Vico's thought of is of particular importance, as he sought to interpret historical processes not only through the lens of "problematic reason," but also by embracing a cyclical vision of time, analogous to the temporal rhythms of the Biosphere. At the same time, it is essential to consider the processes of feedback and reflexivity through which law is expressed and evolves, keeping in mind that the observer is both immersed in the Biosphere and part of history and law.

Hence, the search for universal values – values in which each subject may recognize themselves – plays a crucial role in enabling universal legal communication, also for practical and operational purposes. In this light, the process of secularization may be seen as an

effort to transcend the particularities of individual religions, orienting itself instead toward universal principles capable of underpinning care for the Common Home, as a fundamental basis for coexistence.

In this regard, it is worth noting that Pope Francis' encyclical Laudato Si' concludes with both a "Prayer for our earth" and a "Christian prayer in union with creation." The former may be interpreted as a kind of invocation for the overcoming of biopower – an intention that resonates throughout the entire encyclical. It thus stands as a call to freedom and as an appeal to seek principles capable of fostering a conscious and lasting symbiosis between humanity and the Biosphere.

1.1. "Religio" and metaphysics in Vico's thought

Vico and the metaphysics of responsibility: the Table of "Civil Things"

The search for a methodology capable of observing the Biosphere together with all living beings – including the diversity of human societies – finds a fertile point of reference in the study of Vico's thought. Indeed, Vico develops a metaphysics of responsibility, capable of directing the gaze both toward history and toward the possibility, through induction, of understanding how human societies may reflect upon their duties toward the Biosphere and toward other societies.

The aim of this chapter is thus to identify what might constitute a representation of a concept such as religio – a concept that could prove useful in a time when religions, movements of thought, and worldviews interact with one another as never before[1]. These factors are therefore called upon to recognize each other, identifying their respective identities, responsibilities, and the increasingly urgent common call. Therefore, one wonders what support scientific reflection and practical activity can provide in this regard. In fact, phenomena such as climate change, wars, and apparent and latent conflicts appear to be of such gravity that they can no longer be overlooked. They also encompass a wide variety of communication realms, spanning the centers and peripheries of the world, the venues where the interests of large corporations are discussed, geopolitical issues, and the "clouds" of social networks. Their gravity and scope do indeed test both speculative and practical reflections, as well as individual and universal active life choices, but

[1] A former Italian version of the reflections that led to this chapter has the following title: P. Policastro, *L'ipotesi biosferica tra religio, principi universali e il concetto di diritto. Da Vico alle cibernetiche di secondo grado*, in: *Immaginario e realtà. Percorsi della religione*, eds. A. Rella, S. Valerio, Aga editrice, Alberobello 2018, pp. 295–352.

at the same time, they constitute a great opportunity for the ethical development of human beings and contemporary societies.

Among the many texts produced and left to us by philosophical and political thought, few are as profound and deserving of enduring fame as the illustration of the "Table of Civil Things" introduced in Giambattista Vico's "New Science"[2]. A brief discussion of it seems instructive and inspiring. First of all, let us start with the purpose of the representation. Vico introduces his science through a painting, which he calls a "Table." However, it is not a "Tableau," meaning a combinatorial scheme like the Tables of Lull[3] or the "Tableau Économique" of the physiocrat François Quesnay that describes transfers between social classes[4]. It is not an input-output matrix or a "binary string" describing a program. Instead, it is a drawing, but it is not even an "Iconologia" where descriptions of images on vices and virtues serve to "depict with its own symbols everything that can happen in human thought"[5]. It is not even the frontispiece of the Leviathan, in which one observes unity without pluralism, which then influenced the reception of all of Hobbes's work.

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[2] G.B. Vico, *La Scienza Nuova*, Napoli 1725–1744: 1725: *Principj di una Scienza Nuova Intorno alla Natura delle Nazioni per la Quale si Ritruovano i Principj di Altro Sistema del Diritto Naturale delle Genti*; 1730: *Cinque Libri di Giambattista Vico de' Principj d' una Scienza Nuova d'Intorno alla Comune Natura della Nazioni*; 1744: *Principj di Scienza Nuova di Giambattista Vico d'Intorno alla Comune Natura delle Nazioni. In questa terza impressione del dal medesimo autore, in un gran numero di luoghi corretta, schiarita e notabilmente accresciuta*, Napoli 1744. Quoted edition: G.B. Vico, *Autobiografia. Poesie. Scienza Nuova*, ed. P. Soccio, Garzanti, Milano 1983. For a bibliography, I refer to pages LX–LXXX of its introduction. I have also referred, for verification purposes, to an electronic edition, listed as published by Giulio Einaudi, and based on the 1963 reference edition edited by Paolo Rossi (G. Vico, *La scienza nuova*, secondo l'edizione del 1744, ed. P. Rossi, Biblioteca Universale Rizzoli, Milano 1963).

[3] A. Bonner, P.J. Planas Mulet, L. Badia, *Graphs and Lattices in the Early Versions of Ramon Llull's Art*, "Historia Mathematica" March 2025, No. 1(70), pp. 31–52, https://doi.org/10.1016/j.hm.2025.02.001. U. Eco, *The Ars Magna by Ramon Llull*, "Contributions to Science" 2016, No. 1(12), pp. 47–50, https://doi.org/10.2436/20.7010.01.243.

[4] A. Phillips, *The Tableau* Économique as a Simple Leontief Model, "The Quarterly Journal of Economics" 1955, No. 1(69), pp. 137–144, https://doi.org/10.2307/1884854. A.E. Steenge, R. van den Berg, *Impact Studies without Multipliers: Lessons from Quesnay's Tableau Économique*, paper presented at the *International Input-Output Meeting on Managing the Environment* (IIOMME), Seville, Spain, 9–11 July 2008, International Input-Output Association, PDF, https://www.iioa.org/conferences/intermediate-2008/pdf/2b2_Steenge.pdf, (19.09.2025).

[5] P. Rossi, *Le sterminate antichità. Studi Vichiani*, Nistri Lischi, Pisa 1969, pp. 181–182, quoted by P. Soccio, in: G. Vico, *Autobiografia*..., p. 213.

Connecting space and time with nature and human events

The purpose of representing the *Idea of the Work* in Vico's *New Science* is not to explain reality by reducing it to a linear or two-dimensional scheme. Rather, it aims to connect space and time with nature and human events within a dynamic and circular framework. In fact, in the frontispiece of the *New Science*, the world of nature – symbolized by the globe – does not appear as an autonomous and objectively separate entity. Humanity is part of it, and man himself becomes a figure of metaphysical reflection. This metaphysics is, in effect, a 'metaphysics of metaphysics': while not occupying the center of the image, it constitutes the primary object of Vico's design. The interdependencies illustrated in Vico's composition thus represent the metaphysical effort to generate a conscious symbiosis with the design of the universe.

Following this painting, there is nevertheless a chronological table (*Tavola cronologica*), which serves as a reference for events. These events are indeed important for Vico, but of little relevance to today's reader[6]. Throughout *New Science*, Vico consistently highlights the multiple perspectives through which his work contributes to the study of reality as a whole, beginning with human events. The Vichian design represents a scientific method that seeks to integrate different forms of knowledge while accounting for their interdependencies. Rather than relying on deductive rationality, as in Descartes, Vico adopts an inductive approach that addresses the totality of human life, including its relationship with nature. This methodology places great emphasis on responsibility – understood both as the capacity to observe reality and grasp its systemic connections, and as the obligation to act in symbiosis with it, in opposition to prevailing tendencies of decline. Within this scientific method, both individual and collective responsibility – especially in relation to metaphysics and to the religious dimension – are of central importance. Vico explicitly addresses these concerns in the conclusion of the *New Science*. These considerations invite a renewed study of Vico today, particularly in connection with contemporary approaches to the nature of science: how science is defined, how it can encompass diverse cognitive dimensions, and how it may offer guidance for concrete action.

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[6] In fact, the edition edited by Soccio does not report it, and therefore, to take cognizance of it, I referred to the one edited by Rossi (see footnotes above).

1.2. The issue of complexity in Vico's thought

Vico's thought, by linking speculative reflection, ethical obligation, and concrete action, anticipates both systems thinking and the philosophy of complexity. His conception is grounded in a metaphysics of providence that stimulates reason to engage in learning. Myth, art, and religion are oriented toward a universal process of learning – one that is always exposed to the risk of interruption, yet capable of renewal. This raises the question of the contemporary relevance of inductive reflection, good practices, and ethical emulation, particularly in relation to the care of our common home.

The multidimensionality and interdependence expressed in the Idea of the *New Science* are of crucial importance for the question we pose – one that requires a simultaneous look on three dimensions: speculative reflection, practical engagement (deriving duties from the conclusions reached through reflection), and action (what we actually do). In this regard, Vico's inquiry is especially significant, as it may be seen as a precursor to complexity thinking and systems theory[7]. The pioneering character attributed to his work adds weight to the elements that inspire the *New Science*, beginning with its introduction, which emerges from the object and method of study he undertakes.

Vico articulates a conception of complexity that neither results in full predictability nor collapses into chaotic disorder. Nor does it resolve through voluntaristic simplification: there are no *Veltri*, no *Leviathans*, no merely deductive reasons or purely linear causes. Instead, Divine Providence is linked to human history through learning. It directs humanity toward justice and sociality. Within this framework, providence – acting solely through natural means – becomes a stimulus for reason. That stimulus proves effective when reason is capable of traversing all possible paths to represent reality in its entirety and draw meaningful lessons from it. Thus, for example, art becomes, from this perspective, a point of conjunction between philology and philosophy, as it is the human being who represents, thinks, and speaks. This search for connections among the manifestations of human existence enables us to interpret history as a process of overcoming violence through learning.

Myth – linked to poetry and to the poet's mode of communication – can, when internalized and aided by religion, lead to such learning. Yet if history offers evidence of this process, it also reveals numerous instances where such learning fails or no longer occurs effectively. In such cases, human societies may be required to begin anew. Whether this represents a warning or a necessity, Vico does not explicitly say – though he seems to imply

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[7] L. von Bertalanffy, *General System Theory. Foundations, Development*, *Applications*, George Braziller, New York 1969; Itialian edition: *Teoria generale dei sistemi. Fondamenti, sviluppi, applicazioni*, transl. E. Bellone, Studio Mondadori, Milano 1983, 180.

it. Divine Providence, which guides humanity toward sociality and justice, thus appears to follow an ineffable plan, one that seeks, through natural means, to lead human beings toward justice.

The search for reason in history

It therefore seems that, in Vico's thought as transposed into reality, one can discern the presence of a design of Providence – one that even calls upon religion itself to take a step forward over time. This issue had already interested Croce, from a certain perspective, particularly in his important monograph dedicated to Vico's philosophy, where, however, he expressed doubts about it, saying that the question of the transcendence of God limited Vico's mind, who, without denying it, could not have the concept of it. However, Croce adds that:

> [the concept of] "*progress, deduced from immanent providence and introduced in the The New Science, [...] would have changed history, [...] into a drama that has its own raison d'*être; it would have dragged the entire cosmos in its coils and made the thought of infinite worlds real. Vico, faced with this vision, retreats fearfully, stubbornly stops, and the philosopher is replaced in him by the believer"[8].

However, in his monograph, Croce emphasized Vico's reflections aimed at fostering autonomous learning, such as the statement that wisdom is the purpose of education[9], or that the "ethical and social power of the idea of God asserts itself in subsequent history"[10]. Therefore, education, wisdom, ethics, social life, and religion can be regarded as factors that – when combined – are more likely to generate inductive rather than deductive processes. From a perspective rooted in complexity thinking, and one that recognizes the importance of such inductive processes, this approach can highlight the value of cognitive dynamics, practical reflection, and actions which, although conditioned by specific social, economic, and cultural contexts, are capable of producing universal processes of learning. In this regard, it is important to acknowledge the emphasis placed in the Encyclical *Laudato Si'* on good practices as a driving force for similar and coordinated activities in the protection of our common home.

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[8] B. Croce, *La filosofia di Giambattista Vico*, Laterza, Bari 1922 (1st ed. 1910), pp. 147–148.

[9] B. Croce, *La filosofia...*, p. 247. In conclusion of Chapter XI: "Vico against his times," Croce writes: "Wisdom, in fact, is not this or that knowledge or the sum of knowledge; but it is the faculty that commands all disciplines and from which all sciences and all arts that make up humanity are learned."

[10] B. Croce, *La filosofia...*, p. 88: "This ethical and social power of the idea of God asserts itself in later history."

That a universal form of learning – based on reflection and ethical proposals inspired by the example of others – is both real and possible, appears to me as the fundamental question to be developed in this chapter.

1.3. On the design that presents the idea of *The New Science*

The levels of reality

Vico's systemic approach to reality emerges in his treatment of metaphysics, nature, and civil life as interrelated, rather than hierarchically separated domains. His inductive method, which seeks meaning in the symbolic, historical, and cultural manifestations of human destiny, embodies a form of problematic reason that stands in marked contrast to Descartes' deductive rationalism. A key difference lies in the self-awareness of problematic reason – its recognition of the limits of human knowledge – and its orientation toward ethical and cultural reflection, as well as toward the observation and contemplation of nature and of reality as a whole.

One cannot, however, proceed without at least a brief presentation of Vico's own explanation of the introductory design of *The New Science*. Vico starts with the depiction of a woman who dominates the globe: she represents metaphysics. Metaphysics becomes the starting point, but not necessarily the center of Vico's description. According to Vico himself, the painting consists of three parts: the lower part, which denotes "the world of nations, which men applied to before anything else"; the globe, placed in the central part of the painting, representing "the world of nature" and the object of observation for physicists; the upper part of the painting, on the other hand, represents "the world of minds and of God," the object of contemplation for metaphysicians. In this regard, some observations need to be made, and obviously, although the painting is composed of different parts, the fact that Vico constantly returns to their relationships shows his interest in the systemic approach to reality. In fact, in the upper part of the design, as Vico explains, there is metaphysics, represented by a woman with a winged head, contemplating God, rising above the natural order of things. At the same time, however, it also contemplates the natural order of things. Furthermore, Vico continues, it contemplates in God the world of human minds. This contemplation, at various levels, is directed at observing the manifestation of Divine Providence in the world of human souls, which is the world of civil life or the world of nations[11].

[11] G.B. Vico, *Scienza nuova, Idea dell'opera*, § 2, in: G.B. Vico, *Autobiografia. Poesie. Scienza Nuova*, ed. P. Soccio, Garzanti, Milano 1983, pp. 217–218.

From the Old to the New science

At the center of the design is the globe, which rests on an altar and is supported by only one side of it. This reflection serves as a watershed between old and new science, that is, between the way philosophy was understood in its period, especially by Descartes, and the way Vico sees an old and a new approach to it. In fact, philosophers, as Vico says, have contemplated Divine Providence only through the natural order alone. Vico does not deny this perspective, through which he sees philosophy as allied with religion. The latter is belief and is based on approaching God through the things of nature, and therefore also human nature, which is connected to human destiny. It is in this that Vico's proposed change in the understanding of philosophy is observed. Human destiny, represented in the design by the zodiac band encircling the globe, is characterized by factors including certainly the dominant force of man, represented by Hercules and the political heroes who transformed the forests into cultivation. On the other hand, the creative power of nature itself has a decisive character in influencing human life. The latter recalls a golden age, which could be seen today as the potential of nature itself to provide sustenance for all. These symbolic images provide a sort of introduction to the relationship between life according to the gods and life according to human desires, which constitutes a constant motif of human history. This relationship, being an inherent characteristic of human culture, although manifested differently in different times and places, appears always and everywhere connected with significant analogies: something that Vico tries to present to us in the association between the moving stars, associated with the gods, and the fixed stars, associated with the heroes. This association, Vico sees present among the Orientals, Egyptians, Greeks, and Latins, which, the author says, persists even if they knew nothing of each other. Difficult, at this point, not to give credit to Vico for the fact, now established, that the same solar, vital, animal symbols that are represented in different cultures have appeared at great distances and at various times. Likewise, it seems difficult not to credit Vico with the insight that the intrinsic purposes of reality not only do not always appear knowable but are not even so easily refutable.

A problematic reason

It seems, therefore, consistent with the Wittgenstein of the *Tractatus* (7: "Wovon man nicht sprechen kann, darüber muss man schweigen" - "Whereof one cannot speak, thereof one must be silent")[12] that Vico does not tell us what the "plan" of Divine Providence consists

[12] L. Wittgenstein, *Tractatus Logico-Philosophicus*, in: *Annalen der Naturphilosophie* 1921; English edition: *Tractatus Logico-Philosophicus / Logisch-Philosophische Abhandlung*, with the bilingual text

of. Conceiving such a plan might be possible for God, for those who claim to speak in His name, or for those who consider themselves akin to God – like Professor Woland, the devil figure described by Bulgakov in *The Master and Margarita*. Woland, in fact, first warns Mikhail Alexandrovich Berlioz, president of the powerful literary society "Massolit", and the poet Ivan Nikolaevich, known as "Bezdomny," that human beings cannot, on their own, conceive a plan even remotely comparable to that of God. He articulates this warning with cynical eloquence and, over the course of the novel, proceeds to demonstrate it with dramatic inevitability.

On Bulgakov's example: reason learns from history and from the intertwining of human paradoxes

Mikhail Bulgakov's novel *The Master and Margarita*, set in 1930s Moscow, was drafted and redrafted from the late 1920s until 1940 and published posthumously in Russian. Its central concern – the awakening to injustice and its overcoming – unfolds along two axes. First, the narrative draws an analogy between Pilate's lie in judging Jesus, framed by the official politics of the Sanhedrin, and the fate of an independent writer in Stalinist Moscow amid the hypocrisy of the literary establishment. Second, it exposes greed masked by frivolity and fatalism, an unveiling catalyzed by the devil's visit to Moscow. The unmasking of falsehood proceeds together with the purification from sin and functions as a metaphor for Russia's life at the time, crushed on one side by Stalinist power and on the other by the looming war. Yet the novel suggests a paradoxical resilience: although Berlioz is annihilated even after death and Bezdomny abandons writing, the independent Master and his beloved Margarita at least attain peace, and Pilate is finally released from his eternal torment – signs, perhaps, of a salvific metaphysics, if not for society, then at least for the individual[13].

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and Bertrand Russell's introduction, 1922 by Kegan Paul, Trench, Trubner & Co., Ltd., translated by C.K. Ogden and F.P. Ramsey. – EBook #5740 of Project Gutenberg: L. Wittgenstein, *Tractatus Logico-Philosophicus*, rlast revised: 13.12.2021, https://www.gutenberg.org/files/5740/5740-pdf.pdf (05.06.2024). See also the English translation: L. Wittgenstein, *Tractatus Logico-Philosophicus*, transl. D.F. Pears, B.F. McGuinness, Routledge and Kegan Paul, London 1971. Here I refer to thesis 7: "Wovon man nicht sprechen kann, darüber muss man schweigen" (p. 162), Eng. "Whereof one cannot speak, thereof one must be silent" (p. 90), (or "What we cannot speak about, we must pass over in silence", ed. Routledge, p. 89); Italian: "Su ciò di cui non si può parlare, si deve tacere" – for the Italian version see L. Wittgenstein, *Tractatus logico-philosophicus e Quaderni 1914–1916*, translated by A.G. Conte, Giulio Einaudi editore, Torino 1964, p. 82.

[13] М. Булгаков, Мастер и Маргарита (перв. публ. в журнале «Москва», № 11, 1966; № 1, 1967); Mikhail Bulgakov, *The Master and Margarita*, trans. H. Aplin, Alma Classics, London 2020.

Vico's suggestion of the existence of the plan of God and Vernadsky's approach to life

Thus, Vico does not speak of the Plan of Divine Providence, but merely suggests its existence and proposes its purposes through an inductive type of cognitive thought, conscious of its complexity. Russian scientist Vladimir Vernadsky, a Biosphere scholar, is also consistent with Wittgenstein's famous assertion in the Tractatus[14], who affirms that the planet Earth took shape through life in the Biosphere, while also acknowledging that he cannot explain how or why life appeared.

1.4. Vico and inductive thought

On the synergism of totality

Vico's inductive method reveals a systemic and interdependent conception of the world, in which metaphysics, virtue, historical experience, and the observation of nature converge. In the broader framework of his *The New Science*, Vico traces a line of conjunction between human societies, their institutions, and the natural world. The awareness of the shared existence of nature and society underscores the need to recognize the interdependence between human freedom and the conditions of life on Earth.

Returning to Vico's path of thought that underlies the Idea of *The New Science*, one observes his inductive reasoning[15] also in the assertion that "the world rests on a single point of the altar". This statement reveals, on the one hand, that philosophical thought has traditionally approached the problems of the world from aspects familiar and accessible to philosophers; and on the other hand, that religion – especially for the ancients – was intrinsically linked both to the tangible realities of the world (such as mountain peaks) and to practical events like the cultivation of crops.

Metaphysics, however, by taking into account the interaction between the knower and reality, distinguishes itself from other philosophical approaches. This interaction is crucial because it is through the practice of virtue that one becomes capable of embracing the understanding that emanates from Providence, transforming it into political judgment and into guidance on public morals and customs. Conversely, the absence of virtue not only renders this transformation impossible, but also leads to a denial of the need to consider

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[14] "Wovon man nicht sprechen kann, darüber muss man schweigen." – "Whereof one cannot speak, thereof one must be silent."

[15] G.B. Vico, *Scienza nuova...*, § 4, p. 219.

interdependencies. Without the practice of virtue, one loses the illumination of Divine Providence.

Vico's critique of Zeno and Epicurus is thus rooted in the atomization that characterizes their philosophies and the corresponding decline of the virtues. In Zeno's case, Vico denounces pride; in Epicurus's, the attachment to bodily pleasure – both of which, in his view, displace Divine Providence with fate or chance. The result is the loss – at least in conscious reflection – of the idea of totality: a totality that, though difficult to comprehend, is synergistic and interdependent in all its parts, and within which we live[16].

The loss of conscious reference to Divine Providence leads to a decline in wisdom in public affairs – wisdom that had once been upheld by the early singers, the theologian-poets, beginning with Homer. However, as Vico suggests, one cannot rely solely on them. In the introductory design that explains the idea of the work, Homer's statue stands on a pedestal marked by cracks – a sign that the good will of the theologian-poet alone is not sufficient.

Thus, as we understand it, the practice of moral virtues must be extended to society as a whole; otherwise, many essential values may be lost. The participation of philosophers in cultivating these virtues is also indispensable, yet it does not seem sufficient by itself. History, after all, is the domain of freedom – both individual and collective. From this freedom arise languages, customs, and the events of peace and war across all peoples: these are shaped by human action.

By studying these human events through philology – understood by Vico as the science of things subject to human arbitrariness – and by submitting this study to philosophical examination, philosophers can develop a philosophy of authority that articulates a design for the history of all nations. The poems, the myths of the gods, and the natural theogonies all reflect such efforts. The Homeric poems, in this sense, constitute compendiums of customs and law, the significance of which cannot be invalidated by more "objective" methodologies such as that of Thucydides[17].

On the intrinsic interrelation between nature, the divine and civil affairs

The altar depicted in the painting thus refers to all these functions, and above all, to the awareness that the arbitrariness and choices of peoples must find their counterpart in nature, where the very life of those peoples unfolds. Hence the need to perceive the future, to offer sacrifices in order to better understand divine warnings – actions that lead

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[16] G.B. Vico, *Scienza nuova...*, § 5, pp. 219–220.

[17] G.B. Vico, *Scienza nuova...*, § 6–7, pp. 220–222.

to the fulfillment of the histories of peoples, according to what one might call their destiny, seen from the perspective of the divine order of things[18]. From divine things, however, follow human ones – first and foremost marriages, which Vico recalls were celebrated among the Romans with fire and water. Next come burials, from which the division of fields later arises. According to Vico, people appropriate land by settling and burying their dead in the soil; thus, he writes, the domains of the earth were founded[19]. Sea migrations are another phenomenon worthy of attention. According to Vico, these were initially undertaken by impious peoples who, however, eventually gathered and integrated with the more organized and civilized populations already inhabiting the lands, accepting their laws. Indeed, as he observes, the occupation of land, the areas where fire had been used to clear forests, and the waters of sacred springs – capable of quenching thirst – were of fundamental importance for the development of civilizations. In these areas, the weak found protection, jurisdictions emerged, and domains were established on the basis of governance virtues – namely, the taming of the proud and the assistance of those in danger. Vico refers to the birth of war, initially waged for defensive purposes, and to the emergence of peace, as well as to the rise of social conflicts between the nobility and the less affluent classes. The rule of force, however, is gradually tempered by religion – at least until the point at which law, in the form of judicial norms, came to reinforce it.

1.5. Moral consciousness

The engine of progress

Vico's emphasis on inductive reasoning – anchored in imagination, moral conscience, and the awareness of cognitive limits – anticipates a systemic, non-dogmatic approach to knowledge, one that acknowledges the observer as part of the reality observed. These insights guide problematic reason to recognize the interdependence between human institutions, imagination, and the living systems they inhabit. They invite both polities and individuals to cultivate an attitude of modesty and piety in observing social and natural reality. This, in turn, leads to conceiving constitutions as evolving expressions of shared moral awareness and of responsibility toward the totality of life.

Vico indeed refers, in the plan of his work, to the factors that generate social development processes – namely, those that also sustain them over time: a moral conscience

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[18] G.B. Vico, *Scienza nuova...*, § 8–9–10, pp. 222–223.

[19] G.B. Vico, *Scienza nuova...*, § 11–13, pp. 223–226.

sufficiently pure to give rise to metaphysical insight and an imagination capable of fostering inductive processes. He presents his *The New Science* with a wealth of historical references, particularly to Roman political history, seeking to identify how the social dynamics that lead to the development of governance unfold. He discerns symmetries in the historical events of humankind that, in his view, can only be interpreted through recourse to moral consciousness. It is precisely the development of this moral conscience – and thus of learning – that the Neapolitan philosopher considers the engine of progress in civil life.

In ancient times, poets contributed to this process through imagination and ingenuity in representing reality. The importance of the development of moral conscience has not gone unnoticed among philosophers. Among the significant reflections of Benedetto Croce on this matter is the idea that it is from moral conscience, or modesty, that all virtues arise, and that from it also emerges common sense, which becomes solidified in institutions, thereby rendering human choices certain and shareable. The centrality of moral conscience in Vico's thought has likewise been highlighted by legal philosophers attentive to the relationship between law and religion. We may refer here to Giuseppe Capograssi (1889–1956), who developed a theory of the state and of law that paid particular attention to values and virtues (1918), understood as the foundation of communal life, as well as to freedom and duties as elements capable of restoring authority to those foundations (1921). In Capograssi's work, interest in Vico is pervasive. It is also worth noting that Capograssi examined the question of common experience (1930) and, on that basis, subsequently analysed legal experience (1932)[20].

Induction and the discovery of morality – philosophy and philology

However, I would like to signal that Vico's cognitive method, which is based on induction and is of extreme importance in his thought, has not been adequately noted in these approaches. Induction, indeed, is linked to learning, and it is indeed initially acceptable, but it must be tempered by adequate reflection and evaluated with great care[21]. This aspect does not seem to have been sufficiently highlighted by Benedetto Croce, who refers to Vico's thought as a form of thinking that already contains its own consequences, and is therefore susceptible to deduction. Vico's approach, however, is inductive. In fact, as recalled above, Croce writes:

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[20] G. Capograssi, *L'attualità di Vico*, in: *L'attualità dei filosofi classici. Età moderna*, Milano 1943, pp. 89–98 now in: *Opere di Giuseppe Capograssi*, IV, Giuffré, Milano, 1959, pp. 397–410.

[21] B. Croce, *La filosofia...*, cap. VI: *La Coscienza morale*.

> Modesty, or moral conscience, translated into the corresponding empirical science, gives the common sense concerning human needs and utilities, which is the source of the natural law of nations... Through that common sense, moral conscience becomes embodied in compact and enduring institutions; and it affirms human free will, which is by its very nature most uncertain.

Yet in Croce one observes an approach to moral conscience that seems rather deductive than attentive to the importance of induction, which instead plays a crucial role in Vico's thought. Indeed, starting from the principles of his analysis, Vico emphasizes the responsibility it entails. "Man, in fact, makes himself the measure of the universe"[22], he says, and adds that the nature of the human mind leads to estimating "distant and unknown things [...] from those known and present"[23], and on the other hand that the "human mind, which, remaining immersed and buried in the body, is naturally inclined to perceive the things of the body and must use too much effort and fatigue to understand itself, like the physical eye that sees all objects outside itself and needs a mirror to see itself"[24]. This difficulty of a broader vision than the subjective one is seen by Vico as an important cognitive issue, to which the moral conscience is called to respond. In fact, Vico warns against the pride of nations and that of the learned[25], which leads to vanity and dogmatism[26]. For this purpose, philosophy and philology are useful, as they can subject judgments given without any reflection to verification[27].

On the importance of metaphysics

More than all, metaphysics is still more useful, as it allows one to fully benefit from Divine Providence. However, this benefitting is not a "deduction" from Divine Providence, as Croce

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[22] G.B. Vico, *Scienza nuova*...., § 120, p. 243: "L'uomo, infatti, fa sé regola dell'universo".

[23] G.B. Vico, *Scienza nuova*..., § 122, p. 243: "le cose lontane e sconosciute...dalle cose loro conosciute e presenti".

[24] G.B. Vico, *Scienza nuova*..., § 331, p. 281. "mente umana, la quale, restata immersa e seppellita nel corpo, è naturalmente inchinata a sentire le cose del corpo e dee usare troppo sforzo e fatiga per intendere se medesima, come l'occhio corporale che vede tutti gli obbietti fuori di sé ed ha dello specchio bisogno per vedere se stesso".

[25] G.B. Vico, *Scienza nuova*..., § 124, p. 244.

[26] G.B. Vico, *Scienza nuova*..., § 124, p. 244.

[27] G.B. Vico, *Scienza nuova*..., § 141–143, p. 247.

seems to assert[28]. Croce seems, in fact, to require deductive features in his analysis of Vico's metaphysics. He reproaches Vico for falling back in front of the deduction of progress from an immanent providence. Indeed, he writes[29] that progress, deduced from immanent providence and introduced in the New Science, would accentuate "[the] difference within uniformity, the emergence of the new at every instant, (...) and the thought of infinite worlds made real (...)" (p. 148). Croce does not seem to fully detect the scope, in terms of induction, of Vico's cognitive approach, despite the fact that in Chapter I of the aforementioned monograph, devoted to "The first form of Vico's epistemology" he emphasizes the importance of abstraction (p. 10) and that of experimentalism (p. 15), intuition, experience, probability, and authority (p. 18) in Vico's approach to knowledge, which he calls "dell'umiltà" (p. 19), and which (see Chapter II, "Seconda forma della gnoseologia vichiana") is based in formulating hypotheses to find them in facts (p. 33), developing an empirical science that "would be at once a philosophy and a history of humanity" (p. 34).

Instead, Vico's approach is an induction, which develops and is useful to the extent that it is connected to the development of moral faculties. And it is therefore the basis of a philosophy of freedom and responsibility. In fact, Vico concludes *The New Science* by saying that this science "indivisibly carries with it the study of piety, and that, if one is not pious, one cannot truly be wise"[30]. The attitude of being pious will therefore oversee the creativity and imagination necessary for knowledge. In this, Vico expresses his criticism towards Grotius, Selden, and Pufendorf, as well as against rationalism in general and the approaches of Port-Royal logic, with a highly modern orientation, which interpreters of the Neapolitan scholar have found consistent with the observations of scientists characterized by great creativity, such as Pasteur and De Broglie[31]. But according to Vico, creativity requires that it be approached with the proper state of mind. Indeed, creativity supervises reason in the process of knowing: it, as an intrinsic manifestation of the human spirit, is an expression of freedom, and therefore is subject to the constraints of responsibility, which can be adequately fulfilled only with a suitable disposition and exercise of the faculties of the human spirit.

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[28] Croce seems, in fact, to require deductive features in his analysis of Vico's metaphysics. B. Croce, *La filosofia..., passim*

[29] B. Croce, *La filosofia...*, Ch. XII, La Metafisica,

[30] G.B. Vico, *Scienza nuova...*, § 1112: "porta indivisibilmente seco lo studio della pietà, e che, se non siesi pio, non si può daddovero esser saggio".

[31] G.B. Vico, *Scienza nuova...*, p. 463, Notes to Book I, Section II; note added regarding § 488, but also referring to §§ 394, 318, 350, 392. For references to Poincaré and De Broglie Il Soccio, see L. Talamonti, *Universo proibito*, Sugar, Milano 1971, p. 133.

These observations make it necessary to consider both the place of "religio" in Vico's thought and the nature of this "religio," which links the observation of reality through philosophy and philology with the contemplation of God through metaphysics. Thus, metaphysics with the assistance of providence forms the basis for uniting the dynamic contemplation of Creation with that of the Creator. We believe, indeed, that in Vico's thought we are not dealing with a gnosis, that is, an attempt to provide a rational explanation for the Mystery of reality. Instead, Vico's thought rather calls for individual freedom to act, through an engagement that is both individual and collective, to understand it and to live in symbiosis with it. This perspective, in my view, is one of the precursors of the generalisations of systems theories, or second-order cybernetics, through the introduction of hypercomplexity.

2. Orders of Complexity, Recursivity, and Relevance of Giambattista Vico's Thought

2.1. Freedom as responsibility – The enduring relevance of Vico

Consciousness vs. reality: moral conscience vs. utilitarianism

Vico's conception of moral conscience as a stable, universal guide for human action is closely linked to his understanding of freedom. This freedom is not abstract autonomy, but a historically situated responsibility to rebuild social and ethical order amid decay. Vico's inductive and complexity-aware epistemology connects individual action with broader collective and ecological dynamics. From this perspective emerges a conception of human dignity, freedom, and imagination as foundations for representing common life within the Biosphere – thus offering a framework for rethinking constitutions as dynamic expressions of ethical responsibility and ecological interdependence.

Vico's philosophy, therefore, seems to us to be a philosophy of freedom and responsibility, factors that we find in his cognitive perspectives focusing on interdependencies and induction, and which can thus be effectively recognized as precursors to complexity thinking. Indeed, some of the theses introduced by Giambattista Vico not only had significant scientific meaning at the time they were formulated but were also developed by subsequent philosophical approaches[32].

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[32] Among them Herder, Gadamer, Lévy-Strauss, von Bertalanffy, Betti, Bateson, Ricoeur and others. Selected references: J.G. Herder, *Ideen zur Philosophie der Geschichte der Menschheit*, 4 vols., Johann Friedrich Hartknoch, Riga & Leipzig 1784–1791; I. Berlin, *Vico and Herder: Two Studies in the History of Ideas*,

Regarding Vico's contribution to the philosophy of his time, we must remember at least his criticism of utilitarianism, which is adequately referred to by Croce. In fact, Croce says that Vico rightly emphasizes that utility is mutable, as it comes from the corporal part of man. Instead, honesty, or morality, is not only eternal but also allows for accounting and reasoning for the differences that occur within society as a whole[33]. On the other hand, Croce also pointed out not only the importance of Vico's criticism of utilitarianism expressed by Hobbes and Locke but also that other elements of his thought, such as the affirmation of moral conscience, understood as spontaneous modesty and judgment without any reflection, would have been considered deeply argued in other philosophies, such as Kant's. Instead, the polemic against social atomism and the consequent contractualism is found developed in Hegel's philosophy of law[34].

On the relationship between individuality and collectivity

With regard to the relationship between individuality and collectivity, it is useful to compare Croce's observations with Giuseppe Capograssi's reflections on the relevance of Vico. In fact, Croce's position in this regard is historicist: according to Croce, "the individual character of men is obliterated in Vico; individuals and events exist only as particular cases of an

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Hogarth Press, London 1976; H.-G. Gadamer, *Truth and Method*, 2nd rev. ed., trans. J. Weinsheimer, D.G. Marshall, Continuum, London/New York 2004; C. Lévi-Strauss, *The Savage Mind*, University of Chicago Press, Chicago 1966; C. Lévi-Strauss, *Mythologiques I: The Raw and the Cooked*, trans. J. and D. Weightman, University of Chicago Press, Chicago 1969; G. Tagliacozzo, M. Mooney, D.P. Verene eds., *Vico and Contemporary Thought* – 1, "Social Research" 43, No. 3 (Autumn 1976) special issue; G. Tagliacozzo, M. Mooney, and D. Philip Verene eds., *Vico and Contemporary Thought* – 2, "Social Research" 43, No. 4 (Winter 1976) special issue; L. von Bertalanffy, *General System Theory: Foundations, Development, Applications*, George Braziller, New York 1968; D. Pouvreau, M. Drack, *On the History of Ludwig von Bertalanffy's 'General Systemology,' and on Its Relationship to Cybernetics* – Part I: *Elements on the Origins and Genesis*..., "International Journal of General Systems" 2007, No. 3(36), pp. 281–337; M. Drack, D. Pouvreau, *On the History of Ludwig von Bertalanffy's 'General Systemology,' and on Its Relationship to Cybernetics* – Part III: *Convergences and Divergences*, "International Journal of General Systems" 2015, No. 5(44), pp. 523–571; E. Betti, *Die Hermeneutik als allgemeine Methodik der Geisteswissenschaften*, J.C.B. Mohr [Paul Siebeck], Tübingen 1962; E. Betti, *Hermeneutics as a General Methodology of the Sciences of the Spirit*, trans. (first complete Eng. ed.) L. Vinx, Routledge, London/New York 2021; G. Bateson, *Steps to an Ecology of Mind*, University of Chicago Press, Chicago 2000 (orig. 1972); P. Ricoeur, *The Rule of Metaphor: Multi-Disciplinary Studies of the Creation of Meaning in Language*, trans. R. Czerny, K. McLaughlin, J. Costello, University of Toronto Press, S.J. Toronto 1977; P. Ricoeur, *Time and Narrative*, vol. 1, trans. K. McLaughlin, D. Pellauer, University of Chicago Press, Chicago 1984.

[33] B. Croce, *La Filosofia*..., p. 82.

[34] B. Croce, *La Filosofia*..., p. 267 *passim*.

aspect of the spirit or a phase of civilization"[35]. Instead, Capograssi noted that Vico takes into account the constraints of existence, requiring freedom and humanity to overcome the difficulties of falls, through the construction of a civil metaphysics. It is an analysis of man in history, in which, however, the individual appears within the mass[36]. Nevertheless, he added that, in his opinion, Vico tells the anonymous individual "start building the human world," defining "humanity as a thought that is within life"[37].

This statement leads readers to picturing an image that Capograssi was more sensitive than Croce to the position of the individual in Vico's thought. Furthermore, it seems to me that he wanted to connect to some extent the human thought and activity with life, both biological and at the same time spiritual. This aspect identifies an important practical dimension, which I consider essential for Vico's thought, namely that of freedom and democracy resulting in the transition from the historical evolution of societies to individual responsibility. In fact, Capograssi observed that Vico asks everyone to contribute to philosophy on the one hand, and to the development of knowledge on issues depending on human choices on the other, while participating at the same time in initiating and restarting human development, when there is opportunity and necessity for it.

Capograssi formulates these reflections on Vico by arguing that Vico does not present laws of history, nor a providential design to which history must obey, as Saint Augustine did. Instead, he maintains that Vico's thought is entirely different, in that it does not recognize any overarching design or purpose in history[38]. He thus highlighted the importance of moral choice, both individual and collective at the same time, which characterizes Vico's philosophy. In fact, Capograssi, citing § 1106 of *The New Science*, recalled that when peoples lead their civil life to decay, and with "most obstinate factions and desperate civil wars, they turn cities into forests, and forests into dens of men", then circumstances will lead men to restore among themselves, "piety, faith, truth which are the natural foundations of justice and are graces and beauties of the eternal order of God"[39].

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[35] B. Croce, *La Filosofia*..., p. 137.

[36] G. Capograssi, *L'attualità di Vico*..., p. 404.

[37] G. Capograssi, *L'attualità di Vico*..., p. 404.

[38] G. Capograssi, *L'attualità di Vico*..., p. 405: When "most obstinate factions and desperate civil wars turn cities into forests and forests into dens of men," then the circumstances will lead men to bring back among them "piety, faith, and truth, which are the natural foundations of justice and the graces and beauties of God's eternal order."

[39] G. Capograssi, *L'attualità di Vico*..., p. 406.

On the call to freedom and democracy through responsibility

Here, it is not so much about who will respond first to this call, but rather the fact that it is there for everyone, and therefore the active responsibility of someone, whether through highly visible activities or through less evident and widespread activities, is able to bring about real social transformations. In this, however, one can also discern a theology of the human person and of their contribution to the liberation of societies from the vicious cycles of decadence. This, however, can be better understood by considering Vico's thought within the framework of complexity thinking, particularly by taking into account the relationship between learning and symbiosis among individuals and between them and the world of nature and living beings.

2.2. The moral conscience in the face of crises in history

Crisis and solutions – interpreting of historical processes through Vico's proposal

The importance of Vico's legacy lies in its circular conception of time, marked by moments of development and decay. In times of historical crisis, moral conscience re-emerges as a fundamental guide for restoring human dignity and social order, while taking due account of the interdependencies in which we live. Historical figures such as Altiero Spinelli, Karol Wojtyła (Pope John Paul II), Józef Tischner, and Pope Francis responded to systemic breakdowns not with technocratic solutions, but with ethical and spiritual appeals rooted in freedom, solidarity, and metaphysical reflection. These approaches call for a participatory democracy as a practical metaphysics capable of cultivating and integrating moral conscience, solidarity, and care for the Biosphere as foundational principles of contemporary legal and political orders.

Morality and the conceptions of Europe in Spinelli, Churchill, and Schuman

Vico's statements mentioned above, which express his conception of history and the role of individuals in it, have been corroborated in recent history by great testimonies of moral, political, and philosophical thought, which have emerged precisely in the face of crises that seemed to deny humanity and political direction towards the common good of human societies. Among these, we can recall the European integration project, starting from voices like those of Altiero Spinelli and Ernesto Rossi, who in "The Ventotene Manifesto: For

a Free and United Europe"[40], written during their confinement in Ventotene in 1941, in the midst of World War II, proposed the establishment of an international state in Europe, which should have overcome the instrumentalization of the individual by the nation-state. The latter was built to dominate the individual in their various manifestations, such as a student, a worker, a participant in political processes, or simply as a father, mother, or young person.

These observations were echoed by contributions such as those of Winston Churchill, who in Zurich in 1946, proposed to revive brotherhood in Europe through the establishment of the United States of Europe[41], or that of the French Foreign Minister Schuman, who proposed that Germany and other European countries unite the coal and steel resources within a supranational Community, aiming to achieve a "de facto solidarity" that would make it impossible to contemplate war again[42].

Divine Mercy (Kowalska), identity in Wojtyła's phenomenology of the person and society, and discourse-based solidarity (Tischner) – paths beyond history's short-circuits: a Vichian quest for morality?

Faced with the Soviet totalitarian state and the suffering it inflicted on its citizens and those of the states that fell under its orbit, the Catholic philosopher Karol Wojtyła, later to become Pope and now raised to the altars, would have developed a phenomenological philosophy where the measure of evil would be limited by the possibility of doing good. This philosophy, rich in spirituality, would later become part of the volume *Pamięć i tożsamość* (Memory and Identity), which in a sense was his philosophical testament. In this volume, which began in the form of a dialogue with two philosophers, Krzysztof Michalski and Józef Tischner, he presents various issues that can lead to a comparison with Vico's thought. Among these, there is, first and foremost, the problem of the predominance of thought, of the "cogito," over that of being, which, according to the Pope, was at the root of the philosophy of evil. The second is the intrinsic limit to evil itself. This

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[40] The first edition seems to be lost; concerning the 1944 edition of the Italian Movement for European Federation editions, entitled "Problemi della Federazione europea" where the first part is devoted to "Progetto di un Manifesto per un'Europa libera e unita". This edition was reprinted in an astatic form edited by Sergio Pistone with an essay by Norberto Bobbio in 2001, in which it is stated that the preface to the 1944 volume was by Eugenio Colorni.

[41] W. Churchill W., *Address given by Winston Churchill* (Zurich, 19 September 1946), CVCE.eu by UNI.LU, transcript of the speech delivered at the University of Zurich, 19 September 1946

[42] Schuman R., *The Schuman Declaration* (Paris, 9 May 1950)," CVCE.eu by UNI.LU, text of the declaration delivered in the Salon de l'Horloge, French Foreign Ministry, 9 May 1950 (19.08.2025).

problem is addressed starting from some fundamental examples, affirming that, in the circumstances in which evil manifests itself, values become the prevailing element.

A third element of Pope John Paul II's volume, to which I am referring, concerns precisely the question of everyone's call to metaphysics, as a fundamental element of democracy. The Author seems to look at it through the prism of the example of St. Faustina Kowalska, who had developed, without any particular cultural background, a mysticism of mercy and freedom directed towards the common good[43]. We must also remember the Ethics of Solidarity by the Polish philosopher Józef Tischner[44]; he too, a Catholic priest, starting from the crisis of Polish society during the course of real socialism, proposes to rebuild its political fabric in its fundamental aspects through the proposal of dialogue and sharing of respective problems, primarily those related to labor, but through a deconstruction of these and a reconstitution through the aid of solidarity itself. Tischner's ethics of solidarity, calling for dialogue and sharing, invites each individual to an action that approaches others starting from their own conscience and seeks to indicate the maximum horizon of possible freedom.

Let us look as a reference to a Christian ethos while striving to transform it into a universal ethos where history awakens people's consciousness. This analysis cannot overlook the encyclical *Laudato Si'*, in which Pope Francis calls everyone, indiscriminately, to the protection of Nature and Creation, without forgetting that the destruction of life and the resources of the planet is manifested by enormous inequalities between the rich and the poor. The ethical call is directed not only toward the environment but also toward caring for the poor. In this sense, the natural environment is regarded as our Common Home[45].

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[43] Jan Paweł II, *Pamięć i tożsamość,* Społeczny Instytut Wydawniczy Znak, Kraków 2005. I would like to recall in this regard the text of the lecture with which I bid farewell to my colleagues at the John Paul II Catholic University of Lublin when I moved to Szczecin. The lecture is titled *From the Moral Judgment to Political Responsibility: A brief Analysis of John Paul II: Pamięć i tożsamość* (Kraków 2005) in the perspective of the values grounding European integration*, and it remains unpublished.

[44] Józef Stanisław Tischner (1931 – 2000) was a Polish priest and philosopher who played an important role in the opposition movement (Solidarność). His "Ethics of Solidarity," which in fact began as a series of homilies, was an attempt to find a solution to overcome real socialism and regain freedom through an effort of communication and understanding of others. This approach was evidently also opposed to a transition towards uncritical liberalism.

[45] *Lettera enciclica Laudato si'* Francis. *Laudato si'* (Encyclical Letter, 24 May 2015). *Acta Apostolicae Sedis* 107 (2015): 847–945. English version *Laudato Si': On Care for Our Common Home*. Holy See, https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html (16.09.2025). See among the many noteworthy elements, § 17 where it mentions "a number of themes which will reappear as the Encyclical unfolds. As examples, I will point to the intimate relationship between the poor and the fragility of the planet, the conviction that everything in the world

In all these cases, to a situation of crisis, the response is a call to an ethics that goes beyond the present situation. In it, metaphysics still remains among men, while religion descends towards men, starting from the exhortations that emanate from the "Divine Providence," using the Vichian formula, which manifests itself in the events and situations we experience.

Towards universal principles through practical metaphysics?

The question then becomes how to conceive and live religion – and ethical calls more generally – as messages that descend toward humanity, yet enable the practice of activities that allow us to aspire upwards. In other words, activities that are humble, not based on the presumption of knowing everything; activities that are accessible to all, suitable for everyone, and imbued with wisdom.

These practices must therefore make it possible to realize a practical metaphysics – one that may take form in a new discourse and a renewed approach to life in common within the Biosphere.

2.3. Values and self-regulation in Vico's thought

The question of the collective consciousness

Vico's vision of self-regulating feedback cycles – virtuous or vicious – is of paramount importance for understanding the development of human societies. Drawing on a proto-systemic logic, he links metaphysical contemplation, moral virtue, and governance in a recursive dynamic, where the human mind – conceived as part of a collective noosphere – plays a crucial role in sustaining or disrupting societal progress, depending on the path chosen. Divine Providence functions not as a deterministic force, but as an evaluative mechanism that stimulates ethical reflection and guides societal evolution through the consequences of human attitudes. These insights remain highly relevant today, as they underscore the need to cultivate metaphysical awareness and value-based feedback loops that sustain peace, humility, and also a life in harmony with the Biosphere.

The Vichian image, with which he presents the idea of *The New Science* is quite important to this aim. We see a movement that goes from the bottom to the top and another

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is connected, the critique of new paradigms and forms of power derived from technology, the call to seek other ways of understanding the economy and progress, the value proper to each creature, the human meaning of ecology".

that goes from the top to the bottom. On the one hand, there is metaphysics, which contemplates in God the human minds, and thus the thoughts of men, and on the other hand, there is the ray of Divine Providence, which is directed to the heart of metaphysics itself, and is reflected on a convex jewel, which spreads beyond the sphere of intellectuals, towards all the things of men and nations. This is the call for everyone to observe things through the perception of Divine Providence, and thus to have a pure heart[46], to embrace a philosophical knowledge and develop it in a metaphysical perspective.

This call constitutes a fundamental element of the recursiveness of the Vichian conception, which is itself complex and indicates that undertaking and then resuming the positive course of the development of nations is possible, but at least when a certain group of people is able to make their own and to sow around them this attitude of observing the world and the "minds of men," from a metaphysical perspective. The latter, moreover, sustains itself because metaphysics contemplates precisely in God the minds of men. We could therefore indicate this set of men's minds, individual yet interconnected, as the "noosphere," using an expression adopted by Vernadsky[47] and by Teilhard de Chardin[48], and that refers us to one of the issues that Vico seems not to have addressed: namely, the world of nature.

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[46] G.B. Vico, *Scienza Nuova*..., § 5.

[47] V.I. Vernadsky, *The Biosphere*, Complete Annotated edition, Copernicus (Springer Verlag), New York 1998 (1st ed. 1926: Биосфера, Ленинград) (Foreword: L. Margulis, M. Ceruti, S. Goluabic, R. Guerrero, N. Ikeda, N. Ikezawa, W.E. Krumblen, A. Lapo, A. Lozcano, D. Suzuki, C. Tickell, M. Walter, P. Westbroek; Introd. J. Grinevald; transl. D.B. Langmuir; revised and annotated by M.A.S. McMenamin). In particular, see Appendix I of this volume, entitled *Vladimir Ivanovich Vernadsky (1863-1945) A Biographical Chronology*, compiled by Jacques Grinevald. On page 155 of this edition, as part of this appendix where it is reported that Vernadsky was in Paris in 1924 and published *La Geochimie*, printed by Felix Alcan, a publisher in Paris. In this year Vernadsky received financial support from the Rosenthal Foundation to measure biogeochemical energy. The editor of the bibliography recalls the many conversations had in this year between Vernadsky, Pierre Teilhard de Chardin (1881–1955) and Edouard Le Roy (1870–1954). He also reports that the concept of "noosphere" (sphere of thought, consciousness or, putting it in Vichian terms, sphere of minds) was invented by these three. The concept of noosphere will, in fact, be used in several subsequent publications by Vernadsky. In this regard, see *The Transition From the Biosphere To the Noösphere*, excerpts from Scientific Thought as a Planetary Phenomenon (1938), now in 21st Century, Spring-Summer 2012, p. 18 *passim*.

[48] P.T. De Chardin, *The Phenomenon of Man*, Harper & Brothers, New York, 1959. See: Book three, *Thought*, Capitolo I, *The birth of thought*, Part I, *The threshold of Reflection*, section c: *The Threshold of the Terrestrial Planet: The Noosphere*, pp. 180–183.

Virtuous vs. vicious circles – toward a new approach to dialogue with nature and others

We may observe that the relationship between God and humans, in Vico's view, takes on the perspective of a conditioned feedback process: only where humanity, through the evaluative feedback work of Divine Providence, adopts a sufficient level of moral virtue, will it find itself in a virtuous circle, or else it will experience a vicious circle. Both cycles are open-ended: therefore, the virtuous circle may either strengthen itself through the metaphysical contemplation of the minds of men or deteriorate into a vicious circle, while the vicious circle, given the difficulties caused by conflicts, will serve as a stimulus for humanity to modify its attitude.

In both circles, both the virtuous and the vicious one, Divine Providence acts as a self-regulating element, pushing humanity towards the path of good. This is Vico's optimism, as discussed by Capograssi.

Therefore, we will have the following virtuous circle:

> If humanity's ethical attitude is adequate, it will allow, through metaphysics, contemplation of providence and observation of the minds of men (which will lead to an increasing and metaphysical development of culture and human life) – so we will have the following type of feedback loop: in the face of stimuli from communal life → adopting an adequate ethical attitude → being able to make use of metaphysics → succeeding in the contemplation of God → being able to develop its governance → achieving a life of peace → improving this condition of peace through the contemplation of the minds of men through the contemplation of God → still needing to be careful not to show an attitude of arrogance.

Alternatively, we will have the following vicious cycle:

> If humanity, when faced with the stimuli of communal life, → adopts an inadequate ethical attitude, namely either prideful or focused on life's pleasures, → denying the existence of divine providence, it will fail in contemplating God, → experience a devolution of governance, → leading to society becoming full of conflicts, → suffering will serve as a stimulus to develop a correct ethical attitude.

2.4. On the need to combine thought on society with thought on nature

When the vision of nature reflects the understanding of the self (also in society)

Although Vico's feedback model is centered on human society, it contains the conceptual seeds – such as moral conscience, the anthropic principle, and learning through observation – for a higher-order systemic approach that resonates with contemporary complexity theory. The comparison with Luhmann's systems theory sharpens the need to account not only for abstract social mechanisms but also for the concrete actions of individuals, thereby reintroducing the ethical subject into systemic reflection.

The interplay between "observation of observation," ecological communication, and moral plurality underscores the need for an ethics of responsibility rooted in personal action yet oriented toward systemic transformation. Indeed, personal action, as a carrier of communication and human interaction, enables the emergence of a shared ethics in search, by means of human freedom applied to the present common challenges of humankind of universal principles adequate to the complexity of human–nature relations.

In reality, Vico, while considering the feedback just illustrated, which is at the basis of his theory of history, since his model focuses on the philosophy of society and not also on the philosophy of nature (and at this point we could say that the globe appears only from one side in the painting of the *Idea of the Work*), does not think of more complex feedback loops. However, precisely because he considers the call of providence to be directed toward humanity – that is, to all people, of all nations – we cannot overlook the need to place Vico's thought within a system of relationships of a more complex order: not only in relation to a State in its ideality, however manifested in history, but also in relation to all States, considered both in themselves and in their relations with one another.

This does not constitute a task completely abstracted from the problems Vico was aware of, and which he could have based his analysis on. Indeed, Vico had studied the development of the Roman Empire around the Mediterranean, both as the Roman Empire of the West and as the Roman Empire of the East, as well as the developments in international law and the wealth of nations that had descended from geographic discoveries. However, Vico wrote almost a century after the Peace of Westphalia, which, by emphasising the importance of the "State" had sanctioned those factual elements that had emerged since the 16th century, and which would have allowed redesigning the political geography of the Earth from the perspective of the "*Jus publicum Europæum*".

Indeed, according to Schmitt:

> The appearance of vast free spaces and the land-appropriation of a new world made possible a new European international law among states: an interstate structure. In the epoch of interstate international law, which lasted from the 16th to the end of the 19th century, there was real progress, namely a limiting and bracketing of European wars. (...) It arose solely from the emergence of a new spatial order – a balance of territorial states on the European continent in relation to the maritime British Empire and against the background of vast free spaces. Given the fact that independent powers, with unified central governments and administrations, and well-defined borders had arisen on European soil, the appropriate agencies of a new jus gentium were in place. The concrete spatial order of these territorial states gave European soil a specific status in international law, not only within Europe, but in relation to both the free space of the open sea and to all non-European soil overseas. This made possible a common, non-religious and non-feudal international law among states that lasted 300 years.[49]

The reflection of God disclosed through metaphysics should not be neglected, for it enables a higher and more comprehensive understanding of the meaning and scope of observation – an understanding that encompasses not only human beings but also natural resources and, moreover, the regularities of the biosphere.

Toward a higher level of observation

As I have been saying, the issues explained could not be considered without taking into account the material and human resources of the various continents and different nations and empires. Vico himself, in the idea of *The New Science*, had referred to the contemplation of human minds in God, and had postulated feedback-regulation-learning processes, as we have just seen. Additionally, he had formulated an anthropic principle, similar to the idea that "man makes himself the measure of the universe"[50], and from this he is called to learn. Thus, it seems natural to consider Vico's scientific project through a higher order of complexity, derived from the interaction of man consciously observing himself and the world

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[49] Cfr. C Schmitt, *Der Nomos der Erde im Volkerrecht des Jus Publicum Europaeum*, Duncker & Humblot, Berlin 1974. I refer here to the English edition: *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, transl. G.L. Ülmen, Telos Press Publishing, New York 2006. Italian edition: *Il Nomos della Terra nel diritto internazionale dello „Jus Publicum Europaeum"*, transl. E. Castrucci, ed. F. Volpi, Adelphi, Milan 1991. See Part III: The Jus Publicum Europaeum Chapter 1. The State as the Agency of a New, Interstate, Eurocentric, Spatial Order of the Earth, pp. 140–151. See p. 140.

[50] G.B. Vico, La *scienza nuova*...., § 120, p. 243.

around him. From this perspective, it is natural to pose the subsequent question of how Vico's thought, viewed through the prism of systems theory, addresses the issue of nature. In this regard, Niklas Luhmann must be mentioned first, as he approaches the problem of nature by starting from society, and speaking of "observation of observation". He thus highlights several paradoxes that arise when society seeks to observe the nature that constitutes its horizon, whose depth can always extend further. He also notes how ethics, understood as "a reflective theory of morality, otherwise known as a theory of the unity of the difference between good and evil," can assume the task of addressing the different perspectives on morality. If such an ethics were to emerge, then, Luhmann argues, it could address the necessary distance that would otherwise have to be maintained between ecological communication (which, in his terminology, combines information, expression, and understanding) and morality[51].

Joining different moral perspectives in a coherent and comprehensive ethics – toward a "religio" of universal principles

We thus arrive to the question of "religio," which is called to seek an ethics capable of addressing the various existing moral positions. I will attempt to approach this issue by referring to the tripartition between speculation, activity, and practice. Indeed, although Luhmann's theory of social systems offers a reflection that describes the functioning of modern, technologically advanced mass societies, it remains confined to describing the mechanisms that regulate their activities. But can this theory truly exclude the individual from its scope of interest? As we have seen, Vico also limited himself to speaking about humanity, yet without excluding the concrete person[52]. In my view, a turn toward concrete men and women – toward the young and the elderly – which necessarily involves the question of their practical actions, is essential. This transition – namely introducing the human person in their concrete reality – makes it possible to address the issue of the generalized ethical problem described by Luhmann, which means going beyond the various moral positions on good and evil. In fact, it is the action of each individual, realized starting from concrete subjects yet not limited to them, that, once deemed possible, also constitutes the transition

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[51] N. Luhmann, Ökologische Kommunikation: Kann die Moderne Gesellschaft sich auf ökologische Gefährdungen einstellen?, 2nd editoon, Westdeutsches Verlag GmbH, Opladen 1986; English version: *Ecological Communication*, transl. J. Bednarz, Jr., The University of Chicago Press, Polity Press Cambridge 1989, pp. 141–143, *passim*.

[52] See Capograssi's debate with A. Guzzo, N. Abbagnano and the others in G. Capograssi, *L'attualità di Vico*, in: *L'attualità dei filosofi classici. Età moderna*, Milano 1943, pp. 89–98 now in: *Opere di Giuseppe Capograssi*, IV, Giuffré, Milano, 1959, pp. 397–410.

through which such action becomes first acceptable, then desirable for most, and therefore practiced. Shifting our focus of interest from society to humans does not only require that we consider society as an object of knowledge or propose only activities such as legislations or programs relevant to the whole society, but also that we recognise the decisive importance of each of our activities. This allows us to confront the ethical problem – and therefore the problem of human freedom – beyond the differences that we often perceive among individuals.

2.5. Symbiosis and society

Can we read Vico with reference to symbiosis among all living beings?

Vico's openness to individual human agency and moral conscience appears well-suited to expanding his thought toward the idea that societies may be understood not only within their cultural and spiritual frameworks, but also in their biological dimension. Just as the failure to recognize interdependence in child-rearing and education leads to atomization, violence, and systemic breakdown, so too does it affect communities and political orders. The constitutional relevance of these insights lies in the need to recognize the existence of others – both within society and in relation to their embeddedness within the Biosphere. From this perspective, a culture of symbiosis calls for addressing both human dignity and the identity of communities, as well as the intricate web of relationships that constitute the Biosphere.

The decisive elements of this shift toward human beings are the concept of the relationship between the different perspectives of our existence, the concept of interdependencies, and finally the concept of symbiosis. The object of Vico's thought undoubtedly rests on them, remaining within the realm of society and with both a cognitive and a direct focus on the effects of human actions. On this basis, we may ask whether Vico's thought can be considered in relation to symbiosis among human beings, and among living beings more generally. Since, as we have established, Vico's theory does not exclude the human being as an individuality at all, it appears entirely legitimate, if not necessary, to consider the biological question from the perspective of his thought. In fact, human life, although it has remarkable cultural and spiritual dimensions, is necessarily a biological life. Starting from this, we can consider the biological life of societies as a whole.

Universal principles as systemic patterns?

The question of symbiosis becomes important in this regard, considering not the concept of organisation, but that of the relationships that constitute systems, which has been carefully studied by Gregory Bateson[53]. This author frames a "healthy" man–environment system as one where the flexibility of civilization matches that of the environment – i.e., the joint system remains open-ended for slow change of even basic characteristics. He calls this characteristics "uncommitted potentiality for change"[54]. To achieve this state the question is whether we can develop an ethical approach from below, where each individual adaptation shall connect with the adaptation of others and nature, or whether we have to listen to some other call. Therefore the research of "the pattern that connects," which is the main issue in Gregory Bateson's research, shall be discussed in the said perspective. The approach from below is manifested, according to Bateson, in the relationship as such, in the modality of context, feedback, homology, meta-communication. In this perspective ethics "from below" means cultivating perceptual and communicative habits that keep the system open to learning across levels. However, Bateson keeps the learning process also connected to patterns, from above. Among such patterns we have law, whose main duty ought to be to permit the system to pursue learning from below. This dichotomy is echoed by Heinz von Foerster. The latter, in a dialogue with Humberto Maturana, and using the derivation of "pattern" from "pater"[55], and thus attributing to this term a meaning of pattern in the sense of a mold, has sought the complement of this concept, namely "the matrix that embeds." Systemic observation of systems, therefore, provides space and incorporates aspects of the surrounding world. Hans von Foerster naturally also notes that this approach modifies the concept of science, as well as the method adopted by systems theories. Indeed, the root of science is the Indo-European term "schi." From this, we have schizophrenia or schism, but also the Latin "scio," which indicates knowing in the sense of dividing. If we consider the practical aspects of this perspective, adopted

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[53] G. Bateson, *Steps to an Ecology of Mind*, Jason Aronson, Northvale, N.Y. 1987 (first ed. 1972).

[54] G. Bateson, *Ecology and Flexibility in Urban Civilization*, in: *Steps to an Ecology of Mind*, Jason Aronson, Northvale, N.Y. 1987 (first ed. 1972), p. 502.

[55] Thus see the etymology of pattern, which in the English language is descended from the Old French "patron," understood as a model to follow, itself then descended from the Latin "pater", https://www.google.pl/search?q=the+ethymology+of+pattern&oq=the+ethymology+of+pattern&aqs=chrome..69i57.14293j0j7&sourceid=chrome&ie=UTF-8 (9.06.2024).

by second-order cybernetics as proposed by Mary Catherine Bateson[56], then, in systems theory, , the central issue becomes that of interdependencies. This author highlights the importance of understanding the significance of interdependencies, observing that the fundamental problems of the societies around us are atomization and competition. One example presented by Bateson concerns the message we give to children when we decorate their rooms with images dedicated to children. This is equivalent to saying to the child, "You are alone." In this way, the author adds, a balanced education cannot be developed. Bateson goes further and gives the example of a mother breastfeeding her child. Not breastfeeding a child or imposing feeding schedules creates obstacles to the proper functioning of interdependencies. Instead, if the mother breastfeeds the child and takes notes on the child's requests, as soon as she realizes a pattern, she discovers how the child operates. Therefore, when the child asks for milk, the mother will produce milk because we are dealing with a self-regulating system.

Self-regulating systems and the understanding of interdependences – on the transformative power of universal principles

Everything is interdependent, and the lack of awareness of this will undoubtedly disrupt contacts even between the mother and the child. Instead, the conscious effort of the mother to understand the child's rhythm allows for establishing a type of unity between mother and child. However, she adds, we often hear that it is necessary to let the child cry, that the child must have milk at the hour determined by us, otherwise he falls behind in the predetermined societal pattern. Here, we would say, we encounter an analytical and conceptual framework not very different from the one Altiero Spinelli and Ernesto Rossi spoke of in the "Ventotene Manifesto." That is, a great crisis occurs in society when the State, allied with mass parties and large capitalist structures, turns the individual into their instrument. However, this analysis was centered on the European national state. Instead, Mary Catherine Bateson, speaking of American society, says that it has adopted a counter-systemic attitude, promoting extreme individualism, urging people to compete with each other, and also believing that violence is a way to resolve conflicts. The exportation of this attitude, Bateson says, has been accompanied by a tendency of American citizens to incite violent solutions to problems even in their respective countries of origin. Therefore, she concluded, the destabilization of the mechanisms that allow symbiosis between

[56] M.C. Bateson, *Cybernetics in the future – Introduction* [Video]. American Society for Cybernetics – ASC, YouTube 2014, https://www.youtube.com/watch?v=nXQCybernetics in the Future - Introduction by Mary Catherine BatesonraugWbjQ (30.08.2025).

living beings has taken on a global character. This critique of American civilization should not be misunderstood or radicalized. The problem that Mary Bateson talks about is much older and deeply rooted in time and should be examined within the framework of the problem of hegemonic political thought.

2.6. Hegemonic thought, abuse of rational operations, and anti-cybernetic thought

A vicious circle

However, a proper understanding of Vico's thought may raise certain challenges. Indeed, I have been showing that we may enter virtuous circles or vicious circles, according to the ethical attitude that we take. Neglecting freedom and the identities of communities in favor of hegemonic thought and action risks thus hindering the creative contributions of individuals and societies, along with the richness of their diverse experiences within the various biospheric contexts. In this regard, several historical experiences – including the attempt to develop the *Jus Publicum Europæum* as a global spatial order – demonstrate that the failure to acknowledge the importance of mutual identity and diversity has led to profound ecological and social imbalances, ultimately resulting in the dissipation of peoples, communities, and natural resources.

Division of patterns, territories, peoples, cultures, nations

Let us move on to hegemonic political thought. The purpose of the volume written by the scholar of law and politics Carl Schmitt titled "*The Nomos of the Earth*"[57], is, according to the author himself, to address the issue of Land and Sea in a comprehensive and global sense, considering: a) land and open sea issues; b) land and sea occupations; c) the relationship between order and location (*Ordnung und Ortung*)[58]. Indeed, a theory of international law that advances claims of historicity, universality, and globality, as does this work, may not any longer ignore the problem of man, his freedom, and the nature in which he lives. Schmitt, drawing in some way from a Vichian concept, according to

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[57] C. Schmitt, *The Nomos...*

[58] C. Schmitt, *Der Nomos Der Erde – The Nomos of the Earth.* From the German Introduction (Vorwort): "Denn es ist hier von festem Land und freiem Meer die Rede, von Landnahmen und Seenahmen, von Ordnung und Ortung." In the English version: "For I speak here of firm land and free sea, of land-appropriations and sea appropriations, of order and orientation", p. 37.

which the primordial elements of law and human history go back significantly to the "division of fields," shows clear interest in land occupation. The origin of the division of fields, according to Vico[59], lies at the origin of the distinction of races and peoples, and ultimately of nations. The land, through its borders and productivity, constitutes in itself a significant measure for the law[60]. The occupation of land, says Schmitt, always creates, within the community, a sort of super-ownership of it as a whole, which precedes even the distinction between private law and public law. This occupation thus constitutes the archetype of a constitutive legal process[61]. The sea, on the other hand, has always been seen as a free zone and as free prey[62]. Carl Schmitt then continues by presenting the concept of pre-global law. Throughout all ages, says Schmitt, there have existed relations among empires, as well as treaties. These relations could have different natures, peaceful or hostile, or concern commerce (*commercium*) or even marriage (*connubium*)[63].

Carl Schmitt seems to refer to how the "*Jus Publicum Europæum*" asserted itself as the predominant law in the modern world as a model for global balance. This hegemony of European law was based on an agreement among European and colonizing countries, which envisaged limited hostilities on the European continent. Instead, the open seas marked lines beyond which war was permitted without restrictions. In this regard, we must say that, in Vico's thought, the division of fields stemmed from the fact that people, to seek security in primordial times, thought to gather together. In doing so, they provided for burials, tying themselves to the land, and thus becoming settled. This required the clearing of forests to cultivate the land, hence the division of fields.

However, this moment of city formation was accompanied by a quest for security and therefore by a conception of war, which was primarily defensive. Other forms of war, in Vico's thought, could only be connected to the question of values: thus, if they resulted in a failure to uphold a proper understanding of Divine Providence, they would have led to conflict and consequently to decline – while leaving humanity the possibility of repentance and of returning to the proper course of development of nations. Indeed, the creation of a hegemonic European public law on a global scale, based on the "nomos" of the earth as considered by Schmitt, without reflection on the deep interdependence that links the values of the human soul with the development of political societies, as noted by Vico, did

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[59] G.B. Vico, *La Scienza Nuova*..., § 13, p. 224.

[60] C. Schmitt, *The Nomos*..., German version, p. 17, English edition p. 47, Italian edition p. 20.

[61] C. Schmitt, *The Nomos*..., pp. 24–25 are from the Italian edition.

[62] C. Schmitt, *The Nomos*..., p. 21 always from the Italian edition.

[63] C. Schmitt, *The Nomos*..., p. 33 of the Italian edition.

not prevent the indiscriminate appropriation of the Earth's resources through hegemony and instrumentalization, for the benefit of the colonizing countries, at the expense of the majority of the world's population.

The way of thinking about international law of states as universal, and the attempt to establish a kind of "*ordo liberalis*" with the development of free trade, could appear as a separation of the economy from the state[64]. Schmitt appropriately holds that "a concrete international legal order generally arises from a connection and intertwining of multiple different orders". He traces these orders back to increasing separations and development of complexity, but without drawing adequate consequences. Indeed, he states that in the Christian Middle Ages, international law consisted of the entanglement of relations linking feudal law to ecclesiastical law. Once the form of the modern state was established, in the seventeenth and eighteenth centuries, such law arose from relations between dynastic law linking ruling families to law between states. In the nineteenth century, however, Schmitt perceives international law through the connections between interstate sovereignty, open seas, and free economy. In this regard, Schmitt referred especially to the consequences of the Cobden-Chevalier Treaty of 1860, which is considered the first modern trade treaty. This was concluded between France and the United Kingdom, resulting in a reduction of customs duties along with the inclusion of the most favored nation clause, and was followed by another 56 similar treaties in the subsequent 15 years: all European countries, by 1875, were almost entirely members of this system[65].

Duality of international relations: toward interdependence together with the respect of mutual identity?

According to Schmitt, the structure of international law, which was composed of public international law and private international law, corresponded to a dual structure of international relations. In fact, on the one hand, there were relations between sovereign states, each with its own territory, and on the other hand, the community of *liberum commercium*[66]. This distinction, Schmitt adds, found its foundation "as a constitutional standard of liberal constitutionalism, and that crossed the borders of states [...] a modern version of the

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[64] C. Schmitt, *The Nomos* ..., p. 298 of the Italian edition.

[65] Gene M. Grossman, "The Purpose of Trade Agreements," *NBER Working Paper* 22070, National Bureau of Economic Research, Cambridge, MA., March 2016, http://www.nber.org/papers/w22070 (2.09.2025).

[66] C. Schmitt, *Il Nomos...*, p. 293 of the Italian edition.

amity line"[67]. This is the most critical point of this analysis. Indeed, Schmitt observes first that the separation between the law of sovereign states and free trade combines international law with constitutional law and crosses the borders of individual states. On the other hand, from the mid-19th century, the dichotomy between international law and the organization of the global economy sees the development of new articulations and also processes of disintegration. Among these is the detachment from international law of private international law, which has been approaching the sphere of national law assuming a positive content. In this way, the reservations made by national rights on the basis of public order produce disintegrative effects identical to those posed by reservations to treaties between states[68].

Citizenship and the erosion of the rule of law in international law

The decisive moment of this disintegration, as observed by Schmitt, occurs in the localization of the legal case in space, no longer through the criterion of residence, but through that of citizenship, through the contribution of Italian legal doctrine. And such a change, according to the German legal scholar, reverses the relationship between norm and exception by attributing to the latter the reason for law. If we ask why this happened, we find justification in a conception of law built on Eurocentric and hegemonic political and economic relationships. In fact, at the moment when industrial development placed societies in conditions to emancipate somewhat from these hegemonies, it also produced the disintegration of an order without creating a new one. Rightly then, the law that had been stratified over the centuries through hegemonic relationships, through an appropriation of spaces, so as to regulate not only war on the European continent but also to legitimize appropriation and violence, was destined to be put in crisis. Indeed, on the one hand, it concentrated the distribution of produced value in the hands of hegemonic powers, on the other, it was unable to adequately valorize the human factor and resources on a global scale in such a way as to benefit anyone. The system, therefore, was "dissipative"[69]. And the emergence of new states in the second half of the 19th century would not only have rendered cultural connections between states irrelevant regarding their recognition. It would have generated units that, necessarily having to connect to the hitherto hegemonic states and economies to reap benefits, would have had to accentuate both violence on nature and

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[67] C. Schmitt, *Il Nomos...*, p. 300 of the Italian edition.

[68] C. Schmitt, *Il Nomos...*, p. 301 of the Italian edition.

[69] For the definition of the concept of constitution as a dissipative process, see above Chapter III of this work. *Constitution and Conflict...*

on people, namely those aspects that characterize constitutional processes and dissipative economies. The two world wars, following each other so rapidly as to seem that the latter were the the second act of the former, along with globalization processes and their consequences, including the current situation of the biosphere, which is extremely dangerous for the survival of the human species, constitute profound examples[70].

2.7. Universal principles and freedom

When the relationship between an individual and a community is not taken as a duty, but is justified as a prerogative

The extension of rationalist approaches did not foster the openness to listening – to nature and to others – that Vico associated with the development of a clean and pure heart. Such openness could have enabled a cooperative attitude and a growing symbiosis with the natural world. Instead, rationalism led to the closure of thought systems which, as Voegelin critically observed, replaced spiritual freedom with homogenizing norms and hegemonic structures – often accompanied by the apodictic claim that such systems guaranteed a bright future for humanity. To overcome this gnostic tendency, a new constitutional framework must reject abstract universalism in favor of a discovery of universal values that emerge from attentive listening to others and to nature, grounded in human freedom and metaphysical awareness.

The issue, therefore, is not the development of a universalist "nomos" or an international law reduced to an impenetrable network of relationships[71]. Instead, the question is to consider how that communal obfuscation, which generated the present situation, was produced. In my opinion, it occurred because we had confused strength with the values of "a clear and pure heart that metaphysics must have" (Vico)[72]. In other words, with the necessity of a practical, conscious, and active responsibility of each individual for today's complex societies. Furthermore, we have developed rational understandings of ethical systems, treating them as closed and complete systems. We have thus considered these systems as all-encompassing.

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[70] A.D. Barnosky, N. Matzke, S. Tomiya, G.O.U. Wogan, B. Swartz, T.B. Quental, Ch. Marshall, J.L. McGuire, E.L. Lindsey, K.C. Maguire, B. Mersey, E.A. Ferrer, *Has the Earth's sixth mass extinction already arrived?*, "Nature" 3 March 2011, No. 471, pp. 51–57, DOI: 10.1038/nature09678 (10.09.2025).

[71] Schmitt, *The Nomos...*, p. 304.

[72] G.B. Vico, *Scienza Nuova...*, § 5, p. 224: "cuor terso e puro che qui la metafisica deve avere".

Vogelin's criticism of modernity

In this regard, I refer to Voegelin's critique of the political ideologies of modernity, which have taken on the character of a gnosis. In seeking the idea of gnosis, which Voegelin presents within the context of modernity, we observe that he identifies its carriers, starting from the historical evolution that has led to a homogenization of societies. Indeed, in the early stages of modernity, it was the inhabitants of cities and countryside who found themselves in opposition to feudal society, then it was the bourgeoisie, socialist workers, and later the small fascist middle class. As this progressed, homogenization occurred[73], to which philosophy seems to have made a significant contribution. Voegelin, in this regard, critically addresses the last chapter of Condorcet's "Esquisse," where it is emphasized that the progress of reason, exported as a result of the achievements of the Enlightenment century, can play a fundamental role for all humankind, and this can fundamentally overcome inequalities between wealth and the conditions of men and the level of education[74]. Indeed, the yardstick of this rational development, tending towards homogeneity, was, as Voegelin observes, nothing other than the scientific approach of the French intellectuals.

With positivism, he continues, this scientism reached its peak[75]. Voegelin criticizes this approach because it tends to give human activities and civilization an eschatological sense that leads to a self-constructed salvation. However, according to Voegelin's thesis, this leads to the death of the spirit and therefore to the demise of the order it causes. In this case, where elites assume the monopoly of representation[76], this also brings about the end of freedom, primarily because every debate about the truth professed by the elites themselves is eliminated[77]. This is what we consider to be the abuse of reason, as reason, by becoming truth in itself, closes in on itself and therefore is not open to relationships with the surrounding world.

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[73] E. Voegelin, *The New Science of Politics. An Introduction*, University of Chicago Press, Chicago & London, 1952. Now in: *The Collected Works of Eric Voegelin*, vol. 5: *Modernity Without Restraint*, ed. M. Henningsen, University of Missouri Press, Columbia, MI. 2000 p. 191.

[74] Condorcet, *Esquisse d'un tableau historique des progrès de l'esprit humain* (1st ed. 1795), ed. it. *Quadro storico dei progressi dello spirito umano*, introductory essays: R. Guiducci and M. Augias, Rizzoli, Milano 1989. I refer here especially to the last chapter devoted to "The Future Progress of the Human Spirit" (Dixième époque. Des progrès futurs de l'esprit humain.).

[75] E. Voegelin, *The New Science...*, *passim*.

[76] E. Voegelin, *The New Science...*, p. 240.

[77] E. Voegelin, *The New Science...*, *passim*.

Practical activity as a feedback principle permitting to test universal principles

At this point, we can also observe the importance of practical activity in the search for universal principles. Indeed, it is practice that enables us to give meaning to activity understood as the shared representation of solutions to what we regard as our present problems. The design of activity is the result of speculative reflection.

The concept of "religio," in order to avoid falling into counter-systemic manifestations – such as those observed in the hegemonic theory of the *Jus Publicum Europæum* or in the case of gnosis, which was the subject of Voegelin's criticism – must therefore assume an open character. It should aim not only to connect people with one another, but also to foster symbiotic relationships with nature and among different peoples. Here, once again, we find the enduring relevance of Vico's thought.

3. Toward an Ecology of the Biosphere and the Question Juridical

3.1. The phenomenology of language and complexity of "religion": between "religio" and the ecology of the Biosphere

Metaphysics and language

The deep relationship between language evolution and the formation of universal spiritual and cognitive concepts, particularly in Indo-European traditions, reveals a common metaphysical ground shared across cultures. This suggests that even today, such a common heritage can be recognized and, if integrated with contemporary knowledge, can significantly contribute to the development of a legal framework grounded in universal values such as reverence for life, interconnection, and responsibility. In this way, it becomes possible to foster a symbiotic relationship between human freedom, cultural identity, and the integrity of the Biosphere.

In Vico's thought, metaphysics holds a central importance: starting from it, the various human affairs can find an arrangement that leads to the development of nations. However, metaphysics is a path that needs to be cultivated itself, starting from the study of human capabilities, and thus of language, which identifies how much man can embrace, therefore, understand, in his thought, and history, which allows us to verify if what intuitively appeared as a way for society to position itself has actually led to the development of nations. This

verification, moreover, can be done retrospectively, but it allows us to identify the authority of those who managed to operate language in a positive or auspicious manner, for the nations themselves[78].

On the roots of our languages as a common ground for institutional development – vital energy and cosmic waters

The recent studies on the origin of the Indo-European languages have shed new light on these issues[79]. If we consider the meaning of some of the Indo-European words, their presentation is rendered by Franco Rendich as an etymological consideration regarding the origin of religious thought. I will refer to this description for the liveliness and multidimensionality it introduces into the concept of religion. Let us begin with the concept of the vital breath, which is primordial from the perspective of man approaching the Absolute. In the reconstruction of the proposed Indo-European language, the expressions "an" and "manas" indicated the animating breath of the waters in relation to the cosmic mind. The vowel "a" signified that which initiates, while the consonant "n" symbolized water. The root "an" was thus formed to express that man, through breath, inhales and exhales vital energy. The latter, instead, was brought to the earth through cosmic waters, which were considered as "mothers" and "generators" of everything that was part of creation. From this root, the Greeks derived ánemos – ἄνεμος – which meant breath, or air, or wind, while Latin appropriated it through the concepts of an-imus and an-ima. In Indo-European, the consonant "m" instead denoted limit, hence a concept of dimension. The word m-an thus indicated the dimension of the breath of the waters, and hence "thinking."

Creation, and the encounter between the celestial and the earthly spheres

From the verb "man" derived "manas," which denoted both knowledge through intellect and senses, and the psychic function that descends from the heart, or consciousness. The union of finite breath and Absolute, infinite breath identified the experience through which the religious sentiment manifested itself in the Indo-Europeans. Note the associations that Rendich examines between this vital breath and the Latin "spiritus," the Greek

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[78] See G.B. Vico, *Sinopsi del diritto universale* (1720), in: G. Vico, *Opere Giuridiche. Il Diritto Universale*, ed. P. Cristofolini, Sansoni editore, Firenze 1974, pp. 14–15. See also the Introduction of N. Badaloni, *Sul Vichiano diritto naturale delle genti*, in: G.B. Vico, *Opere giuridiche*, ed. P. Cristofolini, Sansoni, Firenze 1974, pp. XV–XLI, citation on page: XV.

[79] F. Rendich, *Dizionario etimologico comparato delle lingue classiche indoeuropee. Indoeuropeo – sanscrito – greco – latino*, Palombi Editori, Roma 2010.

"pneuma" (πνεύμα), or psykhē (ψυχή)[80]. The concept immediately following the vital breath is that of Creation. In Vedic writings, the events denoting Creation are: the separation of being from non-being, of life from death, and of light from darkness. Therefore, we find two types of cosmic waters: those dark and impenetrable on the one hand, and on the other, those luminous and radiant. Thus, the word "*eka*", which indicates "One," appears to be composed of the Indo-European verb "i" (in Latin īre – in the strong form, the verb "*i*" is "*e*", "*eti*"), and the noun "*ka*", which stands for "water," "light," or "happiness", thus indicating movement towards the clear waters, bringers of happiness. Creation, directed towards happiness, is expressed in Vedic cosmogony by its dynamic character. Eka, the One, is born from the Power of fervor: thus, this latter, *Tapas*, cosmic fervor, has generated the One. Connected to these notions is that of "*Kam*", desire (*ka*) of the luminous waters (*ka*), which incarnated in the *Eka*, to create matter (*ma*) and living beings that are mortal ("*m*" – "*r*"), just as mother (*m*). Thus, etymology indicates an encounter between the celestial spheres (*ka*) and the earthly one (*m*), between the infinite and the finite, with the desire to create life in the universe[81].

From the personification of divinity to faith

These concepts are linked to the personification of the Divinity, at least for the one who directs the material world, namely *Vac*, semantically connected to the cosmic waters (whose sound is *ma*/*ra*), which named the various gods using the thought (*man*) of the maternal waters (*na*). Thus, the expression nāman was formed, from which the expressions of name, name, imię have descended. In fact, from the qualification of the gods with a name, the qualification of the self descended – from which *nomen*, *name*, *nome*, *imię*[82]. The word *atman*, or soul, has been conceived as a drop of the divine breath-thought (*an*/*man*), which for every man tends to unite with the cosmic whole, which is the Brahman (*brah* derives from *bṛh* which means to grow or develop). *Aman* thus indicated the mystical bond between Man and God[83]. This bond generated other concepts – among them, Light and the Heavenly Father. The Indo-European words *div*, meaning sky or brightness, appear linked to the Sanskrit words *divya*, meaning "divine," and *deva*, meaning god, corresponding to the Latin terms *divinus* and *deus*. Through these, it has been observed that the expression *dyauṣ-pit*,

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[80] F. Rendich, *Comparative etymological...*, pp. 41–43.

[81] F. Rendich, *Comparative etymological...*, pp. 43–53.

[82] F. Rendich, *Comparative etymological...*, pp. 53–54.

[83] F. Rendich, *Comparative etymological...*, pp. 54–56.

meaning heavenly father, became in Latin "Jupiter" and in Greek "Zeus" (Ζεύς). The vowel "i" (ī) as a verbal voice combined with the semivowel "v," indicating "spreading from a point," gives *div* its original meaning of "movement of light propagating," while *dī* indicated the constant movement of light itself[84]. Rendich mentions several of such expressions.

From sacred knowledge to the concept of *sacer*

We have *vid*, which was sacred knowledge: indeed, *jñā* was the knowledge guided by cosmic waters, while *vid*, containing the consonant "d", which means light, manifested the knowledge obtained by abstract and deep thinking, or meditation – in Sanskrit *dhī*; *yai* – veneration, which referred to the act of proceeding (*ya*) forward (*i*), with hands open towards the sky as a sign of offering. From *yaj* descended the Greek terms *ágios* (ἅγιος), meaning holy or venerated with offerings, *agnós* (ἀγνός) pure or chaste, and *agós* (ἄγος) which stands for sacred fear or awe. The Latin terms *sacer*, sacred, and *sacerdos*, the one who performs sacred rites or priest, also descended from this root. *Sacer*, however, says Rendich, does not have the same sense as ágios, but rather resembles *ierós*, which denoted a space separated from the human, dedicated and attributed to the divine. It is an ambiguous concept, between the sacred and the accursed, as contact with the *homo sacer* was forbidden or they could be put to death without incurring punishment[85]. The concept of *ierós* is explained starting from the Proto-Indo-European *iṣ* – the starry sky, desire, and the sacred, a concept that indicates that the ancient Indo-Europeans saw the entire universe as an immense temple in which celestial dynamics and atmospheric phenomena symbolized sacrificial rites, which priests celebrated to live in harmony with the cosmos and obtain the favor of the gods. In this expression, the bond inherent in the consonant "*s*" assumed an essentially religious value through *iṣ*, which indicated the creation of a relationship, a communication with the higher world of the ancestors, united with a desire to return to the homeland where we all were born. This bond manifested itself in the Proto-Indo-European *sid*, meaning to bind to the light. From this descended the Latin expressions *sidus*, star or constellation, as well as *desiderium*, meaning not only desire but also that which descends from the starry sky[86].

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[84] F. Rendich, *Comparative etymological...*, p. 56.

[85] See G. Agamben, *Homo sacer. Il potere sovrano e la nuda vita*, Giulio Einaudi editore s.p.a, Torino 1995. English version: *Homo Sacer: Sovereign Power and Bare Life*, transl. D. Heller-Roazen, Stanford University Press, Stanford, Ca. 1998.

[86] F. Rendich, *Comparative etymological...*, p. 61.

Offering, light, justice, *religio*, *ethos*

Other expressions considered by Rendich are *hu* – sacrificial offering[87]; *dhu* – sacrificial fire, smoke, and spirit - from which the Greek *thýmos* – θυμός – soul[88]; *dhī* – Inner light and meditation, from which the Sanskrit word *dhyāna* descends, meaning meditation, which then transcribed into Chinese becomes *chán*, and *zen* in Japanese[89]. We then have ūh, *prāc*, *yāc*, which correspond to the concept of prayer[90]; *sat*, being and truth[91]; śrad – belief and faith[92]; *dhṛ* – Born from light and consolidated on earth, and therefore *dharma* which means justice, but also religion: indeed, in the Indo-European, justice was considered as the projection on earth of divine light, while the principle of authority descended from the divine; hence the expression *diś*, which meant binding oneself to the light, or showing: and hence the term *díkē* which indicates "that which shows the divine light," namely justice[93]. *Lag*, in turn, indicates the etymology of the word "religion," which signifies binding or connecting. From "*lag*," the Greek verb "*légo*" – λέγω descends, meaning to gather, collect, as well as the Latin roots "*leg*/*lig*". With the advent of writing, the verb "*lego*" indicated the gathering of the meaning of what has been written, or "gathering the divine message", while "*ligo*" also mainly indicated "to bind". Through the suffix "*re*", Latin created the expression "*religio*"[94]. Moving further, "*svadhā*" indicates the etymology of the word "ethics": in Sanskrit, this term denoted what is placed within ourselves, namely the customs and moral laws that have been received from the ancestors, and are in accordance with the light of divine law. From "*svadhā*", with the dropping of the "*s*" and "*v*", comes the expression "*ethos*" – ἦθος[95].

On the connection between being of the individual and being of the world

Due to space constraints, it is not possible to provide even a brief examination of the relationship between language use and the search for connections that, from a human perspective, link the various entities through which people have sought to understand

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87 F. Rendich, *Comparative etymological...*, pp. 61–62.

88 F. Rendich, *Comparative etymological...*, pp. 62–63.

89 F. Rendich, *Comparative etymological...*, pp. 63–64.

90 F. Rendich, *Comparative etymological...*, pp. 65–66.

91 F. Rendich, *Comparative etymological...*, p. 66.

92 F. Rendich, *Comparative etymological...*, p. 67.

93 F. Rendich, *Comparative etymological...*, pp. 67–68.

94 F. Rendich, *Comparative etymological...*, pp. 68–69.

95 F. Rendich, *Comparative etymological...*, pp. 69–70.

both the world above the earth – where the deities reside – and the realm of the spirits of the ancestors. However, it seems beyond doubt to us that the cultural development of human beings has led to the emergence of a whole series of concepts aimed at denoting the relationship between human beings and the foundations of the surrounding reality. We therefore observe the presence of two conceptions: one that human beings, nature, and the world in general were part of a single design; the second, that the different existential and conscious expressions of human beings necessarily related to the continuity between the being of the individual and the existing world. These components, operating together, have developed an enormous cultural richness, which has become the heritage of a consciousness that is, in fact, universal.

3.2. What truly binds Us – Biosphere, noosphere, and the concept of law

Human consciousness emerges within and alongside other forms of life and psychic expression

The interconnection between the biosphere (life systems), the noosphere (consciousness and psychic expression), the semiosphere (communication and symbolic structures), and the technosphere (artefacts and tools) forms the basis of a general responsibility – particularly legal and ethical – on the part of individuals, communities, and states to maintain a balance between freedom, plurality, and the care of the living systems to which we belong, as well as the planet's resources. Drawing from Vernadsky and Teilhard de Chardin, it is essential to emphasize that human consciousness emerges within and alongside other forms of life and psychic expression, indicating an evolutionary continuity that is not only biological, but also spiritual and cognitive. The fact that human know-how significantly influences our planet further compels us to act in ways that do not break the chain of our shared existence.

Returning to the "design" in which the individual has seen themselves reflected since the dawn of their existence, one must consider the necessary continuity between the biosphere – the domain where life develops on Earth – and the noosphere, the sphere in which consciousness emerges. This assumption can be supported both by Vernadsky's observation that life has been a defining element in the evolution of our planet, and by the hypothesis underlying Teilhard de Chardin's research, which holds that it is the "inner" element – what he calls the "psychic" dimension – of every living being that shapes its evolution. For example, he suggests that the tiger did not become a carnivore merely because it developed

sharp teeth and claws, but rather because, through its lineage, it inherited and developed a "soul of a carnivore."

Teilhard offers this example to emphasize that a true account of natural history would require rewriting it "from within," taking into consideration, as far as possible, this internal and "radial" dimension of evolution. He proposes, in fact, that evolution should be viewed as the progressive growth of this psychic or radial energy. In this perspective, Teilhard refers to consciousness in a generalized sense, considering it as inherent in every form of psychic expression[96].

Communication between self-aware consciousness and the world of all living beings

This conception leads us to reflect on what truly binds us. Indeed, we live thanks to the biosphere. We ourselves are living beings. All living beings manifest a psychic dimension that accumulates over time. Within this psychic dimension, human consciousness also develops. It is characterised by self-awareness, the ability to pose cognitive problems and represent reality, the ability to develop symbolic language and communicate it, as well as the ability to produce artifacts, both material and non-material, and processes that use them to achieve goals. However, human consciousness, namely its psychic dimension, lives immersed in the world of all other expressions of living beings' psyche, which also encompass knowledge of the surrounding world, the drive for food, reproduction, self-protection, and in many cases, the protection of one's own species, as well as the pursuit of light (as seen in the case of plants), calmness, tranquility, and play. All of this binds us not only to all humans but also to all living beings and the natural world. Therefore, an ethical problem arises for beings endowed with self-awareness It focuses on both the purpose of human conduct and its motive, in order to regulate conduct itself[97].

Common roots of languages and purposes of human actions

The study of the reconstruction of the Indo-European language seems to suggest that both the question of purpose and that of regulating human conduct have been adequately addressed. In fact the existence of a purpose behind human actions certainly emerges from

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[96] P.T. De Chardin, *The Phenomenon of Man...*, p. 57 *passim*.

[97] N. Abbagnano, s.v. *Etica*, in N. Abbagnano *Storia della Filosofia*, Vol. 11: *Dizionario di filosofia ESPOPP, Aggiornato e ampliato da Giovanni Fornero*, Istituto Geografico De Agostini, Milano, 2006, p. 93 *passim*.

these linguistic roots. Furthermore, regarding the conduct itself, the concept of "sacer," which implied the possibility of banishment from a community and legal protection, appears eloquent on this matter[98]. The question we must ask, however, is whether the legal aspect can be connected solely to the regulation of conduct or also to the purpose of human beings. The problem naturally lies in freedom, namely whether law aims to limit human beings in terms of their purposes or whether it should leave individuals an original space for determining their purposes and protect them in preserving them.

The individual's purpose and that of the system, however, are heterogeneous. Indeed, it is true that humans live immersed in interdependencies with nature and others, and cannot escape them. However, they have the ability to represent these interdependencies and influence them through the senses, self-awareness, expression of their spiritual and artistic manifestations, language, and the ability to build tools and use them for complex processes. For this reason, legal systems arise and develop within these interdependencies, which are primarily those occurring in the Biosphere, the sphere of consciousness, in language, and the interdependencies that occur through the use of technology and artefacts.

Human possibilities are bound to the possibilities of the Biosphere

These latter, in particular, allow us to transform the surrounding world according to our own design, which we develop through thought and language. However, human societies are born, develop, consolidate, and transform being bound by the possibilities of the Biosphere, but also by the possible development of consciousness, language, and technology. The interdependence between these elements constitutes both a constraint and a call for human consciousness, language, and technology. These elements together must be articulated in a way that is compatible with the existence of all within the biosphere.

Freedom, therefore, is not exempt from constraints but rather consists of a creative effort to represent reality and operate within its scope, taking into account the existing constraints. In this context, the development of legal systems occurs in the communion between the Biosphere, the noosphere, the semiosphere, and the technosphere.

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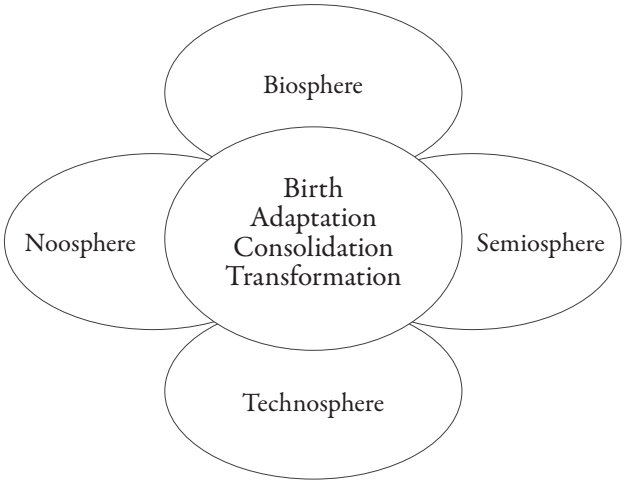
[98] See Agamben G., *Homo sacer. Il potere sovrano e la nuda vita*, Giulio Einaudi editore s.p.a, Torino 1995. English version: *Versione inglese Homo Sacer: Sovereign Power and Bare Life*, transl. D. Heller-Roazen, Stanford University Press, Stanford, Ca. 1998, page 12 *passim*.

Figure 1. Connection in the communion of the biosphere–noosphere–semiosphere–technosphere

At their intersection, new equilibriums emerge and take shape; their development is expressed through adaptive processes, the consolidation of the balances achieved, and their transformation



The term *communion* here indicates that the legal system cannot simply balance the needs of life as expressed through nature (the Biosphere), the demands of individual and communal expression (through the self-representation of consciousness), communication and political discourse (the semiosphere), and the production of laws or the development of technologies.

The legal problem as seeking symbiosis among the different dimensions of our existence

Therefore, once we consider the legal problem as the problem of seeking symbiosis among the various dimensions of our existence – biological, psychic and intellectual, linguistic-communicative, and organizational-technological – we must observe the fundamental importance of freedom and everyone's contribution to the pursuit and practice of such symbiosis. Indeed, only freedom can allow the development of awareness, original solutions, and good practices that enable us to address the problem of symbiosis of the values representing the dimensions of reality in which human life develops and takes place.

This issue manifests itself from the perspective of law as such but also has significant practical relevance. Indeed, the importance of freedom, which is an intrinsic characteristic of human beings, is associated with pluralism and broad, innovative forms of

participation, not only in common decisions. In fact, the protection of pluralism also entails the possibility of developing good social practices, such as providing public services through society itself[99]. From this point of view, recent practices such as urban agriculture, biodynamic and sustainable gardens close to cities, local currencies, sustainable exchange networks, fair trade, appear to be very interesting. Equally interesting in the past – with widespread habits of cultivating small gardens or situations in which workers also engaged in agricultural activities, and today – the various examples of sustainable economies developing in villages, for example, those in the Sahel, especially in cases where they are supported by volunteerism attentive to values.

3.3. Dynamics of law, constitution, and constitutionalism – toward symbiosis between individuals, nature, and society[100]

Interdependence between life and self-conscious life

Conscious interdependence entails an openness to others. From the perspective of comparative law, this requires adopting an expanded framework of comparison, grounded

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[99] See at least the experience of the youth of the Cœur Vert Foundation in the development of the Sahel regions, particularly Senegal, and the dissemination of this good practice in Portugal with significant participation from Polish youth. For this purpose, see the results of the conference "Towards an Ecology of Biosphere. Forest Our Life," Starościn, 10–12 May 2018. For some references to the evolution of this experience starting from 2005, see P. Policastro, *Biosfera, politica del diritto e educazione delle coscienze*, in: *Democrazia e religioni. Libertà religiosa, diversità e convivenza nell'Europa del XXI secolo* (Proceedings of the National Conference – ADEC, Trento, 22–23 October 2015), ed. E. Camassa, "Quaderni della Facoltà di Giurisprudenza dell'Università degli Studi di Trento" No. 21 Editoriale Scientifica, Napoli 2016, No. 21, *infra*, note 100.

[100] The observations developed in this paragraph present a brief summary and further exploration of the reflections I have developed over the last 20 years on the theory of the constitution and the theory of the state. As these reflections are my own, I can only refer to my main writings on the subject, while at the same time expressing gratitude to the editors of the volume for the encouragement to deepen my research in the perspective of what unites us and, in particular, of religio: 1) *Prawa podstawowe w demokratycznych transformacjach ustrojowych. Polski przykład*, Redakcja Wydawnictw KUL, Lublin, 2002, 511; 2) *La transizione costituzionale polacca e l'Europa tra paradigmi del costituzionalismo e costituzionalismo multilivello*, in: *Le transizioni costituzionali*, ed. S. Gambino, Giuffrè, Milano 2003; 3) *Challenges of Multi-Level Constitutionalism* (Proceedings of the XXI IVR World Conference: Lund 12–18 August 2003: Law and Politics. In search of Balance), eds. J. Nergelius, P. Policastro, K. Urata, Polpress, Kraków, 2004 (see in particular my introduction and my essay – items number 4 and 5 further); 4) P. Policastro, *Constitutionalism, Multi-Level Democracy and Fundamental Values*, in: *Challenges of Multi-Level Constitutionalism*, Proceedings of the XXI IVR World Conference: Lund 12–18 August, 2003: Law and Politics. In search of Balance, ed. J. Nergelius, P. Policastro, K. Urata, Polpress, Kraków 2004, pp. 9–49 and my essay, pp. 9–49; 5) *On the Reconstruction of the Legal Strength of the Constitution in a World*

in Transition. Multi Level Constitutionalism Towards Multi Level Democracy, in: *Challenges of Multi-Level...*, pp. 55–100; 6) *On the Descriptive and the prescriptive Nature of the Constitution. Constitutionalism and the Legitimisation of the Constitution in the Practice of its Implementation*, in: *The Theory and Practice of Legislation. Essays in Legisprudence*, ed. L.J. Wintgens, Ashgate, Aldershot 2005, pp. 162–186; 7) *A New Garment for an Old Question: A Clash between Man's Rights and Citizens' Rights in the Enlarged Europe?*, in: *Nordic and other European Constitutional Traditions*, ed. J. Nergelius, Martinus Nijhoff Publishers, Leiden/Boston 2005, pp. 61–92; 8) *Governing Conscious Interdependence: Inter-regional Independent Authorities as Regulatory Proposal for the Relations between European Union and Russia*, "Интернет журнал «Вся Европа.ru»" [Internet Magazine «All of Europe.ru»] 2009, No. 11(38); 9) *Godność człowieka wobec konstytucyjnych wartości*, in: *W poszukiwaniu dobra wspólnego, Księga Jubileuszowa profesora Macieja Zielińskiego,* ed. A. Choduń, S. Czepita, Wydawnictwo Naukowe Uniwersytetu Szczecińskiego, Szczecin 2010, pp. 613–653. Spanish translation: P. Policastro, *La dignidad de la persona y los principios constitucionales en la época de la globalización*, "Persona y derecho" 2011, Vol. 64(1), pp. 175–206; German translation: P. Policastro, *Die Menschenwürde vor dem Hintergrund von Verfassungswerten*, in: *Rechtsentwicklung im Rahmen der deutsch-polnischen Beziehungen*, ed. E. Tuora-Schwierskott, Deiure, Berlin 2015, pp. 67–95; 10) *Liberty and Language, The Global Dimension of European Constitutional Integration*, Torino 2010, pp. VI–498, which I edited with Emilio Castorina and where I am also the author; 11) *Constitutionalism, Comparison, Complexity: Prolegomena on Liberty and the Use of Language for a Predictive Theory of Law*, in: *Liberty and Language, The global dimension of European constitutional integration*, ed. P. Policastro, E. Castorina, Giappichelli, Torino 2010, pp. 15–110; 12) (together with M.L. Entin) *Dialogues sur les droits de la personne. Pour une théorie de la protection juridique de la phénoménologie existentielle de la personne humaine au-delà des différences entre cultures et conceptions du droit. Dialogue 1: L'identité individuelle et sociale de la personne comme finalité de la médiation juridique*, in: *Liberty and Language, The Global dimension of European Constitutional Integration*, ed. P. Policastro, E. Castorina, Giappichelli, Torino 2010, pp. 469–487; 13) *L'unificazione della Repubblica di Polonia e la questione dell'unitarietà. del suo diritto*, in: *Diritto Pubblico Comparato ed europeo*, Vol 3, Giappichelli, Torino 2011, pp. 1091–1115; 14) *Interdipendenze costituzionali e protezione della persona*, in: *Scritti in Onore di Luigi Arcidiacono*, Vol. 6, Università di Catania, No. 239, new series, Torino, 2010, pp. 2635–2675. 15) *Constitutionalism vs. Economic Analysis: On the Use of Founding Theories and Complementary Theories in Constitutional Interpretation*, in: *Interdisciplinary Research in Jurisprudence and Constitutionalism*, ed. M. Anderheiden, A. van Aaken, S. Kirste, P. Policastro, "Archiv-Für Rechts- und Sozial Philosophie", Franz Steiner Verlag, Stuttgart 2012, pp. 173–203; 16) *L'espace constitutionnel pan-Européen et nouvelle supra-nationalité*, "Anayasa Hukuku Dergisi/Journal of Constitutional Law/Revue de droit constitutionnel" 2012, No. 2, pp. 314–366; 17) P. Policastro, *Constitution and Conflict Regulating Regional Interdependencies through Society-based Supranationality as a Path for the European and Mediterranean Transformation*, in: *Costituzione - Economia - Globalizzazione*, *Liber amicorum in onore di Carlo Amirante*, Edizioni Scientifiche Italiane, Napoli, 2013, pp. 1467–1493 (revised and expanded version of: P. Policastro, *Constitution and Conflict. From Energy Dissipating to Renewable Energy Based Capitalistic Accumulation as a Path for the European and Mediterranean Transformation*", paper presented in Istanbul, Marmara Universitesi and European Institute 26/04/2012); 18) *Biosfera, politica del diritto e educazione delle coscienze*, in: *Democrazia e religioni. Libertà religiosa, diversità e convivenza nell'Europa del XXI secolo* (Proceedings of the National Conference – ADEC, Trento, 22–23 ottobre 2015), ed. E. Camassa, "Quaderni della Facoltà di Giurisprudenza dell'Università degli Studi di Trento" No. 21, Editoriale Scientifica, Napoli 2016, pp. 43–77, Polish version: *Biosfera, polityka prawa, wychowanie sumień*, in: *Aktualne problemy Konstytucji. Księga Jubileuszowa z okazji 40-lecia pracy naukowej Profesora Bogusława Banaszaka*, ed. H. Babiuch, P. Kapusta, J. Michalska, Wyższa Szkoła Zawodowa im. Witelona w Legnicy, Legnica 2017. P. Policastro, *Superior Values and the Foundation of Constitutional Comparison: Peace,*

in paradigms of constitutionalism. In particular, it involves tests designed to evaluate whether the relationship between legal conceptions of the person and the policies for their protection, the relationship between participation and representation, and the relationship between law and its interpretation, all demonstrate a degree of mutual reasonableness and coherence. These tests, when translated into legal policy, should rest on a general understanding of constitutionalism that integrates three classes of norms: the aims of society, the rules governing the distribution of influence, and the rules of modal recognition and organization.

If law must evolve to ensure the realization of certain paramount values, then educating consciousness and fostering awareness of our shared life within the Biosphere become essential. They form the basis for recognizing that dialogue is both possible and necessary. In this perspective, legal transformation – especially the dynamics of law – must also ensure the protection of the core fundamental values that merit safeguarding at the very outset of any transformative process. A "rule of reason", linking individual and state legal duties with ethical imperatives, represents a key challenge for current and future legal systems, particularly in light of the Advisory Opinion of the International Court of Justice of 23 July 2025 concerning state obligations in the face of climate change.

The understanding of the legal problem that arises from the reflections developed in this Chapter, appears to be based on the necessity of considering the interdependencies both with the world of life, with its biological and at the same time psychic dimension, and with the world of self-conscious life with its manifestations, spiritual, linguistic, and technological. The solutions that can be provided through the law are, in most cases, circumscribed from a territorial point of view, and by the various limitations inherent in legal obligations, and primarily that legal intervention often comes after the occurrence of events that need to be corrected. More generally, addressing the legal problem is complex because it requires representing and trying to propose solutions that can modify current conditions, directing them towards a more desirable state of affairs. Therefore, all of this must confront the issue of correcting errors, or modifying the choices made if they prove unsatisfactory over time. In this regard, the issue of metaphysics and that of practice have fundamental value.

Symbiosis with the Biosphere and Transnational Citizenship, in: *Professor Marek Safjan znany i nieznany, Księga jubileuszowa z okazji 70-tych urodzin profesora Marka Sajana*, ed. K. Szczepanowska-Kozłowska, C.H. Beck, Warszawa 2020, pp. 359–363. A somewhat changed version of this book can be found in this study, in Ch. II. Superior Values and the Foundations of Constitutional Comparison: Peace, Symbiosis within the Biosphere and Transnational Citizenship.

On the connection between biological life, conscious life, language, and τέχνη (techne)

As has been observed, the complex reality in which the law operates combines biological life, conscious life, language, and τέχνη: this last term derives from the Proto-Indo-European *tek′, which refers to production, as if from a thread emanating from the self, woven together like in a fabric[101].

The interconnection between the biosphere (life systems), the noosphere (consciousness and psychic expression), the semiosphere (communication and symbolic structures), and the technosphere (artefacts and tools) forms the basis of a general responsibility – particularly legal and ethical – on the part of individuals, communities, and states to maintain a balance between freedom, plurality, and the care of the living systems to which we belong, as well as the planet's resources. Drawing from Vernadsky and Teilhard de Chardin, it is essential to emphasize that human consciousness emerges within and alongside other forms of life and psychic expression, indicating an evolutionary continuity that is not only biological, but also spiritual and cognitive. The fact that human know-how significantly influences our planet further compels us to act in ways that do not break the chain of our shared existence. All these purposes can be realized in different ways and forms. However, their realization begins with a reference community. Therefore, in the study of law, particular importance is given to what I call distributive principles, following a tradition that dates back to Vico (and partly adopted in more recent times by Carl Schmitt), which refers to "marriages" to indicate how societies unite, to "burials" or even to the "division of fields" to indicate how the territory of a population was determined, but also that of individual domain, or "altars", which instead indicate the bases of the "political" order. I believe this to have been a very insightful intuition, and, in discussing a legal system, we must first take into account that the problems observed in reality are considered in society through its social structure, its economic structure, and decisions are made through processes characteristic of each political system. The representation of problems, however, does not only occur through the prism of community purposes and these three classes of distributive principles, namely: the principle of distribution of influences on society, on politics, and on the economy (production and distribution of goods and services).

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[101] J. Pokorny, s.v.*"tek-" e "tek´þ-"*, in: J. Pokorny, *Indogermanisches etymologisches Wörterbuch*, Vol. III, Francke Verlag, Bern – München 1959, pp. 1058–1059, https://archive.org/details/indogermanisches-03pokouoft/page/1058/mode/2up.

On the approach to law as a technology

An approach to law as a technology yields a belief that the ways in which it manifests itself have fundamental importance, such as principles intrinsic to the object of law through which this manifests itself. We must consider in this regard at least the subjective principle, the organizational principle, and the principle of recognition. As for the subjective principle, it takes into consideration which subjects are predominantly protected by law. It influences the relationships between individual private subjects, collective ones, and institutions. As an example, we can observe that the law of states has increasingly aimed to protect individuals, and has developed sophisticated institutions such as direct constitutional recourse. Instead, the law of the European common market was born mainly with businesses in mind, although this was motivated by the attempt to overcome the identification between the interests of large enterprises and those of states, and was not unrelated to the protection of individuals: however, the neo-mercantile perspective of the primordial position of the internal market, combined with monetary stability, has shifted to the European Union level. For this reason, the subjective principle can be synthesised through the juridification of the relationship between the protection of rights (or the existential manifestations of the person) and policies for their implementation.

As for the organisational principle, it mainly concerns institutions. It can be discussed starting from the relationship between informal organisation and formal organisation of power, the relationship between decentralisation and centralization of public functions, and the relationship between participation and representation in the exercise of political power. Regarding the relationship between formal organisation or informal organisation of power, we can refer, among many types, to that constituted by traditional organisation, compared to the political organisation of power. It is worth considering the example of Africa, where alongside the governments of states, there are those of traditional kings and village chiefs. Then we have the principle of centralization-decentralisation, which refers to territorial distribution, but also to the distribution among institutions of power itself, and the representative-participatory principle. The latter can constitute a sort of synthesis to represent specific cases.

On the principle of recognition

Then we have the principle of recognition, which takes into account the relationship between recognition and separation between objects considered worthy of protection, both within legal systems and in relations between legal systems. For example, within legal systems, we

have seen how over time an increasing number of existential manifestations of the person have become the object of protection by constitutions, with significant processes of protection of differences and internationalisation of rights themselves. On the other hand, there has been a growing interest in transnational cases, for example regarding competition, consumer protection, the environment, and even criminal law. Very often, solutions adopted at the international level have then been constitutionalized. Therefore, the internationalisation of constitutional law and the constitutionalization of international law appear as two parallel phenomena. However, the principle of recognition itself can appear to be of different degrees and levels, assuming a relevant intensity in supranational integration processes, such as in the European integration process, where there is extensive case law and legislation regarding the principle of mutual recognition. However, it is necessary to observe that the legal system "recognizes itself", and thus always presents a relationship, often very articulated and plural, between what it recognizes and guarantees and what is indifferent or "external" to it – and this includes both cases produced within the territory of the State itself and external ones.

On the tension between the external and the internal dimension of the individual, the community and the state

The dynamic between the internal and the external that attributes to legal norms that flexible character, through which the relationship between the semantic scope of norms in an abstract manner and what is recognized to them concretely is observed, identifies the manifestation of that metaphysics of law that we perceive through the operational character of legal principles - in particular, but not only, through judicial interpretation. The relationship between the internal and the external can be synthesised by referring it back to the relationship between norms and their becoming.

These three classes of relationships, which synthesize the modal characteristics of law, are essential for defining the typology of relationships between law and power. They are very important for understanding the issue of how law can limit itself, namely constitutionalism. In fact, political power, from the perspective of constituted power, manifests itself through autopoietic characteristics, so it tends to reproduce itself over time and space. The modal characteristics of law – which we have qualified as the relationships between fundamental rights (existential manifestations of the person recognized as worthy of legal protection) and the policies to make their recognition and protection concrete, that between participation and representation, and finally the relationship between norms and their becoming – remain, as explained in earlier sections of this work, of constituted

power. Recognising a space for rights, for the policies necessary to implement them, for citizen participation, political parties, and representative institutions, or as well as the and creative power of judges, are all matters that make sense only within the framework of constituted power, whether it is expressed in written form or in the form of agreements, constitutional customs, and the like. Any other legal limitation of power will always be an expression of constituted power. Therefore, we cannot imagine that the typical institutions of constitutionalism can contribute to "closing" the legal system by binding it to values that express the ideology of constitutionalism. Institutions are expression of an articulated – albeit balanced – power; they remain manifestations of an Autopoietic logic that consolidates the interests sustaining and legitimizing the status quo and the existing distribution influence within society, the economy, and politics. Law, however, stands in opposition to the status quo and seeks to transform the surrounding reality – social, economic, and political – for two reasons: a majoritarian one, aimed at ensuring consensus, and an ontological one, rooted in the very nature of law. As for consensus, we can observe that constituent processes, in order to solicit broad participation and agreement, elevate their language and stated aims above the current interaction among rights, powers, and interests. Even governance processes appeal to majority consent in order to address present problems.

On the ontological issue

With regard to the ontological dimension, the function of law is to achieve balance within communities and, where possible, between different communities. Consequently, law will always seek to modify those facts that are considered "harmful" to the community. However, the natural incompleteness of law and its inherent porosity to power require metaphysics – or rather, require that metaphysics be coordinated with being and with phenomenal reality. It is in this sense that the reflections previously developed on the principles underlying the knowledge and application of law, and those complementary to it,[102] should be understood. Indeed, it is the various metaphysical frameworks, each according to its own possibilities, that enable law to make the qualitative leap needed to consider balance not only within and among communities but also in relation to nature. The inclusion of different

[102] P. Policastro, *Constitutionalism vs. Economic Analysis: On the Use of Founding Theories and Complementary Theories in Constitutional Interpretation,* in: *Interdisciplinary Research in Jurisprudence and Constitutionalism*, ed. M. Anderhein, A. Aaken, S. Kirste, P. Policastro Franz Steiner Verlag, Stuttgart 2012, pp. 173–203; in: "Archiv-Für Rechts- und Sozialphilosophie" (ARSP) 2012, No. 1 (Special issue containing the proceedings of the "Special Workshops" coordinated by the editors at the XXIII World Conference of IVR, Kraków 2007), pp. 173–203.

metaphysical perspectives makes it possible to account for the complexity of the relevant elements. As we have seen in this chapter, Vico's metaphysics focused on history because, as the product of human activity, it could be scientifically known by human beings.

Not so with nature, which, being the work of God, could never be fully known by human beings. However, we have seen that Vico's systemic approach – avant la lettre – already revealed the relationship between human beings and nature, whose forests must be cleared to allow cultivation. Correspondingly, when human activity in history progressively destroys nature and thereby endangers the biosphere itself, the protection of the biosphere becomes part of history and must be understood as a fundamental constitutional principle. From this perspective, practical action – arising from different levels of possibility – can become the form of ethics that weaves together, like a warp, the various moral positions of which Luhmann speaks. Moreover, this ethical inquiry appears all the more justified because practical interventions by local communities not only have an adaptive character, thus resonating with Gregory and Mary Bateson's adaptive-symbiotic metaphysics, but also serve to establish care for the biosphere as a theory capable of integrating other theoretical frameworks. In this way, it responds to the question first posed by Bateson and later by von Foerster (and Maturana) concerning systems theory as second-order cybernetics, and thus as a metaphysics.

On the metaphysics of discourse as a constant gathering

The metaphysics of discourse as a constant gathering, which emerges in Heidegger's thought, is significant in this respect because it enables law to become aware of those aspects connected to nature, to the human cultures formed over the centuries, and to the languages developed through which certain concepts can be expressed more clearly than others – elements that qualify our being in phenomenal reality. These metaphysical approaches converge in fostering empathy: in placing oneself in the situation of others and in seeking the many elements that unite us, thereby locating this inquiry at the center of both our cognitive investigation and our practical activity. The latter may then aspire to become that model or ethical choice that unifies. In this regard, if law plays a crucial role in recognizing, within the dynamics of history, what unites us, we cannot deny – indeed, must all the more affirm – the importance of religion when it is able to emphasize and give priority to that which truly constitutes a moment and a practice of encounter and union.

Part III

On Our Duties Towards the Common Home. Some Proposals

This part serves as the culmination of the monograph, translating the preceding theoretical insights into concrete normative outcomes and duties. The phrase "Common Home" evokes the Earth as a shared dwelling of humanity and all living beings, and the chapters in this part focus on articulating the responsibilities of states and citizens in protecting that home. Building on the premises discussed earlier, Part III contrasts the declining paradigm of uncompromising national self-interest – a non-cooperative geopolitical approach – with a proposed new paradigm of cooperative constitutionalism oriented toward the global common good. It examines how constitutional and international law might recognize *erga omnes* duties – those owed to humanity and the planet as a whole – and integrates perspectives from philosophy, religion, and complex systems theory to ground these duties in universal values. Readers are presented with the "results" of the book's inquiry: principles for a transnational constitutional order that prioritizes ecological sustainability, the legal recognition of the biosphere's primacy, and an ethic of cooperation and solidarity among nations. In summary, Part III offers a forward-looking blueprint for how constitutional law could evolve – recommending concrete duties and institutional innovations – so that human societies may live up to their responsibility to care for our common planetary home.

Chapter VII

Protecting Life in the Biosphere – Toward a New Generation of Public *Erga Omnes* Obligations

Keywords

climate migration; *erga omnes* obligations, interdependencies, noosphere & technosphere, transnational accountability, Biosphere protection

Abstract

Chapter VII applies the book's framework to urgent global challenges, arguing for the emergence of new universal ("*erga omnes*") obligations to protect life in the Biosphere, with a focus on climate change and human displacement. It posits that legal systems must evolve proactive duties to prevent and address phenomena like climate-induced migration, treating the stable functioning of the Biosphere as a common interest of humanity. Methodologically, the chapter is profoundly interdisciplinary: it insists that as scientific knowledge reveals the conditions for the *ordered existence* of life, law must incorporate that knowledge through a systematic approach. It outlines a four-step method for jurists – from describing reality (with input from the natural sciences) to identifying what elements need protection, devising modes of protection, and assessing their impact – to crafting legal responses commensurate with planetary crises. Key insights include an expansive view of the Biosphere's legal relevance (encompassing the **noosphere**, **semiosphere**, and **technosphere** – the realms of mind, communication, and technology that interact with biological life) and a detailed account of interdependencies that law must address: within communities, between state and citizens, among different communities and states, and between humanity and natural processes. The chapter highlights the responsibility of industrialized societies for the vulnerabilities of others – for instance, how one community's technological choices or emissions can render distant regions uninhabitable – and argues

that protecting the Biosphere should become a constitutive element of legal order to remedy such injustices. By proposing concrete legal principles (e.g. recognizing climate stability and biodiversity as global legal interests, and expanding the duty to avoid transboundary harm), Chapter VII translates biospheric constitutionalism into normative commitments. It shows that only through shared obligations and an interdisciplinary and a preventive approach can law fulfill its purpose in the era of ecological crisis, thus advancing the overall argument with a tangible blueprint for issues like climate refugees.

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1. Protection of the Biosphere and Protection of the Living Entities Therein: for a Foundation of the Protection of Persons against Forced Displacements

1.1. Law and our common existence in the Biosphere

Our common existence

The general aim of this chapter is to further develop a theory of law that enables societies to confront, with full consciousness, the phenomena associated with human existence within the Biosphere[1].

Nature and our life: the question of climate migration

The progress made by the natural sciences in understanding our Common Home should be accompanied by a corresponding understanding of these phenomena in legal terms. This requires examining the conditions that allow for the ordered existence and development of human life while preventing critical phenomena – such as the increase in catastrophic climate events caused by human activity and the expansion of areas no longer suitable for habitation. This, in turn, demands that lawyers undertake the following tasks:

a) First of all, to attain a general description of reality – an operation of an interdisciplinary character;
b) Secondly, to identify the elements of reality that need to be highlighted and protected – an operation to be carried out through meta-disciplines in relation to those that are the direct object of our inquiry;
c) Thirdly, to determine the appropriate modalities of protection – an activity that requires taking into account complementary disciplines in relation to law;
d) Fourthly, to assess the possible impact of the chosen modalities of protection on reality – an activity that must consider legal and constitutional policies, as well as the connection between the proposed actions and reality itself[2].

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[1] This chapter is drawn from a broader, ongoing study aligned with the aim of this book. An earlier, condensed version – restricted to a narrower object – appeared in 2021 as "Transnational Constitutional Values and Protection of the Person in the Age of Climatic Migrations."

[2] This approach represents a more evolved version to the analysis carried out in P. Policastro, *Constitutionalism vs. Economic Analysis: On the Use of Founding Theories and Complementary Theories in Constitutional Interpretation*, in: *Interdisciplinary Research in Jurisprudence and Constitutionalism*, ed.

In my view, these aspects may contribute to the development of more effective legal approaches to climate-induced migration.

1.2. Biosphere and legal interdependencies

Interdependence of phenomena and of sciences

My approach tries to look at the Biosphere[3] considered as a whole, from the perspective of its legal protection. Indeed, a proper state of the Biosphere[4] is the necessary condition for human life to exist with adequate stability. For this reason, I shall take into account the fact that, without properly including the conditions that allowed human life to emerge, and that enable humanity to develop in a relatively stable manner, the study of law may soon lose much of its practical importance.

Without a suitable state of the Biosphere we would be immersed in an expanding web of emergencies, of which climatic-induced migrations is only one example. To this end, we shall consider the Biosphere – namely the sphere of life – as encompassing : the "noosphere", the sphere of drives and emotions present in every living being according to its level of complexity, as well as human sentiments and consciousness[5]; the semiosphere, that is the sphere of all the human language and discourses[6]; the "technosphere", the sphere of human tools, created through complex systems of symbolic languages, which operate and interact with users and with the external world.

M. Anderheiden, A. van Aaken, S. Kirste, P. Policastro, "Archiv Für Rechts und Sozial Philosophie" 2012, No. 1, Franz Steiner Verlag, Stuttgart 2012, pp. 173–203.

[3] For a first accomplished formulation of the concept See V.I. Vernadsky, *The Biosphere*, transl. D.B. Langmuir, ed, M.A.S. McMenamin, New York 1998 (1st ed. 1926). The volume also has an appendix: *Vladimir Ivanovich Vernadsky (1863–1945) A Biographical Chronology*, edited by Jacques Grinevald.

[4] A. Barnosky et al., *Approaching a State Shift in Earth's Biosphere*, "Nature" 2012, Vol. 486, No. 52–58, https://doi.org/10.1038/nature11018 *passim*.

[5] K. Fuchs-Kittowski, P. Krüger, *The Noosphere Vision of Pierre Teilhard de Chardin and Vladimir I. Vernadsky in the Perspective of Information and of World-Wide Communication*, "World Futures. The Journal of New Paradigm Research" 1997, Vol. 50(1–4), pp. 757–784, https://doi.org/10.1080/02604027.1997.9972669 (31.10.2025).

[6] Y.M. Lotman, *Universe of the Mind*, Indiana University Press, Bloomington and Indianapolis 1997. The second part of the book is dedicated to the Semiosphere. Лотман, Юрий М. (1984), О Семиосфере, "Труды По Знаковым Системам" XVII, Структура Диалога Как Принцип Работы Семиотического Механизма (Acta Et Commentationes Universitatis Tartuensis, 641), pp. 5–23 is of extreme importance for understanding my aim with respect to this concept.

Among such tools is law, a non-material instrument – or mechanism – created to manage interdependencies. These include interdependencies within a community or a state; vertical interdependencies between a community that enacts and enforces the law and the individuals subject to it; and, conversely, between individuals and their community, since individuals are citizens who give shape to the community's values and legitimate its rulers.

There are also interdependencies between different communities and individuals outside a given community. Among these are those found in the realm of private international law. Moreover, the legal issues related to the protection of refugees also fall within this scope of concern.[7] In particular, careful consideration should be given to the responsibilities of a community whose technological choices affect the ability of other communities to live in peace, without being subjected to escalating natural disasters or compelled to abandon territories that have become unfit for habitation.

The degradation of the environment as a common issue: on climate migrations

Likewise, account should be taken of the responsibilities of the communities for activities that through the technologies employed and the emissions released into the atmosphere and waters, put biodiversity – that is living species in different parts of the world – at risk. For this reason, including the protection of the Biosphere as a constitutive element of law, may appear, particularly in the present historical period, to be of paramount importance. In this sense a theory of constitution ought to consider how to include the relations of societies towards nature[8]. Other interdependencies that law ought to take into account are those between private actors and communities, as well as those among communities themselves. With regard to the interdependencies between private actors and communities, the influence exerted by private corporations is a significant factor that, over the years, has contributed to the worsening condition of the Biosphere. It constitutes an important component of the economic forces that make it difficult for people to remain in areas most affected by climate change[9].

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[7] V. Türk, A. Edwards, *Introductory Note to the Bellagio Summary of Deliberations on Climate Change and Displacement*, "International Journal of Refugee Law" October 2011, Vol. 23(3), pp. 558–560, as well as J. McAdam, *Building International Approaches To Climate Change, Disasters, And Displacement*, "Windsor Yearbook of Access to Justice" 2016, Vol. 33(2), pp. 1–14.

[8] P. Policastro, *Superior Values and the Foundation of Constitutional Comparison: Peace, Symbiosis with the Biosphere and Transnational Citizenship*, in: *Professor Marek Safjan znany i nieznany*, *Księga jubileuszowa z okazji 70-tych urodzin profesora Marka Safjana*, ed. K. Szczepanowska-Kozłowska, C.H. Beck, Warszawa 2020, pp. 359–363.

[9] For another perspective on the drivers of climate migrations see A. de Sherbinin, *Climate Impacts as Drivers of Migration*, "Migration Information Source. The Online Journal of the Migration Policy

With regard to relations between communities – and thus between states – we observe a growing interest on the part of international law in the issues related to climate-induced migration. The study of hybrid institutions operating within the field of international law, which include both politically mandated representatives and independent experts, is a particularly relevant topic in this context.

1.3. Existence, communication, values

Communication as a general phenomenon

The interdependencies discussed involve a network of legal rules that operates through communication. Communication is a fundamental aspect not only for law but for all living beings. Thus, addressing the conditions necessary for life in the Biosphere – and the related domain of climate-induced migrations – plays a crucial role.

Communication is a feature of all living beings. Some of them – for example bees, or other insects – developed extremely refined processes of communication. However, such activities are not directed toward a specific aim. Conversely, many evaluative activities performed by human beings are not conscious, even though they are the base for acting with purpose[10]. In the sphere of life, from the Pleistocene onwards, the human species has engaged in activities marked by self-consciousness and, consequently, by the capacity to observe reality from an external perspective and to set aims in relation to it. In this way, the ability to represent the various aspects of reality – by naming and distinguishing them – has been manifested. Yet this human capacity remains rooted in the biological operations that characterize other living entities. Human dignity, therefore, carries a "realistic" connotation: it is a concept grounded in the biological and psychic structures common to all living beings, yet enriched by the distinctive feature of self-consciousness and, hence, by the ability to develop and to share symbolic languages. In this sense, human liberty too possesses a realistic foundation within the bio-psychic sphere of human existence[11]. This is a fundamental aspect linking the world of life with the world of law.

Institute. Special issue 'Climate Change'", 23 October 2020, https://www.migrationpolicy.org/article/climate-impacts-drivers-migration (29/08/2025).

[10] L. von Bertalanffy, *Robot, Men and Machines. Psychology in the Modern World*, George Braziller, New York 1967, p. 35 *passim*. I also refer here to K. Lorenz, *Gestaltwahrnehmung als Quelle wissenschaftlicher Erkenntnis*, "Zeitschrift für experimentelle und angewandte Psychologie" 1959, Vol. 6(1), pp. 118–165. Page 136 *passim* is worth looking at in particular.

[11] P. Pasquale, *La dignidad de la persona y los principios constitucionales en la época de la globalización*, "Persona i Derecho" 2011, Universitat de Navarra Vol. 64(1), pp. 175–206; P. Pasquale, *Constitutionalism,*

Self-representation of human environment and the question of duties

Through this capacity for representation, human beings have been able to name the different aspects of reality and to compose them together in relation to certain aims[12]. The conscious formulation of these aims extends beyond the creation of tools for appropriating growing quantities of energy, thereby conferring an evolutionary advantage[13]. Yet the act of naming objects and entities – and thus becoming able to operate with them – does not primarily create domination,[14] but rather obligation. Self-consciousness and knowledge give rise to a fundamental duty and responsibility toward the surrounding environment. History offers examples of cultures that lived in symbiosis with nature, and scientific studies have attributed great importance to them[15]. There are also views which merely affirm that, in early civilizations not yet technologically advanced, human beings may have felt the necessity to develop a certain harmony with nature[16]. Joint studies of human psychology and the development of civilization indicate that the formation of the symbolic sphere of humankind was a long and gradual process. In its final stages, a new human capacity emerged – the ability to master organized systems of symbols. On this basis, it became possible to choose new values that supported the appropriation and use of increasing resources[17]. Other studies – this time focused on the archaeology of language – show, however, that the spiritual representation of the world among ancient peoples became embodied in Sanskrit, Greek, and Latin[18]. This may rather indicate that the transition from the Paleolithic to the Neolithic involved not only a transformation of abilities, but above all, of values. Scholars studying theory of systems are very well aware of this problem

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Comparison, Complexity: Prolegomena on Liberty and the use of Language for a Predictive Theory of Law, in: *Liberty and Language*, eds. E. Castorina, P. Policastro, Giappichelli, Torino 2010, pp. 15–110.

[12] L. von Bertalanffy, *Robot*..., p. 37 *passim*.

[13] A.J. Lotka, *The Law of Evolution as a Maximal Principle*, "Human Biology" 1945, Vol. 17(3), pp. 167–194.

[14] L. von Bertalanffy, *Robot*..., p. 56 *passim*.

[15] See J.W. Gruber, *Ethnographic Salvage and the Shaping of Anthropology*, "American Anthropologist" 1970, Vol. 72, pp. 1289–1299. In the realm of such studies see R.J. Flaherty, *Nanook of the North: A Story of Life and Love in the Actual Arctic*, a documentary film, Revillon Frères, https://www.youtube.com/watch?v=lkW14Lu1IBo&t=127s (31.10.2025). Such a documentary shows an interesting example of a culture ancestrally living in symbiosis with nature.

[16] D.A. Guthrie, *Primitive Man's Relationship to Nature*, "Bioscience" 1971, Vol. 21(13), pp. 721–723. p. 722 *passim*.

[17] L. von Bertalanffy, *Robot*..., p. 39.

[18] F. Rendich, *Dizionario etimologico comparato delle lingue classiche indoeuropee. Indoeuropeo – sanscrito – greco – latino*, Palombi Editori, Roma 2010.

and rightly emphasize that philosophy appears accustomed to considering a new approach to values[19]. The argument here is that such transformations rest upon forms of understanding that matured in earlier periods. This understanding may be enriched by new elements, yet even a "change of paradigms"[20] ultimately rests on established habits, logical tools and many analogous conceptual structures – not to mention the same neural operations that characterized human reasoning at the very moment when the transformation occurred. It is quite possible that the words and concepts found in languages such as Sanskrit, Greek, or Latin have their roots in the Paleolithic age.

The heritage of our communication and the relation with nature

Thus, the deep spiritual relations between humans and nature – revealed by the study of the common roots of language – may have survived the transition from the Paleolithic to the Neolithic and continue, in some form, to persist in our languages. An even more striking example may be given in the realm of law. Institutions such as debate and deliberation, the coexistence of different deliberative bodies and councils (sometimes with a precise location)[21] and their mutual independence; the duties of citizenship; the recourse to a wise persons and later to the authority of the State[22] – to obtain a judgement in case of dispute, may all have survived from very ancient times. Furthermore, studies in theoretical history suggest that attention to values tends to reappear periodically[23]. Likewise, research in social sciences indicates that shifts between the paradigm of production and the paradigm of exchange have periodically emerged in the field of economics[24].

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[19] L. von Bertalanffy, *Robot...*, p. 39 ff.

[20] T.S. Kuhn, *The Structure of Scientific Revolutions*, 2nd ed., University of Chicago Press, Chicago 1970, *International Encyclopedia of Unified Science*, vol. 2.

[21] T. Livius, *Ab Urbe condita libri CXLII* (25 B.C.), English version, The History of Rome, ed. Rev. Canon Roberts, Book X, 31, 38-39, http://www.perseus.tufts.edu/hopper/text?doc=Perseus:text:1999.02.0026; N. Machiavelli, *Discorsi sopra la prima Deca di Tito Livio*, 1531; English ed. *Discourses on Livy,* transl. H.C. Mansfield, N. Tarcov, The University of Chicago Press, Chicago & London 1996, Book, 1, Ch. 15; Wikisource: N. Machiavelli.

[22] See L. Capogrossi Colognesi, *Storia di Roma tra diritto e potere. La formazione di un ordinamento giuridico*, Il Mulino, Bologna 2014, who mentions how, in archaic Roman times, the first wise men who were asked to give jurisdiction were given the title of "rex".

[23] G. Vico, *Principi di scienza nuova, d'intorno alla comune natura delle nazioni, in questa terza impressione del medesimo autore, in un gran numero di luoghi corretta, schiarita e notabilmente accresciuta*, Napoli 1744, in: *Giambattista Vico, Autobiografia. Poesie. Scienza Nuova*, ed. Pasquale Soccio, Garzanti, Milano 1983.

[24] P. Policastro, *Constitutionalism vs. Economic Analysis*... and the different positions quoted thereby. Among them I would like to highlight the works of Baranzini and Scazzieri.

Thus we may suppose that a new period of human history may unfold through a change in values, grounded on a closer relationship with nature[25]. However, for such a turn to take place, the law itself must also evolve, supported by a renewed moral sense directed toward respect of nature and others.

1.4. Different realms of language: perception, representation of reality and participation in the improvement of the framework

The problem of choosing values is closely connected with the problem of language. If we consider that we live within the Biosphere, our functions related to the manifestation of self-consciousness are grounded in biological processes, based on retroaction, which are common for all living beings. On this basis, we may consider three realms of languages: a) the E language, which is the language of empathy-homeostasis; b) the R language, which is the language of representation; and c) the T language, which is the language of telling.

These three realms of language allow us to link the sphere of sensations and consciousness, the sphere of communication, and the sphere of know-how. The importance of encompassing such forms of languages derives not only from the fact that we live immersed in nature; but also from the fact that we live thanks to nature, and we contribute to shaping it[26]. It also follows from the fact that a conscious approach to law requires not only sensing reality, but also choosing which aspects of it are significant to our shared learning, as well as the diverse ways in which reality can be perceived. For this reason, an approach to the essence of law – through the perception of its use and through comparison – may help to support the lines of research emerging in the present years, which I will comment on in the following parts of this contribution.

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[25] As it may also seem compatible with the results and remarks of E. Cassirer, *An Essay on Man. An Introduction to a Philosophy of Human Culture*, Yale University Press, New Haven 1944, reprint: Doubleday & Company, New York, Garden City 1956.

[26] Stockholm (1972) – *Declaration of the United Nations Conference on the Human Environment* (Stockholm, 16 June 1972), in *Report of the United Nations Conference on the Human Environment*, A/CONF.48/14/Rev.1, Ch. I., https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/ConferencesMeetings/Documents/A%20CONF.48%2014%20Rev.1.pdf (20.08.2025); *World Charter for Nature* (1982) – *UN General Assembly, World Charter for Nature*, A/RES/37/7 (28 October 1982), https://digitallibrary.un.org/record/39295 (20.08.2025); Rio Declaration (1992) – *Rio Declaration on Environment and Development*, in *Report of the United Nations Conference on Environment and Development* (UNCED), Rio de Janeiro, 3–14 June 1992, A/CONF.151/26 (Vol. I), Annex I, https://www.un.org/.../A_CONF.151_26_Vol.I_Declaration.pdf (20.08.2025).

1.4.1. Empathic–homeostatic aspects of language: toward an overarching protection of the manifestations of life and existence

E language: communication and well-being

We communicate with the world around us most of all through perception. The first realm of communication may be called the empathic–homeostatic aspect of language (E language), where different sentient beings interact, communicate, and sustain equilibrium by drawing on the senses, intuition, wisdom, and experience.

The sphere of the E language is important for the perception of law, because a proper order between human beings and the surrounding living world ultimately grounds human dignity in the relation between human life and life on the planet. The existence of such a sphere is thus fundamental to confer a "realistic" ultimate value upon those concepts developed by human cultures that aim to protect **the manifestations of human existence** as an overarching category – acknowledging human beings as a species and thereby justifying their legal protection[27].

Furthermore, this linguistic sphere marks the limits of any separation between human beings and external reality through consciousness. It shows how innermost thought and attitude affect equilibrium – from the cellular level to the self and the world around us.

Today, increasing research in animal psychology and plant communication shows that scientific inquiry is again focusing on this field of communication[28]. We should also consider that this language operates within our innermost vibrational realm and relates to the self-regulating equilibrium of the very cells that compose us.

The Medical School of Salerno, which in the Western Middle Ages interwove Western and Eastern wisdom, was directed toward this kind of communication, fostering an attitude that consciously supported the processes taking place within the human body. It prescribed:

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[27] I started studying this problem in: P. Policastro, *A New Garment for an Old Question: 'A Clash between Man's Rights and Citizens' Rights in the Enlarged Europe*?' in: *Nordic and other European Constitutional Traditions* (Proceedings of the Conference held at Örebro University in 2004), ed. J. Nergelius, Leiden-Boston 2006. This paper mentions the question of the subjects, which were underrepresented or not represented at all. The next paper on this subject: P. Policastro, *Interdipendenze costituzionali e protezione della persona*, in: *Studi in Onore di Luigi Arcidiacono,* Pubblicazioni dell'Università di Catania No. 239, new series, Vol. VI, Giappichelli, Torino 2010, pp. 2635–2675. I then we started studying the question of life within the Biosphere in a more systemic way.

[28] M. Bekoff, *Animal Emotions: Exploring Passionate Natures: Current Interdisciplinary Research Provides Compelling Evidence that Many Animals Experience Such Emotions as Joy, Fear, Love, Despair, and Grief – We Are Not Alone*, "BioScience" October 2000, Vol. 50(10), pp. 861–870, see in particular pp. 861–862 *passim*.

"If you wish to keep in perfect health, and keep away from you all sorts of evil, get rid of heavy worries and do get ahold of anger, which is a truce and profane passion. Instead, drink not much wine, sup light and soon arise. Sit at a meal and stand up after it, and in the afternoon keep yourself awake... let your doctors be: quiet, mirth and diet"[29].

This realm of communication may therefore not only foster constant attention to persons and living entities, which are insufficiently represented, but also support an attitude addressed toward a better equilibrium with the living world.

Beyond rights: protecting the manifestations of human existence

More generally, this aspect suggests a broader approach to protecting the manifestations of human existence – an area that mainstream legal science still frames chiefly in terms of rights. When rights are posited, they become positive law only through group demands that appear ethically justified[30]. The danger, however, is that rights-claiming groups may overlook the protection of other persons' manifestations of existence, as well as the risks posed to nature and other living beings.

A striking example is that of welfare rights. Their incorporation into policies and constitutions can drive constitutional development that secures rights within one society at the expense of other peoples and communities. Emissions, waste, and pollution – the anthropic footprint – are largely produced by the most technologically intensive societies. Technological processes have enabled these societies to accumulate wealth and realize rights for their citizens, often at the cost of others and of nature. Likewise, state geopolitics has divided the globe into spheres of influence, frequently indifferent to the harms their economic processes inflict beyond their metropolitan cores[31].

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[29] *Regimen Sanitatis Salerni*. We may refer to several editions and translations, among them the Italian one: *La regola sanitaria salernitana*, ed. by C. Gatto Trocchi, R.M. Suozzi, Newton Compton, Roma 1993; among the different papers written about the "School", see: N. Pouyan, *Salerno, the Mother of European Medical Schools and Father of Constantine the African, Trotula, and Roger of Salerno*, "Asian Academic Research Journal of Social Science and Humanities. AARJSH" August 2015, Vol. 2(3), pp. 2278–859X.

[30] For a wider reference to the problem see: P. Policastro, *Prawa Podstawowe w Demokratycznych Transformacjach Ustrojowych. Polski Przykład*, Redakcja Wydawnictw KUL, Lublin 2002; P. Policastro, *A New Garment for an Old Question*..., pp. 61–92.

[31] English edition: *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, transl. G.L. Ülmen, Telos Press Publishing, New York 2006. Italian edition: *Il Nomos della Terra nel diritto internazionale dello "Jus Publicum Europaeum"*, transl. E. Castrucci, ed. F. Volpi, Adelphi, Milan 1991.

This is not only a matter for moral inquiry;[32] it has direct implications for legal policy. The task is not to limit thought (which is impossible) nor to punish "wrongful" thought or its expression – a practice attempted since archaic times, for example through sacralization. Rather, the task is to build education and mutual care that cultivate in each person a deeper awareness of the responsibility that arises from our mutual shared interconnection.

Exemplars and practices of the E language

Today, in a simple and accessible way, we can notice people who are gifted at growing plants – plants seem to thrive in their presence – as well as people to whom animals are naturally drawn. Such persons play an important mediating role in communication between humans and the surrounding living world. Saint Francis is emblematic in this regard. The miracle of the Wolf of Gubbio – where Francis preached the Word of God to the wolf and persuaded it to stop attacking people[33] – suggests a new register of language, one that anticipates the time of *parousia* (παρουσία), when "the wolf and the lamb shall feed together, and the lion shall eat straw like the ox"[34].

This deep level of communication – one to which Pope Francis arguably calls in *Laudato si'* – is not the only register within this realm. This language also operates at the level of our innermost resonances, and examples from diverse peoples and practices that cultivate such empathy can help ground a legal foundation more fitting for our common life in the Biosphere.

1.4.2. The representational realm of language: toward a biospheric orientation

R language: an introduction

I will now discuss the representational realm of language – R language, to give it a name. As noted earlier, human language is shaped by self-consciousness, through which human beings detach themselves from their world, formulate aims, and set procedures to achieve them. To this end, we separate elements from the surrounding reality and

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[32] Jan Paweł II, *Pamięć i tożsamość. Rozmowy na przełomie tysiącleci,* Społeczny Instytut Wydawniczy Znak, Kraków 2005. English version: Pope John Paul II, *Memory and Identity. Conversations at the Dawn of a Millennium,* Thorndike Press, Waterville, ME., USA and BBC Audiobooks Ltd., Bath, England 2005. See in particular the chapter: "Miara wyznaczona złu" (The Limit Imposed Upon Evil), pp. 17–54.

[33] L. White, Jr., *The Historical Roots of Our Ecologic Crisis*, "Science" 1967, No. 155, pp. 1203–1207.

[34] Isaiah 65,19-25.

functionally associate them with our aims. Language thus comes to represent both the entities we perceive and the relations among them – and between those entities and our purposes.

Yet our life unfolds on planet Earth: a spheroidal body rotating on its axis and orbiting the S un on a slightly elliptical path. The distribution of continents, the atmosphere, the flows of water, energy, and matter (including geothermal flux), and the work of life together sustain regularities because everything flows in the right proportions. For this reason, the representational realm – when dealing with relations within the Biosphere – demands greater effort of self-consciousness.

When we represent an entity, we first step back from the surrounding reality and adopt the stance of an observer. In doing so, we select elements of reality and connect them toward a chosen aim. Biospheric consciousness, however, requires that when we name things and link them to our purposes, we also consider each being's function within the Biosphere. In cultures such as those portrayed in *Nanook of the North*, we can sense such awareness. The poem addressed to the captured fish – describing it as "a present from the abyss" – is one expression of this sensibility[35]. Likewise, hunting peoples' recognition that animals in their territories must have time to multiply reflects a general consciousness that we live within the Universe and in our common home.

From declarations to doctrine: consciousness of the Biosphere in law

The call for such consciousness has been partly embodied in major environmental declarations – from the Declaration of the United Nations Conference on the Human Environment (Stockholm, 1972)[36] to the World Charter for Nature (1982)[37] and the Rio Declaration on Environment and Development (1992)[38] – each acknowledging, in different ways, the relation between human action and the environment. Yet, despite growing

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[35] R.J. Flaherty, *Nanook of the North*...

[36] See Report of the United Nations Conference on Human Development: A/CONF.48/14/Rev.1.

[37] UN General Assembly (37th sess.: 1982–1983), New York: UN, 9 Nov. 1982, A/RES/37/7, Adopted at the 48th plenary meeting, 28 Oct. 1982. In: Resolutions and decisions adopted by the General Assembly during its 37th session, 21 September-21 December 1982 and 10-13 May 1983. A/37/51. 1983, pp. 17–18, (GAOR, 37th sess., Suppl. no. 51), https://digitallibrary.un.org/record/39295?ln=en#record-files-collapse-header.

[38] Report of The United Nations Conference on Environment and Development (Rio de Janeiro, 3–14 June 1992), A/CONF.151/26 (Vol. I), 12 August 1992, A/CONF.151/26/Vol. I: Rio Declaration on Environment and Development.

scientific evidence,[39] attempts to translate the fact that human action occurs in a common world – and therefore affects everyone – into binding legal formulations have produced uncertain results.

In the Stockholm Declaration, planning is presented as a rational tool to ensure compatibility between development and environmental protection for the benefit of populations (Principle 13). In this vein, rational planning appears essential to reconciling development with environmental protection (Principle 14). The World Charter for Nature adds that "appropriate national institutions should be entrusted with the task of planning, managing or controlling natural resources" (Principle 17) and that science and technology "must be applied" to identify, avoid, and control environmental risks – and to solve environmental problems – for the common good of humankind (Principle 18).

The World Charter for Nature further emphasizes that decision-making must recognize that human needs can be met only by "ensuring the proper functioning of natural systems" (art. 6). Economic and social activities should therefore integrate the conservation of nature (art. 7). Proper consideration of natural capacity should undergird long-term development projects, while acknowledging that such capacity "may be enhanced through science and technology" (art. 8). Moreover, the allocation of areas to various uses should be planned with due regard to physical constraints, productivity, diversity, and natural beauty (art. 9), and "natural resources should not be wasted" (art. 10).

By contrast, the Rio Declaration centers on sustainable development, a concept often criticized for its ambiguity – especially regarding the appropriate scale (local versus planetary). It affirms that human beings are "at the center of concerns for sustainable development," underscoring a right to development in harmony with nature (Principle 1). It also recognizes that states possess the sovereign right to exploit their own resources, while bearing the responsibility to ensure that activities within their jurisdiction or control do not cause environmental damage to other states or to areas beyond national jurisdiction (Principle 2). Although the Rio Declaration articulates important principles – most notably the precautionary principle (Principle 15) – the earlier emphasis on planning recedes; at the national level it is largely reduced to environmental impact assessment for activities likely to have a significant adverse environmental effect (Principle 17).

The approach to nature and climate appears heavily influenced by the search for adequate terminology rather than by applying known, workable legal notions. Moreover, the Rio

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[39] See for example: The International Geosphere-Program 1987–2015, which was sponsored by the International Council for Science (ICSU). The research has yielded hundreds of publications, projects, reports and advisory opinions, including the "Global Change" magazine, which had 84 issues. See http://www.igbp.net.

declarations are framed primarily in terms of rights – individual rights and state sovereignty – with only minimal correlative responsibilities. For example, state responsibility is cast chiefly as a duty not to cause environmental damage to other states, a formulation that is narrow and does not foster a global awareness that a state's economic activities can have effects far beyond its borders. Emissions, resource exploitation, and pollution produce impacts at a planetary scale. These shortcomings tend to shift discourse into a moral register while leaving the law's potential underused.

When climate changes, people move: rethinking refugee protection

Here we limit ourselves to one field in which moral discourse has addressed worsening climatic conditions: migration. The trend toward broadening the category of recognised refugees has been grounded in two ethical arguments:[40] (a) the minimal social bond and (b) basic needs. These elements are functionally related: a person who, because of climate change, is deprived of the possibility of satisfying basic needs may be considered a refugee.

This approach – rooted in the right to form and maintain a social bond – does not yet, however, adopt a Biosphere-based perspective that properly accounts for interdependencies among states. More recent works, along similar lines, seek to justify more generous refugee policies through a non-rationalist, motivational ethics aimed at realising the greater good; on this basis, an empathic disposition can be channelled into a more generous policy towards refugees[41].

On the one hand, this view links representational language with the language of empathy; on the other, it is advanced by a scholar who, reconsidering Shacknove's theses, argues that justice requires international law to recognise a broader class of refugees under the 1951 Refugee Convention, thereby entailing the duty of non-refoulement[42].

Representation, protected values and complementary disciplines

Such an approach to moral discourse often remains structurally autonomous and somewhat disconnected from the sources and multiplicity of causes behind the current rise

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[40] A.E. Shacknove, *Who Is a Refugee?* "Ethics" 1985, Vol. 95(2), pp. 274–284, http://www.jstor.org/stable/2380340.

[41] C. Boswell, *Refugee Policy and the Limits of Liberal Universalism*, Thesis submitted in fulfilment of a Ph.D at the International Relations London School of Economics and Political Science, Department of International Relations. UMI Number: U166533, 2001, pp. 3–5, 306–307 *passim*.

[42] C.D. Boom, *Beyond Persecution: A Moral Defence of Expanding Refugee Status*, "International Journal of Refugee Law" 2018, Vol. 30(3), pp. 516–517 *passim*.

in climate-related phenomena. A general description of reality should therefore come first. In law, the fundamental operations are intrinsically interconnected.

Representing reality. We should begin with a general description of reality that is compatible with the findings of climate science. In our case, the state of the planet must be taken seriously. The statement in the *Declaration on the State of the Planet* – "Global sustainability must become a foundation of society. It can and must be part of the bedrock of nation states and the fabric of societies"[43] – is particularly instructive for questions of climate-related migration.

Identifying the values to protect. The next operation is to identify and highlight the goods that warrant legal protection. This requires meta-disciplinary tools. Here, the **theory of the State** – which links territory, population, and legal order as essential elements of statehood – supports a **coherentist** approach. Equally fundamental is acknowledging the intimate connection between legal, political, and ethical problems as basic philosophical questions[44].

Drawing on complementary disciplines. Law must engage with geology, biology, forestry, economics, sociology, and related fields[45] to understand and assess the impact of societies on the Biosphere and on other societies. This knowledge underpins planning and the design of regulatory schemes that enable the proper care and use of natural resources, allowing all to share in the planet's wealth. Such a duty is central because it expresses national sovereignty over natural resources as a paramount principle of international law – yet it must be situated within a framework that recognizes each state's territory as comprising a portion of the Biosphere's resources.

Our understanding of the Biosphere supports the claim that the growth of lands unfit for an adequate human life is frequently driven by causes generated by other communities. This entails an expanding responsibility of states, communities, and individuals for the common good. In this sense, reconstructing the legal principles relevant to climate

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[43] Lidia Brito and Mark Stafford Smith, State of the Planet Declaration (declaration presented at the conference "Planet Under Pressure: New Knowledge Towards Solutions", London, 26–29 March 2012), p. 5 *passim*.

[44] P. Policastro, *Superior Values...*, pp. 359–364.

[45] For a wider analysis of the concept of meta-disciplines and complementary-disciplines see P. Policastro, *Constitutionalism vs. Economic Analysis: On the Use of Founding Theories and Complementary Theories in Constitutional Interpretation,* in: *Interdisciplinary Research in Jurisprudence and Constitutionalism*, ed. M. Anderhein, A. Aaken, S. Kirste, P. Policastro, Franz Steiner Verlag, Stuttgart 2012, pp. 173–203; in: "Archiv-Für Rechts- und Sozialphilosophie" (ARSP) 2012, No. 1 (Special issue containing the proceedings of the "Special Workshops" coordinated by the editors at the XXIII World Conference of IVR, Kraków 2007), pp. 173–203.

refugees in terms of duties to protect the Biosphere would allow individuals to fulfil their existential functions within an acceptably ordered framework.

1.4.3. The telling realm of language and the question of ecological communications

The T language through which we tell and narrate

The fourth operation – concerning what law is, how it ought to be understood, and how it should be applied – relates to the language by means of which we tell and narrate; we may call it the **T language**. This language refers to the multiplicity of actors who express themselves, reflect, and communicate information. Like the language of representation, the T language is also connected to the intimate sphere of the human being – the **E sphere**.

The inner disposition of each person, the concrete conditions of existence of individuals and groups – climatic, economic, political, and social – as well as a group's culture, the language of others and the information circulating from outside, together create a vast plurality of narratives. Furthermore, everyone learns from and adapts to the external world at every moment. This gives rise to a phenomenon of hypercomplexity, which according to the Russian mathematician Andrey Kolmogorow, occurs because any sequence of interconnected information leading to an aim can be described in infinitely many ways[46]. In the present case, however, the problem appears somehow inverted. What actually happens is that we encounter numerous narratives emerging from below, through which we can understand how humanity perceives the problem – the meaning of the relationship between climate change and migrations, as well as the meaning of the terms that are used and conceived. With regard to meaning, which arises from use, I follow the approach of Ludwig Wittgenstein[47].

Intermingling of languages: empathy, representation and the narrative

There is also an intermingling of discourses: the language of emotions and empathy, the language of representation, and the language of telling (narration). Different

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[46] To see some proposals concerning the application of this principle in law, see P. Policastro, *Constitutionalism, Comparison, Complexity...*, pp. 15–110, *passim*.

[47] L. Wittgenstein, *Philosophical Investigations*, transl. G.E.M. Anscombe, Basil Blackwell, Oxford 1958, first edition: 1953, par. 58; A. Biletzki, A. Matar, *Ludwig Wittgenstein*, in: *The Stanford Encyclopedia of Philosophy,* ed. E.N. Zalta, Spring 2020 Edition, https://plato.stanford.edu/archives/spr2020/entries/wittgenstein, esp. par. 3.3.: *Meaning as use*.

structures of discourse arise from this blend. The Russian linguist Yuri Lotman[48] noted that literary discourse often comprises the author's speech to the self and the author's speech to others, thereby creating a code of communication that unites different aspects of reality within the text. It is therefore important to consider this perspective within legal reasoning.

Humanity is differentiated and articulated across international organizations, states, communities, and individuals. Various actors address climate change from their own vantage points. Many people experience shifting weather patterns, fading seasonal regularity, and more frequent disasters, yet large numbers endure such hardship that they must focus on their immediate condition. In regions where climate change is most direct, even those living in severe poverty face serious choices about whether to migrate. This occurs not only where rising waters inundate inhabited areas, but also where desertification, drought, and soil fertility loss take hold.

Some communities depend directly on soils; others are sufficiently wealthy or technically capable of transforming land and making it habitable (for example, in parts of the Gulf states or Israel). There are also communities less directly exposed to climate impacts whose development model nonetheless significantly contributes to climate change. In such places, awareness may be high, but genuine action to temper effects often lags. Attention is paid to housing efficiency, low-impact construction, recycling, and urban gardening. Environmental issues appear more frequently in politics and protest. Yet high labor specialization and living standards require substantial income generation and costly public services, thus rising awareness has only limited global effect.

An increasingly radicalized conservation discourse can even risk causing environmental harm, since many regions now require **active** models of nature protection. Technological solutions adopted to protect the environment may generate new pollutants and place additional pressure on existing resources – as seen with electric vehicles, where older, more polluting cars are often exported, transferring pollution elsewhere. Meanwhile, countries whose development models drive much of climate change are generally reluctant to accept climate migrants or to recognize their legal status. A shift from geopolitical competition to a common, Biosphere-centered approach remains distant. Despite this, the legal approaches adopted – even on crucial climate questions – tend to reflect the preferences of wealthier

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[48] Лотман, Юрий М., О Двух Моделях Коммуникации в Системе Культуры, (On Two Models of Communication within the System of Culture), "Труды по Знаковым Системам", VI Сборник научных статей в честь М ихаила М ихайловича Бахтина, (к 75-летшо со дня рождения), (Acta et Commentationes Universitatis Tartuensis, 308), pp. 227–243, in particular, p. 229 *passim*; Y. M. Lotman, *Universe of the Mind*, Introduction by U. Eco, Indiana University Press, Bloomington and Indianapolis 1990. Part One: *The Text as a Meaning-Generating Mechanism*, pp. 11–119, *passim*.

governments. Demands and legal proposals from less wealthy countries are commonly dismissed or reframed as "aid," thereby perpetuating the present *status quo*.

Codes of communication and ecological communication

The diversity of positions and arguments also reveals diverse uses of the same concepts. In Yuri Lotman's terms, different *codes of communication* operate within discourse. Thus, the reasoning advanced by various actors deploys distinct codes, each carrying its own representation of reality and its own aims in using language. For this reason, concepts such as justice – invoked in debates about climate migrants – often reflect communication codes that do not adequately account for the relation between human beings and the Biosphere.

Taking Niklas Luhmann's idea of ecological communication seriously means engaging with multiple levels of complexity. Luhmann's contribution[49] ultimately directs us toward methods capable of addressing both the moral justifications and the standpoints of each actor. A further complication lies in the fact that not all actors participate in the same debate or within the same arena; the discourse as a whole unfolds within the noosphere. To capture the full range of positions, the legal semiosphere can help by internalizing the very codes of communication Lotman identified.

Law, for its part, performs a set of interconnected operations: (i) offering a general description of reality; (ii) identifying the values to be highlighted and protected; (iii) testing impacts on reality; and (iv) reflecting on these choices in the form of a legal policy. These operations enable a conscious understanding of the kinds and types of communication codes that enter public discourse – provided that a sustained practice of comparative law is maintained. In this sense, the "telling" register of legal language calls for comparison.

Telling how to protect the Biosphere and protect the migrants

On this basis, law can reflect on itself and articulate a policy of law. Considering the state of the Biosphere and, consequently, the understanding and protection of climate migrants, four policy questions arise:

a) The Biosphere in constitutional perspective. How can the Biosphere be legally conceived within a notion of global sustainability understood as "a foundation of society,"

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[49] N. Luhmann, Ökologische *Kommunikation: Kann die Moderne Gesellschaft sich auf* ökologische *Gefährdungen einstellen?,* Westdeutsches Verlag GmbH, Opladen 1986; English version: *Ecological Communication*, transl. J. Bednarz, Jr., The University of Chicago Press, Polity Press, Cambridge 1989; P. Policastro, *Constitutionalism, Comparison, Complexity..., passim*.

"part of the bedrock of nation states and the fabric of societies"? This points toward recognizing Biosphere protection within the realm of constitutions.

b) From rights to duties. How should we design the model of protection for climate migrants – or, more precisely, can we reconstruct pertinent norms in terms of duties (at national and transnational levels), rather than solely in terms of rights?

c) State elements and a law of the Biosphere. Given the centrality of the State in our understanding of the legal order – and the need to root legal development in experience – how can we reconceive and interrelate territory, population, and legal order for a renewed approach to the law of the Biosphere and, in particular, to the protection of climate migrants?

d) Ethics in action amid an open semiosphere. Because the legal semiosphere is only partially determinate[50] (as reflected in the Roman maxim *ius est ars boni et aequi*[51] – law is the art of the good and the equitable), can an ethics of the legal order in action contribute meaningfully to addressing our problem?

These questions aim to explore how constitutionalization of international law and internationalization of constitutional law might proceed on the ground of Biosphere protection and the related protection of climate migrants, while opening transnational avenues of protection. I will discuss some of these issues in what follows.

2. On the Transnational Aspects of the Law of Climate Migrations

2.1. Is the Biosphere for all? Freedom of use, the common good, and climate-change migration

How law can help prevent human-driven climate change

In this section of the present chapter I wish to analyse the legal arguments developed in the field of climate- change-related migration, mainly within international law. On

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[50] And this is also related to the fact that even formal systems may not be proven as internally consistent, which stands in favor of inductive knowledge, see K. Gödel, *On Formally Undecidable Propositions of Principia Mathematica and Related Systems*, transl. B. Meltzer, Dover Publications, Inc., New York 1992, see the Introduction, p. 3, as well as pp. 71–72 *passim*.

[51] *Iustiniani Augusti Digesta seu Pandectae*, 1,1,1. Justinian. *Digesta Iustiniani Augusti*, ed. Th. Mommsen, P. Krueger. 2 vols., Weidmann, Berlin 1870. Online Mommsen–Krueger Latin critical edition (Weidmann, 1868–70/1913), Internet Archive.

this basis I will discuss whether and how these arguments may contribute to the development of transnational constitutional principles aimed at addressing the issue of climate-induced migrations.

My aim is not only to emphasize the protection of people that are forced to migrate as a result of climate change, but also to explore how law may support the prevention of human-driven climatic transformations. A uthoritative opinions in the natural sciences show that, under various drivers, the Biosphere is undergoing a shift in its state, due to a human-induced increase in global temperature[52]. This means that different parts of our planet will no longer be able to sustain human societies. Consequently, governments will not be in the condition to protect "life, liberty and property"[53] and the rule of law may thus be transformed into a rule of exception – one in which a growing number of people are forced to leave the areas where their property and lives were rooted and are effectively deprived of genuine legal protection.

The efforts of many legal scholars to justify and to advocate legal recognition of people compelled to migrate because of climate change are gradually giving rise to a distinct separate branch of migration law. Recognition must also be given to the broader studies on migration law for the merit of having, particularly over the last decade, developed issues of general importance such as the protection of the rights of foreigners. This principle, although widely recognized in international law and in constitutional law after World War II, has been placed at risk amid the waves of migration accompanying the process of globalization.

The common good

Thus, studies on the acknowledgement of migrants' rights, as well as on the ranking of the principle of non-refoulement in international law, have appeared of special importance. In my view, such principles pave the way for efforts to deepen the understanding of migration due to climate change – efforts that so far have highlighted crucial issues concerning the protection of the manifestations of human existence.

From this perspective, we must first examine the problems related to climate-change-induced migration, taking into account the various conditions under which climate change manifests itself in ways that induce displacement. Several questions concerning the model of international legal protection suitable to dealing with climate migrations derive from this issue.

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[52] Barnosky et al., *Approaching...*, *passim*.

[53] Cf. J. Locke, *The Two Treatises of Civil Government*, ed. Thomas Hollis, London 1764. Reprinted as an online edition by Online Liberty Library, http://oll.libertyfund.org/title/222.

As already noted, there has been a significant debate over the interpretation of the Geneva Convention. This debate has also inspired growing interest in studying climate migrations together with climate change itself. The question relates to the emerging awareness that the human species has managed to inhabit virtually the entire Earth. Furthermore, statehood – and indeed the very form of political organization – has developed through an approach in which raw materials were often drawn from far beyond the borders of the State, while the sale of finished goods extended much beyond the national boundaries.

As Carl Schmitt observed, the conceptions that accompanied the development of the *jus publicum Europaeum*, led to viewing every land of the globe as the potential territory of a colony to be occupied[54]. In the development of such a legal order – conceived as a spatial framework applied to the entire globe – a constant struggle to reach goods transported by sea shaped the legal balance between land and sea. Indeed, only land was recognized as being within the domain of law. On the sea, by contrast, the concepts of law, peace or property became weak, if not entirely absent[55]. I have already had an occasion to criticize this conception, arguing that the very concept of constitution – based on the internal conflict (to gain and maintain power), and the external conflict (to get ahold of resources and of markets) – ought to be improved. The Constitution should primarily express the duties we owe to living entities, persons, communities and the natural processes, that make our existence possible[56].

Res omnium

The protection of our Common Home, the Biosphere, requires an approach that cannot be the same as the traditional legal approach to the sea, which for a long time has been treated as *res nullius*, rather than as *res omnium*[57]. Indeed, according to Carl Schmitt, we cannot reach the point of considering the sea as a "*res omnium*" without a community of states, which is sufficiently organized to accomplish this task. As we can see today, and notwithstanding significant progress, international organizations have still not reached the point to consider not only the sea, but also other fundamental goods – including human

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[54] C. Schmitt, *Der Nomos...*, pp. 207–214 *passim*.

[55] *Ibidem*, p. 212.

[56] P. Policastro, *Constitution and Conflict. From Energy Dissipating to Renewable Energy Based Capitalist Accumulation as a Aath for the European and Mediterranean Transformation*, in: *Costituzione – Economia – Globalizzazione, Liber amicorum in onore di Carlo Amirante*, Edizioni Scientifiche Italiane, Napoli April 2013, pp. 1467–1493, *passim*.

[57] C. Schmitt, *Der Nomos...*, pp. 212–213 *passim*.

life – as something we ought to protect together. For this reason, an approach to the protection of the Common Home, also requires new and transnational approach to law, and to legal duties. The study of climate change refugees may offer important insights to this aim.

2.2. Migrations, refugees and climate as a problem inherent to statehood

A general note on statehood

We should however, underline that a legal approach to migration and refugees requires taking into account the foundation of the making of the modern political form that we call "State". All forms of political organization have acknowledged the fundamental importance of territory, population, and legal order. The territory provides resources; the population constitutes the core of the process through which a political community develops as an institution. Law, however, is the code through which the community identifies itself in space and in time and is recognized beyond its borders.

Law is a complex concept that can be articulated in constitutional terms as a set of principles establishing : a) the aims of a community (including its relations with nature, history, society, individuals and law); b) the principles through which we regulate – and therefore share – the influences on society (the role of men and women, children, religions, different social groups), on politics (the way in which collective decisions are taken and enforced), and on production and exchange of goods and services (property, organization of work, commerce); and c) the principles through which law determines its own function (the relations and persons protected by law and the structures through which legal protection is implemented)[58].

Furthermore, every legal order, in its operation, produces a political power that is manifested through relations between the legally recognised expressions of the person and the policies designed to implement them, through the relationship between representation and participation, and through the interplay between norms and their enforcement. The ways in which law balances itself with the exercise of power vary. Yet these ways must remain viable, enabling communities to reproduce themselves through time; otherwise they prove insufficient to that task.

During the development and consolidation of the modern State, the principles of equality and of balanced government were tentatively adopted – but not always through a genuine

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[58] I have been developing this theory since 2000, and included it in several papers. For one of the latter versions see P. Policastro, *Superior Values*..., pp. 359–364.

distribution of power. More often they took shape through its consolidation. We can begin this reflection with the formation of the European order based on the Westphalian model. The Treaty of Osnabrück, in particular, ensured legal protection for members for a religious faith, different from that of the sovereign. This included protection in migration and protection for refugees in relation to wartime events. Furthermore, it protected the property of migrants and regulated the return of war refugees[59].

Protecting individuals against inter-state agreements and policies

The approach embodied in the Peace of Westphalia shows that Europe had developed a framework for the relations between states that sought, in some measure, to guarantee protection for individuals against the effects of inter-state agreements. At the same time it legitimazed warfare. This is significant because states began to recognise a sphere of individual protection – of the different manifestations of human existence – that extended beyond the ruler's sole discretion.

Viewed historically, the *jus publicum Europeaum*, as a spatial order, was preparing to become a global order that incorporated the protection of persons under the sovereign

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[59] German History in Documents and Images (GHDI), Peace Treaties of Westphalia (October 14/24, 1648), Internet-Portal "Westfälische Geschichte" 1648-10-24: Osnabrücker Friedensvertrag (Instrumentum Pacis Osnabrugensis, IPO) [Volltext] with a translation in English of significant parts of Article V, Regulation of Confessional Relations. See in particular §32. [General Restoration of Rights.] Whoever has been disturbed or in any manner deprived of what they had in 1624 is to be truly and fully restored without exception. §34. [Toleration of Non-Conforming Subjects.], §35. [Guarantee of Properties of Non-Conforming Subjects.], §36. [Toleration of Subjects Who Convert to a Different Religion.] If a subject who possessed [the right to] neither public nor private exercise of his religion in the year 1624, or who changes his religion after the publication of the peace, shall have a mind to change his religion or be willing to change his abode or be ordered by the lord of the manor to emigrate, then he shall be free to sell his properties or to have them administered by his relations, to visit them freely without any letters of passport, and to do this as often as is required to prosecute his affairs, conduct legal business, and pay his debts. Concerning Time of emigration and prohibition of impairment: *[§ 37] Furthermore, it has been agreed that... those subjects who in the aforementioned years follow neither the public nor the private religious practice, which, however, at the time of the proclamation of the present peace treaty have been found in the areas of the confession, including those who went there in order to evade acts of war, but who did not move to another place with the intention of changing their place of residence, and want to return to their homeland again after the conclusion of the peace, of at least five years, which, however, after the proclamation of peace, change the confession,... should be granted. The either voluntary or forced emigrants may not be denied witnesses of their birth, their free origin, their withdrawal permit, their learned business as well as their unprofessional way of life...extraordinarily high deduction fees imposed, and even fewer should be put in the way of those who voluntarily emigrate, subject to a subordinate relationship or another pretext* [my own translation]. See https://blogs.loc.gov/law/2017/10/the-peace-of-westphalia/ for Latin and German versions. See also Internet-Portal "Westfälische Geschichte"/1648-10-24: Osnabrücker Friedensvertrag (Instrumentum Pacis Osnabrugensis, IPO) [Volltext]

powers of Europe[60]. This approach, based on the creation of a mutual equilibrium among European States, was later followed by efforts to establish hegemony through the projection of European state power. In a subsequent stage, with the formal end of colonialism, this state hegemony was replaced by attempts to create hegemony through the culture of international law and the transnational logic of economically dominant groups.

This perspective on migrants and refugees is, in a sense, genetically related to the birth and the function of the *jus publicum Europaeum*.

Protecting refugees – or instrumentalising them?

The said perspective, when applied to migration law, would later be employed as a means of expressing political disapproval toward countries that operated contrary to the rules and spirit of such an order. Within this context, the approach to refugees was used, first of all, as an element that naturally followed the division of territories resulting from the redrawing of the borders after World War I, consequently, from the implementation of the "principle of nationality" according to the Mancini-Wilson doctrine. Secondly, refugee movements could be used to confirm the wrongdoing of an adversary. Third, refugees could be regarded as a source of manpower for postwar reconstruction.

However, this process was based on the exclusion of specific parts of society from full legal protection. In the following pages w e will see how deeply the existence of people excluded from legal protection by political power is embedded in the very construction of the modern State.

2.3. On the international law concept of the refugee: the problem of its application to climate migration

2.3.1. On the evolution of basic legal instruments

Early instruments and "lack of protection" as the core criterion

The system of refugee protection adopted in most countries appears to be based on a conception which developed in Europe in the period between World War I and World War II. The crisis and the fall of the Ottoman Empire, the 1917 Bolshevik revolution in Russia, and the new borders established in Europe after World War I were all phenomena that

[60] For the development of the concept see Schmitt C., *Der Nomos...*, *passim*.

created massive denationalization and large flows of migrants. Several treaties and agreements were concluded for this purpose[61].

At the same time, the creation of new borders, the nationalist ideas underlying these processes, the rise of political hatred, and the increase in economic migrations led States to pay closer attention to their borders[62]. We must remember, however, that natural calamities – such as the Irish famine in the previous century–had already caused large flows of refugees[63].

In the second half of the 1920s, it was agreed that the measures adopted for Russian and Armenian refugees were to be extended also to Assyrian, Assyro-Caldean, assimilated and Turkish refugees as well. These instruments, however, were not legally binding. Moreover, the relationship between the State of origin and the refugee was limited to the assertion that the latter no longer enjoyed the protection of the government of the country of origin. The "lack of protection" was the core element in such agreements that conferred the refugee status[64]. According to the *Institut de Droit International* (Brussels section, 1936), a refugee "does not enjoy the diplomatic protection of the State".

Forced migration

The wording of the 1938 Convention Concerning the Status of Refugees Coming from Germany provides evidence of the character of forced migration[65]. Article 1 of the Convention defines the term "refugees coming from Germany" and includes: "1. (a) Persons possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy, in law or in fact, the protection of the German Government. (b) Stateless persons not covered by previous Conventions or Agreements who have left Germany territory after being established therein and who are proved not to enjoy, in law or in fact, the protection of the German Government." It excludes, however, "2. Persons who leave Germany for reasons of purely personal convenience (...)."

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[61] J.H. Fischel De Andrade, *On the Development of the Concept of Persecution in International Refugee Law*, "III Anuário Brasileiro De Direito Internacional" 2008, Vol. 2, p. 115 ff.

[62] M. Radomska, *The Political Origins of the Social Protection of Polish Migrant Workers in the German Interwar Labor Market*, "Annales de démographie historique" 2012, No. 124(2), pp. 105–140.

[63] E.D.G. Fraser, *Social Vulnerability and Ecological Fragility: Building Bridges between Social and Natural Sciences Using the Irish Potato Famine as a Case Study*, "Conservation Ecology" 2003, No. 7(2), p. 9, http://www.consecol.org/vol7/iss2/art9 (30.08.2025).

[64] F. De Andrade, *On the Development...,* pp. 116–117.

[65] Convention concerning the Status of Refugees coming from Germany Geneva, February 10th, 1938 League of Nations Treaty Series, Vol. CXCII, No. 4461, p. 59.

As it has been observed, the Convention aimed at condemning German policies at that time. Yet, as Hannah Arendt already underlined, the deprivations of nationality and mass expulsions produced paradoxical consequences: deportations from other States became possible overnight[66].

The importance of the Convention lies in the fact that the proof of not enjoying, in law or in fact, the protection of one State – together with the exclusion of the people that migrate for economic convenience – paved the way for a more stringent notion of the refugee[67]. The negative connotation attached to the state from which refugees fled becomes evident from the definition of refugee given by the United Nations Relief and Rehabilitation Administration (UNRRA) in its Resolution no. 71. This definition of persons eligible for assistance extends to "other persons who have been obliged to leave their country or place of origin or former residence"[68].

The displeasure that this wording caused among Eastern European countries confirms that the recognition of refugee status was widely perceived as casting a negative judgement on the countries from which refugees fled. The International Refugee Organization (IRO) Constitution[69] later introduced the concept of *persecution*.

International Refugee Organization and the concept of persecution.

The International Refugee Organization (IRO) focused on "victims of the nazi or fascist regimes or of regimes which took part on their side in the second world war"[70], "Spanish Republicans and other victims of the Falangist regime in Spain"[71], "persons who were considered refugees before the outbreak of the Second World War for reasons of race, religion, nationality or political opinion"[72].

The term "refugee" also applies, under the Constitution of the International Refugee Organization, to "a person", "other than a displaced person, who is outside of his

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[66] H. Mahrdt, *Rethinking our Refugee Crisis with Hannah Arendt*, "Estudos Ibero-Americanos" 2017, Vol. 43(3), pp. 535–547, https://www.redalyc.org/jatsRepo/1346/134653657006/html/index.html.

[67] F. De Andrade, *On the Development*..., p. 118.

[68] *Ibidem*.

[69] United Nations, Treaty Series, Vol. 18, p. 3.

[70] "or of the quisling or similar regimes which assisted them against the United Nations, whether enjoying international status as refugees or not", Constitution of the International Refugee Organization Annex I, Part I Section A. 1 (a).

[71] *Ibidem*, Annex I, Part I Section A. 1 (b).

[72] *Ibidem*, Annex I, Part I Section A. 1 (c).

country of nationality or former habitual residence, and who, as a result of events subsequent to the outbreak of the second world war, is unable or unwilling to avail himself of the protection of the Government of his country of nationality or former nationality"[73]. It also applied to "persons who, having resided in Germany or Austria, and being of Jewish origin or foreigners or stateless persons, were victims of nazi persecution and were detained in, or were obliged to flee from, and were subsequently returned to, one of those countries as a result of enemy action, or of war circumstances, and have not yet been firmly resettled therein"[74]. The term further applies also to unaccompanied children who are outside their country of origin and are war orphans or whose parents have disappeared.[75]

The "refugees" defined above became of concern to the Organization if they could be repatriated, or if they expressed, in full freedom and with full knowledge of the facts, valid objections to return to their countries. The Constitution of the International Refugee Organization considered the following objections as valid: "(i) persecution, or fear, based on reasonable grounds of persecution because of race, religion, nationality or political opinions (...)[76]; (ii) objections of a political nature judged by the Organization to be "valid" (...), (iii) (...) compelling family reasons (...) or, compelling reasons of infirmity or illness"[77].

2.3.2. Refugees as an issue of protection or as a matter to prevent or avoid tensions between the States?

The 1951 Refugee Convention: scope, structure, limits

The United Nations Convention relating to the Status of Refugee, signed at Geneva on 28 July 1951[78], was grounded in the concern for the protection of fundamental rights and freedoms, the need to revise and consolidate previous international agreements, and the desire to extend their scope. Its preamble reflects the understanding that the granting of asylum may place unduly burdens on certain countries and thus requires international cooperation and expresses a wish that all States should do everything in their power to prevent refugee issues from becoming a source of tension among them[79].

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[73] *Ibidem*, Annex I, Part I Section A. 2.

[74] *Ibidem*, Annex I, Part I Section A. 3.

[75] *Ibidem*, Annex I, Part I Section A. 4.

[76] "provided these opinions are not in conflict with the principles of the United Nations, as laid down in the Preamble of the Charter of the United Nations", *Ibidem*.

[77] *Ibidem,* Annex I, Part I, Section C, 1.

[78] United Nations, Treaty Series, No. 2545, Vol. 189, p. 137.

[79] See *Ibidem*, Preamble.

The structure of the Convention relies on a definition of the term "refugee" derived from previous documents, including the 1938 Convention and the Constitution of the International Refugee Organization. Concerning its ambit of application, the Convention grants refugee status to persons who, "as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it"[80].

Indeed, the Convention was designed to address the conditions of displacement that followed WWII and took place mainly in Europe. Furthermore, its original ambit of application accommodated persons who were already displaced in another country. The protocol to the Convention relieved such limitations and permitted a general application of the Convention[81].

However, a question remains concerning the boundaries of the semiotic space created by the concept of *persecution*, which is not defined in the Convention itself. The recognition of a refugee status involves a "fear of being persecuted". The reasons for such persecution are enumerated in the Convention, and they are: "race, religion, nationality, membership to a particular social group or political opinion". The condition to be fulfilled is that this fear prevents the person from returning to their country of nationality or habitual residence. Not one of these elements really applies to climate change phenomena including, at first glance, also natural disasters.

The political function of recognition: the 1967 Protocol and after

However, we should take into account that the Geneva Convention was not only concerned with the European situation, but was also linked to the political function of recognizing refugees, which carried a negative connotation towards the States from which those refugees came. The 1967 Protocol relating to the Status of Refugees[82] acknowledged that the Convention covered only those persons who had become refugees as a result of events that had taken place before 1951. It added that new refugee situations had arisen and that it was

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[80] *Ibidem*, Article 1(2).

[81] F. De Andrade, *On the Development...*, see in particular p. 122 *passim*.

[82] Adopted on 31 January 1967, United Nations, Treaty Series, No. 8791, Vol. 606, p. 267.

therefore desirable that all persons covered by Convention's definition be protected under its provisions, without regard to the temporal limitation set in the original version of the Convention. The Convention thus acquired a "universal" scope through to the removal of a few words that had imposed a time-related limitation on its application.

Even after the adoption of the Protocol, the Convention remained grounded on the assumptions of the chain of documents and acts, which led to its enactment. This had several implications : a) description of the events– the refugee question was treated as a temporary phenomenon, with refugees driven by actions carried out by a limited number of States; b) evaluation of events – the Convention's logic entailed a negative judgment on the States from which refugees originated and required evidence of a well-founded fear of persecution; c) impact on reality– the Convention's adequacy was linked to the rights of refugees, including the prohibition of expulsion and the principle of "non-refoulement"; d) policy of law– the aforementioned elements, on the one hand, led to the generalization of the Geneva Convention model, and on the other, inspired attempts to extend refugee status to climate migrants, a phenomenon now increasingly evident.

The framework of the 1951 Convention specified the kinds of events that could justify granting refugee status. Shortly thereafter, the **Convention of the Organization of African Unity Governing the Specific Aspects of Refugee Problems in Africa**, adopted in Addis Ababa in 1969[83], expanded the principles of the Geneva Convention to include "external aggression, occupation, foreign domination, or events seriously disturbing the public order"[84]. By doing so, however, it maintained the Geneva Convention's approach, which associated refugee movements – directly or indirectly – with political determinants. Establishing such conditions made it possible to protect, tolerate, or exclude individual refugees from protection. It also allowed for a limited expansion of the concept, for example, to encompass organized turmoil.

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[83] The Convention was adopted by the Assembly of the Heads of State and Government at its Sixth Ordinary Session, on 6–10 September 1969 and came into force on June 20th 1974. United Nations, Treaty Series, No. 14691.

[84] See art. 1.2 of the Convention of Addis Ababa: "The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality."

The climate question and the shortcomings of the Geneva model

Although the **1951 Geneva Convention** model has acquired an almost universal character, the methods of legal analysis outlined at the beginning of this work lead to the conclusion that the Convention rests on the belief that displacement caused by climate change is not a temporary phenomenon and therefore calls for sustained, long-term efforts. Responsibility for climate change cannot be circumscribed to one or a few States. Nor should climate change give rise to negative judgments directed at States that generate refugee flows. On the contrary, the States from which climate refugees flee have, in many cases, contributed little or nothing to the problem. Yet they are forced to bear extraordinary costs resulting from the effects of climate change and to suffer the loss of habitable territory – land that could otherwise support agriculture and other economic activities capable of sustaining the population.

The impoverishment of soils, in turn, triggers migration movements that generate social and political tensions as well as instability. Moreover, the approach adopted in the 1951 Geneva Convention does not encourage concerted action by all States to eliminate the causes of climate-related migration. The multiplicity of these causes has so far prevented the formal recognition of *climate refugees*, as will be shown later. From the standpoint of legal policy, however, climate change has become the object of calls for a diverse range of legal instruments.

3. Climate Migration Protection between Governance and *Jus Cogens*

3.1. The governance track

Framing the problem: complexity, science, and the legal method

A gradual acknowledgment of the rights of climate migrants has emerged in recent years, reflecting the growing complexity produced by diverse migration-related situations. Alongside the processes of globalization – often referred to by scholars of international law as the "post-Cold War world"[85] – the issue of migration has become increasingly intricate.

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[85] L. Barnett, *Global Governance and the Evolution of the International Refugee Regime*, "International Journal of Refugee Law" 2002, Vol. 14(2–3), p. 261.

These developments have been accompanied by rising geopolitical tensions that have taken on a global dimension.

Moreover, the widening gap between poorer and wealthier countries – also evident in differing demographic trends – has created deep ambiguities regarding migration flows. While many richer states have opened their borders to migration, others have sought to use migratory movements to advance their political and geopolitical interests under the banner of full sovereignty. At the same time, the intensification of internationalization and globalization has heightened conflicts over the control of natural resources.

Conversely, over the past two decades, there has been growing scientific interest in climate change as a driver of transformations at the international level, including migration. Nevertheless, refugee law has remained anchored in the historical paradigm that shaped its origins. Proposals in this field largely focus on the need for coordination and balance: on the one hand, to address increasing refugee flows, and on the other, to respond to the growing restrictions imposed by states[86].

From this perspective, we can observe a pronounced tendency to separate political and geopolitical considerations from those concerning the condition of our planet. Political and geopolitical issues thus take precedence, while the biological, climatic, and physical state of the Earth remains subordinated – despite the growing attention of scholars and civil societies. This occurs even in the face of numerous reports and scientific studies produced within the United Nations system. The Brundtland Report[87] may serves as a significant example in this regard.

The Brundtland Report in the perspective of ecological communication

The Brundtland Report observes that, over the course of the twentieth century, "the relationship between the human world and the planet that sustains it has undergone a profound change." These changes have occurred at such a pace and with such magnitude that they are "outstripping the ability of scientific disciplines and our current capacities to assess and advise"[88].

This observation is invoked here because proper acknowledgment of each scientific contribution or report requires considering the complexity of the problem from a legal perspective: it demands an accurate description of the events and the establishment of clear

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[86] *Ibidem*, p. 257.

[87] H. Bruntland, *Our Common Future, From One Earth to One World. An Overview by the World Commission on Environment and Development*, The Brundtland Report, UN, 1987.

[88] *Ibidem*, par. 122.

priorities. With this in mind, I return to the Brundtland Report, which states that: "The Commissioners came from 21 very different nations. In our discussions, we disagreed often on details and priorities"[89], but "We are unanimous in our conviction that the security, well-being, and very survival of the planet depend on such changes, now" (par. 126).

The complexity of these issues stems from the fact that only 21 States were represented in the Commission chaired by Brundtland herself. Yet climate change and the effects of the anthropic footprint on the Biosphere concern all humankind. Consequently, the level of complexity involved in decision-making and policy implementation is far greater.

For this reason, it is worth recalling Niklas Luhmann's reflections on complexity and ethics in the context of ecological communication. Luhmann conceives an ethics that transcends traditional moral choices – those that embody preconceived values and tend to focus primarily on themselves[90]. In this light, the contribution of legal science, grounded in the evolution of concepts, structures, and procedures, provides an essential framework for developing a *semiosphere* of discourse on climate migration within life in our Common Home, the Biosphere.

The first step in this process – one that appears crucial for proposing new legal approaches – is to study how legal discourse develops its perspectives. Indeed, it is only quite recently that legal scholars have begun to make more extensive use of interdisciplinary perspectives, though often without refraining from formulating evaluative judgments – such as the view that human action can only be limited to mitigation, since "climate change is unstoppable"[91].

Governance instruments: people-centred coordination beyond sovereignty

A crucial feature of current trends in migration law – and in climate migration law in particular – lies in the specific relationships among the concepts used to understand the phenomenon, the relevant institutions, underlying principles, and systemic evaluations from the perspective of legal policy.

When it comes to institutions, one approach that cannot be overlooked is that of global governance. An interesting proposal in this regard suggests extending the mandate of the United Nations High Commissioner for Refugees (UNHCR) to include internally displaced

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[89] *Ibidem*, par. 125.

[90] N. Luhmann, Ökologische *Kommunikation*..., pp. 140–142 *passim*.

[91] B.P. Piskernik, M. Riemer, C. Sandra, *Forced Migration and International Law in a Cross-Area and Interdisciplinary Approach: A Global Environmental Legal Solution Focusing on Adaptation?*, "Journal of Academic Perspectives" 2021, Vol. 17(2), pp. 23–25 *passim*.

persons, based on the assumption that the definitions contained in the 1951 Refugee Convention are no longer fully adequate. Instead, the functions of international institutions should reflect the manifold relations involving refugees – interstate relations, interactions between nations and communities, the role of media, non-governmental organizations, and international bodies, including the UNHCR itself.

Accordingly, it has been proposed that the Office of the High Commissioner broaden its approach – traditionally centred on the absolute notion of State sovereignty – to allow an extension of its mandate to cover internally displaced persons. From this perspective, a mindset focused on assisting those in need may appear not only acceptable but also necessary[92].

It is worth noting that such a view may be seen as consistent with my broader research on the protection of the existential manifestations of the person, extending beyond the traditional framework of human rights protection[93].

3.2. The *jus cogens* track

Peremptory floors: non-refoulement (and related protections) as *Jus Cogens*

Parallel to the line of thought centered on global governance as a means of protecting the manifestations of refugees' existence – briefly discussed above – there is also a line of reasoning that focuses on the status of migrants in international law. This approach accommodates the recognition of the status of being a migrant as a principle of *jus cogens* – that is, a peremptory norm of international law that States or groups of States may not override under any circumstances, unless a new norm of the same status emerges.

Beyond reflections on the formal legal characteristics of this institution, it is important to recall the argument advanced by Allain on this issue. His argument is based on the assumption that, following the end of the Cold War, there has been a rapid expansion of matters that States have sought to address at the international or global level[94]. To this end, States have strengthened both the scope and intensity of their coordinated cooperation through intergovernmental institutions.

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[92] L. Barnett, *Global Governance*..., p. 259. See also footnote 120 and the opinion of Gervais Appaye mentioned thereby.

[93] P. Policastro, *A New Garment*...; P. Policastro, *Interdipendenze costituzionali*...

[94] J. Allain, *The jus cogens Nature of Non-Refoulement*, "International Journal of Refugee Law" 2002, Vol. 13(4), p. 541.

Intergovernmental power, *erga omnes* duties, and accountability

Such intergovernmental institutions have often been able to operate without the kind of democratic oversight that exists within nation-states. As a result, States acting collectively through intergovernmental organizations have frequently achieved – as Allain stresses – what they could not have accomplished individually. For example, he refers to the European Court of Justice, which, as he observes, has advanced economic integration to a degree that States acting alone would not have been able to attain[95].

He therefore argues that it is necessary to ensure that intergovernmental institutions respect their obligations. In the case of *non-refoulement*, this means that States have agreed to recognize its character as a norm of *jus cogens*. Furthermore, Allain makes a brief reference to the *erga omnes* obligations of States as a factor reinforcing the conception of an international legal system that binds States to the international community as a whole. He does not specify, however, whether the object of such obligations concerns adherence to *jus cogens*, or whether these obligations should be interpreted more broadly.

4. Protection of Climate Migrants vs. International Duties, Constitutional Duties, and Geopolitical Interests

4.1. Integration, governance gaps, and geopolitical aims

Context and critique

Arguments in favour of broader and stronger protection for climate migrants deserve careful scrutiny. Regional integration began well before the end of the Cold War and has been fully endorsed by the United Nations (UN). At the same time, intergovernmental integration has often displayed shortcomings – most notably the so-called "democratic deficit"[96]. In Europe, economic integration was deepened early by the European Court of Justice (now the Court of Justice of the European Union, CJEU), long before the more recent opening of the world economy to globalisation. Meanwhile, the tendency of some intergovernmental organisations to overlook certain rights can be interpreted as the pursuit of geopolitical objectives that conflict with rights recognised by the international community.

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[95] Ibidem, p. 542, see also footnote 35, and the relative reference to J. Allain, *The European Court of Justice is an International Court*, "Nordic Journal of International Law" 1999, Vol. 68.

[96] See among others, C. Amirante, *Costituzione e governance*, Enciclopedia Treccani online 2019, https://www.treccani.it/enciclopedia/costituzione-e-governance_%28altro%29.

Evidence-based claims and an *erga omnes* orientation

In recent years, new arguments have been advanced regarding climate-change-related migration. After observing that poorer countries are generally more vulnerable than wealthier ones, one author[97] notes that the Intergovernmental Panel on Climate Change (IPCC) assesses – by region and with varying degrees of confidence – the extent to which climate-related phenomena can be attributed to human activity[98]. On this basis, he proposes relying on such analyses to support residence-permit claims filed by individuals affected by climate-related disasters.

This approach points toward obligations owed to the international community as a whole – an *erga omnes* orientation – by advocating less stringent thresholds in climate-related displacement claims. Although the author does not explicitly frame this as an *erga omnes* duty, he argues that expulsion should be resisted where a demonstrable link between climate change and the precipitating disaster exists, noting that scientific understanding of such connections is steadily increasing.

4.2. The threefold complexity: international duties, constitutional duties, and geopolitics

The ECHR's "living instrument" and constitutional interplay

These opinions reveal a threefold complexity at the intersection of international obligations, constitutional duties, and geopolitical interests. It has been suggested that within the ECHR legal framework, certain arguments concerning climate change may also be relevant to the situation of climate migrants. In addressing the understanding of the climate-change phenomenon, the European Court of Human Rights has indeed considered arguments similar to those advanced in the relevant scholarship[99].

However, the *living instrument* doctrine of the European Convention on Human Rights – reaffirmed as the Court's capacity to adapt to new challenges, including those

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[97] M. Scott, *Natural Disasters, Climate Change and Non-Refoulement: What Scope for Resisting Expulsion under Articles 3 and 8 of the European Convention on Human Rights?*, "International Journal of Refugee Law" 2014, Vol. 26(3), p. 407.

[98] *Ibidem*, p. 410.

[99] T. Ejcke, *Human Rights and Climate Change: What role for the European Court of Human Rights,* Inaugural Annual Human Rights Lecture, Department of Law, Goldsmiths University, 2 March 2021: Tim Eicke, Judge, European Court of Human Rights, par. 20 *passim*, https://rm.coe.int/human-rights-and-climate-change-judge-eicke-speech/1680a195d4 (10.09.2025).

posed by climate change[100] – confers upon the Convention a quasi–common-law character[101]. Such a character, however, cannot be understood apart from the close relationship between the constitutional developments of the Member States of the Council of Europe and the conventions adopted within the Council itself.

Moreover, it appears that the European Union is not at the centre of the most intense manifestations of climate change. In regions where its effects are felt more acutely and form part of daily experience, approaches to these issues may differ significantly.

Case study: *Teitiota* (New Zealand) and subsequent views

We can see this in the well-commented case of Teitiota, a migrant from the Republic of Kiribati composed of small islands in the Pacific Ocean. Mr. Teitiota, who was in New Zealand, wished to continue to live in New Zealand alleging climate change in his country of origin. However, the courts of this country rejected his request.

Let me reiterate that the request was based on arguments related to climate change. The appeal lodged by Mr. Ioane Teitiota claimed his acknowledgement of the status of a "climate refugee" on the ground of the 1951 Geneva Refugee Convention, on the fact of its implementation in New Zealand law, on the United Nations Convention on the Right of the Child (some children of Mr. Teitiota's children were born during his stay in New Zealand) and on the International Covenant on Civil and Political Rights.

The Supreme Court of New Zealand upheld the decision of the lower courts, offering the following reasoning : 1) The question in front of the Court does not give rise to questions of law of "general or public importance"; 2) Mr. Teitiota's return to Kiribati would not expose him to a risk of "serious harm."; 3) The government of Kiribati was not shown to have failed, within its capacity, to protect its citizens from the effects of climate change; 4) The Court found that the ICCPR did not apply to the facts of the case; 5) There was no indication of a miscarriage of justice;[102] 6) Nevertheless, the Supreme Court stressed that the lower courts – the Tribunal and the High Court – had not ruled out the possibility that environmental degradation could, in certain circumstances, give rise to claims

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[100] *Ibidem*, par. 25.

[101] S.D. Warren, L.D. Brandeis, *The Right to Privacy*, "Harvard Law Review" 1890, Vol. 4(5), pp. 193–220. For the inevitable development of law see in particular p. 195.

[102] The Supreme Court of New Zealand SC 7/2015, [2015] NZSC 107, Applicant: Ioane Teitiota; respondent: The Chief Executive of the Ministry of Business, Innovation and Employment. Judgement of 20th of July 2015, https://www.courtsofnz.govt.nz/cases/ioane-teitiota-v-the-chief-executive-of-ministry-of-business-innovation-and-employment, par. 12 (12.09.2025).

under the **Refugee Convention** or other legal instruments. They simply concluded that such circumstances did not arise in the present case[103].

Commentaries on the case have highlighted the difficulty of obtaining protection under international law on the basis of rights related to climate change. Moreover, the scientific literature on climate change and migration emphasizes that almost all countries worldwide have declared that the 1951 Refugee Convention generally does not extend protection to victims of natural disasters who migrate in search of better living conditions. In practice, the courts of Australia and New Zealand have consistently dismissed applications from individuals seeking to migrate from the islands of Tuvalu and Kiribati, even while acknowledging the seriousness of climate-change-related phenomena and the potential relevance of international protection for those affected by them[104].

Teitiota and the right to life: The UN Human Rights Committee

On 23 September 2020, the UN Human Rights Committee issued its views on Mr. Teitiota's communication under the ICCPR (right to life)[105]. Among the different observations the Committee affirmed that: a) the judgment of the national courts in the case Teriota was neither arbitrary nor wrong (par. 9.9), and b) that the State party (New Zealand) authorities, after a thorough examination, found that Kiribati has been taking measures to adapt to climate change and to reduce existing vulnerabilities.

At the same time, the Committee's position regarding the possible violation of the right to life relied on the following considerations : i) although it is presently difficult to grow crops at Kiribati, it is not impossible; ii) the author of the communication did not provide information on alternative sources of employment and on the availability of financial assistance in Kiribati, to meet basic humanitarian needs (par. 9.9).

The Committee counterposed statements claiming that robust "national and international efforts" may be required to respect the rights of the individuals, who, because of of climate change, are compelled to move towards other States. Indeed Articles 6 and 7 of the Covenant – namely the right to life and the right not to be subjected to inhuman

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[103] *Ibidem*, par. 13.

[104] J. McAdam, *Building International Approaches To Climate Change, Disasters, And Displacement*, "Windsor Yearbook of Access to Justice" 2016, Vol. 33(2), pp. 10–14, especially p. 5 and 6 and the cases and the documents quoted thereby.

[105] Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2782/2016. Communication submitted by Ioane Teitiota, as alleged victim; State Party: New Zealand, http://climatecasechart.com/climate-change-litigation/non-us-case/un-human-rights-committee-views-adopted-on-teitiota-communication.

treatment – require, according to the Committee, strong national and international cooperation. Otherwise, the very duty of non-refoulement may be in danger (para 9.11). In this sense, the Committee demonstrates an open attitude toward addressing climate change and related issues, by all possible national and international means.

Implications and open questions

This analysis raises three immediate questions:

1. Sufficiency of international means: Are existing international instruments adequate to protect persons affected by by climate change?
2. State duties and feasible means: How should States – regardless of wealth or share of the anthropic footprint – design and resource their responses?
3. Coordination models: Which forms of mutual coordination (regional, transnational, institutional) best align international obligations, constitutional guarantees, and geopolitical realities?

5. International, National, and Transnational Law and Policies

Climate change is rooted in the human footprint on the Biosphere. It is not only a matter of resource use and technology, but also of the historical relationship between power and territory, geopolitical choices of States, and, ultimately, ethics.

Multiple drivers of climate change – and of climate-related migration – produce differentiated effects. The decision to move is rarely determined by climate factors alone. Proximity to wealthier regions, enduring ties between former colonies and metropoles, and the scale of movements all influence policies on adaptation and mobility. Differentiated impacts, in turn, call for differentiated processes of mutual adjustment – both for S tates facing climate stress and for those experiencing increasing climate-related inflows.

5.1. Governance pathways and soft-law toolkits

Beyond Geneva 1951: limits and near-term levers

When considering the possibility that international mechanisms may be insufficient, two lines of thought should be taken into account.

The first underlines the difficulty, under current interpretations of the 1951 Refugee Convention, of extending its protection to persons displaced by climate-change. McAdam expresses a sceptical opinion about the adoption of a new treaty on climate refugees. The reasoning is sound: the effectiveness of any treaty ultimately depends on its implementation, which in turn requires political will.

Accordingly, this approach emphasises the importance of enacting legislation and implementing policies that support people in their efforts to remain on their land, assist those who wish to migrate due to climate-related hardships, and protect those who have already been displaced[106].

Governance instruments: Nansen/Sendai and inclusive coordination

Commentators have also drawn attention to the challenges of treaty implementation. The Nansen Initiative has achieved broad consensus, among both governments and scholars,[107] yet it also reveals a limitation in dialogue within states and with civil society. As Luhmann would put it, the level of ecological communication does not encompass a large share of potentially affected actors This particularly implies the populations of areas potentially exposed to climate risks, as well as NGOs.

The contribution of civil society appears very important to ensuring the growing communication and to permitting the development of effective mechanisms of subsidiarity.

At the same time the Nansen Initiative addressed important tasks building resilience; facilitating migration with dignity; ensuring relocation that respect peoples' rights; and responding to the needs of internally displaced persons (IDPs)[108]. In this regard, the Sendai Framework for Disaster Risk Reduction shows significant attention to international, regional, subregional and transboundary cooperation as a means to support states' efforts. It emphasises the inclusion of regional and local authorities, communities and businesses[109].

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[106] J. McAdam, *Building...*, p. 9.

[107] Norwegian Refugee Council, *The Nansen Conference: Climate Change and Displacement in the 21st Century,* Oslo, Norway, 5–7 June 2011, Norwegian Refugee Council, 2011, foreword by: E. Rasmusson and P. Presterud; The Nansen Initiative, *Global Consultation Conference Report*, Geneva 12–13 October 2015, Keynote addresses by Volker Türk and William Lacy Swing; The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, Vol. 1 (Geneva: The Nansen Initiative, December 2015).

[108] The Nansen Initiative, *Global Consultation...*, pp. 44–51 *passim*.

[109] United Nations, Resolution adopted by the General Assembly on 3 June 2015 [without reference to a Main Committee (A/69/L.67)] 69/283. Sendai Framework for Disaster Risk Reduction 2015–2030, Sixty-ninth session, Agenda item 19 (c), Annex I – Sendai Declaration, par. 6–9 *passim*.

An essential aspect of this framework lies in its inclusive approach: it calls for the participation of all relevant social stakeholders[110], joint attention to multiple risk drivers[111], and the collective involvement in the design and implementation of policies, plans and standards[112].

Such inclusivity strengthens subsidiarity and practical delivery.

5.2. Binding frameworks and differentiated obligations

A new instrument: scope, coordination, and differentiation

It is also important to consider the opinions supporting the creation of a new binding instrument. As it has been observed, a new instrument not connected with existing models of governance and of conventional law – for example, the United Nations Framework Convention on Climate Change (UNFCCC)[113] or the 1951 Refugee Convention – would have its own scope, independent of current approaches[114]. The implementation of such a new mechanism should take place through a coordinating framework.

Within such a mechanism, state obligations ought to be differentiated, taking into account per-capita greenhouse-gas emissions and per-capita income. Another essential aspect of this proposal concerns the identification of groups of states in relation both to their direct exposure to climate-change phenomena and to the specific types of climate impacts

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[110] "including women, children and youth, persons with disabilities, poor people, migrants, indigenous peoples, volunteers, the community of practitioners and older persons", *Ibidem*, par. 7.

[111] "such as the consequences of poverty and inequality, climate change and variability, unplanned and rapid urbanization, poor land management and compounding factors such as demographic change, weak institutional arrangements, non-risk-informed policies, lack of regulation and incentives for private disaster risk reduction investment, complex supply chains, limited availability of technology, unsustainable uses of natural resources, declining ecosystems, pandemics and epidemics", *Ibidem*, par. 6.

[112] Indeed, "There is a need for the public and private sectors and civil society organizations, as well as academia and scientific and research institutions, to work more closely together and to create opportunities for collaboration, and for businesses to integrate disaster risk into their management practices", *Ibidem*, par. 7.

[113] United Nations, Treaty Series, Vol. 1771, p. 107.

[114] M. Ammer, M. Nowak, L. Stadlmayr, G. Hafner, *Legal Status and Legal Treatment of Environmental Refugees: Summary*, Environmental Research of the Federal Ministry of the Environment, Nature Conservation and Nuclear Safety, Text 54/2010, Dessau-Roßlau: Federal Environment Agency (Umweltbundesamt), November 2010, FKZ 3708 18 101; UBA-FB 001368, http://www.uba.de/uba-info-medien-e/4035.html (20.08.2025).

they experience. In this respect, it would also be valuable to distinguish between climate refugees and environmental refugees[115].

This approach presents several noteworthy features. The first is the avoidance of relying on the 1951 Refugee Convention, which was conceived within a legal and political framework of inter-state relations that no longer fits contemporary realities, either theoretically or practically. A scholar of refugee law who argues against a distinct "climate-refugee" category nonetheless underlines that both legislation and court judgments have restricted the range of application of "inhuman treatment" so narrowly that it can only exceptionally may it be used to deal with phenomena such as poverty, lack of medical care[116].

The second significant feature lies in the differentiation of states according to parameters relevant both to their contribution to human-induced climate change and to the degree of difficulty they and their communities face in addressing their consequences.

National and transnational implementation: why international law is not enough

We can observe, however, that both lines of reflection – those advocating the adoption of a new conventional instrument to address climate change and those focusing on the more efficient use of existing mechanisms – converge on the understanding that international law alone may be insufficient to resolve the challenges of climate migration. Moreover, the participation of state subjects and diverse stakeholders is envisaged. The central question, therefore, is not merely which legal framework might encompass these processes, but how such cooperation can effectively be realised.

6. For a Legal Reference Framework to Limit the Causes of Climate Migrations

6.1. Overview and method

Principles, approach and design goals for the framework

Coordinating a legal framework requires more than international and state-level action. In keeping with the principle of subsidiarity, policy must also operate in a transnational

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[115] *Ibidem*, pp. 12–13 *passim*.

[116] J. McAdam, *Building...*, p. 6. See also footnote 24 and the decision quoted thereby.

register that includes the stakeholders who bear climate and disaster-related harms. An empathic, homeostatic language – one that more accurately reflects reality – can serve to connect the diverse narrations of these stakeholders. As political communities – states and international organizations – become more aware of these dynamics, shared principles for life in common within the Biosphere can begin to emerge.

An introduction to the cases and values of reference

The relevance of the arguments introduced above – concerning our Life in common and the safeguarding of survival within the Biosphere – is particularly evident in the three cases discussed below. These cases will be the subject of further analysis in this chapter:

a) The 2015 petition filed by Inuit People before the Inter-American Commission of Human Rights, seeking relief from violations resulting from acts and omissions of the United States;
b) The Advisory Opinion of the International Court of Justice (ICJ) of 8 July 1996 on Legality of the Threat or Use of Nuclear Weapons;
c) The 2018 decision of the Supreme Court of Colombia concerning the collective threats stemming from the degradation of Amazonian forest.

6.2. The 2015 petition filed by Inuit People to the Inter-American Commission of Human Rights who sought relief from violations caused by acts and omissions of the United States

Facts and claims

The 2015 Petition to the Inter American Commission on Human Rights was filed by Inuit People seeking relief from violations caused by acts and omissions of the United States[117]. The petition highlights how the lives of peoples who have inhabited the Arctic for thousands of years are endangered – in all their existential dimensions, by global warming.

In particular, it emphasises that weather conditions and seasonal cycles have been changing due to climate warming, becoming increasingly difficult to predict and rely upon. They no longer exhibit the regularity, extent, and thickness of ice, the quality of snow and

[117] Inter-American Court of Human Rights, *Petition To The Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of The United States*, Submitted by Sheila Watt-cloutier, with the Support of The Inuit Circumpolar Conference, 2005.

water, or the stable temperature patterns that once allowed these communities to travel and hunt, feed themselves and maintain their health. The loss of such conditions has also adversely affected animal populations, which can no longer gather in predictable ways to permit hunting – and in many cases, lack even the conditions necessary to survival[118].

On this ground, the petition argued that the United States of America is the largest global contributor to climate change.

Foundation of the argument: international protection of human rights

The petition presents a concise yet well-documented analysis illustrating the role of the United States as the largest contributor to CO_2 emissions and to the global temperature increase, including per-capita data, presented from both historical and comparative perspectives.

The strictly legal argument develops through an "in-context" interpretation, which is worth recalling. The petition first pointed out that the American Declaration of the Rights and Duties of Man – the 1948 Bogotá Declaration – which, unlike the American Convention on Human Rights, has been ratified by the United States, despite its status as a non-binding instrument, "demonstrates a well-defined orientation toward the international protection of the fundamental rights of the human person", and is "a source of international obligations related to the Charter of the Organization"[119].

Furthermore, the Inter-American Court of Human Rights has recognised the binding force of the State's duty to adopt, within its domestic legal order, all necessary measures to ensure the definition and exercise of indigenous peoples' property rights "in accordance with their customary law, values, customs and mores"[120].

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[118] *Ivi*, pp. 1–66.

[119] The Inter-American Court of Human Rights provides evidence for the existence of a constant line of institutional legal analysis, which supports this though. See Organization of the American States – OAS (1989), Inter American Court of Human Rights, Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89, July 14, 1989, Inter-Am. Ct. H.R. (Ser. A) No. 10 (1989), par. 34 (and the opinions included in the documents thereby quoted), and par. 45.

[120] Organization of the American States – OAS (1989), Inter-American Court of Human Rights, Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua Judgment of August 31, 2001 (Merits, Reparations and Costs), par. 173, point 3.

Reasons of the demand

On this basis, the petitioners argued that global warming violates the human rights of the Inuit, particularly their rights to use and enjoy the lands traditionally occupied by them; to enjoy their personal and intellectual property; to preserve their health; to life, physical integrity, and security; to their own means of subsistence; and to residence, movement, and the inviolability of their homes.

They therefore claimed that the United States, through its acts and omissions, had violated the rights of the Inuit and bore the duty to provide redress. Although the Inter-American Commission on Human Rights ultimately declined to examine this case or subsequent related petitions, the legal approach it initiated remains of significant interest. It links the protection of human rights and the fundamental existential dimension of human life with the protection of the climate – understood as the basic system of natural conditions that enables human communities to live.

A reflection on *jus cogens*

This systemic call for an interpretation of the most fundamental and basic rights invites reflection on the scope and modalities of implementing international *jus cogens* norms[121]. Indeed, if no urgent measures to address climate change are taken, the Inuit – and Arctic peoples in general – will be forced to move and deprived of the possibility of living in their ancestral environments according to their traditions.

The conscious refusal to act should be regarded as a profoundly illegitimate behaviour, as it ultimately leads to the extinction of an entire people. Given our scientific knowledge of the Biosphere and our awareness of technological capacities, persisting in behaviours that fail to foster a symbiotic relationship between human cultures and nature may be viewed as the very negation of the essence of law and justice.

In this perspective, climate migration caused by human activity may be seen as analogous, in certain respects, to the use of weapons that endanger the lives of entire communities – if not of the planet itself. For this reason, the findings developed so far may also serve the purposes outlined in this volume.

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[121] K. Parker, *Jus cogens: Compelling the Law of Human Rights*, "Hastings International and Comparative Law" 1989, Vol. 12(2), Article 4, pp. 411–463, see in particular the conclusions concerning the use of *jus cogens* in the adjudication of the Courts.

6.3. The 1996 Advisory Opinion of the International Court of Justice on Legality of the Threat or Use of Nuclear Weapons

Environment, peace and the rule of law

The Advisory opinion of the International Court of Justice of 8 July 1996 on Legality of the Threat or Use of Nuclear Weapons[122], contains valuable reflections on the relationship between the environment, peace and the rule of law. The Opinion deserves recognition for addressing the very nature of nuclear arms as weapons of mass – and even planetary – destruction. It thus explores the connection between the protection of life, including the fundamental expressions of the person, and the conditions that make an ordered existence on our planet possible.

In particular, the findings of the International Court of Justice acknowledge the importance of the environment in relation to the nuclear threat[123] – an argument strikingly similar to that advanced in the Inuit petition and in several analogous complaints.

According to the Court, the environment "represents the living space, the quality of life, and the wealth of human beings, including unborn generations." This statement reflects a profound awareness of the fundamental dimensions through which human existence unfolds – namely, space, time, and the complex cultural and technological systems by which human beings organise their lives, secure stability, and protect themselves from danger. This understanding also intersects with essential elements of statehood: the State's territory and population, which must be protected, and the legal order, which must be capable of representing and addressing the harm that may be caused to others.

On the fundamental and general importance of the environment

For this reason, the ICJ's argument concerning the general obligation of States to ensure that activities carried out within their "jurisdiction and control" respect the environment of other States or of areas beyond national jurisdiction is of the utmost importance. This is not only because, as the ICJ affirms, it forms part of international law protecting the environment, but also because it allows for a meaningful analogy between human-induced migrations and those caused by climate change[124].

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[122] International Court of Justice, I.C.R. (1996), Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1. C.J. Reports 1996, p. 226.

[123] *Ivi*, par. 29.

[124] *Ivi*, par. 29 *passim*.

In the case of indigenous or original peoples, their relationship with the land is particularly striking, as their technological and cultural approaches to life are deeply connected to equilibrium with natural elements and surrounding forms of life. The situation of Indigenous peoples should thus be regarded with respect and compassion, for their suffering merely anticipates what may ultimately affect others.

Principle 24 of the Rio Declaration on Environment and Development, aptly referred to by the International Court of Justice[125], underlines that warfare in itself is destructive of sustainable development. Furthermore, Principle 25 of the same declaration underlines that "Peace, development and environmental protection are interdependent and indivisible"[126].

All this leads to a further reflection: whether respect for the environment constitutes an essential characteristic of the rule of law within the UN legal order. In this regard, the protection of the Biosphere should be recognised as having constitutional value for States and, consequently, be adequately reflected in the system of relations among them. A certain self-restraint of the ICJ in declaring such a principle may appear understandable. Yet it is worth recalling that as early as 1960 – when the memory of the atomic bombings of Hiroshima and Nagasaki, which claimed the lives of elders, women, and children, was still vivid – scholars had already envisioned the International Court of Justice as a court of a world rule of law[127].

From this perspective, the Court's statement that the "respect for the environment is one of the elements that go to assessing whether an action [pursuing legitimate military objectives] is in conformity with the principles of necessity and proportionality" stands as a courageous step forward. This statement must, however, be read together with the Court's reference to the General Assembly Resolution 47/35 of 25 November 1992[128], which affirms that the "destruction of the environment, not justified by military necessity and carried out wantonly, is clearly contrary to the existing international law"[129].

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[125] *Ivi*, par. 30.

[126] UN, *Rio Declaration*...

[127] McClure, Wallace, *World Rule of Law: The Jurisdiction of The International Court of Justice*, "Duke Law Journal" 1960, Vol. 1960, pp. 56–72.

[128] UN, A/RES/47/37. Protection of the environment in times of armed conflict: resolution adopted by the General Assembly.

[129] *Ivi*, par. 31.

On the legal importance of ecosystems

The International Court of Justice draws several conclusions from this reasoning, emphasising the importance of environmental factors in the law applicable to armed conflict. In doing so, the Court also recognises that nuclear weapons – owing to their immense release of heat and energy and prolonged radiation – are "potentially catastrophic"[130]. Indeed, "the destructive power of nuclear weapons cannot be contained in either space or time. They have the potential to destroy all civilization and the entire ecosystem of the planet"[131].

The Court statement, stressing the "unique characteristics of nuclear weapons, and in particular their destructive capacity, their capacity to cause untold human suffering, and their ability to cause damage to the generations to come", is particularly noteworthy. Indeed, if we consider the catastrophic nature of nuclear weapons, we must also acknowledge that human technology, more broadly, can be used in a way that is potentially destructive for the entirety of our civilization.

The destruction of living conditions for people inhabiting the Arctic regions, the Amazon, the Pacific islands, and the Sahara, may, as noted earlier, serve as a prelude to a wider threat to the life, the liberty and the property – and, consequently, to the very foundations of the rule of law. In this light, the ICJ recognition of the duty contained in Article VI of the Treaty of the Non-Proliferation of Nuclear Weapons – to negotiate in good faith nuclear disarmament – must be taken very seriously[132]. This duty encompasses not only disarmament negotiations, but also broader efforts to transform the technologies and modes of interaction between society and nature that may cause disasters of a magnitude comparable to those produced by nuclear weapons.

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[130] *Ivi,* par. 35.

[131] *Ibidem.*

[132] United Nations (1968–1970), *Treaty on the Non-Proliferation of Nuclear Weapons*: Article VI: "Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control." These principles have been confirmed in the most recent (2017–2021) UN *Treaty on the Prohibition of Nuclear Weapons*, which however does not include nuclear powers. See the Preamble: "...Reaffirming that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control, Reaffirming also that the full and effective implementation of the Treaty on the Non-Proliferation of Nuclear Weapons, which serves as the cornerstone of the nuclear disarmament and non-proliferation regime, has a vital role to play in promoting international peace and security..."

This clearly calls for the inclusion, within constitutional frameworks, of principles that safeguard humanity from activities extending beyond spatial and temporal limits – activities capable of generating disasters and catastrophic consequences. Such inclusion may constitute a fundamental step toward eliminating the human-induced conditions that increasingly render parts of the Earth inhospitable to life.

6.4. The decision of the Supreme Court of Colombia (2018): Amazonia deforestation and future generations

The rise of global temperature and risks for younger generations

The introduction of a constitutional provision establishing a conscious relationship between humanity and the Biosphere requires a pluralistic openness to diverse ways of understanding the relationship between human beings and the surrounding world. In the petition to the Inter-American Commission on Human Rights filed by the Inuit People, the explanations of how the Inuit are able to orient themselves across the snow, or to estimate with great accuracy the size of whale populations – based on long and meticulous observation handed down from generation to generation – offer a valuable lesson for all humanity.

At the same time, proper care for the territory fosters a deeper sense of responsibility among all humans for the Biosphere and for all living beings, including human beings themselves. In this sense, a pluralistic approach to the relationship between humanity and nature must take into account multiple perspectives that support symbiotic coexistence between human communities and the natural world[133].

For this reason, judicial reasoning can play a crucial role in addressing the problem of coexistence in accordance with the principles of law and justice. A particularly compelling example is the decision of the Supreme Court of Colombia[134] concerning the deforestation processes. The case was brought by a group of twenty-five young plaintiffs – children, adolescents, and youth between seven and twenty-five years of age – living in towns identified as among those most at risk from the effects of climate change. According to estimates,

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[133] R. Dubos, *A God Within*, Charles Scribner's Sons, New York 1972, p. 294. Polish edition: *Pochwała różnorodności*, PIW, Warszawa 1986. See the different chapters, *passim*.

[134] Colombia, Republica de (2018), Corte Suprema de Justicia, Sala de Cuidado Civil, Luis Armando Tolosa Villabona, Magistrado Ponente, STC4360-2018, Radicación n. 1101-22-03-000-2018-319-01, decidese de la impugnación interpuesta frente a la sentencia de 12 de febrero de 2018, dictada por la Sala Civil Especializada en Restitución de Tierras del Tribunal Superior del Distrito Judicial de Bogotá..., por el "*incremento de la deforestación en la Amazonia*".

during their lifetimes the average temperature is expected to rise from 1.6°C to 2.14°C, creating extremely difficult living conditions.

Indiscriminate deforestation and climate change

They argued that, under the Paris agreements and the national laws implementing it – as well as other relevant international instruments – the government had committed itself to reducing deforestation and greenhouse gas emissions. However, they reported that data available to the government showed a sharp increase in deforestation, accompanied by the expansion of agriculture for illicit purposes, infrastructure development, agro-industrial cultivation, and illegal logging.

They added that deforestation had produced severe consequences for the water cycle: it reduced the soil's capacity to capture and absorb water, increased the risk of flooding, and worsened the quality of the water available for urban use. Overall, deforestation had led to the deterioration of ecosystems, thereby undermining their quality of life and their ability to enjoy a healthy environment. On this basis, the plaintiffs demanded that the State take appropriate administrative action[135].

Findings of the Supreme Court

The Court's legal reasoning emphasised that it acts for the collective protection of rights when the violation of one right – in this case, the right to a healthy environment – leads to the consequent violation of other fundamental rights and basic needs, such as life, health, and access to water. From this perspective, the Court held that the fundamental rights to life, a healthy environment, freedom, and human dignity are substantially interconnected and defined within the broader ecosystem.

Without a healthy environment, the decision continues "the subjects of law and the sentient beings in general may not survive, and even less we may take care of these rights, for our children and for future generations. Also, it would not be possible to guarantee the existence of the family, of the society and of the State"[136]. According to the Court, all of this justifies a form of protection that requires institutions to undertake specific actions. Indeed, the protection of the environment is systematically linked to the protection of the rights of present and future generations.

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[135] *Ibidem*, pp. 1–3.

[136] *Ibidem,* p. 13.

A constitutional state, the Supreme Court added, demonstrates "respect for supralegal principles." However, such principles find their limit in respect for others – a respect that demands due consideration of the fact that acts negatively affecting nature diminish the fundamental rights of persons and their surroundings[137].

Orders and doctrinal innovations

On the basis of the claims and legal reasoning presented, the Supreme Court ordered the Presidency of the Republic, the Ministry of Environment, and other institutions to work in mutual cooperation to develop a short-, medium-, and long-term action plan to counter deforestation in the Amazon and to address the effects of climate change.

Furthermore, the decision instructed the Presidency of the Republic, the Ministry of Environment, other institutions, local communities, and civil society actors to develop – through the active participation of the latter – an Intergenerational Pact for the Life of the Colombian Amazon. This pact is intended to establish mechanisms to reduce deforestation to zero and to lower greenhouse gas emissions. It will also define a strategy for implementation at the national, regional, and local levels, consisting of preventive, mandatory, corrective, and educational measures addressing adaptation to climate change.

Finally, the Court ordered the municipalities of the Colombian Amazon and the Corporation for the Sustainable Development of the Southern Amazon to design follow-up, implementation, and coordination mechanisms.

The difficulties that have arisen in the implementation of the decision, despite the supervision of public authorities, call for the study of principles and legal approaches that may enable an adequate legal framework for the relationship between humanity and the Biosphere.

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[137] *Ibidem*, p. 17.

7. For a Comprehensive Legal Approach to the Human Footprint on the Biosphere: "Healing the Earth and Restoring Peace Among the Nations"

7.1. Foundations: language, law, and transnational duties

Why a Biosphere-centred legal language

The cases and analyses presented so far have shown that climate change encompasses a complex web of interactions between human beings and the Biosphere. For this reason, it involves not only the relationships among individuals, societies, States, and nature, but also the mutual interrelations among all elements of the world of sentient beings, including humans themselves.

The need for an appropriate and conscious approach to language in addressing this sphere of communication is therefore fundamental to understanding the problems at stake and to envisioning possible solutions. As we have seen, climate-induced migration must be understood by taking into account the full complexity of these relationships[138].

Accordingly, the function of law – which seeks to mediate between needs and expectations – may play a crucial role. Yet, as our analysis has shown, despite the fact that climate migration engages legal principles and values of the highest order – both in international and constitutional law – and enjoys deep ethical recognition, it remains at risk of going unheard. This is so even though legal scholarship and practice already offer valuable insights and approaches.

However, these approaches also call for a higher level of communication[139] and mutual integration. A coherentist approach to law, moreover, requires reasoning[140], the proper application of legal principles, and the conscious awareness of society.

In concluding this chapter, and in considering how the problems discussed here may inspire further studies, I believe that the fields of legal practice and legislation need to recognise the importance of specific legal applications, develop concepts and arguments to address legislative challenges, and foster deeper social awareness of these potentials.

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[138] See also B.P. Piskernik; M. Riemer; S. Cassotta*, Forced Migration…*, *passim*.

[139] N. Luhmann, Ökologische *Kommunikation…*, *passim*.

[140] For a coherentist approach to law, see from the theoretical perspective A. Peczenik, *On Law and Reason*, Kluwer, Dordrecht, 1984, 2nd ed.: SpringerLink 2009. In the perspective of international law see E. Cała-Wacinkiewicz, *Fragmentacja prawa międzynarodowego*, Warszawa, Beck 2018.

From rights to duties: *erga omnes* obligations and transnational constitutionalism

In international law, the "erga omnes" obligations of the States have attracted the attention of scholars and legal practitioners for several years. Picone, the first scholar to our knowledge to develop a systematic study of these principles[141], highlighted the importance of the transition from conventional international law to general international law – a transition that may occur when specific duties are conceived *uti universi*. Such duties arise when essential values for the whole Community of the States are at stake, such as the protection of the environment, peace, human rights and so on – values which, in juridical terms, often take the form of overriding principles of international law: *jus cogens*, fundamental constitutional principles, paramount ethical values, and the compelling demands of individuals and society.

This appears to be the case with the issue of climate-induced migration, which reflects an appeal not only from affected populations but also from an expanding segment of civil society, the global scientific community, a growing number of international legal acts, and an increasing body of national legislation and judicial decisions. The problem thus acquires both a transversal and a transnational dimension – what may be called the transnational dimension of constitutional law. This dimension manifests itself most clearly in the sphere of duties: duties that extend across the interdependencies between States, between States and individuals – citizens or non-citizens – and among individuals and their communities.

I have been working for some years toward grounding the proper protection of the Biosphere within a framework of transnational constitutional law[142]. Furthermore, I have

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[141] P. Picone, *Comunità internazionale ed obblighi erga omnes*, Jovene, Napoli 2006 collecting essays ranging from 1983 to 2005; see pp. 44–45, 47, 48, 51 *passim*.

[142] See P. Policastro, *A New Garment for...*, pp. 61–92; P. Policastro, *Governing Conscious Interdependence: Inter-regional Independent Authorities as Regulatory Proposal for the Relations between European Union and Russia* «Вся Европа.ru» 2009, No. 11(38), http://alleuropa.ru/?page_id=509 (not all pages mentioned here are still available); P. Policastro, *Interdipendenze costituzionali e protezione della persona*, in Scritti Arcidiacono, Università di Catania, No. 239, new series, Torino 2010, Vol. VI, pp. 2635–2675; P. Policastro, *Constitutionalism, Comparison, Complexity...*; P. Policstro, *Constitutionalism vs. Economic Analysis...*; P. Policastro, *La dignidad...*; P. Policastro, *Constitution and Conflict...*; P. Policastro, *The Law of Biosphere...*; P. Policastro, Biosfera, politica del diritto e educazione delle coscienze, Editoriale Scientifica, Napoli 2016 (Translations in Polish and French); P. Policastro, *L' ipotesi biosferica tra religio, principi universali e il concetto di diritto. Da Vico alle cibernetica di secondo grado* 2018; P. Policastro, *Planting Trees to Plant Life. Care of the Common Home and Pedagogy of a Green Heart*, "Educatio Catholica" 2019, No. 5 (2–3) Service Learning, pp. 141–156; P. Policastro, *Superior Values...*

sought to establish the foundations of this approach by searching for a "measure" of law – that is, a relationship between *nomos* and *jus* – centred upon the human person.

From this perspective, the State is understood as a fundamental expression of collective life, whose primary task is to serve the person, regardless of the State (if any) to which he or she belongs. To achieve this, States and international organisations, as well as various collectivities, would need to assume a fundamental *erga omnes* obligation toward humanity[143] as a whole: the obligation to protect life within the Biosphere.

Such an obligation could extend so far as to render illegitimate any act of a State that may be considered harmful to the reconstruction of a common life capable of "reconciling" human activities with the proper functioning of the Biosphere.

7.2. Implementation: state responsibility, international support, and civic participation

State responsibility, historical drivers, and territorial recovery

When it comes to implementing such a fundamental obligation, the first issue is that it should recognise the responsibility of the State as the ultimate actor responsible for restoring the equilibrium between society and the Biosphere. Indeed, the State is the sovereign power closest to the individual, and it is also the entity that suffers most when the degradation of the Biosphere makes life in certain parts of its territory increasingly difficult.

Being forced to migrate, moreover, constitutes an infringement of the due protection of the most fundamental manifestations of individual and collective existence – and this is not necessarily limited to those groups directly compelled to migrate. From this perspective, climate change caused by human activity must be properly addressed.

The current scientific understanding of the Anthropocene may, in some respects, appear misleading. We can acknowledge that a fundamental feature of human existence has always been the creation of tools and the development of strategies to collect and use energy in ways far more sophisticated than any other living species[144]. Yet, it was the emergence of the European nation-state – developed through the establishment of overseas empires, the pursuit of industrialisation, and the control of vast markets to secure raw

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[143] Cf. P. Picone, *Obblighi reciproci ed erga omnes degli Stati nel campo della Protezione internazionale dell'ambiente marino dall'inquinamento*, 1983, now in P. Paolo, *Comunità internazionale*...

[144] J. Lotka, *The Law of Evolution*..., *passim*.

materials and sell finished goods[145] – that embedded a model of progress based on domination and extraction. The control of such an extensive economic sphere led to the profound exploitation of natural resources and to the accumulation of economic and technological forces, which revealed their destructive potential in the First and Second World Wars.

The display of economic and technological power capable of disrupting the self-regulating processes of the Biosphere continues to this day. The responsibility for the escalating climate crisis and the resulting natural disasters must therefore be attributed to those States that have generated them. Their activities should be viewed as an immediate and extreme danger – comparable, in many ways, to the threat posed by weapons of mass destruction.

For this reason, the international community's fundamental obligation to reconcile human development with the Biosphere must include the promotion of actions that support the recovery of territories endangered by climate change. Indeed, human-induced climate change undermines the territorial sovereignty of the States most affected, often rendering large parts of their lands incapable of sustaining stable human settlements. Politically, such an obligation should lead to a reconsideration of the international community's duties, in favour of a cooperative and equitable approach to geopolitical challenges[146].

Universality of duty: citizenship, ethics, and civil society practice

A characteristic feature of the *erga omnes* obligation discussed above is its universality. This means that it extends beyond the responsibility of States and international organisations to include individuals. Public participation thus entails a duty on citizens to work toward reconciling human development with the Biosphere.

Postulating a transnational approach to citizenship centred on the protection of the Biosphere can add a moral dimension to the structure of the fundamental *erga omnes* obligation. Such an ethical dimension – articulated in documents of broad global relevance, such as the encyclical *Laudato si'*[147] – can play an important role in addressing Niklas Luhmann's "problem of ecological communication": the need to build consensus that bridges the diverse conceptions, interests, and demands involved in ecological matters[148].

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[145] P. Policastro, *Constitution and Conflict*...

[146] P. Policastro, *The Law of Biosphere: Duties of The Nations and Common Good*, Ph.D. honoris causa lecture at the University "1 December 1918", Alba Iulia, Romania, 2015.

[147] Francis, Pope. *Laudato si'* (Encyclical Letter, 24 May 2015). *Acta Apostolicae Sedis* 107 (2015): 847–945. English version: *Laudato Si': On Care for Our Common Home*, Libreria Vaticana, Città del Vaticano, 2015.

[148] N. Luhmann, Ökologische *Kommunikation*..., pp. 141–143, *passim*.

We recognise that the aims, structure, and content of such a fundamental, public, and universal *erga omnes* obligation require further elaboration in order to reconcile: (i) the ordinary meaning accorded to the concept in international law; (ii) States' duties to respect fundamental rights; and (iii) individual duties. However, by examining law in the context of the Biosphere – as a primary condition for life, and for human life in particular – together with the approaches that legal scholarship has developed to protect persons affected by climate-related migration, and with the proposed method of centring law on the protection of life, we can outline an analytical path useful for legal knowledge, legislation, and civil society.

In particular, I wish to underline the importance of civil-society engagement. Youth tree-planting initiatives, animated by a spirit of service, offer a practical and inclusive approach. Such concrete actions, together with simple calls like "Healing the Earth and Restoring Peace Among Nations," can foster the behavioural change indispensable to sustaining the economic and legal measures that prevent people from losing the possibility of living in their homes due to climate change and from being forced into displacement and uncertainty.

Chapter VIII

On the Search for the Telos of a New Approach to *Erga Omnes* Duties – The Question of Life in Symbiosis with Nature

Keywords

symbiosis with nature, adaptive law, pluralism of approaches, ecosystem approach, global duties, climate change

Abstract

The concluding chapter of this monograph synthesizes the work's insights by asking: what is the ultimate aim (*telos*) of reorienting law toward universal duties to the Biosphere? It argues that the answer lies in guiding humanity toward a form of symbiosis with nature, wherein legal systems ensure that human societies adapt to and respect the Earth's ecological limits. Building on the evolution of international environmental law, the chapter notes a paradigm shift in legal thought: as we acknowledge that human survival hinges on caring for natural systems, the focus of law is moving from sovereign rights to shared responsibilities. States are reconceived not just as holders of authority over resources, but as trustees bearing obligations *erga omnes* – duties to refrain from activities that degrade the planet and to safeguard the integrity of global life-support processes. The chapter reviews key milestones (from the 1972 Stockholm Declaration to the 1992 Rio Conference and beyond) that have progressively expanded the notion of environmental responsibility beyond national borders. This leads to a "new horizon" for law: one that accommodates the fact that ecosystems cross political boundaries and have their own internal dynamics. In practical terms, the chapter advocates an *ecosystem approach* to constitutionalism, meaning legal frameworks must be consistent with ecological connectivity and complexity. It emphasizes incorporating diverse knowledge systems – from cutting-edge scientific models to indigenous concepts like *vivir bien* ("living well" in harmony with nature) – into governance strategies. Key insights include the assertion that environmental protection cannot be an

isolated policy domain but must be integrated into all aspects of development (echoing principles such as Rio Declaration Principle 4), and that sovereignty itself now implies a duty to ensure one's actions do not harm other communities or the global commons. Ultimately, Chapter VIII concludes that a pluralistic yet coordinated constitutional order, grounded in humility and collective stewardship, is required to achieve the *telos* of biospheric constitutionalism: a way of life in common that actively preserves the planet's vitality for present and future generations.

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1. Ecosystem approach and the representation of the relation between Humanity and Nature

1.1. Foundations: adaptation, timescales, and legal language

Law as an instrument of adaptation ("*legein*" and listening to nature)

Climate change demands a look at law in a new perspective. Adaptation is a fundamental element in the life of all living beings. In human life law plays a very important role in such a process of adaptation. Listening to nature, understood as "legein," leads us to addressing the relationship between human societies and nature. In fact, it must be kept in mind that the time of nature, the time of human civilizations, and the time of legal systems are closely connected to each other.

The fundamental importance of embracing pluralism in observing diverse legal experiences that acknowledge our life within the Biosphere lies in the need to ensure the adaptive capacity of human communities – not only in their relations with one another, but above all in their shared responsibility for caring for biospheric processes. Law must therefore serve as an instrument of adaptation, guiding societies to align with the conditions and regularities of the Biosphere.

From sovereignty and rights to duties and responsibilities

The interrelation between humanity and nature – the recognition that we originate from nature and that our survival depends on how we care for its systems – demands a new way of understanding law. In particular, thinking of our relationship with nature through the lens of ecosystems, which necessarily include human beings, shifts the legal perspective from one centered on sovereignty and rights to one grounded in duties and responsibilities. Basic political units such as states appear increasingly as bearers of obligations rather than merely holders of rights. These obligations include the duty to observe and support biospheric processes in a way that preserves them, enabling other states, communities, and individuals to also care for these processes while benefiting from their continuity.

1.2. Normative architecture: from Stockholm to the ecosystem approach

Core international principles (1972–1992 and beyond)

The climate change that is underway makes the living conditions of the inhabitants of our planet uncertain.[1] In the years 1972–1992, along the arc of acts adopted by the international community, i.e. the Stockholm Declaration of 1972[2], the United Nations Charter for Nature[3], the Declaration, Conventions and other resolutions of the Rio Conference of 1992[4], have gradually led to the research of observing the impact of human beings on the environment in its complexity. However, this approach ends up undermining the different categories through which we observe the law and try to understand the legal phenomenon. For example, let us look at principle 3 of the 1972 Stockholm Declaration:

"Principle 3. The capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved." Let us also consider some of the principles of the 1982 Charter for Nature: 1. Nature shall be respected and its essential processes shall not be impaired. 2. The genetic viability on the earth shall not be compromised; the population levels of all life forms, wild and domesticated, must be at least sufficient for their survival, and to this end necessary habitats shall be safeguarded [....] 6. In the decision-making process it shall be recognized that man's needs can be met only by ensuring the proper functioning of natural systems and by respecting the principles set forth in the present Charter."

According to the Rio Declaration on Environment and Development (Principle 4), "In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it." The Convention on Biological Diversity furthermore stresses in its Article 3. Principle that "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to

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[1] A preliminary version of this chapter was originally written for Philip Langbroek, in: *Mer recht, rad en daad, Liber amicorum Philip Langbroek*, ed. E. Bauw, A.W.G.J. Buijze, R.J.G.M. Widdershoven, Boom Juridisch, Den Haag 2023, pp. 129–139.

[2] UN, Report of the Conference of the Human Environment (Stockholm, 5–16 June 1972), https://documents.un.org/doc/undoc/gen/nl7/300/05/pdf/nl730005.pdf?token=nJRO0sF2uhouwGJejG&fe=true (11.06.2024).

[3] UN General Assembly, World Charter for Nature (48th Plenary Meeting 28th October 1982), A RES 37/7 ENG.

[4] UN General Assembly, Report of the United Nations Conference on Environment and Development (Rio de Janeiro, 2–14 June 1992), A/CONF.151/26/Rev. l (Vol. l), see Resolutions Adopted by the Conference.

their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction." Furthermore, the United Nations Framework Convention on Climate Change, points out that in its Article 3. Purposes., that (...) 3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gasses and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties."

The said approaches have been joined with rights and obligations of the States, among others the rights to the sovereign use of natural resources without causing harm to neighboring states, the duty to carry out assessments of the impact of economic activities on the environment, of taking care of the natural resources, the right to economic development and to make use of every kind of knowledge. This has been gradually leading to the awareness that some duties of the States of refraining from activities causing a worsening of the condition of the planet, to be taken within the limits of the jurisdiction of the States, had to be related with a new horizon to look at law.

Operationalising the ecosystem approach (definitions, topology, and legal implications)

A new horizon to look at law ought to aim for some consistency with the fact that ecosystems may significantly range beyond the different states, and at the internal level, beyond political and administrative divisions, as well as with the fact that ecosystems have their own topology. We shall remember that pursuant to Article 2 of the Convention on Biological Diversity[5], such a concept indicates "the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems". The concept of ecosystem, in turn, is to be understood

[5] UN, Convention on Biological Diversity. Text and Annexes (first adopted 22 May 1992), Secretariat of the Convention on Biological Diversity, Montreal 2011, https://www.cbd.int/doc/legal/cbd-en.pdf (11.06.2024).

as "a complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit." The adoption of the ecosystem approach in the implementation process of the Convention stems from a broader framework of outcomes established by the Rio Conference. In particular, it emphasizes the interrelations between human beings and ecosystems. This orientation has been further developed by the Conference of the Parties to the Convention on Biological Diversity and presented in the Report of the Workshop of the Ecosystem Approach. As stated in the Convention's documentation: "People frequently move among ecosystems, and often use different ecosystems to satisfy their needs"; "Humans are frequently seen as external to ecosystems even when they are residents within them"; and "The ecosystem approach allows the use of both indigenous and local knowledge, innovations and practices including traditional management systems and scientific thinking" [6].

To consider the relevance of such principles, as the plurality of the different ecosystems, their coexistence and complementarity, for legal enquiry it demands a wider reflection on the foundation of modern public law.

2. Biosphere, Life and Complexity of Nature and Law

2.1. Foundations for a biosphere-embedded constitutional approach

Re-reading statehood: territory, population, legal order as custodial duties

The inadequacy of state-centric legal orders to address the transboundary and systemic nature of ecological processes has become increasingly evident. Recognizing that human beings are part of ecosystems – and that ecosystems themselves unfold within the Biosphere – requires legal systems to reflect these levels of embeddedness. This calls for a constitutional approach that acknowledges the *erga omnes* responsibilities of states and communities in preserving life systems. From this perspective, foundational attributes of statehood – such as sovereignty over natural resources – must be understood as entailing a duty to ensure that such resources are used in ways that preserve and protect the regularities of the Biosphere. A constitutionally grounded theory of law that incorporates the intrinsic value of nature should draw inspiration not only from constitutional models of symbiosis with nature, but

[6] Conference of the Parties to the Convention on Biological Diversity. Report of the Workshop of the Ecosystem Approach. Fourth meeting Bratislava, Slovakia 4 to 15 May 1998, UNEP/CBD/COP/4/Inf. 9, 20 March 1998, pp. 5, 6 and 7, respectively.

also from effective good practices, even when implemented at a smaller scale. In this way, a legal framework may be developed that reconciles historical civilizational trajectories with the urgent imperative of planetary ecological stewardship.

If we consider that the fundamental elements of the State include at least the territory, the population, and the legal order[7], a reflection on them that takes into account that we come from nature and live thanks to its mechanisms[8] leads us once again to considering and representing these concepts. First of all, the territory cannot be discussed in an abstract way either in relation to its borders or in relation to its resources. The production of natural resources and their functionality is linked to natural mechanisms that go beyond the borders of each state. And in this regard, even concepts such as sovereignty over natural resources come to conform rather to states' "*erga omnes*" responsibility[9]. In fact, this responsibility, although exercised within the jurisdiction of each State, is concentrated on the fact that each State is the custodian of resources, which constitute an essential part of natural processes. For this reason, the political responsibility of the State as an original political subject makes it difficult for any transfer of sovereignty that does not allow the State to fully assume responsibility for nature in the last instance, vis-à-vis its own citizens and humanity.

Life as planetary force: Vernadsky, indigenous mediation, and legal timescales

The second concept, i.e. that of population, also needs a profound revision in a legal conception that takes into account ecosystems. Indeed, the biological, ethological or sociological concept of population must be considered in relation to a function which is fundamental for law and legal protection, which is life. Life in this regard does not mean only human life, but all forms of life, through which the life of human beings is developed and maintained.

In this perspective, the ecosystem approach may not be enough, and it is important to bear in mind that it is life that is the force characteristic of our planet. In the introduction to the first systematic monograph on the Biosphere, that of Vernadsky, Margulis and others highlighted the empirical generalizations that Vernadsky himself placed at the basis of his reflections. First, that life occurs on a spherical planet which is contained in the biosphere. Second, that life creates geology. Third, that the planetary influence of living matter becomes more and more extensive over time. The number and proportions of chemical

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[7] See H. Kelsen, *General Theory of Law and State*, transl. A. Wedberg, Harvard University Press, Cambridge, Ma. 1949 (Introduction of the author: 1944, Copyright: 1945), pp. 207–267.

[8] See the Stockholm declaration, 1972, and the United Nations World Charter for Nature, 1982.

[9] P. Policastro, *Transnational Constitutional Values and Protection of the Person in the Age of Climatic Migrations*, "Studia Prawnicze KUL" 2021, Vol. 4(88), pp. 127–149, esp. p. 147.

elements transformed and the spectrum of chemical reactions involved in living matter are increasing, so that an increasing part of the Earth is included in the Biosphere[10]. It is precisely this last regularity that makes this question extremely important for the law.

With all these reflections presented here in mind, we must ask ourselves a question of how far do we acknowledge that the world's growing population must become concerned with maintaining the balance of nature. For this reason, both the assumptions of the United Nations Charter for Nature, which underlines the importance of taking care of the mechanisms of nature[11], and the current trends towards a growing attention to matters of indigenous peoples[12] must be considered with the greatest interest. In fact, people who live in symbiosis with nature play an important mediating role between it and industrial societies, as the path of nature and the path of these societies are interdependent[13].

The question of the growing role of the planetary influence on living matter leads us to a further reflection on legal systems. We must keep in mind that the time of nature, the time of human civilizations, and the time of legal systems are closely interconnected. Furthermore, this connection is realized with concrete actions in space, which is itself differentiated. Such differences are manifested through the interactions of different legal orders appearing across written constitutions, cultures and ways of life.

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[10] See L. Margulis et al., Foreword to the English-Language Edition of: V. I. Vernadsky, *The Biosphere*. Complete Annotated edition, Copernicus (Springer Verlag), New York 1998 (first ed. Биосфера, Ленинград 1926), pp. 15.

[11] And in particular the statements: "Aware that: Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems (...), Civilization is rooted in nature (...), and living in harmony with nature gives man the best opportunities". The document has been fully quoted above.

[12] See UN Department of Economic and Social Affairs. Indigenous Peoples, and the very wide range of activities carried out throughout the years, https://www.un.org/development/desa/indigenous-peoples/climate -change.html (11.12.2022).

[13] P. Policastro, *Forest Care and Nature Protection. The Case of Bialowieza Forest and its Inhabitants*, in: *Towards an Ecology of Biosphere VIII. Defenders of Rights - Defenders of Nature. Appeal of the people of the Białowieża Forest*, International webinar, 27 November 2022, https://teams.microsoft.com/l/meetup-join/19%3avW-MwLR0Thn3jByBfCCfYm2iBV7wjQxTnBHhkdifRE1%40thread.tacv2/1669295156120?context=%7b%22Tid%22%3a%22af892dd6-4563-4455-9c05-a398a43f2362%22%2c%22Oid%22%3a%22a55d099e-1691-461a-98bc-b9a0c1d5e90b%22%7d, printed version forthcoming (11.06.2024).

2.2. Historical trajectories and comparative constitutional signals

From symbiosis to extraction: civilizational arc and legal archaeology

My analysis of the historical development of constitutions, which I am also trying to develop in the context of the evolution of civilizations, shows that the fundamental purposes of societies have been transformed over time. We have gone from a prevalence of civilizations that lived in symbiosis with nature, to a gradual affirmation of civilizations that have tried to develop by competing with nature.

Research in archaeology, archeology of language or archeology of law, provides an array of elements pointing to this transformation. The semantic studies of Proto-Indo-European[14], or the juridical studies on institutions such as *homo sacer*[15], initiation rites such as the *ver sacrum*[16] or *kóryos*,[17] the appearance of institutions such as the oath[18], the development of the conquest of territories and the consequent destruction of large natural resources, as in the case of the conquests in Italy and other territorial conquests of the Roman Empire, provide interesting evidence in this regard.

Hegemony and innovation: *jus publicum Europaeum* to rights of nature

The technological progress and humanity's greater ability to explore and control different parts of the world have facilitated people's attempts to make use of the law in such a way as to succeed, with the joint contribution of various states belonging to the same, i.a. European, civilization, in controlling practically all areas of the globe to gain resources and

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[14] P. Policastro, *L' ipotesi biosferica tra religio, principi universali e il concetto di diritto. Da Vico alle cibernetiche di secondo grado*, in: A. Rella, S. Valerio, *Immaginario e realtà. Percorsi della religione*, Aga editrice, Alberobello, 2018, pp. 295–352. P. Policastro, *Sustainable Development in Theory and Practice. An Interdisciplinary Approach*, speech delivered at Hitit Universitesi on 24 October 2022; P. Policastro, *Le Costituzioni tra passato e presente: tra teoria e metodo della comparazione costituzionale*, in: *Le Costituzioni: Un invito alla comparazione. Dal passato al presente. Evoluzione di una ricerca*, ed. E. Castorina, pp. Policastro, Giappichelli, Torino 2022, pp. XI–XXVII.

[15] D.V. Anthony, *The Horse, the Wheel, and Language: How Bronze-Age Riders from the Eurasian Steppes Shaped the Modern World*, Princeton University Press, Princeton, N.J. 2010.

[16] G. Dumézil, *La religion romaine archaïque,avec un appendice sur la religion des Étrusques*, 2nd edition, Payot, Paris 1974, pp. 217–219 (the institution denoted also as "uer sacrum").

[17] See D.V. Anthony, *Horse, the Wheel*....

[18] E. Benveniste, *L'expression du serment dans la Grèce ancienne*, "Revue de l'histoire des religions" 1947, Vol. CXXXIV, No. 1–3, pp. 81–94. G. Goetz, E. Cuq, s.v. *Iusiurandum*, in: *Dictionnaire des antiquitès grecques et romaines*, ed. Ch. Daremberg, E. Saglio, Akademische Druck-u Verlagsanstalt, Graz 1969, Vol. III, part 11, pp. 748 ff.

outlets for man-made goods. The development of this global "jus publicum Europaeum"[19], together with the development of production and trade, has led to the drafting of policies or principles pertaining to respect for nature, in a perspective, however, aimed at guaranteeing control of hegemonic powers[20].

In this angle, the protection of nature takes the form of an attempt to make it completely subject to divisions of the Earth imposed by the hegemonic powers. A reverse trend prevailed at the birth of constitutionalism when the English "Charter of the Forest" recognized a limited right to use the Royal Forest[21]. The awareness of the control of natural resources on a global scale, technological development, and the related legal paraphernalia, however, facilitate a growing sense of autonomy of human societies from nature. This autonomy is also characteristic of many current approaches to the protection of nature[22]. The growing body of literature on this subject presents convergent opinions formed from a South American perspective. In this angle, the estrangement of people from nature is seen, again within the framework of the perspective of human civilization, as an estrangement from an original condition. The peoples of Latin America, therefore, in perceiving this estrangement as imposed, underline the importance of their intrinsic, and in many respects personified, relationship with Nature as such[23]. For this reason, certain

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[19] C. Schmitt, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum,* Duncker & Humblot, Berlin 1950, *passim*.

[20] W. Simonis, *Roots Against the Sand. A Global History of the "Green Wall'" Concept*, unpublished M. Phil. dissertation, University of Dublin, Trinity College, 2021 and the bibliography quoted therein.

[21] https://www.nationalarchives.gov.uk/education/resources/magna-carta/charter-forest-1225-westminster (1.12.2022). See for example para. 9: "Every freeman may agest his own wood within our forest at his pleasure, and shall take his pawnage. Also we do grant, that every freeman may drive his swine freely without impediment through our demesne woods, for to agest them in their own woods, or else where they will. And if the swine of any freeman lie one night within our forest, there shall be no occasion taken thereof, whereby he may lose anything of his own".

[22] We may recall the Man and Biosphere programme launched in 1971 by UNESCO. "In practice, the MAB Programme is implemented in biosphere reserves. They may contain terrestrial, coastal and/or marine ecosystems, which should be representative of their biogeographic region and of significance for biodiversity conservation". See UNESCO, *Man and the Biosphere (MAB) Programme strategy for the period 2015-2025*, 38 C-55, 17 September 2015, https://unesdoc.unesco.org/ark:/48223/pf0000234624 (12.06.2024). Principle 2 of the Stockholm Declaration of 1972 refers to the safeguard of "natural resources...and especially representative samples of natural ecosystems...". *The World Charter for Nature*, while underlying that all areas of the earth shall be respected, acknowledges (Section I art. 3) that "special protection shall be given to unique areas, to representative samples of all the different types of ecosystems and to the habitats of rare or endangered species".

[23] D. Bonilla Maldonado, *The Rights of Nature: their Conceptual Architecture*, speech held at the IACL (International Association of Constitutional Law) Round Table, on "Environment, Climate Change and Constitutionalism", Ankara 20–22 October 2022.

Latin American constitutional systems explicitly recognize the innate value of nature and the principle of life in harmony with it. In this regard, the constitutions of Bolivia and Ecuador are particularly noteworthy. Specific aspects of New Zealand's constitutional model also attribute a significant role to nature. Similar elements can also be found in various other constitutions, such as that of Turkey or Bhutan.

3. The Importance of a Pluralistic Approach to the Relationship Between Society and Nature

3.1. Pluralistic constitutional models and rights of nature

The constitutional systems in Bolivia, Ecuador, and New Zealand have introduced legal recognition of nature's personality and intrinsic value, aligning law with ecological complexity and cultural plurality. These models integrate local cosmologies and participatory principles, offering alternative frameworks – such as *buen vivir* – that challenge anthropocentric and capitalist paradigms by emphasizing reciprocity, interdependence, and spiritual connection with the Earth. Scientifically, they underscore that ecosystems and cultural systems co-evolve, and they call upon the law to recognize both the need to adapt to biospheric regularities and the paramount duty to care for and preserve them.

Bolivia: Mother Earth and *buen vivir*

The constitutional systems of Bolivia, Ecuador and New Zealand are the main beacons of recognition of Nature's personality. Starting from the plurinational state system of Bolivia, the preamble to its political constitution of 2009[24] recalls the formation of Mother Earth who boasts a variety of characteristics and forms of life. It underlines the strategic importance of natural resources (art. 348) and in particular of forests (art. 386) and the right of the communities originating in forest areas to make use of them and manage them (art. 388). It highlights the public ownership of these resources (art. 349).

The Constitution itself dedicates an important chapter to the Amazon, recognizing its strategic nature and its particular protection (art. 390). It prescribes that these purposes be exercised through an administration of the Amazon jungle that is "integral, participatory, shared and equitable" (art. 391.I). In this regard, agreements with native populations have

[24] Bolivia, Political Constitution of the State, http://www.gacetaoficialdebolivia.gob.bo/app/webroot/archivos/CONSTITUCION.pdf (12.06.2024).

a special importance (art. 391.III), as well as policies in their favor and aimed at their protection (art. 392).

In regulating the relationship between society and nature in the plurinational state of Bolivia, an important role is played by Law 71 of 2010, on the rights of Mother Earth[25] and by Law no. 300 of 2012, Framework Law on Mother Earth and integral development for the good life (*Vivir bien*)[26]. The first law establishes, among other things, the rights due to Mother Earth. Pursuant to article 7 of the law itself, they are: 1) the right to life, understood as the right to preserve the integrity of life systems and the natural processes that support them, as well as the capacity and conditions for their regeneration; 2) the right to diversity of life, i.e. the right to preserve the diversity and variety of beings that make up Mother Earth, without genetic alterations or artificial modifications to its structure, such as to threaten their existence, functioning and potential; 3) the right to water, i.e. the right to preserve the functionality of water cycles, its existence in the quantity and quality necessary to sustain life systems, and its protection against contamination for the reproduction of life on Mother Earth and all its components. Then there are, 4) the right to pure air, 5) the right to preserve or restore the balance between the interdependencies, complementarities and functionalities of the elements that make up Mother Earth; 6) the right to regeneration of life systems compromised directly or indirectly by human activity; 7) the right to preservation of Mother Earth from contamination.

Law no. 300 specifies some other interesting principles. For example, article 4 expresses the principle of reconciliation, namely "Compatibility and complementarity of rights, obligations and duties". A right cannot be realized without other rights or cannot be above other rights, implying interdependence and mutual support of, among other things, the rights of Mother Earth and the right to a good life. It also foresees, which is also very interesting, the prohibition of commercializing the environmental functions of Mother Earth. The latter, for the purposes of this law, is considered sacred (art. 5.1).

The definition of good living, expressed in the Aymara and Guarani languages as "Sumaj Kamaña, Sumaj Kausay, Yaiko Kavi Päve", or good work, good life (in Aymara) and we live together (in Guarani), intends to realize the complementarity and balance between Mother Earth and society (art. 5.2).

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[25] Bolivia, Law 71, Gaceta Official del Estado Plurinacional de Bolivia (Official Gazette of the Plurinational State of Bolivia), Published Edition: 205NEC, 22.12.2010, http://www.gacetaoficialdebolivia.gob.bo/normas/buscar/71 (12.06.2024).

[26] Bolivia, Law No. 300, Framework Law of Mother Earth and Integral Development for Living Well, 15 October 2012, Gaceta Oficial Edition (Official Gazette) No. 431, https://www.lexivox.org/norms/BO-L-N300.html?utm_source=chatgpt.com#norm (12.06.2024).

The definition of the values associated with *buen vivir* (good living) is particularly noteworthy. These values are presented as alternatives to capitalism and, in our view, should be understood as attempts to overcome biopower in its various forms and modalities. They are linked to diverse forms of knowledge: growing through the sharing of spirituality and faith; nourishing oneself with natural foods and in harmony with time; knowing how to dance as an expression of gratitude to Mother Earth and communal life; understanding work as a source of joy and celebration; mastering the arts of communication and speech; cultivating the capacity to dream and envision a good future; knowing how to listen; and developing the ability to think (art. 6).

Ecuador and New Zealand: rights of nature and legal personhood

The Constitution of Ecuador[27] begins with an invocation to Mother Nature, which it indicates in the preamble as Pacha Mama. This denominates personification of Nature in her integrity. The relationship between society and Nature is indicated in the Constitution itself, in article 71 and a few other. Nature has the right to be respected while its cycles have the right to be preserved and regenerated (art. 71). In particular, nature has the right to renew itself (art. 72), and people and social groups have the right to make use of natural resources that allow them to "live well" (art. 74). These reinforce the participatory model for environmental protection.

The constitutional model of New Zealand includes, in some of its elements, the recognition of the highest constitutional rank to some areas, characterized by a close symbiosis between people and nature, as shown by two laws: the Te Urewera Act of 2014[28] and the Te Awa Tupua Act of 2017[29]. According to the first law, Te Urewera is an ancient and enduring area (3(1)) and a place of spiritual value (3(2)), with its own identity (3(3)). For the people originally from that place, the Tūhoe, Te Urewera is the heart of the great fish, son of their Great ancestor (3(4)). It constitutes their place of origin and return, the motherland (3(5)). It gives meaning to the culture and identity of the Tūhoe (3(6)). It is also recognized for its special value by all New Zealanders (3(8)). Te Awa Tupua (Whanganui River Claims

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[27] Ecuador, Constitution of the Republic of Ecuador, Registro Oficial (Official Register of Laws) No. 449, 20 October 2008, https://www.ambiente.gob.ec/wp-content/uploads/downloads/2018/09/Constitucion-de-la-Republica-del-Ecuador.pdf (12.06.2024).

[28] New Zealand, Te Urewera Act 2014 No. 51, 28 October 2021, https://www.legislation.govt.nz/act/public/2014/0051/latest/whole.html (12.06.2024).

[29] New Zealand, Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 No. 7, 17 February 2017, https://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html#DLM6831458 (12.06.2024).

Settlement) Act 2017[30] recognizes Te Awa Tupua as an "indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements" (12). It is declared to be a legal person (14).

3.2. Coexistence, adaptive law, and comparative extensions

Coexistence and the adaptive function of law (with the example of Turkey)

These constitutional approaches, although different from each other, allow us to affirm that there are reference models and reflections that recognize an important value of Nature and of the relationship between it and human life. These models have a crucial function in a conception of law that takes into account our existence in the Biosphere. Based on this, the law is expected to take into account not only the plurality of biomes and ecosystems, but also the plurality of relationships between nature and human beings and their different conformation, so that they can coexist as interdependent and complementary.

This coexistence of these different elements forms an adaptive function of the law, which from its very beginnings is accustomed to seeking concordances between different elements. Such concordances must also be sought through other approaches to the relationship between constitutions and nature. An excellent example of this relationship is provided in the Turkish Constitution which seeks, in its article 169, to recognize a special legal status for forests, in particular to guarantee their constitutional protection even in the face of attempts to reduce the surface of forests. It recognizes the special importance of populations living on the edge of woods for the care and conservation of the integrity of the forests (art. 170)[31].

Effectiveness under growing anthropic pressure (with a Bhutanese signal)

However, we must ask ourselves whether these rules can be effective in the face of the growing anthropic effect. At this point, I would also like to recall the Constitution of Bhutan, which calls on the state and society to develop permanent happiness of populations[32]. These tendencies to place the person and participation at the center of attention for the re-

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[30] New Zealand, *Te Awa Tupua*....

[31] Turkey, Constitution of the Republic of Turkey, https://www.refworld.org/docid/3ae6b5be0.html (12.06.2024).

[32] See the Preamble of the Constitution of Bhutan as well as art. 9, calling the State to pursue the "Gross National Happiness", https://www.nab.gov.bt/dz/business/constitution_of_bhutan (1.12.2022).

spect of nature and others, generate a push for the transformation of political power toward growing decentralization. In fact, it is everyone's choices that can lead, together with a more attentive approach to the Biosphere, to our common good.

4. Toward New Legal and Constitutional Approaches for our Life in the Biosphere. Beyond a Conclusion

4.1. Foundations: paradigms, regularities, and the human condition

4.1.1. A theoretical framework for constitutional analysis

I have developed a significant part of my research by observing regularities common to legal orders: (1) the relation between understanding the existential manifestations of persons to be protected and the policies required to implement that protection; (2) the relation between participation and representation; (3) the relation between norms and their manifestation in reality. Together these relations form a paradigmatic lens for assessing whether, and how, a government may be called balanced. This points to a constitutional theory grounded in basic manifestations that reveal classes of rules: (a) the aims of society – including the relations between society and nature, culture, and history – indicating constitutional roots and transformative principles; (b) principles that distribute influences (i) on society, (ii) on decision-making (politics), and (iii) on production, exchange of goods and services, and the distribution of income from subordinate work, self-organized labour, and property. This approach, from the outset, has remained open to complementary foundations that allow constitutional science to perceive the broader context in which we live – history, modes of thought, and nature.

4.1.2. Human dignity across spheres of existence and implications for law

Over the years, this work has led me to grounding human dignity in the biological, psychic, and spiritual characteristics of human beings. These characteristics manifest themselves at the level of biological existence in the Biosphere, at the level of spiritual and psychic existence in the Noosphere, at the level of communication and language in the Semiosphere, and at the level of exosomatic outcomes through material and non-material artefacts. Human evolution unfolds through organelles, viruses, and bacteria – each with its own form of existence – not only biological but also psychic, and through genetics, epigenetics, language, history, civilization, and technology. Above all, we exist thanks to the Sun's cosmic

energy, the cosmic force of Life, and the way these forces have arranged themselves within our planetary structure, giving rise to the Biosphere. Life exhibits homeostasis and self-organization, reproduces across time, and expands to occupy available space – the "pressure of life." Through exosomatic activity, human life can transform the Biosphere – reducing biodiversity or destabilizing climate and homeostasis – but can also care for and restore biospheric regularities. For these reasons, these problems are of utmost legal relevance. Law concerns life in society and must connect disciplines that shape social life; thus, this work addresses law while drawing on foundational and complementary disciplines.

4.2. From theory to practice: duties-based constitutionalism and pathways of implementation

4.2.1. Comparative law, empathy, and the turn from rights to duties

This volume presents two core developments. First, a comparison must consider not only legal formulations or institutional functioning, but also the founding disciplines that give law meaning and the complementary disciplines that connect law to different realms of reality. Second, comparative law must take seriously the pain and difficulties of humans' existence in the psychic dimension – the "heart", all living beings, and the Biosphere itself. The Biosphere both absorbs cosmic forces and suffers distress when human activity jeopardizes its symbiotic regularities; even beneficial cosmic forces (such as solar energy) may become harmful when those regularities are undermined. Third, because we live in the Biosphere, relations among human societies – and between societies and the Biosphere – should be reconstructed in terms of duties rather than rights. This helps account for differences in community identities and supports a more reflective understanding of each community's duties toward others and toward nature. Constitutions and constitutionalism are therefore central. International law must be implemented domestically with attention to state and community particularities; hence constitutional paradigms and the descriptive classes of norms outlined above are especially significant. Activities emerging from below help develop consciousness that also manifests transnationally. Such consciousness may inspire support for a renewed approach to law, including changes in our way of living. Law must adapt to our biological nature of symbiosis through a bottom-up approach: people's initiatives provide the ground on which communities and states can act. Without continuity and feedback from below, producing and implementing court orders, legislation, and international agreements becomes difficult. Many proposals emerge from international

law: a rights-based approach (e.g., a third UN pact on environmental rights[33]), an EU approach focused on restoration of nature[34], and a recent advisory opinion of ICJ on climate change[35] underlining states' obligations toward the international community. These proposals reinforce constitutions' growing attention to the environment, biodiversity, and nature, alongside initiatives arising from civil society.

4.2.2. A program for the biospheric rule of law: principles and concrete steps

A biospheric democracy rests not only on demands and deeds but also on sustained efforts aligned with reality and possibility. Reality includes what history has consolidated and what shapes our expectations: we desire higher incomes, consumption, travel, externalization of onerous work, returns on savings, and simultaneously a lighter environmental footprint. Without recalibrating expectations, constitutional protections for environment and biodiversity risk remaining on paper, and "ecological conversion" will lack concrete references. Accordingly, I propose the following:

1. The biospheric rule of law should rely on coherent, continuous relations between bottom-up actions, community and state decisions, and international action, with appropriate feedback. Legal declarations of crisis – judicial or legislative – will otherwise remain chiefly educational.
2. Existing grassroots solutions in every culture must be observed. They may appear simple but are rarely simplistic; their persistence merits attention.
3. Solutions requiring significant organization and time-built know-how are equally valuable. Forests are fundamental: their care maintains a leaf surface adequately larger than Earth's surface and supports humus and oxygen production – both essential to sustaining the pressure of life. This matters for constitutionalism because it undergirds life, culture-specific human functions, and the stability of legal relations.

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[33] M. Prieur, ed., *Draft International Covenant on the Human Right to the Environment* (Third Covenant), 15 February 2017, International Center for Comparative Environmental Law – CIDCE, Limoges; M. Prieur, *Le projet de troisième Pacte international relatif au droit des* êtres *humains à l'environnement de 2017*, "Revue juridique de l'environnement" 2020, No. 2(45), pp. 269–277. CIDCE, *Projet de Pacte international relatif aux droits environnementaux (PIDE) – Note introductive*, May 2025.

[34] Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869, OJ L, 29.07.2024 (entered into force 18 August 2024).

[35] International Court of Justice, Obligations of States in respect of Climate Change (Request for Advisory Opinion), Advisory Opinion of 23 July 2025, General List No. 187, I.C.J. Reports 2025 (forthcoming), https://www.icj-cij.org/case/187/advisory-opinions (2.09.2025).

4. Because society must participate in legally shaping the human–nature relationship, parliamentary institutions and debates should be appropriately involved. Focusing on a concrete, essential object – such as forests – may enable step-by-step improvement.
5. Professions and responsibilities tied to caring for nature should receive special recognition and guarantees to ensure their proper exercise.
6. The protection of nature should not be subordinated to shifting political preferences or majority needs; it implies states' long-term responsibility toward national society and to the Biosphere. Legal personhood for forests may be an appropriate first step toward improving the human–nature relationship.
7. Respecting subsidiarity, a parliamentary debate may also address plans to improve human–nature relations and enact periodic legislation to ensure adequate regeneration and use of natural resources.
8. Heads of states – or, where appropriate, heads of government – should participate in the most important decisions concerning the human–nature relationship, including, together with parliaments, the appointment of persons responsible for natural resources, with specific accountability mechanisms for fulfilling this duty.

Some other statements (presented below) – whose foundations are developed in this work – will be further expanded in the forthcoming monographs. Indeed, the next volumes of the series aim to develop the question of the symbiosis between humanity and the Biosphere as a constitutional problem. This inquiry will encompass all substantive aspects of constitutional relations, adapted to the different ambits and modalities through which humanity interacts with Nature. Among the first of the forthcoming volumes, forests will receive particular attention.

9. The forthcoming monographs will analyse how biospheric professions – that is, professions dedicated to the care, regeneration, and stewardship of natural systems – should be integrated into constitutional law. This includes the recognition of their public relevance, the guarantees required for their proper exercise, and their role in ensuring a stable and symbiotic relationship between humanity and the Biosphere.
10. Future volumes will further investigate the constitutional principle that the protection of nature cannot be subordinated to the shifting preferences of political majorities. Instead, it constitutes a long-term responsibility of the State toward both national society and the Biosphere as a whole. In this perspective, the legal personhood of forests will be explored as a paradigmatic institutional innovation capable of reshaping the constitutional architecture of the human–nature relationship.
11. The upcoming monographs will also address how the principle of subsidiarity can structure multilevel governance for the Biosphere. This includes the constitution-

alisation of planning mechanisms aimed at improving human–nature relations and the adoption of periodic legislation ensuring the regeneration, continuity, and balanced use of natural resources across local, regional, national, and transnational levels.

12. Lastly, subsequent studies in the series will examine the constitutional responsibilities of heads of State and heads of government in decisions affecting the Biosphere. Particular attention will be devoted to their role in appointing and supervising the authorities entrusted with natural resources, along with the accountability mechanisms necessary to ensure the effective performance of these duties within a biospheric constitutional order.

Taken together, these considerations outline a constitutional agenda for a biospheric rule of law – one that treats the symbiosis between humanity and the Biosphere not as a rhetorical appeal, but as a structural requirement of contemporary constitutionalism and of the evolving architecture of international law. The principles sketched above indicate the direction of a long-term transformation: they call for renewed institutional imagination, the redefinition of public responsibilities, and the integration of ecological realities into the core of legal and political decision-making. The forthcoming monographs will develop these themes in greater depth, examining how constitutional orders can evolve so that the vitality of natural systems, the continuity of human communities, and the integrity of the Biosphere become mutually reinforcing elements of a coherent constitutional framework.

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Pasquale Policastro (b. 1959) is a Professor at the Faculty of Law and Administration of the University of Szczecin, Poland. He specializes in comparative constitutional and public law, the philosophy of law and politics, and interdisciplinary methodologies in legal studies. He is among the first scholars to develop a legal understanding of the Biosphere.

The distinctive feature of his approach is a broad conception of the Biosphere that integrates the biological dimension of life with the psychic and semiotic aspects of communication, as well as the exosomatic dimensions of human life. This perspective leads to conceiving law as an immaterial tool and to recognizing, from the cosmic nature of Life itself, the need to understand the Biosphere as a constitutional entity.

For many years, he has combined theoretical reflection with practical initiatives aimed at reconciling humanity and nature – particularly through reforestation projects in Africa and Europe, documented in film and writing. His work interweaves social engagement, ethics, pedagogy, literature, anthropology, the arts, and spirituality.

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