ΠΑΝΤΕΙΟ ΠΑΝΕΠΙΣΤΗΜΙΟ

ΚΟΙΝΩΝΙΚΩΝ & ΠΟΛΙΤΙΚΩΝ ΕΠΙΣΤΗΜΩΝ

Τμήμα Δημόσιας Διοίκησης

Regulating Natural Things

An Historical and Comparative Legal Approach

Διπλωματική Εργασία

υπό

Deniz Gedik

2015

Εγκρίθηκε από τα Μέλη της Τριμελούς Εξεταστικής Επιτροπής:

Πρώτος Εξεταστής (Επιβλέπων) Δρ. Αντώνιος Χάνος

Δεύτερος Εξεταστής Δρ. Σταύρος Περεντίδης

Τρίτος Εξεταστής Δρ. Ελευθέριος Βόγκλης

REGULATING NATURAL THINGS

AN HISTORICAL AND COMPARATIVE LEGAL APPROACH

by Deniz Gedik

ABSTRACT:

This study focuses on administrative and legislative aspects of environmental law from a critical point of view of legal philosophy enriched by an historical approach. Law, as one of the main phenomena of societies and as a source of order against disorder of the state of nature consists of a contrast with nature in legal philosophy narrative. The term used to connote the societies former to organized societies in political philosophy, the state of nature, is rasped and neatened by regulation. In this work, first the nature of this regulation will be examined and then according to this rasping aspect of it, the subject of the regulation and the possibility of comprehension of natural things as subjects of law will be studied.

ABBREVIATIONS

ECHR	**European Court of Human Rights**
EConvHR	**European Convention on Human Rights**
EHEES	**Ecole des Hautes Etudes en Sciences Sociales**

ACKNOWLEDGEMENTS

Foremost, I would like to express my sincere gratitude to my advisor Prof. Antonis Chanos, for his continuous support, for his immense understanding, collaboration, motivation, mind-opening suggestions and comments as well as broad knowledge. He has always believed that I can achieve this study and his enthusiasm with my subject reflected on my research. He was always there, ready to help, whenever I was puzzled and had trouble, both in my research process but also in one year that I spent in Athens, to settle the background for this study.

Besides, I would like to thank for Prof. Sofia Adam and Prof. Perentidis. If they have not been supported me from the very beginning of my Greece adventure, I would have not be able to start this mighty program. Prof. Perentidis also one member of my thesis committee had always enlightened my path with his wisdom and understanding. His calmness and ability to fix problems helped me a lot to finish this study.

I thank IKY for their financial support. If they have not existed, I would never be able to learn this fascinating language, to live in this enchanting country that gave me another horizon and to continue my studies in Athens.

I would like to thank my parents Canan Gedik and Zafer Gedik who set me free with my choices of life. Last but not the least; I would like to thank Olguner Olgun for his support in stressful and sleepless nights and immense patience. He never ceased the communication link between Istanbul and Athens and who have always supported my dreams.

INTRODUCTION

Regulation as a fact embedded in our lives so deeply, *lato sensu* refers to ensemble of the indications, laws, rules or other legal texts. It has its etymological roots in Late Latin verb *regulare* and noun *regulus* (rule) which means "*to adjust or control by rule, to govern by restriction*"[1], "*a rule or order prescribed for management or government*"[2]. From national, to international and supranational in every legal system, regulation may be used to express different notions and variable types of control, so for example, the regulation in United States cannot be considered identical to French regulation from many aspects such as historical and structural, nor the regulations of European Union organs which is different from directives can be comprehended parallel to national enactments. In national plan regulation expresses basically the enforcement of rules prepared by primary or delegated legislation usually by administrative units and the intervention of state especially to markets or certain industries. The power that is used to regulate, to give orders and the ability of making people obey them in other words political authority within a determined land and the liaison with its subjects have to be mentioned.

In this work I will not focus on the effect of regulation as a subject which takes place in the core of debates about liberalism and the intervention of state to certain areas of social and economic life, yet I will try to analyse the point where the power of the sovereign touches to our lives. Namely, I wish to examine the control of sovereign force, of law on our daily life, bodies and gradually on nature. I prefer using the term regulation instead of law because it's connotation which is closer to administrative law. In other signification of the relation between subjects of law and coercive and executive orders and sovereign power who holds the power to regulate is preferred.

In fact, my research is an attempt to understand the relationships between human beings, things, power, force, law, regulation, nature, subjects and objects of law in interconnected manner. This is to be understood as the political history of human and its intercourse with the nature. *Inter alia*, my study may start from the myth of Gaia or from *Ahamkara*, an Indian word to express the creation of the 'I'[3]. Of course to cover as well as to systematise all these

[1] http://www.etymonline.com/index.php?allowed_in_frame=0&search=regulate&searchmode=none
[2] http://thelawdictionary.org/regulation/
[3] MAUSS Marcel, "A Category of the Human Mind: The Notion of the Person; the Notion of Self", (tr. HALLS W. D.), pp. 1-26 in CARRITHERS Michael, COLLINS Steven, LUKES Steven (ed.), The Category of the Person, Cambridge University Press, 6th ed., 1999, Cambridge, p. 13. Here the self is esteemed as the illusory thing.

subjects in the extent of a master study are impossible. However this broad narrative can be told by following a path. This path which I try to construct is starting with the borderline between the order and disorder. This line draws the borders of political power and limits it with a determined land. Same line distinguishes the legal from a-legal. The borders of legality separate the wild from the civil and human from its environment.

According to Rosen, "*law does not (...) depend on express sanctions or even the existence of an actual sovereign; not does it require utter precision to possess content*"[4]. He adds, even if there is not any enforcement powers in some cultures (he gives the example of a group in Philippines called the Tiruray) the guidance of people is provided solely by moral rules[5]. For Hart, who dedicates the first chapter of his boot The Concept of Law, to the persistent character of the question "what is law?" is the representative of analytic-normativist law theory law is the union of primary and secondary rules.

"*Legal system creates facts in order to treat them as facts*"[6]. "*Law*", as asserts Rosen, (maybe we can replace the term law with legal fact), "*is in many respects 'a way of managing doubt*'"[7] From the penal practices to oath ceremonies, from the primeval forms of contract to the most complicated genetically modified organism regulation, the legal creation of facts summarizes and stimulates our sense of reality[8]. This area or field if we use the terms of Bourdieu is not always so determined. From the primordial structures of social and political organization until now, the boundaries of the moral and legal area is under discussion. Postmodern and post structural models bring us even more complicated questions.

Generally we can assert that, as inherited from ancient Greek dichotomy which is emphasized basically by Sophists, *nomos* and *physis* takes place in the core of the debate. Nomos, law is introduced as the antithesis of the nature. One step further the civilisation is determined at the level of domination toward nature. The capacity to tame the nature becomes the measure of the development and technology. This contrast and even the exclusion of the nature from legal system and legal sphere become even more problematic when we are in the field of

[4] ROSEN, op. cit. p.22. He gives the example of two businessmen who conclude a contract in between but in case of any breach that they do not prefer to sue each other considering the flexibility of their relation, the possible loss on monetary gain and so on, ibid. p. 14 ff.
[5] ROSEN, ibid. p. 24. He concludes that "*at issue, 'constitutional' dispersal of power*" in the societies that he cites as example i.e. Tiruray and Barotse judges in Zambia who uses extrajuridical powers while as judges they do not have power to force the concerned man,*" a process that depends not on recourse to strict rules but on the maintenance of order through diverse social, economic and psychological pressures*", ibid, p. 26.
[6] ROSEN, ibid. p. 68.
[7] ibid. p. 88.
[8] ibid. p. 93.

environmental law. Here appears the problematic of this study: How law can regulate nature if we accept that law exists in order to erase the state of nature and to create order external to the nature?

In order to systematise our work, first I will try to understand the anatomy of the regulation. The nature of the regulation forms the first chapter of my study. I will start this examination from the line which is drawn between order and disorder. Can and if we can how we determine the field of law, regulation and the extent of the power inherent to rules? Then we may ask if a human made transaction such as regulation which is made in order to provide public order, is able to provide in the same manner an ecological order? These questions will help us to examine the nature of the regulation and the extent of it. This extent will be accomplished with the elements which are excluded from the extent of law. So to say, we can understand the nature of the regulation by observing the things which law is blind to, which are invisible from the point of view of law.

In second chapter will focus on the regulation of the nature itself. Following our path which is drawn in the first chapter, I will examine the addressee of the regulation, in other words the subject of law. The main question will be the possibility to define the subject of law? This question, which is related to the second title of the first chapter, will focus on the subjects of law. If it is possible to define this term, how can we set the natural things in the legal system? This question provokes other questions such as the possibility of having the capacity to act and the attribution of rights to them.

I. NATURE OF THE REGULATION

1. Order and Disorder

City, from Latin *civitas* denotes any settlement of people regardless to size; *civitas* means citizenship, condition or rights of a citizen, membership in the community[9]. This liaison is not peculiar to Latin language, on the contrary one of the oldest cities in Arabic peninsula, Medina means city and constitutes the root of the word "*medeniyet*" which means civilization. Civilization is the act or process of civilizing, as by bringing out of a savage, uneducated, or unrefined state, or of being civilized and at the same time, a perceived separation from the nature and the ability to dominate the nature. It is not a coincidence that we call civilization to the social, political and economic organization within the city walls, since the word denotes at the same time "*a process of collective self-differentiation from a world characterized, implicitly or explicitly, as 'barbaric' or 'savage' or 'primitive'*" and the description of progress as the renunciation of nature[10]. Further, in his tenet Clastres defines primitive societies as the societies without a state[11]. As comparing an African mask with the Belvedere Apollo, famous art historian Kenneth Clark states that "*the Apollo embodies a higher state of civilization than the mask*" and explains this difference as the Pyhtian Apollo represents "*confidence to build for the future; whereas the mask, by implication, comes from a world terrified and inhibited by nature's power over man*"[12]. Thus civilization is defined within the city walls, in contradiction with nature.

Both Aristotelian and Platonic philosophy contributed to the conception of nature as inert or mindless matter[13]. What matters to Homeric man is not to be a citizen of a *polis*, but to be a permanent member of an *oikos*[14]. In Ancient Greece, until about the mid fifth century the absolute validity of *nomos* "*the embodiment of the concept of popular sovereignty remained unquestioned*"[15]. So, living in a society in different degrees bring its own law; "*ubi ius, ibi*

[9] http://www.etymonline.com/index.php?term=city&allowed_in_frame=0
[10] FERNANDEZ-ARMESTO Felipe, Civilizations: Culture, Ambition and the Transformation of Nature, Free Press, New York, 2001, p. 13.
[11] CLASTRES Pierre, Archeology of Violence, (tr. HERMAN Jeanine), Semiotext(e), New York, 1994, p. 88.
[12] CLARK Kenneth, Civilisation: A Personal View, Harmondsworth, 1982, pp. 18, 27. cited by, FERNANDEZ-ARMESTO op. cit, p. 17.
[13] KHEEL Marti, "From Heroic to Holistic Ethics: The Ecofeminist Challenge", in (ed) GAARD Greta, Ecofeminism, Temple Universtiy Press, 1993, pp. 243-271, p. 246.
[14] TODD S.C., The Shape of Athenian Law, Clarendon Paperbacks, Oxford, 1993, p. 171.
[15] OSTWALD Martin, From Popular Sovereignity to the Sovereignity of Law, Law, Society and Politics in Fifth-Century Athens, Universtiy of California Press, Berkeley, LA, London, 1986, p. 250.

societas", where is society, there is law, in other words the society excretes its law. Law can be comprehended as a way of communication between the members of the society.

So another aspect of the city or the civilization is its particular administrative and legal status and this aspect becomes visible by rules. These rules or laws must have been transmitted by word of mouth in Stone Age[16]. The transition from oral transmission to written laws had a far reaching effect on the status and the nature of law itself, as asserts Sassoon[17]. Individual justice (which may be identified as the use of force to obtain justice) must be prevailed[18] and some civil demands must be fulfilled; these civil and practical demands that can be considered as three pillars of any ordered society are feeding the people, protecting them and providing them with justice for Sassoon[19]. I would add equality to this assumption for the unwillingness toward the individual justice stems from the unequal results of it, based on the rule of the strongest.

This is state in which anyone can execute individual justice expressed by Hobbes as a *state of nature* which is *bellum omnium contra omnes*: the war of all against all. The social contract theories from ancient Greece to Stoic thought and to Rousseau, Hobbes, Locke are based on this hypothetical state. The assertion of Varaut, "*Liberties are absent since the law is absent in this universe*[20]" defines another notion of liberty, within the city, society and thus law. These laws which lack of predictability of modern laws but still suggest continuity, provides some principles such as propriety or some criminal provision[21]. In this chapter, I will try to analyse the nature of the regulation, of the orders and rules considering their close relation to the concepts of power, force and violence. Of course this is a bold and impudent claim to explain all these concepts and their interconnectedness in a final essay, however it is important to underline some aspects of this concepts, in order to understand the relation of the legal system with the nature and particularly to perceive how can be the relation of legal system with the nature, if there can be one. That is why this power struggle between nature and human

[16] SASSOON John, Ancient Times and Modern Problems, Intellect, Bristol UK, Portland, USA, 2004, p. 26.
[17] ibid. p. 28.
[18] ibid.
[19] ibid, p. 31.
[20] VARAUT Jean-Marc, Le Droit au Droit, Pour une Libéralisme Institutionnel, Libre Echange, PUF, 1986, p.12. Here he refers to the notable book of Soljenitsyne, L'Archipel du Goulag, Le Seuil, in which he defines as a political prisonner relying on eyewitness testimony in goulag labour camp or in "sovietic carceration industry".
[21] ibid, p. 27.

which is crystallized by the law of human "front" and especially the field of law regarding to the nature will be explained.

Rules to render a society ordered requires a system to make them executable, otherwise it is not possible to talk about the existence of rules, nor of an order. In the same vein, Derrida asserts "*there is no law (loi) without enforceability and no applicability or enforceability of the law without force, whether this force be direct or indirect, physical or symbolic, exterior or interior, brutal or subtly discursive (...) coercive or regulative, and so forth*"[22]. So, "*there is no law that does not imply in itself a priori in the analytic structure of its concept, the possibility of being "enforced", applied by force*"[23]. Therefore there is an inherent force, embedded in law which opposes with the state of nature, "violence" that is always judged unjust. This idea of force and enforceability of orders, bring us to the idea of the organization of the power and the state. Applicability, "enforceability" as emphasizes Derrida, is not an exterior or secondary possibility that may or may not be added as a supplement to law. It is the ***force*** essentially implied in the very concept of *justice as law,* of justice as it becomes law, of the law as law" [*de la loi en tant que droit*][24].

Power, as indicates Laclau, "*is located at some point within society, from where its effects would in some way spread over and around the social structure as a whole; indeed, that there is a structure at all is, to a large extent, the result of power*". He defines the power as following: "*in a sense, is the source of the social, though one could equally say in another (and related) sense, that it is the very condition of intelligibility of the social (given that the possibility of representing the latter as a coherent entity depends on a set of orderly effects emanating from power)*"[25].

The monopoly of power in modern construction of state is exclusively owned by the state itself. State, according to Weber's mighty definition is a group of people who claim that, at least when they are around and in their official capacity, they are the only ones with the right to act violently. This monopoly of violence or the monopoly of the legitimate use of force

[22] DERRIDA, op. cit. p. 233.
[23] ibid.
[24] DERRIDA Jacques, "Force of law: The 'Mystical Foundation of Authority'", tr. QUAINTANCE Mary, http://users.polisci.wisc.edu/avramenko/methods/derrida_theforceoflaw.pdf,
Turkish version: Yasanın Gücü: Otoritenin Mistik Temeli, Şiddetin Eleştirisi Üzerine, ed. ÇELEBİ Aykut, tr. DİREK Zeynep Metis Yayınları, İstanbul, 2010, pp. 43-133, p. 47.
[25] Laclau Ernesto, "Minding the Gap", Making of Political Identities, p. 17.

results in the assertion that "*the modern state is a compulsory association which organizes domination*"[26]. We can claim that neither the idea of the state nor of the domination is identical to modern states. On the contrary, we can observe these phenomena in ancient societies. As classifies Clastres Western political thought, from ancient Greece, has been able to seize "*the social and political division between the dominating and the dominated, between who know and thus command and those who does not know thus obey*"[27]. This dichotomy reminds the main distinction in administrative law on which it is based: administer and administered[28].

According to Heraclitus, Plato and Aristotle, there is no society except under the aegis of kings[29]. In the same manner, outside Athens, Heraclitus exemplifies a similar attitude that of Athenians in which the people ratify the cultic prerogatives, when he derives all human *nomoi* from the divine one and prescribes that "the people must fight for their *nomos* as for their walls"[30]. The *nomoi* do not prevail universally, especially Heredotus demonstrates that different *nomoi* are valid among different societies[31]. *Nomos,* used in sense of common parlance or ordinary speech, describes conventional belief based on the lack of scientific thinking or research, in sense of holding a common but false opinion. However in Sophocles' Antigone claimed an equal validity for the *nomima* of family religion, the *nomoi* are praised as the preserver of the state[32], as a guarantor of freedom and as bulwark against tyranny, *nomos* is the basis of the state's social as well as legal norms[33]. Babylonian law code of ancient Mesopotamia, the Code of Hammurabi is one of the oldest deciphered writings enacted by the sixth Babylonian king, Hammurabi. Its partial copies exist on a human-sized stone stele and various clay tablets. The Code consists of 282 laws, with scaled punishments, adjusting "an eye for an eye, a tooth for a tooth" (lex talionis) as graded depending on social status, of slave versus free man. The structure of the code is very specific, with each offense receiving a specified punishment. It starts as follows: "*Hammurabi, the exalted prince, who feared*

[26] Essays from Max Weber; https://archive.org/stream/frommaxweberessa00webe#page/82/mode/2up
[27] CLASTRES, op. cit. p. 88.
[28] This is derived from French administrative system. If we consider the evolution of French administrative jurisdiction, we can observe some faculties concerning the administereds to the detriment of the administers. This is the very result of the struggle against the 'omnipotent' administration, along similar lines in labour law which evoluated for the benefit of workers considering the inequality between the workers and the employers.
[29] CLASTRES, op. cit. p. 88.
[30] HERACLITUS, 22BII4 and 44 DK, cited by OSTWALD, op. cit., p. 251.
[31] ibid.
[32] EURIPIDES, Supplices, p. 312-13.
[33] OSTWALD, op. cit. p. 252.

God, to bring about the rule of righteousness in the land, to destroy the wicked and the evil-doers; so that the strong should not harm the weak; so that I should rule over the black-headed people like Shamash, and enlighten the land, to further the well-being of mankind"[34].

In Ancient Egypt, Nu or Nun is the deification of the primordial waters. The word Nu in Ogdoad[35] cosmogony signifies abyss and the Nun means chaos and it is the source of all that appears in a differentiated world, encompassing all aspects of divine and earthly existence. According to Egyptian beliefs Nun's qualities were boundlessness, darkness, and the turbulence of stormy waters; these qualities were personified separately by pairs of deities. Nun played a role in the destruction of mankind when humans no longer respected and obeyed Ra, his son[36]. From annual flooding of Nile river to ponds in temples, he is represented by water.

The name Ma´at is generally translated as "that which is straight" or "truth" but also implies "order", "balance" and "justice". Thus Ma´at personified perfect order and harmony. The principles embodied in Maat, the goddess of "truth" are fundamental element in ancient Egypt civilization. The sense of continuity provided by the principles and the tradition of Maat, ensures the permanence of many features. Ancient legal issues and administration of the state is related to Maat, as The Maxims of Ptahhotep relate: "*Maat (justice) is great and its appropriateness is lasting: … there is punishment for him who passes over its laws*"[37]. Maat was highly intermingled with the idea of state and justice in Ancient Egypt. The priests of Maat's temples were involved in the judicial workings of the government and the ritual is comprehended as "a physical symbol of the partnership between god and mankind". Here, mankind is represented by the king which figures a pillar of the basics of order, which will be ensured by gods and people together in order not to "disorder come to overpower justice and order, this is the meaning of their common obligation toward *maat*[38]". The heart (conscience) of each Egyptian after

[34] The Code of Hammurabi, based on the translation of L. W. King, on 1915, public domain, http://www.general-intelligence.com/library/hr.pdf
[35] Ogdoad is from Greek word ογδοάς, eightfold, where eight deities worshipped in Hermopolis or Khmun in Egyptian, during Old Kingdom.
[36] http://www.britannica.com/EBchecked/topic/422462/Nun
[37] Translation by Wilson in Pritchard 1969, cited by, Teeter Emily, The Presentation of Maat, Ritual and Legitimacy in Ancient Egypt, The Oriental Institute of the University of Chicago, Studies in Ancient Oriental Civilisation, N. 57, Chicago, Illinois, 1997, p. 2.
[38] Hornung Erik, Conceptions of God in Ancient Egypt, Ithaca, Cornell University Press, 1982, p. 213, cited by Teeter, op. cit. p. 3.

their death was weighed against the feather of Ma´at (an ostrich feather) on scales which represented balance and justice. If their heart was heavier than the feather because they had failed to live a balanced life by the principles of Ma´at their heart was either thrown into a lake of fire or devoured by a fearsome deity known as Ammit.

The ancient Egyptians believed that the universe was ordered and rational. The rising and setting of the sun, the flooding of the Nile and the predicable course of the stars in the sky reassured them that there was permanence to existence which was central to the nature of all things. There is no perfect but balance. However, the forces of chaos were always present and threatened the balance of Ma´at. Each person was duty bound to preserve and defend Ma´at and the Pharaoh was perceived as the guardian of Ma´at. Without Ma´at, Nun would reclaim the universe and chaos would reign supreme.

However many treaties had been written on Athenian law, the earliest law tablets contain some of the written laws of the Sumerian city of Ur[39], three hundred years before Hammurabi, based on the judgements given in case of the conflict of some principles, as a continuation of oral law[40]. Justice, in their eyes "*consisted of truth and common sense*"[41]. That brings us to the central claim of Bourdieu on juridical field, "*like any social field, is organized around a body of internal protocols and assumptions, characteristic behaviours and self-sustaining values -- what we might informally term a 'legal culture'*"[42]. He explains the force of law as, "*the quasi-magnetic pull of the legal field*" that means "*accepting the rules of legislation, regulation, and judicial precedents by which legal decisions are ostensibly structured*"[43]. These deep structures of behaviour in this juridical field are called *habitus*, in his sociology. For him,

> "*the juridical field is not simply a cat's paw of State power, as instrumentalist theory at times tends to suggest. Neither is the law just a reflection of these other modalities of state control. On the contrary, the law has its own complex, specific, and often antagonistic relation to the exercise of such power*"[44].

[39] SASSOON, op. cit., p. 28.
[40] ibid, s. 29-30. For further information, same oeuvre, p. 32, 33.
[41] ibid. p. 29.
[42] TERDIMAN Richard, Introduction to the Force of Law of Bourdieu, University of California, Hastings College of Law, Hastings Law Journal, 38, 805, 1987.
[43] ibid.
[44] ibid.

In Bourdieu's conception a social field is the site of struggle, of competition for control[45]. Additionally, he states in the same vein with Derrida that "*power inheres in the law's constitutive tendency to formalize and to codify everything which enters its field of vision*"[46]. The power refer both Bourdieu and Derrida, is not identical with the brutality of penalties, but the capacity of law to enforce itself, however these two fact cannot be separable so easily. The reputed book of Foucault starts with a scene from 1757 the execution of Damiens before the main door of the Church of Paris, "*taken and conveyed in a cart, wearing nothing but a shirt, holding a torch of burning wax weighing two pounds'; then, 'in the said cart, to the Place de Grève, where, on a scaffold that will be erected there, the flesh will be tom from his breasts, arms, thighs and calves with red-hot pincers, his right hand, holding the knife with which he committed the said parricide, burnt with sulphur, and, on those places where the flesh will be torn away, poured molten lead, boiling oil, burning resin, wax and sulphur melted together and then his body drawn and quartered by four horses and his limbs and body consumed by fire, reduced to ashes and his ashes thrown to the winds*"'[47]. Sassoon points the same "*ancient laws are often condemned because some of their penalties were horrific, among which mutilation and the branch of talion which punished the innocent were the worst, but that hardly justifies dismissing the laws wholesale as arbitrary and unworthy of the name of law*"[48].

In order to analyse inherent power, law and political organizations and especially the point where all these instruments touch to the "administered" ones, the comprehension of them by societies is important. For a starting point the remark of Graebers can be useful[49]:

> "*Much of the mythology of "the West" goes back to Herodotus' description of an epochal clash between the Persian Empire, based on an ideal of obedience and absolute power, and the Greek cities of Athens and Sparta, based on ideals of civic autonomy, freedom and equality. It's not that these ideas—especially their vivid representations in poets like Aeschylus or historians like Herodotus—are not important. One could not possibly understand Western history without them. But their very importance and vividness long blinded historians to what is becoming the increasingly clear reality: that whatever its ideals, the Achmaenid*

[45] ibid.
[46] ibid.
[47] FOUCAULT Michel, Discipline and Punish, (tr. SHERIDAN Alan), Vintage Books, p. 3.
[48] SASSOON, op. cit., p. 29.
[49] ibid. p. 67.

Empire was a pretty light touch when it came to the day-to-day control of its subjects' lives, particularly in comparison with the degree of control exercised by Athenians over their slaves or Spartans over the overwhelming majority of the Laconian population, who were helots".

In that vein politics, remembering also its deep connection with polis, ancient Greek city-state gain another aspect. Politics in Turkish, Persian, Kurdish and Arab means "*siyasa, siyaset*"[50]. It has the sense of the governance of state but in the same time it comes from the root "*seyis*" that means stableman, ostler, the man who takes care of horses, who shepherds. This capacity of governance brings the intervention to daily life of its' subject. Herein Graeber draws a distinction between politics and policy, in his tiny manifesto against policy[51] as separating the faculty or even power to discuss, to find a compromise, to render possible the consensus, which he calls politics. The defines policy as an instrument which presumes a state or governing apparatus to impose its will on others. Thus he underlines this tension between politics and policy as following: "*Policy" is the negation of politics; policy is by definition something concocted by some form of elite, which presumes it knows better than others how their affairs are to be conducted. By participating in policy debates the very best one can achieve is to limit the damage, since the very premise is inimical to the idea of people managing their own affairs*"[52].

With reference to Paul Bohannan "*men attain power by consuming the substance of others. (...) They are at the same time forms of institutionalized raiding or extortion, and utopian projects. The first certainly reflects the way states are actually experienced, by any communities that retain some degree of autonomy; the second however is how they tend to appear in the written record*"[53].

It was the Aristotelian notion of purpose and function; however that especially helped to shape the Western world's instrumental treatment of nature and also woman[54]. Concerning the point of origin of states, Graeber refers to Clastres once more:

[50] http://nisanyansozluk.com/?k=siyaset&x=0&y=0
[51] GRAEBER David, Fragments of an Anarchist Anthropology, Prickly Paradigm Press, Chicago , 2004, p. 9.
[52] ibid.
[53] ibid. p. 65
[54] KHEEL, p. 246.

"That the state emerged from images of an impossible resolution of the human condition was Clastres' point as well. He argued that historically, the institution of the state could not have possibly emerged from the political institutions of anarchist societies, which were designed to ensure this never happened. Instead, it could only have been from religious institutions: he pointed to the Tupinamba prophets who led the whole population on a vast migration in search of a "land without evil". Of course, in later contexts, what Peter Lamborn Wilson calls "the Clastrian machine," that set of mechanisms which oppose the emergence of domination, what I'm calling the apparatus of counter power, can itself become caught in such apocalyptic fantasies"[55].

Following Graeber, regarding our subject we can skip to his definition of democracy with reference to its etymological roots: "*This in turn might help explain the term "democracy" itself, which appears to have been coined as something of a slur by its elitist opponents: it literally means the "force" or even "violence" of the people. Kratos, not archos*"[56]. He criticizes the main stream misunderstanding of democracy by "elites", as a fact which is not too far from simple rioting or mob rule; and he adds that "*though of course their solution was the permanent conquest of the people by someone else*"[57].

It meant that the courts would increasingly become bound by written laws and that judges would lose much of their ancient discretion in the individual case. It meant that the meaning of justice had been changed by a necessary reaction to population pressure and that, in turn, opened the way for further changes in the meaning of justice in response to different pressures in the future. The act of writing laws down planted the seeds of conflict between public policy and the individual which, four thousand years later, has still to be resolved[58].

The form, in which the earliest surviving written laws are framed, as though distilling the essence of established judgements, suggests continuity both in the laws and in the principles on which they are based. If so, ancient laws, including written laws when they appeared, will have added up to a coherent system of social control based on

[55] GRAEBER op cit, p. 31, 32.
[56] ibid. 91.
[57] ibid.
[58] SASSOON, op. cit. p. 28.

ethical principles and enforced by public opinion. But neither oral nor written laws were comprehensive in the modern sense of providing a law for every foreseeable situation. One coherent principle that pervaded so many of the earliest written laws was the principle of property. The ancient concept of property included people as well as things, and underlay most of criminal, civil and family law[59].

"*For a religious man*", says Eliade, "*the Nature is never exclusively natural: it is always charged with a religious value*"[60]. Eliade continues "*the World exists, it is there and it has a structure, it is not a Chaos but it is Cosmos. (...) The cosmic rhythms manifest the order, the harmony, the permanence and the fecundity*"[61].

Here, the dichotomy that must be cited is the one between *nomos* and *physis* in the 420's. Even though they do not necessarily appear incompatible or antithetical, in the intellectual climate of the fifth century they commonly regarded as opposed[62]. *Physis* was not the earliest opponent to enter the field against *nomos*, about the mid fifth century, the simple fact, or other values were regarded as containing a greater degree of truth[63]. In the 420s, for the first time *physis* enters into discussions of social, behavioural and political issues[64]. Earlier authors used *physis* to describe "*the coming-to-be of things, the true being of natural phenomena, the provenance of physical appearance, (...) the basic normal state of human body*"[65].

Different thinkers attribute different qualities to *physis*, ie. Hippolytus attributes his chastity to his inborn character, *physis* becomes the true character of a man, to which he must not be false, different people have different *physeis*, the *physis* of someone may be hateful and savage.

Here it must be underlined that, *physis* is affirmed as a force stronger than conventional morality, here expressed by νόμιζε and that no external social forces ought to be

[59] ibid.
[60] Eliade, Le Sacré et le Profane, Gallimard, Paris, 1965, p. 101.
[61] ibid.
[62] GUTHRIE W.K. The Sophists, Cambridge University Press, Cambridge, 1971, p. 55. According to Archelaus, they are used in opposition, as antithesis, according to their sophistic usage, possibly by the only natural philosopher Athens produced, who is said to have been the pupil of Anaxagoras and the teacher of Socrates, as cites OSTWALD, op. cit. 262.
[63] OSTWALD, op. cit. p. 260.
[64] ibid. p. 263.
[65] Heinimann, NP,89-98, cited by, ibid. p. 263.

permitted to prevent its free expression, according to Ostwald[66]: "*nomos is represented by νόμιζε as the opponent of physis*", says Ostwald. Here we find the idea of contradicting *nomoi* and regulations of justice[67]. The question of resistance to *physis* rises since physis is a stronger, more valid force in human life than the norms prevailing society. In large, "*nomos identifies the conventions, traditions and values of the democratic establishment which the older generation tended to regard itself as guarding; arguments from physis were marshalled by an intelligentsia that took shape in the Periclean age and from the late 430s, attracted the allegiance of young aristocrats*"[68].

In Rome, the legislative power shifted in much more striking ways. During the Republic it was in the hands of Assemblies of the people, not representative bodies[69]. The Assembly which is called *comitia centuriata* had the legislative power. An overwhelming preponderance was given to the wealthy and noble in this system, but passed ultimately to the Tributal Assembly, arranged-on democratic lines[70]. No measure could become law without '*auctoritas patrum*', the approval of a body which seems to have consisted of the patrician members of the Senate[71]. By the end of the Republic, these popular assemblies are ceased to exist and the legislation passed to Senate, thus the evolution of legislative power was from popular legislation to legislation by the Head of the State[72].

The administration was in the hands of annually elected magistrates, and the more important of these, Consuls, Praetors, Aediles, had the *ius edicendi,* i.e. the power of issuing proclamations of the principles they intended to follow. The power of moulding the procedure and the forms of action carried with it, inevitably, much power over the law itself, though there is no reason to suppose this was originally contemplated[73].

This line drawn between order and disorder, law and nature, civil and barbarian defines also the limits of the regulation. Geographical scope of applicability of law is

[66] ibid. p. 266.
[67] ibid.
[68] ibid. p. 273.
[69] Buckland W. W./McNAIR Arnold, Roman Law and Common Law, Second Edition Revised by F. H. Lawson, Cambridge University Press, 1965, p. 1.
[70] ibid.
[71] ibid.
[72] ibid,
[73] ibid. p. 3.

understood by this limitation but also an essential border is drawn for the subjects of regulation. If we caricaturize this essential issue, we may cite the dialogue between the Little Prince[74] and the king of the planet that he visits the first. As he found himself on the asteroid 325, he saw a king who rules everything; "*For his rule was not only absolute: it was also universal*". Little Prince asks if the stars obey him then;

> "*Certainly they do," the king said. "They obey instantly. I do not permit insubordination."*
>
> *Such power was a thing for the little prince to marvel at. If he had been master of such complete authority, he would have been able to watch the sunset, not forty-four times in one day, but seventy-two, or even a hundred, or even two hundred times, without ever having to move his chair. And because he felt a bit sad as he remembered his little planet which he had forsaken, he plucked up his courage to ask the king a favour:*
>
> *"I should like to see a sunset. Do me that kindness. Order the sun to set…"*
>
> *"If I ordered a general to fly from one flower to another like a butterfly, or to write a tragic drama, or to change himself into a sea bird, and if the general did not carry out the order that he had received, which one of us would be in the wrong?" the king demanded. "The general or myself?"*

Of course regulation of the nature is not comprised of giving orders to the natural things but their exploitation and protection statutes. This subject will be reviewed later, while we are discussing the systems theory of Luhmann.

[74] EXUPERY Antoine de Saint, Le Petit Prince, Folio Junior, p. 10 et s.

2. Ex-Capere

Law addresses to someone. The persons that law call outs to be defined by law itself as well. Derrida explores this submission of the beast, or living being to political sovereignty and the analogy between a beast and a sovereign who are "*supposed to share a space of some exteriority with respect to `law` and `right`*"[75]. In his lectures in EHEES Derrida starts analysing the issue by the femininity of the beast in French language, *la bête*, and the masculinity of the sovereign, *le souverain*. A political bestiary, according to Derrida is "rich in animal figures as figures of the political"[76]. This is underlined by Agamben as well in his book The Open: Man and Animal, in the first chapter as the sketches to present the king are unmistakeably animals. Derrida uses the wolf, *loup* in French. He asserts that *loup*, besides its usage in daily language in idioms and expressions, is also the name of the black velvet mask, that used to be worn that woman used to wear at one time and more precisely in certain milieu at masked balls[77] and he says that the sexual difference between the real animal and the mask no longer exists[78]. Rousseau opposes, as emphasizes Derrida, "*Grotius and Hobbes as theorists of the political, of the foundation of the political who reduce citizen to beast"*[79]. He then refers to Aristotle by citing from Rousseau that "*men are not naturally equal but that some were born for slavery and others for domination*"[80]. This path of Derrida takes us to being-outside-of-law. A striking example from the last century may be the concentration camps in which industrial-scale of mass executions took place. The prisoners were not covered by law.

In the same vein, a slave is a man without rights, i.e. without the power of setting the law in motion for his own protection[81]. The slave in Rome dates from the very earliest times, and in view of the autocratic power of the paterfamilias it is not easy to see much difference in primitive law between the positions of son and slave[82]. Captives, it is said,

[75] DERRIDA Jacques, The Beast and the Sovereign, Vol 1, The University of Chicago Press, 2009, p. 14.
[76] ibid, p. 22.
[77] ibid. p. 25.
[78] ibid. p. 29.
[79] ibid. p. 31.
[80] ibid, p. 34.
[81] Buckland W. W., The Roman Law of Slavery, The Condition of the Slave in Private Law from Augustus to Justinian, Cambridge University Press, New York, 1970 - digitally printed version 2010, p. 2.
[82] Buckland,. Roman Law and Common Law, op. cit., p. 26.

may be slain: to make them slaves is to save their lives; hence they are called *servi, ut servati,* and thus both names, *servus* and *mancipium,* are derived from capture in war[83].

Dominus and *dominium* are different words. The statement that slaves as such are subject to *dominium* does not imply that every slave is always owned. Chattels are the subject of ownership: it is immaterial that a slave or other chattel is at the moment a res nullius.

From the fact that a slave is a Res, it is inferred, apparently as a necessary deduction10, that he cannot be a person. Indeed the Roman slave did not possess the attributes which modern analysis regards as essential to personality. Of these, capacity for rights is one, and this the Roman slave had not, for though the shadowy rights already mentioned constitute one of several objections to the definition of slaves as "rightless men," it is true that rights could not in general vest in slaves. But many writers push the inference further, and lay it down that a slave was not regarded as a person by the Roman lawyers[84].

The individual survives as a *socius* (‘member’ of a society), not as a *singulus* (‘individual’); he is a part of a community and not a lone being, defenceless and fragile like an ant outside its anthill or a bee far from its hive. The communities of which the medieval individual was a member vary widely: from nuclei of a few families, to noble houses, as well as guilds, which could be religious, charitable, professional or micropolitical. The socio-political reality of the Middle Ages was composed of an extremely fragmented complex of communities, a society made up of societies. This structure would be long-lived and indeed would still be thriving on the eve of the French Revolution[85].

In point of fact, the end of human Time or History—that is, the definitive annihilation of Man properly so called or of the free and historical Individual—means quite simply the cessation of Action in the strong sense of the term[86]. The “rest” that survives the death of man, who has become animal again at the end of history[87].

[83] Buckland W. W., The Roman Law of Slavery, The Condition of the Slave in Private Law from Augustus to Justinian, Cambridge University Press, New York, 1970 - digitally printed version 2010, p. 2.
[84] ibid. p. 3.
[85] ibid. p. 6.
[86] AGAMBEN, The Open, p. 6, reference to Kojeve's footnote of 1938-39 course.
[87] ibid.

Perhaps the body of the anthropophorous animal (the body of the slave) is the unresolved remnant that idealism leaves as an inheritance to thought, and the aporias of the philosophy of our time coincide with the aporias of this body that is irreducibly drawn and divided between animality and humanity[88].

Similarly the women are also dominated by men, deprived from the enhancement of rights and became visible by law only in case of marriage or motherhood. Even the criminal responsibility has not attributed to women in some periods.

According to Derrida, "*the animal, the criminal and the sovereign are outside the law at a distance from or above the laws; criminal beast and the sovereign strangely resemble each other while seeming to be situated at the antipodes at each other's antipodes*"[89].

[88] ibid. p. 12.
[89] DERRIDA, op cit. p. 39.

II. REGULATION OF THE NATURE

1. Anthropocentrism, Environment and Value

The word environment has entered "Le Grand Larousse" of French language in 1972[90], stems from the root "environ" which signifies to enclose, encircle and also the fact that being surrounded, encircled[91]. In its most general sense, 'the environment' refers to "our" surroundings. The environment –singular– does not exist, therefore in its basic sense to talk of the environment is to talk of the environs or surroundings of some person, being or community[92]. But then who are we and what encircles us? How do we define the centre and the environment?

This question, far from being a simple word-puzzle, connotes a big cleave between two approaches to the subject. These approaches can be classified as anthropocentric and ecocentrica. The word centre which is common in these two terms, stems from the Latin word "*centrum*" is used for the first time in ancient French of 14th century to signify the fixed point of a compass. Then around 1650, it has started to be used as the centre of gravity. The belief about the place of the world in the universe is quite close to this connotation. The approach which places man to the centre of the world and the system is called anthropocentrism. The term can be used interchangeably with homocentrism, humanocentrism, and some refer to the concept as human supremacy or human exceptionalism. For example, Aristotle[93] maintains that "*nature has made all things specifically for the sake of man*" and that the value of nonhuman things in nature is merely instrumental. Generally, anthropocentric positions find it problematic to articulate what is wrong with the cruel treatment of nonhuman animals, except to the extent that such treatment may lead to bad consequences for human beings. Immanuel Kant[94], for instance, suggests that cruelty towards a dog might encourage a person to develop a character which would be desensitized to cruelty towards humans. From this standpoint, cruelty towards nonhuman animals would be instrumentally, rather than intrinsically, wrong. Likewise, anthropocentrism often recognizes some non-intrinsic wrongness of anthropogenic (i.e. human-caused) environmental devastation. Such destruction might damage the well-being of

[90] édition, Dalloz, Paris, 1996, p. 2.
[91] www.etymonline.com/index.php?term=environ&allowed_in_frame=0.
[92] O'NEILL John, HOLLAND Alan, LIGHT Andrew, Environmental Values, Routledge, 2008, p. 1.
[93] Aristotle, Politics, Bk. 1, Ch. 8.
[94] KANT Immanuel, "Duties to Animals and Spirits", in Lectures on Ethics.

human beings now and in the future, since our well-being is essentially dependent on a sustainable environment. According to anthropocentric view, man's ultimate goal lies in his ability to transform nature.

On the contrary, ecocentrism is a term used in ecological political philosophy to denote a nature-centred, as opposed to human-centred or home-centered, rather than biocentric, meaning organism-centered[95] system of values. Ecocentrism defines ecosphere as the source of life rather than a simple support for life. Here rises the problem of the determination of thresholds, where human ends and where nature begins. Even though a distinction may be drawn between human life and wilderness, stressing the capacity of human to rebuild its wild environment to create rural or urban environments[96], it will not be clear enough. This duality may be seen in Declaration of the United Nations Conference on the Human Environment, as follows: "*Man is both creature and moulder of his environment*"[97]. Complying with this, the ontological tradition denies that there are any existential divisions between human and non-human nature. "*A profound appreciation of Earth prompts ethical behavior toward it*"[98]. Consequently we end up with the denial of the title of the sole or greater bearer of intrinsic value for human, compared to non-human living things. Therefore 'biospherical egalitarianism' can be discussed, as a concept defending the equality of all living things. Biocentrism, on the other hand, extends sympathy and understanding beyond the human race to other organisms and marks an ethical advance but it lacks the appreciation a total ecological view.

The term ecocentrism is used for the first time in 1866 by the biologist Ernst Haeckel[99] (1834-1919) is composed by the Greek word *oikos*, which means home, residence, and centre. Furthermore, it denotes a building, a family, the property belonging to such a family. The relationship between Nazism and radical ecology will be evaluated in turn whilst we are discussing about the ethics of environmental law. Even though the term *oikos* has a central

[95] MOSQUIN Ted/ROWE Stan J., "A Manifesto for Earth", 'Biodiversity' Volume 5, No. 1, pages 3 to 9, January/March 2004, http://www.ecospherics.net/pages/EarthManifesto.html.
[96] ROLSTON Holmes, "Global Environmental Ethics: A Valuable Earth", in (ed.) KNIGHT Richard l:/BATES Sarah, A New Century for Natural Resource Management, Island Press, Washington, 1995, pp.349-366.
[97] Declaration of the United Nations Conference on the Human Environment, Stockholm June 1972, http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503.
[98] ROLSTON, "Global Environmental Ethics: A Valuable Earth", op cit. Principle 4, Ecocentric Ethics are Grounded in Awareness of our Place in Nature.
[99] He began to establish ecology as a scientific discipline and he founded The German Monist League in which ecological holism and *völkisch* social views are combined: STAUDENMAIER Peter, "Fascist Ecology: The "Green Wing" of the Nazi Party and Its Historical Antecedents", http://www.spunk.org/library/places/germany/sp001630/peter.html.

place in Athenian thought, there is no legal definition or significance of it[100]. Thus, the sense places our home, the world with all of its components to the centre and it does not separate the human being from other living creatures or non-living creatures i.e. ecological system as a whole. Human as a living specie is a part of a complex system in which there are intricate relations and interrelations with its natural "*terra*" or "*topos*".

The word environment, by separating outside from inside of a house, human beings from other elements of the nature, designates a vague line, if not fictive between our lives and the lives of the things that surround us. According to Grand Larousse, the definition is "ensemble of the natural or artificial elements which condition the life of human. Dictionary of Environmental Sciences and Technology defines the notion so: "all of the physical, biological and chemical factors, which nourish the existence and the evolution of living things". Additionally, the transmission of the complexity of terms to a legal language or terminology is a big problem for the jurists and politicians.

In international plan, Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment of Lugano extends the reach of the term towards non-living creatures in art. 2/10 as following: "*Environment" includes: natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors; property which forms part of the cultural heritage; and the characteristic aspects of the landscape*"[101]. By counting cultural heritage as a part of environment, we can consider that this term does not involve only natural things but in the same time artificial ones. Instead of giving a specific definition and limit these terms, international texts cite some elements as examples and abstain from a *numerus clausus* approach. This is the case in some manuals of environmental law as well. Rather than concentrating on what the environment is and clarifying the domain of the regulation, they explain some specific acts on pollution etc.

According to the French regulation, the generic term of environment recovers three elements: "*the nature (space, animal and vegetal species, diversity and biological equilibrium), the natural resources and sites*"[102].

[100] MACDOWELL D. M., "The Oikos in Athenian Law", The Classical Quarterly (New Series), V. 39, Issue 01, May 1989, pp. 10-21 p. 20.
[101] http://conventions.coe.int/Treaty/en/Treaties/Html/150.htm.
[102] PRIEUR, op. cit. p. 13.

The Royal Commission on Environmental Pollution (RCEP)[103] of Great Britain has provided the following helpful definition: "*The introduction by man into the environment of substances or energy liable to cause hazards to human health, harm to living resources and ecological systems, damage to structure or amenity or interference with the legitimate uses of the environment*"[104].

As defined in Australian Environment Protection Act, environment "*including all aspects of the surroundings of man whether affecting him as an individual or in his social groupings*"[105]. A proprietary essence is distilled by the Canadian Study Group on Environmental Assessment Hearing Procedures in identifying environment as "*a collectively shared property*"[106].

In consonance with the autopoietic systems theory of Luhmann, the relation between a system and its environment is one of paradoxical continuum/rupture, where the environment finds itself both outside and inside; however, its internal apparition is just a ghost, an absence which ruptures the cognitive continuum[107]. The object of environmental law is its environment[108] and this is almost a contradictive approach. The term autopoiesis[109] was introduced in 1972 by biologists Humberto Maturana and Francisco Varela[110] in order to define the self-maintaining chemistry of living cells. An autopoietic system is "*which is a system that reproduces itself, its constituent elements, and its processes of reproduction*"[111] and as a consequence it has no inherent purpose. While society constitutes a suprasystem in terms of autopoietic system theory, law is a subsystem.

---

[103] Pollution in Some British Estuaries and Coastal Waters, Third Report, 1972

[104] WOLF Susan/STANLEY Neil, Wolf and Stanley on Environmental Law, Fourth Edition, Cavendish Publishing, 2003, p. 2.

[105] Environment Protection (Impact of Proposals) Act, Commonwealth (Federal) Government of Australia, 1974, http://www.environment.gov.au/about-us/legislation

[106] Public Review: Neither Judicial, Nor Political, But An Essential Forum For The Future of The Environment. A Report concerning the Reform of Public Hearing Procedures for Federal Environmental Assessment Reviews. Canada 1988, ROWE Stan J.," What on Earth is Environment?", The Trumpeter 6 (4) pp: 123-126, 1989.

[107] PHILIPPOPOULOS-MIHALOPOULOS Andreas, Absent Environments Theorising Environmental Law and the City, Routledge-Cavendish, New York, United States and Canada, 2007, p. 37.

[108] ibid.

[109] This term has also Greek origin: αὐ το- (auto-), meaning "self", and ποίησις (poiesis), meaning "creation, production". Conforming to the creators of this term, the word autopoiesis that carries the strenght of the word poiesis, "*could directly mean what takes place in the dynamics of the autonomy proper to living systems*", MATURANA Humberto/VARELA Francisco, Autopoiesis and Cognition, The Realization of the Living, Reidel Publishing Company, 1980, p. xvii.

[110] MATURANA/VARELA, 1972 as cited by Philippopoulos-Mihalopoulos, op. cit, p. 11.

[111] LUHMANN Niklas, Social Systems, trans. J. Bednarz, Jr., Stanford, California: Stanford University Press, 1995, cited by ibid.

According to this theory, "*systems float in opaqueness*", this opaqueness is called environment by Luhmann and "*as far as the system is concerned, it remains unintelligible*" so a system is closed to its environment[112]. That is how he founds the conceptual basis of his theory on the difference between system and its environment. So drawing this distinction is one of the main problems, here Philippopoulos-Mihalopoulos reminds us the mathematician Spencer Brown as he stresses the importance of drawing distinction in his book Law of Forms. As stated there, the drawing of a "distinction", and can be thought of as signifying the following, all at once: (1) The act of drawing a boundary around something, thus separating it from everything else; (2) That which becomes distinct from everything by drawing the boundary; (3) Crossing from one side of the boundary to the other[113]. This distinction or differentiation or selectivity, which is strengthened by this differentiation as defines Luhmann is the starting point of a system in autopoietic theory. "*Through selectivity*", explains Philippopoulos-Mihalopoulos, "*a system deals with environmental complexity and reduces it to a manageable systemic complexity, thereby differentiating itself from its environment and, hence, acquiring its identity*"[114].

Lack of any exact definition about regarding the object of environment and environmental law renders the application of autopoietic theory to environmental law stiff. Still environmental law is a subsystem of the general legal system,

As Luhmann endeavours to draw a line and to determine the borders of environmental law, he keeps on oscillating between, on one hand, "*denying the possibility of looking at ecological problems as a problem per se rather than as a resonance* [irritability, pursuant to fn. 97] *within society of something that clearly is no longer of relevance and on the other, referring to a certain exteriority to society which translates in arbitrariness, insecurity, angst, and so on, without ever wondering whether this exteriority could be linked with degrees of exclusion from society, in the direction in which he has later allowed his writings to move"*[115]. This vacillation refers somehow to our subject of anthropocentrism and ecocentrism, and to obscure distinction between human and non-human i.e. other shareholders of nature. Also related to the regulation of nature, environmental law describes

[112] ibid. p. 14.
[113] SPENCER BROWN G., Laws of Form, Allen & Unwin, London, 1969, ch. 1.
[114] PHILIPPOPOULOS-MIHALOPOULOS, op. cit. p. 15. This reduction of environmental complexity is also a precondition for the system's identity.
[115] PHILIPPOPOULOS-MIHALOPOULOS, op. cit. p. 27.

itself both anthropocentric and ecocentric since the measures taken is for the sake of both human and of other components of the nature[116].

In this respect, many questions about environmental ethics and policy making raise. Ethical problems revolve around values and the evolution of their relative importance. The world that we are living in and in interaction with, that we cultivate and harvest is subjected to legal regulation. Moral standards and ethical actions are also human inventions, as legal regulations, related to culture, religions or beliefs and understandings. They are formed by human however, this does not mean that they are necessarily homocentric, centered on ourselves[117]. While all human made law is related with human beings and their transactions, powers conferred to them, some procedures to bring into force their wills, the subject of environmental law is both human beings and other entities in nature. Respect for life which is the leading ethical principle since the rise of humanist ethics, demands an ethic concerned about human welfare, but in the same time a new moral perspective presupposes the concern for the others and the environment[118]. Legal enactments who are not only for the protection of the environment, may still have effects on the environment. That is why integration principle has been recognized as a fundamental principle of environmental law which provides "*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*"[119]. Taking into account this principle, the evaluation of environmental values occupy a central place in decision and policy making process.

Reminding the uncertainties cited above and quantum-like structure of environmental law, it is possible to say that environmental good and bad can coexist[120]. Construction of a highway might have pejorative effects on the nature whereas it facilitates the transportation which can be considered as a positive effect on social plan. A question much more provocative is raised by Rolston, "*You wouldn't let the Ethiopians starve to save some butterfly, would*

[116] ALDER/WILKINSON, Environmental Law and Ethics, Palgrave Macmillan, 1999.
[117] ROWE Stan, "Ethical Ecosphere", Home Place; Essays in Ecology. 1990. NeWest Publishers Limited, Edmonton. pp. 139-143, http://www.ecospherics.net/pages/RoEthicalEcosp.html.
[118] ROLSTON Holmes, "Environmental Ethics: Values in and Duties to the Natural World", ed. BORMANN/KELLERT, The Broken Circle: Ecology, Economics, Ethics, Yale University Press, New Haven 1991.
[119] Principle 4 of the Rio Declaration on Environment and Development, at http://www.unep.org/Documents.Multilingual/Default.Print.asp?DocumentID=78&ArticleID=1163.
[120] O'NEILL John, HOLLAND Alan, LIGHT Andrew, Environmental Values, Routledge, 2008, p. 4.

you?"[121]. This value conflict has to be resolved in order to take public decisions. One possible response to this problem is "*to find a common measure of values through which the gains and losses in different values can be traded off one with another*"[122]. In this value evaluating process or the attempt to create an "ethos" for environmental values, many different aspects, such as social justice, inequality, male domination etc. must be taken into consideration. Besides of generally accepted ethical evaluations, there are some other approaches constructed exclusively for environmental ethics.

Leading environmental policy paradigm of sustainable development places human beings in the centre of concerns. From the first mention of environmental concerns in international plan in Stockholm 1972 this approach can be observed. Likewise, after the recognition of "*the integral and interdependent nature of the Earth, our home*", in the beginning of Rio Declaration, the first principle is formulated at the United Nations Conference on Environment and Development and accepted by the majority of the countries all over the world as follows: "*Human beings are at the centre of concerns...*"[123]. Furthermore, the states have "*the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies*" in accordance with the principles of international law. In Stockholm Conference, second article gives a rough clue to our question above concerning the centre-environment relationship: The expression of "*the protection and improvement of the human environment*" in cited part, shows that human is situated in the centre and in a primary position as surrounded by the periphery, the environment. The same declaration whispers us more on these locations. The first principle of Declaration of the United Nations Conference on the Human Environment, Stockholm 1972, the basis of the sustainable development is also revealed: "*Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations*"[124]. At this point, the importance of the environment is based on the wealth of the present and future generations instead of mentioning about any other inherent value, ecosystems are of value because of their contributions to human life and of their ability to improve human conditions.

[121] ROLSTON Holmes, "Feeding People versus Saving Nature?" in AIKEN William/LAFOLLETTE Hugh, World Hunger and Morality, 2nd ed., Englewood Cliffs, 1996, pp: 248–267. http://www.ecospherics.net/pages/RolstonPeopleVSNature.html.
[122] O'NEILL/HOLLAND/LIGHT, op. cit, p. 5.
[123] http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm
[124] http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503

Compatibly to these critics the necessity to "*value all components of ecosystems, without regard to their usefulness to humans, because all components have intrinsic value*" is emphasized by Raymond S. Craig, chair of their Land Ethic Committee, in the land ethic canon of The Society of American Foresters regarding the objections of United States against the Rio Declaration[125]. This accentuation on the benefit of present and future generations shapes also the mainstream ethics on environmental policy. In decision-making process generally cost-benefit analysis is used in order to calculate the ultimate effect of the act on general well-being. To be able to understand the background of this approach we should analyse utilitarianism, criticisms of utilitarianism, basically deontological ethics and virtue ethics, the attempt to create a new environmental ethics of deep ecology and finally the approach of Nazis to ecology.

Utilitarianism is an ethical theory which is generally held to be the view that the morally right action is the action that produces the most good. In other words, the outcomes or consequences of choosing one action/policy over other actions/policies are determined according to the general welfare, so the action or policy which aims to maximise the welfare is good or right[126]. That is why classic utilitarianism is consequentialist. Consequentialism means the moral rightness of an act depends solely on consequences. It means the intrinsic values or circumstances[127] will not be taken into consideration while assessing the moral rightfulness of an act. This position is opposed to deontological approach because it denies "*moral rightness depends directly on anything other than consequences, such as whether the agent promised in the past to do the act now*"[128]. This point of view dominates the decision-making organs. As state O'Neill, Holland and Light "*it is assumed that individuals in society have preferences whose satisfaction increases their welfare, and that these can be measured by individuals' willingness to pay for their satisfaction*"[129]. In order to constitute a veritable utilitarian approach, first the identification of some common measure of value for

[125] ROLSTON, "Global Environmental Ethics", op. cit. CRAIG, R.S., "Land ethic canon proposal: a report from the task force. Journal of Forestry", 1992, 90, n. 8 August, 40-41.
[126] Online Guide to Ethics and Moral Philosophy, Utilitarian Theories, Utilitarianism: http://caae.phil.cmu.edu/Cavalier/80130/part2/sect9.html, DRIVER, Julia, "The History of Utilitarianism", The Stanford Encyclopedia of Philosophy (Winter 2014 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2014/entries/utilitarianism-history/>, MILL John Stuart, Utilitarianism, http://www.utilitarianism.com/.
[127] SINNOTT ARMSTRONG Walter, "Consequentialism", The Stanford Encyclopedia of Philosophy (Spring 2014 Edition), Edward N. Zalta (ed.), http://plato.stanford.edu/archives/spr2014/entries/consequentialism/.
[128] ibid. For more information and for different types of consequentialism please check the same link.
[129] O'NEILL/HOLLAND/LIGHT, op. cit. p. 6.

determining the significance of an option in relation to other possible options is required[130]. Then the "best" solution according to these options has to be evaluated. For the first step, measure of value has been proposed as a measure of the happiness and wellbeing of all parties affected by this action[131]. For the second one, according to O'Neill, Holland and Light, "*the best option is that which, from all available alternatives, has the consequences which maximise the well-being of affected agents, i.e. the best action is that which produces the greatest improvement in well-being*"[132]. Jeremy Bentham calculates the value of pleasure or pain could be measured by their intensity, duration, certainty, propinquity[133]. But a point remains blurry: How can we define wilderness as a interest-group? Are we able to confer wild life some human-made interests? This approach of Bentham has been criticised also on the grounds of reducing a theory of morals into mathematic calculations and undermining other parameters.

One of his critics is made by John Stuart Mill and he interrogated his quantitative approach from a qualitative point of view by reminding that some kind of pleasure are more desirable and more valuable than others. "*Of two pleasures,*" he says, "*if there be one to which all or almost all who have experience of both give a decided preference, irrespective of any feeling of moral obligation to prefer it, that is the more desirable pleasure*"[134]. He counts growing crops for human beings, the creatures of the nature, their exploitation by men (he uses the expression "*exterminated as his rivals for food*") and finally he complains about there is no place left where a wild flower can grow without being eradicated for improved agriculture[135]. He continues "*If the earth must lose that great portion of its pleasantness which it owes to things that the unlimited increase of wealth and population would extirpate from it, for the mere purpose of enabling it to support a larger, but not a better or a happier population, I sincerely hope, for the sake of posterity, that they will be content to be stationary, long before necessity compels them to it*"[136]. His interest on environmental issues is not limited with this book. On his booklet "On Nature" he asserts, "*Naturum sequi was the*

[130] ibid. p. 12.
[131] ibid.
[132] ibid.
[133] BENTHAM Jeremy, Introduction to the Principles of Morals and Legislation, 1789, p. 38-40, cited by ibid. p. 15.
[134] MILL John Stuart, Utilitariansim, 1861, p. 258.
[135] ibid.
[136] ibid.

fundamental principle of morals in many of the most admired schools of philosophy"[137]. He emphasizes how Stoics and Epicureans, even though they have asunder thinking systems their conducts were compatible with the dictates of nature[138]. *Ius naturale est quod natura omnia animalia docuit,* as cited in Institutio of Iustinianus, with reference to Law of Nature. After arraying how nature become the supreme rule and ultimate standard during history and he concludes: "*that any mode of thinking, feeling, or acting, is "according to nature " is usually accepted as a strong argument for its goodness*"[139]. However the calculus of utilitarianism has been rejected by many thinkers, it is a leading approach in environmental policy making. Environmental economists have developed several methods to calculate these prices of well-being. As a whole, in other words not only for the impossibility of calculating pleasures this consequentialist approaches are subjected to many other criticisms. First of all, as mentioned above, the lack of any intrinsic value constitutes the basis of this objection. According to consequentialism, the only value which is recognized is an instrumental value.

The criticism of consequentialism is run mainly by deontological ethics on two fundamental grounds. First objection is that it permits too much and the second one is that it requires too much in other words on the one hand, overly demanding, and, on the other hand, that it is not demanding[140]. It means, there are some cases that boundary lines must not be passed even if it improves general wellbeing. Rawls asserts it so: "*Each person has an inviolability founded on justice that even the welfare of society as a whole cannot override*"[141]. In accordance with Kantian proposition that individuals have moral standing and dignity, we have to abstain from some behaviour whatever their consequences can be[142]. The second objection implies on some acts that improve general welfare but clash with an agent's commitments. We can enlarge this objection to that the consequence of one act may be so

[137] MILL John Stuart, On Nature, prepared by the Philosophy Department at Lancaster University, from Nature, The Utility of Religion and Theism, Rationalist Press, 1904, https://www.marxists.org/reference/archive/mill-john-stuart/1874/nature.htm.
[138] ibid.
[139] ibid.
[140] O'NEILL/HOLLAND/LIGHT, op. cit. p. 7, ALEXANDER Larry/MOORE Michael, "Deontological Ethics", The Stanford Encyclopedia of Philosophy (Spring 2015 Edition), Edward N. Zalta (ed.), URL: http://plato.stanford.edu/archives/spr2015/entries/ethics-deontological/.
[141] RAWLS John, A Theory of Justice, Oxford University Press, 1972, p. 3.
[142] O'NEILL/HOLLAND/LIGHT, op. cit. p. 7,

beneficial for general welfare but for some groups it can be harmful and this harmfulness is undermined[143].

The starting point of deep ecology i.e. ecocentrism is the question whether there is also inherent or intrinsic value independent of humans which humans ought to consider and whether the primary values about nature. Alike, the criteria of rightness in ethical evaluation are not defined only from a human centred point of view, as cited by Curry "*a thing is right when it tends to preserve the integrity, stability and beauty of the biotic community. It is wrong when it tends otherwise*"[144]. Likewise, environmental ethics must be more biologically objective i.e. non-anthropocentric according to deep ecologists[145]. The answer given to the first question is the first principle of deep ecology: "*The well-being and flourishing of human and nonhuman Life on Earth have value in themselves (synonyms: intrinsic value, inherent value). These values are independent of the usefulness of the nonhuman world for human purposes*"[146]. The second principle, which is like an affirmation of this fundamental principle, is as following "*richness and diversity of life forms contribute to the realizations of these values and are also values in themselves*"[147]. At this point the intrinsic value of natural entities is recognized regardless of their use value, i.e. instrumental value and this intrinsic value may predominate over human value[148]. In this approach any reference to human centred ethics are intended to be erased.

Rolston is one of the authors who is intended to found a new ethical approach recedes from the main stream anthropocentric evaluations. While he is arguing the intrinsic value of nature, he distinguishes ecosystems, species, organisms and their roles in nature. In his approach the inherent value they have is called systemic value[149]. He concedes that individuals are necessary for the existence of life on earth but a lost individual is always reproducible, on the other side a lost species is never reproducible[150] so he asserts that to

[143] ALEXANDER/MOORE, op. cit.
[144] CURRY Patrick, "Dark Green or Deep (Ecocentric) Ethics", in Ecological Ethics: An Introduction, Polity Press, 2011, URL: http://www.ecospherics.net/pages/Currypdf.pdf
[145] ROLSTON Holmes, "Environmental Ethics: Values in and Duties to the Natural World", ed. BORMANN F. Herbert Bormann/KELLERT Stephen R, The Broken Circle: Ecology, Economics, Ethics, Yale University Press, New Haven, 1991.
[146] DRENGSON Alan, "An Ecophilosophy Approach, the Deep Ecology Movement, and Diverse Ecosophies", The Trumpeter: Journal of Ecosophy, Vol 14, No. 3, Summer 1997, pp. 110-111, http://www.ecospherics.net/pages/DrengEcophil.html
[147] ibid.
[148] CURRY op. cit.
[149] ROLSTON, "Global Environmental Ethics", op. cit.
[150] ROLSTON, "Environmental Ethics", op. cit.

care for the species is above the individual and for the ecosystem is above the species[151]. Dark green ethics takes as objects holistic entities that include integral components that are non-living as well as animate[152]. This holism which is defended by Leopold as well asserts "*namely that individual interests could be unduly overridden in the interest of (someone's particular version of) the collective whole*"[153]. In his essay "Thinking Like a Mountain"[154], he accents this holistic view This argument constitutes the basis of some objections to deep ecology. When we consider the Nazi policies on ecology, we can observe that this apprehension is not without reason.

An objection to deep ecology is raised by Brennan as: "*Radical environmental ethics – whether in the form of valuing the system above the individual, or in extending the self to planetary proportions – seems to risk collapsing into its opposite*"[155]. He criticises the "Self-realization"[156] which is needed for the decrease selfishness and exploitation of the nature and which is like one of the first steps to seize deep ecology. Rivers, mountains, animals are identified in this Self. One of the followers of the inventor of "Self-realization", Plumwood gives an example as following: "*When I say that the fate of the sea-turtle or the tiger or the gibbon is mine, I mean it. All that is in my universe is not merely mine; it is me*"[157]. Brennan underlines "*the danger of creating hyper-extended monsters which claim the entire planet for their bodies and rationally seek to protect it as a means of protecting themselves*"[158]. Instead of proposing new values as altruism or care, this approach over extends the self and self interest as the spur to action[159]. An interesting point of this objection, in my opinion is the accent made to masculine sprawling whilst explaining this stupendous self.

The approach of male philosophers to the subject is highly criticised by female philosophers since the nature ethicists are positioning themselves in a 'saviour role' instead of revealing the reason lays behind the problem. This rescuing task, ignores how and why the nature

[151] LOWE Ian/ PAAVOLA Jouni, Environmental Values in a Globalizing World, Nature, Justice, Governance, Routledge, 2005, p. 20.
[152] CURRY op. cit.
[153] ibid.
[154] LEOPOLD Aldo, "Thinking Like a Mountain", http://www.eco-action.org/dt/thinking.html
[155] BRENANN Andrew, "Globalisation and the environment Endgame or a 'new Renaissance'?", in (ed.) LOWE Ian/ PAAVOLA Jouni, Environmental Values in a Globalising World: Nature, justice and governance, Routledge, 2005, pp. 17-37, p. 23.
[156] This term is used by Næss in Ecosophy T, and capital S means extended planetary self, BRENNAN, op. cit. p. 21.
[157] ibid.
[158] ibid. p. 22
[159] ibid.

arrived at her present plight[160]. Feminist approach to nature ethics is not based on dictating future conduct or on developing pungent and peremptory principles[161] also it is against institutions of patriarchal control and domination which are taken as the major (or sole) responsible for not only the exploitation of women but the exploitation of nature as well. Parallel to the approach of the defenders of environmental ethics, ecofeminism challenges human domination and supremacy.

Mother earth or Gaia is depicted as woman. Gaia in "Theogonia" of Hesiodos images the ground and the land[162]. Rather than an ordinary God or Goddess in Greek Mythology, Gaia is the fundamental principle that falls within in the source of all other elements. It is a solid ground for immortals which creates order from disorder of Chaos. Tiamat, the goddess from whose body the universe is made is killed by her son Marduk, in Sumero-Babylonian Epic of Gilgamesh[163].

As described in order and disorder chapter, civilization is achieved by killing or transforming "the Beast"[164], i.e. the conquest of wilderness and living things driven from their lands. This analogy is emphasized by psychoanalyst Estes in her spectacular oeuvre "Women Who Run With the Wolves" as following: "*Wild life and Wild Woman... Both of them are endangered species*"[165], she continues, "*Healthy wolves and healthy women share certain spiritual characteristics (...) but both of them are constantly hunted, harassed and defined wrongfully as voracious, deviant, assailant and less valuable than their adversaries*"[166]. She is not the only psychoanalyst who concedes this hostility, according to object-relations theory, explains Kheel, "*both the boy and the girl child's earliest experience is that of an undifferentiated oneness with the mother figure. Although both must come to see themselves as separate from the mother figure, the boy child, unlike the girl, must come to see himself as opposed to all that is female as well*"[167]. Dinnerstein takes this approach one step further and claims that, "*it is not just women who become an object against which*

[160] KHEEL Marti, "From Heroic to Holistic Ethics: The Ecofeminist Challenge", in (ed) GAARD Greta, Ecofeminism, Temple Universtiy Press, 1993, pp. 243-271, p. 243.
[161] ibid. p. 244. She admits, "*The natural world will be "saved" not by the sword of ethical theory, but rather through a transformed consciousness toward all of life*".
[162] ERHAT Azra, Mitoloji Sözlüğü, Remzi Kitabevi, İstanbul, 2007, art. Gaia.
[163] KHEEL, op. cit. p. 245.
[164] KHEEL, op. cit. p. 245.
[165] ESTES Clarissa Pinkola, Kurtlarla Koşan Kadınlar, Vahşi Kadın Arketipine Dair Mit ve Öyküler, Ayrıntı Yayınları, 10 ed., İstanbul, 2014, p. 15.
[166] ibid. p. 16.
[167] CHODOROW Nancy, The Reproduction of Mothering: Psychoanalysis and the Sociology of Gender, University of California Press, Berkeley and Los Angeles, 1978, cited by KHEEL, op. cit. p. 247.

men establish their sense of self, but that nature becomes objectified as well"[168]. This point of origin leads us to critics of protection since Hoagland points out: "*Protection objectifies just as much as predation*"[169]. Since they conceive themselves as owners of the values (*valere,* from Latin, means strength), many nature ethicists transform to "judges" and "*inherent value" or "inherent worth" (the highest values) accrue to nature to the extent that nature can be rescued from the object world*"[170]. Conferring an inherent value to a living thing does not change the power of conferring this values to them, in other words, it is still human beings to confer this position of inherent value to natural things and even more, to "mediate" between legal system and living things in order to enjoy these values. Even though the ultimate target is same for both nature ethicists and ecofeminist critics of it, ecofeminist point of view rejects inherent values of nature in favour of grounding their philosophy in a particular phenomenological world view[171].

This aspect of intrinsic value attired suspect of Luc Ferry and some other thinkers. As mentioned above the first scientist who used the term of ecology, Ernst Haeckel suggests a monism that equalizes human and other living and even non-things with reference to their inherent value. According to this approach, "*man is no longer positioned as master and possessor of a nature which he humanizes and cultivates, but as responsible for an original wild state endowed with intrinsic rights, the richness and diversity of which it is his responsibility to preserve forever*"[172].

Ferry starts his reasoning from the contrast between French Enlightenment and German Romanticism[173]. In France the "fight" of man against the animism of Middle Ages and Cartesian thought influence the relation of human with its environment. According to French thought and classicism, the nature is not that we conceive with our senses but is that we conceive with intelligence[174]. Thus in order to achieve to reach the real essence of the nature, the nature can be reshaped geometrically and can be comprehended in a certain

[168] DINNERSTEIN Dorothy Dinnerstein, The Mermaid and the Minotaur: Sexual Arrangements and the Human Malaise, Harper & Row, New York, 1976. cited by ibid. p. 248.
[169] HOAGLAND Sarah Hoagland, Lesbian Ethics: Toward New Values, Institute of Lesbian Studies, California 1989, p. 31, cited by ibid.
[170] ibid. p. 248, 249.
[171] ibid. p. 250.
[172] FERRY Luc, The New Ecological Order, Chicago University Press, Chicago, 1995, p. 107, cited by, BRATTON Susan Power, "Luc Ferry's Critique of Deep Ecology, Nazi Nature Protection Laws and Environmental Semitism", Ethics and Environment, V. 4, n. 1, pp. 3-22, http://www.baylorisr.org/wp-content/uploads/bratton_lucferry.pdf.
[173] FERRY Luc, "Nazi Ekolojisi: Kasım 1933, Temmuz 1934 ve Haziran 1935 Yasaları", Cogito, Kirlenen Çağ, n. 2, Autumn 1994, p. 78, fn. 6.
[174] ibid. p. 78.

artificial manner, for the truth and the reality can be comprehended only with concrete reason and mathematics[175]. In other respects, life is a divine unity of the soul and the body and the beauty rests in the domain of senses rather than reason in German romanticism. Correspondingly Ernst Lehmann, professor of botany, asserts that "*we recognize that separating humanity from nature, from the whole of life, leads to humankind's own destruction and to the death of nations. Only through a re-integration of humanity into the whole of nature can our people be made stronger*"[176]. Alike Arndt and Riehl, passionate for ecology, mention for ecological conservatism in terms of the well-being of the German soil and the German people, identify race and soil in terms of "*teutonic racial purity*"[177].

German natural conception is "*valuable in itself*", which defines nature antecedent to human, that witnesses history, whereas in French classicism nature exists as long as it is conceived by human reason. Biehl, in his essay Field and Forest dated to 1853 made a call to save the forest "*not only so that our ovens do not become cold in winter, but also so that the pulse of life of the people continues to beat warm and joyfully, so that Germany remains German*"[178]. Schoenichen the head of the Prussian Agency for the Protection of Natural Movements revitalise this call and claims "rights of wilderness" which is not limited with the protection of agricultural lands but rights of the lands in forests, dunes and rocks[179]. The claim of inherent value of the nature, which is absolutely ecocentric is applied in Nazi Germany. Lehmann asserts, "*This striving toward connectedness with the totality of life, with nature itself, a nature into which we are born, this is the deepest meaning and the true essence of National Socialist thought*" and he classifies National Socialism as "politically applied biology"[180]. This reminds the assertion of Haeckl, one of the major ideologists of racism and eugenism, as indicated partially fn. 10 of this chapter, which is based on Darwin's evolutionary theory and ecological holism[181]. Logical conclusion of this ecological monism may be harsh critics of humanism as well in terms of protesting the idea of man and the "inflated importance" attached to this idea[182]. Haeckl's student Ludwig Woltmann stay on the same grounds of ecological monism and takes one step further towards the explication of

[175] ibid.
[176] LEHMANN Ernst, Biologischer Wille. Wege und Ziele biologischer Arbeit im neuen Reich, München, 1934, pp. 10-11, cited by STAUDENMAIER, ibid.
[177] ibid.
[178] RIEHL Wilhelm Heinrich, Feld und Wald, Stuttgart, 1857, p. 52, cited by STAUDENMAIER, ibid.
[179] His book Protection of Nature as a Popular (*volkisch*) and International Cultural Task is dated 1942, cited by FERRY, "Nazi Ekolojisi", p. 80.
[180] STAUDENMAIER, op. cit.
[181] ibid.
[182] GASMAN, The Scientific Origins of National Socialism, p. 34i cited by, ibid.

cultural and social phenomena by biology[183] as well as Raoul Francé, who opposed racial mixing. However Hitler did not interested in conservation issues, even though some legislation has been made[184].

2. Subject of Law

Modern legal systems on one hand address legal persons, rig rights and obligations and provide statute to conclude legal transactions to them, alike legal consequences of acts are faced by legal persons. On the other hand law creates categories of legal personality and capacity such as physical or natural persons, juridical persons, minors etc. Culture is explained by Rosen as "*capacity for creating categories of our experience*"[185]. Human beings, as "*category-creating creatures*" continues Rosen, "*are constantly forging the units of our own experience, than "facts", like anything else, must be fabricated, connected, rendered obvious*"[186]. In order to understand how approaches law to the conditions which help law to gauge the legal capacity, we need to focus on statutes granted by legal system. Because according to these statutes, law defines us, attribute us some rights, frames our existence and rasps it. The regulation of the nature by environmental law which is like an impossible assertion considering the existence of law is based on the opposition against nature or natural state and the status or legal capacity of natural things can be understood by this focus on statutes and the evolution of subject of law.

Status is defined as following: "*(...) The legal relation of individual to the rest of the community*"[187]. Statute is "*a special condition of a continuous and institutional nature*" comprehended as "*the legal standing or position of a person as determined by his membership of some class of persons legally enjoying certain rights or subject to certain limitations*"[188]. Legal status of persons and their capacity are two different subjects. Legal personality or status as such a fabrication is a prerequisite to legal capacity, in other words to be able to

[183] ibid.
[184] UEKOETTER Frank, The Green and the Brown: A History of Conservation in Nazi Germany, Cambridge, Cambridge University Press, 2006, p. 10. The reason of it according to Uekotter, "*The Nazi regime reacted allergically to anything that resembled public protest or even a systematic campaign for a certain natural treasure, and it cared little about the general spirit of the protest. Even Ludwig Finckh, one of the most aggressive right-wing ideologists within the entire conservation community, was monitored by the Gestapo during his campaign to save the scenic Hohenstoffeln Mountain from mining interests*", ibid.
[185] ROSEN, Lawrance, Law as Culture, An Invitation, Princeton University Press, Princeton, 2006, p. 4.
[186] ibid. p. 11.
[187] BLACK, op. cit. p. 1264.
[188] Oxford Legal Dictionary, cited by, GRAVESON R. H., Status in the Common Law, University of London The Athlone Press, 1953, p. 1.

enjoy certain rights, it is a must to be visible in the eyes of law. "*Unus homo plures sustinet personas*", i. e. one individual may be clothed with different kinds of legal capacities[189].

This visibility is called *Rechtsfahigkeit* in German legal tradition and signifies the capacity to have rights i.e. not a right but a precondition to enjoy rights. The subject is fitted with proper rights both public and private, such as personality rights. In Modern law, this capacity to have rights enables at least on paper equality and generality before law. Roman legal system originates legal capacity to have rights at birth and terminates on death[190], but it does not mean equality before law because Roman system recognizes different categories of status. The history of status in Common Law is far more different from continental legal systems since the status as a legal person depended on the real estate and tenure in English land[191]. If someone holds land in free tenure, then he is usually a free man[192].

According to Turkish Civil Code, this capacity to have rights exists from the moment of conception on condition that the baby is fully born alive[193], contrarily on French Civil Code the viability of the baby is a condition to have the capacity to have rights. Also in French Civil Code, the future babies are also entitled to some rights[194]. In the same vein, legal capacity ends with death, which is a biological fact but law provides the presumption of death or declaration of absence in case of lack of body and asserts legal consequences to a fiction of death. It was possible under certain circumstances in Roman law to regard as born to an unborn child, which is called '*nasciturus fiction*'[195] in case of it would be more favorable at the relevant stage. By way of explication, law is blind to anything else behind the conception and the birth but the meaning which is assigned to it by law, itself. This is expressed by, "*in personam servilem nulla cadit obligatio*" means the slave was not only rightless, he was also dutiless and any judgment against a slave is a nullity[196].

[189] HOLLAND Sir Thomas Erskine, The Elements of Jurisprudence, The Lawbook Exchange Ltd, Clark, New Jersey, 2006, p. 77.
[190] MOUSOURAKIS George, Roman Law and the Origins of the Civil Law Tradition", Springer International Publishing, Switzerland, 2015, p. 98.
[191] GRAVESON R. H., Status in the Common Law, University of London The Athlone Press, 1953, p. 7.
[192] ibid.
[193] This provision provides the opportunity to sue in case of any damage before birth, which can be enjoyable by the majority.
[194] CARBONNIER, Droit Civil "Les Biens", PUF, Paris, para. 49.
[195] MOUSOURAKIS, op. cit. p. 98, fn, 8.
[196] BUCKLAND W. W., The Roman Law of Slavery, The Condition of the Slave in Private Law from Augustus to Justinian, Cambridge University Press, this edition first published in 1970, digitally reprinted 2010, p. 3, fn, 3, 4, 5.

This distinction can be more visible in an example from Roman legal system regarding the comparison between a birth of a free man and a slave. According to the Institutes, all men are either slaves or free[197]. A slave can be comprehended as a man but also as a *res*, so being born physically as human is not enough to be rigged of full rights before law or the same law can see only an increase of the patrimony of the slave-owner in case of the birth of a slave. There were some other inferior positions such as *nexus, auctoratus, addictus*[198] but none of them are conceived as res. "*In classical law the term persona denoted simply a human being (homo), and hence even slaves were considered persons, despite the fact that a slave was a legal object or object of rights and duties, in contrast with a free person who was a legal subject or bearer of rights and duties*"[199]. A definition of slave is given as follows: "He was the human being who could be owned"[200]. Parallel to modern legal systems, in Roman law also there were municipalities and private bodies which are non-human subjects of rights and duties, these were not recognized as *persona*. The contractual capacity of a slave was *peculium*, "*a form of private property comprised of assets such as a sum of money or an object granted by a master to his slave for the slave's use, free disposal or use in commercial and other transactions*"[201]. After the abolition of slavery, this reification of human beings apparently does not exist. However, masculine history writing continues. Most of the personal pronouns in history and in recent oeuvres if they do not provide a criticism from a feminist point of view. The interest of law toward women is low. For example in Roman history women could not serve as senators or magistrates, neither in imperial nor in provincial or local level. "*But women of high status, those from senatorial and equestrian families and those in the municipal elites of the Empire, played an important role in imperial society because of their wealth and family connections.* ***For this reason the law was interested in them****, and regulated their rank and their munificent activities*"[202]. In the same vein, *patria potestas*, power of father which provides a control over the persons of his children amounting even to a right to inflict capital punishment and also any rights in private law[203], has a power on women as well. "*If a woman's pater familias died or emancipated her, she became legally independent,*

[197] BUCKLAND William Warwick, The Roman Law of Slavery, The Condition of the Slave in Private Law from Augustus to Justinian, Cambridge University Press, 1908, reprinted in 1970, p. 1.
[198] ibid. p. 10.
[199] MOUSOURAKIS, op. cit., p. 98. In next page, he underlines that "*A slave was considered to be both a person (persona) and a form of property (res) legally existing as the object rather than the subject of rights and duties*".
[200] BUCKLAND, op. cit., p. 10.
[201] ibid. p. 100, fn. 18. He adds, "*Although, the peculium theoretically remained the master's property it was considered in the eyes of the community to belong to the slave himself*".
[202] GRUBBS Judith Evans, Woman and the Law in Roman Empire, A Sourcebook on Marriage, Divorce and Widowhood, Routlegde, London, New York, 2002, p. 71, emphasized by myself.
[203] http://www.britannica.com/EBchecked/topic/446579/patria-potestas

though she still needed a tutor mulierum, but she could never become a pater familias herself because she could never have legal power (potestas) over anyone other than herself"[204]. There has always been a legal authority on women in ancient Rome such as *patria potestas, manus* means subordination to a husband's legal power, or *tutela* that means guardianship, for those not under *potestas* or *manus*. Slavewomen, on the other hand similar to slavemen were res and under control of their masters[205].

Since a person cannot be considered as a "thing", can a "thing" be considered as a person? This question is answered both affirmative and negative by François Terré. He stresses that, "*No, if it serves to make a physical person so, and yes, if we intend to see a moral personality through the constitutions of law*"[206] and underlines for some group of things this abstraction is made. Thing, *chose* in French, *Ding* or *Sache* in German, on the other hand, primordially has a legal meaning which is related to human, litigation, case. In this manner, "*causa*" is also used i.e. object of the litigation. Things, persons and *causa* or *actiones* are three main categories in Roman law[207]. Law defines its own conception of legal personality, creates a category and attributes rights, duties, consequences according to this abstraction. This abstraction of legal personhood is an opposition to material flesh[208], "bare life" of Agamben. The borderline between personal statute and real statute is underlined by Argentre as the real statute is composed by the problems with regard to things i. e. mainly it is related with the constitution and transmission of rights on a thing, chattel or propriety[209]. In ancient law, it is completely different, the "thing" is basically real chattel in other words immovable and chattels had so little importance[210]. This was the ground for the existence of families in Common Law, the unity, social statute and the instruments of existence were given by real chattels[211].

[204] GRUBBS, p. 18.
[205] ibid. p. 20.
[206] TERRE François, "Variation de sociologie juridique sur les biens", Archives de Philosophie du Droit, Volume 24, Les Biens et les Choses, Sirey, 1979, p. 17.
[207] MAUSS Marcel, "A Category of the Human Mind: The Notion of the Person; the Notion of Self", (tr. HALLS W. D.), pp. 1-26 in CARRITHERS Michael, COLLINS Steven, LUKES Steven (ed.), The Category of the Person, Cambridge University Press, 6th ed., 1999, Cambridge, p. 14. In the same vein cites GRAVESON op. cit., p. 4, fn. 4 and 5, from AUSTIN's Notes on Jurisprudence and HOLLAND's Jurisprudence.
[208] MOHR R, Flesh and the Person, Australian Feminist Law Journal, 29, 2008, pp. 31-52, p. 34.
[209] BATIFFOL Henri, La Capacité Civile des Etrangers en France, Influence de la Loi Française, Recueil de Sirey, Paris, 1929, p. 16.
[210] ARGENTRE, Coutume de Bretagne, art. 218, glose 6, n. 3, cited by BATIFFOL, op. cit. p. 16.
[211] ibid.

In order to understand better this specter construction of legal personality, we can take the evolution of two words, subject and persona respectively. Subject, according to Black's Law Dictionary in constitutional law means "*one that owes allegiance to a sovereign and is governed by his laws (...) men in free governments are subjects as well as citizens; as citizens enjoy rights and franchises; as subjects they are bound to obey the laws*"[212]. Subject, *ypokeimenon* [ὑποκείμενον] in Ancient Greek *subjectum* in Latin is defined so in Metaphysics of Aristotle: The *ypokeimenon* is "that of which everything else is predicated, while it is itself not predicated of anything else"[213]. Primordially this word designates "place beneath/under"[214] or according to the translation of Heidegger, "the one which is bottom and which gathers all on itself"[215] with no reference to human being. According to Aristotle, *ypokeimenon* is the fourth meaning of four meanings of *ousia* [ουσία] or called *substantia*[216]. According to Vullierme, the Metaphysics of Aristotle has been dominated by modern thinkers' commentaries and their subjectivity[217] thus he claims that from the establishment of "Cartesian problematic", human has progressively become subject and this means that at one point in history, human will be the substratum and the basis of all it is[218]. For Power, "*subjectness points to the very quality of being a subject, prior to its metaphysical capture in a logic of humanism and representation, and before its definition in terms of passivity and activity*"[219]. However, this evolution does not lead us directly to understand subjectum as subject in face of object[220].

The word "*persona*" refers originally to the masks worn by actors in Greece and Rome, according to etymological roots, persona comes from per-sonare, the mask through which (*per*) resounds the voice (*sonare*) of the actor[221]. In that vein persona "*(...) was subsequently employed in jurisprudence to signify the role or status which a man fills in the social*

[212] BLACK Henry Campbell., Black's Law Dictionary, Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern, Sr. Paul Minn. West Publishing Co, 1979, p. 1277.
[213] In the original text, the word used instead of ypokeimenon is substratum. Aristotle, Metaphysics, Book VII, Ch. 3, 350 BCE, Translated by Ross, W. D: classics.mit.edu/Aristotle/metaphysics.7.vii.html.
[214] http://www.etymonline.com/
[215] VULLIERME J. L., "La Chose, (le bien) et la Metaphysique", Archives de Philosophie du Droit, Volume 24, Les Biens et les Choses, Sirey, 1979, p. 42. In original text: "ce-qui-est-un-fond-qui-rassemble-tout-sur-soi"
[216] Aristotle, Metaphysics, Book VII.
[217] VULLIERME op. cit. p. 42.
[218] ibid. For example Leibniz, in his oeuvre Monadology instead of privileging human, multiplies the subjects, every substance is a subject which gathers everything on itself.
[219] POWER Nina, "Philoposhy's Subjects", Parrhesia Journal, No. 3, 2007,pp. 55 – 72, p. 56.
[220] VULLERME, op. cit. p. 43.
[221]http://www.etymonline.com/index.php?allowed_in_frame=0&search=persona&searchmode=none and MAUSS, op. cit. p. 14, 15. In the same vein, BETTETINI Maria, Figure di verità: La finzione nel Medioevo occidentale Einaudi Torino 2004 at 109-110, cited by MOHR, op. cit. p. 43, fn. 28.

organization"[222] and in Ancient Rome "*the 'role' - the 'mask' or persona - was made the locus of general rights and duties as a legal 'person' and a citizen of the state*"[223]. *Persona* according to some writers in Ancient Rome, had two meanings; the technical one means "man capable of rights", the other is simply "man"[224]. All freemen of Rome were Roman citizens, all had a civil *persona*[225]. Slave, in other words is not a "*persona qui in ius vocari potest*"[226]. In Roman legal tradition, the father of the family, *pater familias* is the holder of the right of the to kill his sons which is called *patria potestas*, power of father, his *sui*, signify the acquisition of the *persona* by the sons, even while their father was still alive[227]. "*It is to the persona that is attributed the property of the simulacra and the imagines*"[228]. This categorization shows us legal personality is not invented only to create a bearer of rights and duties but to provide the continuity of the system via an ontological category in a way to justify and reinforce, through its action, the foundations of basic assumptions of law[229]. This view is based on the criticisms made by constructivist social epistemologists which defends that "*it is not human individuals by their intentional actions that produce law as a cultural artefact on the contrary, it is law as a communicative process that by its legal operations produces human actors as semantic artefacts*"[230]. In the same vein, Foucault defends that the human individual is nothing but an ephemeral construction of an historically contingent power/discourse constellation, which dictates the episteme of the historical epoch[231].

If we take a look to anthropological roots of this fiction, we coincide with Pueblo of Zuni in respect to the researches of Frank Hamilton Cushing and Mathilda Cox Stevenson, where we observe a limited number of forenames in each clan and their roles are indicated and defined in the 'cast-list' of the clan and "*the clan is conceived of as being made up of a certain number of persons, in reality of 'characters' (personnages)*"[232]. Based on this structure Mauss asserts, "*with the Pueblo we already see a notion of the 'person' (personne) or individual, absorbed in*

[222] GRAVESON op. cit., p. 4, fn. 1.
[223] CARRITHERS Michael, COLLINS Steven, LUKES Steven (ed.), The Category of the Person, Cambridge University Press, 6th ed., 1999, Cambridge, p. vii.
[224] BUCKLAND, op. cit. p. 4.
[225] MAUSS Marcel, "A Category of the Human Mind: The Notion of the Person; the Notion of Self", (tr. HALLS W. D.), pp. 1-26 in CARRITHERS/COLLINS/LUKES, op. cit, p. 16.
[226] BUCKLAND, op. cit. p. 4.
[227] MAUSS op. cit. p. 16.
[228] ibid. p. 17.
[229] PAYDAŞ Eren, Biyoiktidar Perspektifinden Hukukun Öznesinin Kurgulanma Biçimleri, Galatasatay Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku Anabilim Dalı, unpublished master thesis.
[230] TEUBNER, "How the Law Thinks: Toward a Constructivist Epistemology of Law", Law and Society Review, V. 23, n. 5, 1989, pp. 727-758, p. 730.
[231] ibid. p. 732.
[232] CUSHING Frank Hamilton, cited by, MAUSS ibid. p. 4, 5.

his clan, but already detached from it in the ceremonial by the mask, his title, his rank, his role, his survival and his reappearance on earth in one of his descendants endowed with the same status, forenames, titles, rights and functions"[233]. In different terms but identical in function and nature, in American North-West tribes the name, the legal and religious 'birthright' and the social positions according to them are posed as well[234]. In Kwakiutl Indians, in case of a war the killing of someone who possesses a rank, a power, a religious or aesthetic position, leads the inheritance of all these from the ancestor; this is a way to acquire personal rights and things as well as their particular spirit[235].

This fiction of personality, if we express with the words of Teubner "*unreal fictions, artificial semantic products (...) of classical jurisprudence*"[236], becomes more salient in case of juridical personality of associations, foundations, corporations, as well as public treasure to render the state responsible. This artificial personality may refer both a group of persons and a group of proprieties[237]. The capacity to have rights of these different categories of personalities and the picture of status cannot be painted in only black and white[238]. In other words, legal capacity is a transitive and variable statute. This transition could be made by a simple transaction in Roman period, such as in case of acquisition of liberty. It could be enjoyed by those who were either freeborn or freed person. So a human being can gain the statute of freeman by being freed, along the same line, she/he can lose her/his statute as punishment or as capture in war[239]. There can be some special legal transactions or procedures in order to achieve this transition. In Roman law a slave could be released from slavery (*manumissio*) in three ways: "*by a formal announcement by the master in public and before a higher magistrate (usually a praetor) that the slave was free (vindicta); after the enrolment of a slave as a Roman citizen by the censor, according to the master's request (censu); and under his master's will (testamento)"*[240]. Moreover, *"liberated slaves (libertini, liberti) were Roman citizens, but enjoyed fewer social and political rights than those with no slaves in their ancestry"*[241]. Inversely a loss in legal capacity was also possible. That is called *capitis deminutio* and it has

[233] ibid. p. 6.
[234] ibid. p. 7.
[235] ibid. p, 8, 9.
[236] TEUBNER G., "How the Law Thinks: Toward a Constructivist Epistemology of Law", Law and Society Review 23/5, pp. 727-757, p. 743.
[237] AKİPEK Jale, Türk Medeni Hukuku-Şahsın Hukuku, Ankara 1978, HATEMİ Hüseyin, Medeni Hukuk Tüzel Kişiler, İstanbul 1979, p. 2-6.
[238] GRAVESON, op. cit., p. 3.
[239] MOUSOURAKIS, op. cit., p. 98, 99.
[240] ibid. p. 100.
[241] ibid.

three degrees as *maxima, media* and *minima*[242]. Three of them leads different degrees of loss of civil status and rights. It might be enrolled by the sale of the free man into slavery, in case of the commitment of a grave offence indicated by law, a free man can lose his all legal rights, likewise in case of deportation for example he loses his citizenship but preserves his freedom[243]. Legal systems may draw a distinction of legal capacity according to age, maturity, mental faculties or disabilities. For example, the principle to have legal capacity is to fulfill three conditions cumulatively: being major, having mental faculties and not having special disability.

This distinction between flesh and blood people and legal personality and capacity is underscored by Teubner as well. In his essay, he analyzes the critics of Habermas, Foucault and Luhmann of law as a system of rules and the subject centered legal system. Anthropocentrism as explained in previous chapter is consummated according to Heidegger by Descartes as he interprets man as *subjectum*[244]. The transition from the notion of persona, of 'a man clad in a condition', to the notion of man, quite simply, that of the human 'person' (personne)[245] is observed by Schlossman. By 500 CE a Christian definition of persona was given by Severinus Boethius as '*naturae rationalis individua substantia*': rational nature in an individual substance[246]. For Mohr, this can be taken as premise of Descartes who divided mind and matter, *esprit* and *res extensa*[247]. Heidegger replaces absolute consciousness and intentional structures of Descartes as the major issue for phenomenological investigation with the "being" (*Sein*) of entities[248]. According to this approach, "*The individuated nature of the 'modern' subject, understood in a political framework as the bearer of certain rights or as a legal subject*"[249], no conception of the subject could be free from its association with a certain kind of consciousness which believes in its own freedom, and is thus always tied up with both representation and an ideological, though real, relation between 'ideas' and action[250].

[242] ibid. p. 105.
[243] ibid.
[244] HEIDEGGER Martin, in The Question Concerning Technology and Other Essays (tr. and ed. William Lovitt), "The Age of the World Picture", pp. 115-155, p. 126.
[245] CARRITHERS/COLLINS/LUKES, op. cit, p. 19 with reference to Schlossman for his analysis on Christian "person".
[246] MOHR, op. cit. p. 45.
[247] ibid.
[248] ZIMMERMANN Michael, "Heidegger and Deep Ecology", online resource: http://www.nchu.edu.tw/~hum/download/heidegger_deep_ecology.pdf
[249] POWER Nina, "Philoposhy's Subjects", Parrhesia Journal, No. 3, 2007,pp. 55 – 72, p. 57.
[250] ibid.

Objection to this point of view is made by three main theories as following: critical theory defended by Habermas, poststructuralism defended by Foucault and theory of autopoiesis defended by Luhmann. We can distinguish human beings and being human: "*The history of human beings begins before the history of being human*"[251]. As to culture, it is said to be constitutive by definition "*so must law be formative and not simply formed*"[252]. In that vein these three thinkers assert that law has a self-productive character that cannot be explained by neither sociological-realist nor analytical-normativist theories. This self-productivity becomes intelligible only if communications (synthesis of utterance, information and understanding) are recognized as the law's basic elements[253]. The reference of law at that rate may be mental states of people (such as intentions, negligence etc.) but law as a social process does not deal with flesh and blood people, nor human beings with brains and minds[254]. On the contrary, "*the 'persons' of law are mere constructs, semantic artifacts produced by legal discourse itself*"[255]. *Inter alia* this interpretation renders "persons" of law, the self-reproductive elements of autopoietic system. Chief Justice Marshall discovered it as following in the famous case of *Dartmouth College v. Woodward,* 4 Wheaton 518, 627, in 1819: "*any legal person is nothing but artificial being, invisible, intangible, existing only in contemplation of law*"[256]. According to Grzegorczyk, this represents the "*total dehumanization of law*"[257]. This view renders the approach of reasonable consciousness subject in the center of legal system impossible.

This brief explications on philosophical and historical roots of being subject of law and statutes, lead us the idea of extricable character of human features from the subject of law which are considered as a solid unity since Descartes and creates the main cement of modern legal systems. Rather than this criticism of modern subject of law and identity crisis, the attempt to accept natural things as bearers of rights (and duties?) has its grounds on inherent value theory and legal pragmatism in order to preserve nature. Stone takes the complicated status issue as a starting point. He reasons that if trees, forests and mountains could be given standing in law then they could be represented in their own right in the courts by groups such as the Sierra Club[258]. Moreover, like any other legal person, these natural things could become

[251] ROSEN, op. cit, p. 2.
[252] ibid.
[253] TEUBNER, op. cit. p. 739, 740.
[254] ibid. p. 741.
[255] ibid.
[256] ibid.
[257] GRZEGORZCYK Christophe, "Système Juridique et Réalité: Discussion de la Théorie Autopoietique du Droit", 22, Archives de Philosophie du Droit, cited by ibid.
[258] The Sierra Club is an environmental organization in the United States. Its stated mission is "To explore, enjoy, and protect the wild places of the earth; To practice and promote the responsible use of the earth's

beneficiaries of compensation if it could be shown that they had suffered compensable injury through human activity.

As reminding the situation of children in ancient Rome, with accent on *patria potestas* that we have mentioned hereinabove. The early capacity to have rights and enjoy them of children particularly if they are physically disabled or female is highly low. The father had *ius vitae necisque,* the power of life and death the power of "uncontrolled corporal chastisement; he can modify their personal condition at pleasure; he can give a wife to his son; he can give his daughter in marriage; he can divorce his children of either sex; he can transfer them to another family by adoption[259]. Stone emphasizes as well in nineteenth century the highest court of California stated that Chinese had not the right to testify against "*white men in criminal matters because they were a "race of people whom nature has marked as inferior, and who are incapable of progress or intellectual development beyond a certain point (...) between whom and ourselves nature has placed an impassable difference*"[260]. This rightlessness expressed as "*no Black or Mulatto person, or Indian shall be allowed to give evidence in favour of, or against a white man*"[261], was valid for Jews as well in thirteenth century[262]. In accordance with him, Regan attacks the persons who are recognized by law as the mere holders of a fundamental value. He asserts with reference to Kant's *worth* notion and explicates that it is inherent because the kind of value in question belongs to the individuals who have it and value as it makes them morally equal[263]. He bases his theory on the duty of respect to inherently valuable individuals[264].

There are many thinkers who defend a "holder of legal rights" status for natural things. This status has three criteria comprised of "*first, that the thing can institute legal actions at its behest, second, that in determining the granting of legal relief, the court must take injury to it into account; and, third, that relief must run to the benefit of it*"[265]. For Regan, the right to be treated with respect encapsulates no trespassing, to have a valid claim against being treated as

---

ecosystems and resources; To educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives", http://www.sierraclub.org/policy.

[259] MAINE H, Ancient Law, ed. POLLOCK, 1930, p. 153 cited by STONE Christopher D, Should Trees Have Standing, 3rd edition, Oxford University Press, 2010, p. 1.

[260] Dred Scott v. Sanford, 60, U.S., 19 How. 396, 404–05, 1856. cited by, ibid. p. 2.

[261] *People v. Hall*, 4 Cal. 399, 405, 1854, cited by ibid. fn. 19.

[262] SCHECHTER Frank I., "The Rightlessness of Medieval English Jewry", V. 4 Jewish Q. Review, pp. 121-135, 1914, quoting from BATESON M, Medieval England, 1904, p. 139 cited by, ibid. fn. 20.

[263] REGAN Tom, Animal Rights Human Wrongs, An Introduction to Moral Philosophy, Rowman and Littlefield Publishers, 2003, p. 67.

[264] ibid. p. 68, 69.

[265] STONE op. cit. p. 4.

mere means in pursuit of some good, equality and justice[266]. In following pages we can observe Stone's path from the examples given. Stone moves off from an example of a stream, polluted by an industrial action. Stone assumes a pollution of one hundred thousand dollars per year in total, but considering the people living close to the river this amount may be thousand dollars per riparian and obstacles such as burden of proof, specific damages, the "unreasonableness" of defendant's use of the water, suing expenses, overcoming difficulties raised by issues such as joint causality, right to pollute by prescription, and so forth, makes the hesitation more reasonable[267]. Likewise, in the case that the riparian wins the lawsuit against the industrial company, he will be awarded with an amount of money, in other words no attempt will be provided to inhibit further pollution nor no expense will be made for the rehabilitation of the stream and ecology. The decision will be based on the rights or propriety and on the other side the plaintiff may receive objections such as *"reasonable use", "reasonable methods of use", "balance of convenience"* or *"the public interest doctrine*"[268]. That is why he defends that natural objects should have rights to redress in their own behalf. Inherent value of natural things is discussed in a case before ECHR, Kyrtatos v. Greece, dated to 22 May 2003[269]. The applicants own real property in the south-eastern part of the Greek island of Tinos, where they spend part of their time. The first applicant is the co-owner of a house and a plot of land on the Ayia Kiriaki-Apokofto peninsula, which is adjacent to a swamp by the coast of Ayios Yiannis[270]. The town planning authority of Syros issued building permit in this territory. The applicants complained first that urban development had destroyed the swamp which was adjacent to their property and that the area where their home was had lost all of its scenic beauty[271]. Second, they complained about the environmental pollution caused by the noises and night-lights emanating from the activities of the firms operating in the area[272]. They based their demands upon the eight article of EConvHR which provides protection on grounds of respect to private and family life, home and correspondence. The Court notes that according to its established case-law, severe environmental pollution may affect individuals' well-being and prevent them from enjoying

[266] REGAN, op. cit. p. 73, 74.
[267] STONE op. cit., p. 5.
[268] ibid. p. 6.
[269] application no. 41666/98, http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{"dmdocnumber":["698976"],"itemid":["001-61099"]}
[270] paragraph 9.
[271] paragraph 51.
[272] paragraph 51.

their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health[273].

The Court adds in the present case, even assuming that the environment has been severely damaged by the urban development of the area, the applicants have not brought forward any convincing arguments showing that the alleged damage to the birds and other protected species living in the swamp was of such a nature as to directly affect their own rights under Article 8 § 1 of the Convention. It might have been otherwise if, for instance, the environmental deterioration complained of had consisted in the destruction of a forest area in the vicinity of the applicants' house, a situation which could have affected more directly the applicants' own well-being. To conclude, the Court cannot accept that the interference with the conditions of animal life in the swamp constitutes an attack on the private or family life of the applicants[274]. Here the Court makes a evaluation between the "inherent values" of a swamp and forest and cannot see any reason to protect swamp which does not provides a landscape or any well-being. So for the Court, the swamp does not have an inherent value to be protected, related with the EConvHR.

Another aspect regards to subjectivization in legal plan of natural things is the regulation with regard to animals. The law is blind in terms of subject of law to animals as explained above. Yet, there are some provisions which ban torture or torment of animals. In many legal systems they are comprehended as the chattel of their owners and any damage against them is faced with a fine. In a case took place in Turkey in January, a wild boar has chased by people in Samsun, Canik, tormented and then killed atrociously[275]. This case is brought to agenda via the photographs taken by the offenders who tether the boar, trample it in cheeriness. Since the wild boar does not have a legal owner, no legal way is projected by Turkish regulation. These pictures enkindled the debate on impunity for the crimes or misdemeanour against animals whether they are possessed or not. In the meanwhile, six million animals was being slaughtered all over the world[276].

This paradoxical approach is observed in other countries as well. As underlines Regan, in United States despite the high sensibility on mistreatment to cats or dogs, according to recent polls, in the neighbourhood 98 per cent eat meat, 70 per cent approves of using animals to test

[273] paragraph 52.
[274] paragraph 53.
[275] http://www.bianet.org/bianet/hayvan-haklari/161644-linc-edilen-domuz-icin-hukuk-yok.
[276] Food and Agricultural Organization official numbers:
http://www.abolitionistapproach.com/media/pdf/ARAA_Pamphlet_Turkish.pdf

medical treatments[277]. Here we may return once more to values and interests problem which are generally in conflict. "*The interest that animals have, if in fact they have any, it is claimed are of no direct relevance to morality, whereas human interests meaning both our preference interests and our welfare interests are directly relevant*"[278]. According to one view that defends that we can have duties *involving* the animals but cannot have any duties *to* them is based on the idea of there are mental lives are nonexistent and they are mindless[279]. This depends on Cartesian approach that because of the lack of language they are unable to think and since they cannot think, they are not conscious. In the same vein Stone does not accept the lack of the ability to speak as a reason not to have standing and he asserts that legal personalities such as corporations, states, estates, infants, incompetents, municipalities or universities cannot speak either and the lawyers speak on behalf of them as they do for the ordinary citizen with legal problems[280]. Many animals on the other hand have both preference interests and welfare interests[281]. But until which point we can take this consideration? For example fish have demonstrated associative reasoning which means the ability to take what was learned in the past and apply it to new situations. What about the animals which have a more rudimentary nervous systems? Mosquitoes? "*Regarding religious texts and scientific researches, mammals and birds most certainly are psychologically present in and to the world*"[282]. According to animal rights theories which are based on deontological animal ethics, the reformation of current practices will not help to reach their targets but a new system may be a solution in which nonhuman animals treated "humanely"[283].

The grounds of Stone in my opinion overshoot the target and he ignores that all these entities that he counts are consist in human beings that can express their wills and with this expression of will the will of the aforementioned institution is formed. So these entities, disable to speak, are able to communicate and form a will compatible with their inner structure and the premises provided by law. It is true that the ultimate will of the entity is not always same with the will of its representative since it is based on a compromise of organs entitled to form a will. Exactly this fiction of personality which lies behind in legal persons reminds us the dehumanisation of legal system assertions. Another striking analogy in Stone's thesis, as he

[277] REGAN, op. cit. p. 31.
[278] ibid. p. 33.
[279] ibid. p. 31, 34.
[280] STONE, op. cit. p. 8. Same point is emphasized by Regan as well, op. cit. p. 34 as communication problem so as to attribute a mental capacity to nonhuman animals.
[281] REGAN, op. cit, p. 35.
[282] ibid. p. 38, 39.
[283] https://nonhumananimalethics.wordpress.com/how-to-help/

defends the right to urge a court on behalf of a river he cites another petition to New York State Supreme Court to be appointed as legal guardian for an unrelated fetus scheduled for abortion so as to enable him to bring class action on behalf of all fetuses[284]. This analogy reminds the ecofeminist criticism to ecocentrism from the point that it is still human beings who confer rights to non-human entities and still it is human beings who claim power to defend their rights best. This alleged translation of nature's language to legal one may sound at the first sight reasonable for the sake of the protection of nature but it shows us both insufficient and incompetent struggle to solve a problem in legal area even though the problem is basically not legal.

The most salient case that we can observe a nonhuman entity which is "entitled" to some rights is the case of threatened species. International Union for Conversation of Nature is an international organization working in the field of nature conservation and sustainable use of natural resources and produces the IUCN Red List of Threatened Species. There are seven categories in this list as following: least concern, near threatened, vulnerable, endangered, critically endangered, extinct in the wild, extinct. This reminds the status of persons or categories. The legal systems "see" animals through this "filter". They are not valuable by their own but they are considered in regulation or decision-taking processes in case of taking place in the endangered part of the list. Thus there is no value attributed to one living nonhuman animal because of its inherent value and existence but it is evaluated as specie, as the generality of members of specie and become the subject of law, holder of a protection status.

[284] STONE, op. cit, p. 8.

CONCLUSION

Law as a system establishes order in face of wild life. The state of nature of human beings is rasped by the renouncement of the right to apply violence and the monopoly of the violence is created by the state. This monopoly to exercise the violence and the ability to make rules by its regulating devices which are enforceable are held by the state. This structure does not only mean the rasp of the state of nature but domination on nature. This domination is also provided by the same devices of the state, i. e. regulations are used to exploit nature as well as to protect. The term environment, as it expresses the fact of being environed by something which is in the center places itself by definition outside of the system. That approach, which is coherent with the anthropocentric comprehension of the nature, reduces the existence of nature to a simple area of exploitation of man. So the legal device of regulation and legal system as a whole remain blind to the nature with exception of some aspects which are necessary for the sustainability of the exploitation, i.e. the statute for the protection of extinct animals but not animals as living things.

The regulation of the nature may be thought to be out of the scope of legal apprehension. However the scope of regulation does not consist of the human beings and their lives. Law creates statutes for which attributes rights and duties. The bare life has not been the subject of law. The possibility to consider natural things as subjects of law invited some other question that we tried to give answers.

It is doubtful that an effective solution to ecological crisis whose extent is enormous and getting even worse day by day, may be found in the legal system. Human made legal system with its devices may provide some answers for some human made problems. Thus, the key to both understand the ecological crisis and its possible solution have to be searched in our relation with the nature.

BIBLIOGRAPHY

ADEL B., Japan Whaling Association v. American Cetacean Society, 6 WIs. INT'L L.J. 129-53 1987

AGAMBEN Giorgio, Homo Sacer, Sovereign Pover and Bare Life, (translated by, Daniel Heller-Roazen), Stanford University Press, California, 1998

AGAMBEN Giorgio, The Open, Man and Animal, (translated by, Kevin Attell) Stanford University Press, California, 2004

AIKEN William/LAFOLLETTE Hugh, World Hunger and Morality, 2nd ed., Englewood Cliffs, 1996

AKAL Cemal Bali, Modern Düşüncenin Doğuşu İspanyol Altın Çağı, (The Birth of the Modern Thought and the Spanish Golden Age), 2. edition, Dost Kitabevi, Ankara, October 1997.

AKİPEK Jale, Türk Medeni Hukuku-Şahsın Hukuku, Ankara 1978

ALDER/WILKINSON, Environmental Law and Ethics, Palgrave Macmillan, 1999

ALEXANDER Larry / MOORE Michael, "Deontological Ethics", The Stanford Encyclopedia of Philosophy, Spring 2015 Edition, edited by: ZALTA Edward N., online resource: http://plato.stanford.edu/archives/spr2015/entries/ethics-deontological/

ARENDT Hannah, Les Origines du Totalitarisme, V. II, translated by Paris Fayard

ARISTOTLE, Politics, Book 1, Ch. 8., 350 BCE, Translated by JOWETT, Benjamin classics.mit.edu/Aristotle/politics.html

ARISTOTLE, Metaphysics, Book VII, Ch. 3, 350 BCE, Translated by ROSS, W. D: classics.mit.edu/Aristotle/metaphysics.7.vii.html

BARBE Vanessa, "Le droit de l'environnement en droit constitutionnel comparé: contribution à l'étude des effets de la constitutionnalisation", les notes de conférence (online resource)

BATCHELOR A., The Preservation of Wildlife Habitat in Ecosystems: Towards a New Direction Under International Law to Prevent Species' Extinction, 3 FLA. INT'L L.J. 307-39, 1988

BAUMAN Zygmunt, Globalization The Human Consequences, Polity Press, 2000

BASTIT, M, Naissance de la Loi Moderne, PUF, Paris, 1990

BLACK Henry Campbell., Black's Law Dictionary, Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern, Sr. Paul Minn. West Publishing Co, 1979

BOWMAN M.J., The Protection of Animals Under International Law, 4 CONN. J. INT'L L. 487-99, 1989

BRATTON Susan Power, "Luc Ferry's Critique of Deep Ecology, Nazi Nature Protection Laws and Environmental Semitism", Ethics and Environment, V. 4, n. 1, pp. 3-22

BRENANN Andrew, "Globalisation and the environment Endgame or a 'new Renaissance'?", in (ed.) LOWE Ian/ PAAVOLA Jouni, Environmental Values in a Globalising World: Nature, justice and governance, Routledge, 2005, pp. 17-37

BUCKLAND W. W./McNAIR Arnold, Roman Law and Common Law, Second Edition Revised by F. H. Lawson, Cambridge University Press, 1965

BUCKLAND W. W., The Roman Law of Slavery, The Condition of the Slave in Private Law from Augustus to Justinian, Cambridge University Press, New York, 1908, reprinted in 1970 - digitally printed version 2010

BUTLER W.E., Law Reform in Soviet Environmental Law, 5 PACE ENVTL. L. REV. pp. 425-438, 1988.

CARBONNIER, Droit Civil "Les Biens", PUF, Paris

CARRITHERS Michael, COLLINS Steven, LUKES Steven (ed.), The Category of the Person, Cambridge University Press, 6th ed., 1999, Cambridge

CLASTRES Pierre, Archeology of Violence, (tr. HERMAN Jeanine), Semiotext(e), New York, 1994

COHENDET M.A., "La Charte et le Conseil Constitutionnel: Point du Vue", RJE (p.107-130), n. spécial 2005

COLLIARD Claude-Albert, Libertés Publiques, Dalloz, Paris, 1975

COYLE Sean/MORROW Karen, The Philosophical Foundations of Environmental Law Property, Rights and Nature, Hart Publishing, Oregon, United States, 2004

CRAIG, R.S., "Land ethic canon proposal: a report from the task force. Journal of Forestry", 1992, 90, n. 8 August, pp. 40-41

CURRY Patrick, "Dark Green or Deep (Ecocentric) Ethics", in Ecological Ethics: An Introduction, Polity Press, 2011, URL: http://www.ecospherics.net/pages/Currypdf.pdf

DELHOSTE Marie-France, "L'Environnement dans les Constitutions du Monde", Revue du Droit Public, 2004

DERRIDA Jacques, English version: "Force of law: The 'Mystical Foundation of Authority'", translated by: QUAINTANCE Mary, avaliable online at:

http://users.polisci.wisc.edu/avramenko/methods/derrida_theforceoflaw.pdf,
Turkish version: Yasanın Gücü: Otoritenin Mistik Temeli, Şiddetin Eleştirisi Üzerine, ed. ÇELEBİ Aykut, tr. DİREK Zeynep Metis Yayınları, İstanbul, 2010, pp. 43-133

DERRIDA Jacques, The Beast and the Sovereign, Vol 1, The University of Chicago Press, 2009

DRENGSON Alan, "An Ecophilosophy Approach, the Deep Ecology Movement, and Diverse Ecosophies", The Trumpeter: Journal of Ecosophy, Vol 14, No. 3, Summer 1997, pp. 110-111, http://www.ecospherics.net/pages/DrengEcophil.html

DRIVER, Julia, "The History of Utilitarianism", The Stanford Encyclopedia of Philosophy, Winter 2014 Edition, edited by ZALTA Edward N. online resource: http://plato.stanford.edu/archives/win2014/entries/utilitarianism-history/

ELIADE Mircea, Le Sacré et le Profane, Gallimard, Paris, 1965

ERHAT Azra, Mitoloji Sözlüğü, Remzi Kitabevi, İstanbul, 2007

ESTES Clarissa Pinkola, Kurtlarla Koşan Kadınlar, Vahşi Kadın Arketipine Dair Mit ve Öyküler, Ayrıntı Yayınları, 10 ed., İstanbul, 2014

FERRY Luc, The New Ecological Order, Chicago University Press, Chicago, 1995

FERRY Luc, "Nazi Ekolojisi: Kasım 1933, Temmuz 1934 ve Haziran 1935 Yasaları", Cogito, Kirlenen Çağ, n. 2, Autumn 1994

FERNANDEZ-ARMESTO Felipe, Civilizations: Culture, Ambition and the Transformation of Nature, Free Press, New York, 2001

FITZPATRICK Peter, The Mythology of Modern Law, Routledge, London, 1992

FJELSTAD E., "The Ghosts of Fishing Nets Past: A Proposal For Regulating Derelict Synthetic Fishing Nets", 63 WASH. L. REv. 677-99 (1988)

FOUCAULT Michel, Discipline and Punish, (tr. SHERIDAN Alan), Vintage Books

GEDDES A., "1992 and the Environment-Sovereignty Well Lost?", 138 NEw L.J. 826-28 (1988)

GRAEBER David, Fragments of an Anarchist Anthropology, Prickly Paradigm Press, Chicago , 2004

GRAVESON R. H., Status in the Common Law, University of London The Athlone Press, 1953

GROSSI Paolo, A History of European Law, (translated by Laurence Hooper), Blackwell Publishing, 2010

GRUBBS Judith Evans, Woman and the Law in Roman Empire, A Sourcebook on Marriage, Divorce and Widowhood, Routlegde, London, New York, 2002

GRZEGORZCYK Christophe, "Système Juridique et Réalité: Discussion de la Théorie Autopoietique du Droit", 22, Archives de Philosophie du Droit

HALTER F., Regulating Information Exchange and International Trade in Pesticides and Other Toxic Substances to Beef the Needs of Developing Countries, 12, Columbia Journal of Environmental Law, 1987, pp. 1-37

HATEMİ Hüseyin, Medeni Hukuk Tüzel Kişiler, İstanbul, 1979

HERMITTE Marie-Angèle, "Le droit est un autre monde", Enquête, anthropologie, histoire, sociologie, 7, 1999

HERMITTE Marie-Angèle, "La nature, sujet de droit?", Annales. Histoire, Sciences Sociales, 2011/1 66e année, pp. 173-212

HEIDEGGER Martin, in The Question Concerning Technology and Other Essays (tr. and ed. William Lovitt), "The Age of the World Picture", pp. 115-155

HOLLAND Sir Thomas Erskine, The Elements of Jurisprudence, The Lawbook Exchange Ltd, Clark, New Jersey, 2006

KANT Immanuel, “Duties to Animals and Spirits”, in Lectures on Ethics, Cambridge University Press, 1997, (for soft-copy, online acces to Cambridge University Press: http://ebooks.cambridge.org/ebook.jsf?bid=CBO9781107049512

KHEEL Marti, "From Heroic to Holistic Ethics: The Ecofeminist Challenge", in (ed) GAARD Greta, Ecofeminism, Temple Universtiy Press, 1993, pp. 243-271

KNIGHT Richard l:/BATES Sarah, A New Century for Natural Resource Management, Island Press, Washington, 1995

KOSMO F., "The Commercialization of Space: A Regulatory Scheme That Promotes Commercial Ventures and International Responsibility", 61 S. CAL. L. REV. 1055-89 (1988).

LAMBERT Léopold, "Topie Impitoyable, Colonial Architectures and Situated Gentrifying Bodies", http://thefunambulist.net/2014/03/17/topie-impitoyable-colonial-architectures-and-situated-gentrifying-bodies/

LE ROUX Thomas, "Régulation des Nuisances et Industrialisation de Paris Durant la Révolution Française", Annales Historiques de la Révolution Française, n. 352, 2008/2

LEOPOLD Aldo, "Thinking Like a Mountain", http://www.eco-action.org/dt/thinking.html

LOMAS 0., "Environmental Protection, Economic Conflict and the European Community", 33 MCGILL L.J. 506-39 (1988)

LOVEJOY Bess / PASTRANA Julia, "A Monster to the Whole World", http://publicdomainreview.org/2014/11/26/julia-pastrana-a-monster-to-the-whole-world/

LOWE Ian/ PAAVOLA Jouni, Environmental Values in a Globalizing World, Nature, Justice, Governance, Routledge, 2005

LUHMANN Niklas, Social Systems, trans. J. Bednarz, Jr., Stanford, California: Stanford University Press, 1995

MACDOWELL D. M., "The Oikos in Athenian Law", CQ 39: pp. 10-21

MARTIN Thomas R., An Overview of Classical Greek History from Mycenae to Alexander, http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.04.0009%3Achapter%3D6%3Asection%3D25

MATURANA Humberto/VARELA Francisco, Autopoiesis and Cognition, The Realization of the Living, Reidel Publishing Company, 1980

MAUSS Marcel, "A Category of the Human Mind: The Notion of the Person; the Notion of Self", (tr. HALLS W. D.), pp. 1-26 in CARRITHERS Michael, COLLINS Steven, LUKES Steven (ed.), The Category of the Person, Cambridge University Press, 6th ed., 1999

MILL John Stuart, Utilitarianism,1863, http://www.utilitarianism.com/

MILL John Stuart, On Nature, prepared by the Philosophy Department at Lancaster University, from Nature, The Utility of Religion and Theism, Rationalist Press, 1904, https://www.marxists.org/reference/archive/mill-john-stuart/1874/nature.htm.

MOHR R, "Flesh and the Person", Australian Feminist Law Journal, 29, 2008, pp. 31-52

MOSQUIN Ted/ROWE Stan J., "A Manifesto for Earth", 'Biodiversity' Volume 5, No. 1, pp. 3-9, January/March, 2004

MOUSOURAKIS George, Roman Law and the Origins of the Civil Law Tradition", Springer International Publishing, Switzerland, 2015

MURRAY Alex/WHYTE Jessica, The Agamben Dictionary, Edinburgh University Press, 2011

NOTE, "Killing the Rhine: Immoral, But is it Illegal?", 29 VA. J. INT'L L. 421-72, 1989

O'NEILL John / HOLLAND Alan / LIGHT Andrew, Environmental Values, Routledge New York United States, 2008

OSTWALD Martin, From Popular Sovereignity to the Sovereignity of Law, Law, Society and Politics in Fifth-Century Athens, Universtiy of California Press, Berkeley, LA, London, 1986

PAAVOLA Jouni, LOWE Ian, Environmental Values in a Globalising World - Nature, justice and governance, Routledge, New York, United States, 2005

PANAYOTOU Theodore, "Globalization and Environment", CID Working Paper No. 53, Center for International Development, Harvard University, July 2000

PAYDAŞ Eren, Biyoiktidar Perspektifinden Hukukun Öznesinin Kurgulanma Biçimleri, Galatasatay Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku Anabilim Dalı, unpublished master thesis

PECK Tickell, "Neoliberalising Space", Antipode Volume 34, Issue 3, pages 380–404, July 2002, de même, http://onlinelibrary.wiley.com/doi/10.1111/1467-8330.00247/pdf.

PHILIMORE Lord, "Droits et devoirs fondamentaux des Etats", Recueil des Cours de l'Academie de Droit International, 1923

PHILIPPOPOULOS-MIHALOPOULOS Andreas, Absent Environments Theorising Environmental Law and the City, Routledge-Cavendish, New York, United States and Canada, 2007.

PHILIPPOPOULOS-MIHALOPOULOS Andreas, "Looking for the Space Between Law and Ecology", Law and Ecology New Environmental Foundations, Routledge-Cavendish, New York, United States and Canada, 2011

édition, Dalloz, Paris, 1996

PRIEUR, "L'Importance de la Réforme Constitutionnelle", R.J.E., n. special of 2003

PRIEUR, "La Charte, L'Environnement et la Constitution", AJDA, 3 march 2003

RAWLS John, A Theory of Justice, Oxford University Press, 1972

REGAN Tom, Animal Rights Human Wrongs, An Introduction to Moral Philosophy, Rowman and Littlefield Publishers, 2003

REMOND-GOUILLOUD Martine, Du droit de détruire - Essai sur le droit de l'environnement, PUF, Paris, 1989

REMOND-GOUILLOUD Martine, "A Propos du Principe de Précaution", Revue Juridique de l'Environnement, n. special of 2003

ROLSTON Holmes, "Environmental Ethics: Values in and Duties to the Natural World", ed. BORMANN/KELLERT, The Broken Circle: Ecology, Economics, Ethics, Yale University Press, New Haven 1991

ROLSTON Holmes, "Global Environmental Ethics: A Valuable Earth", in (ed.) KNIGHT Richard l:/BATES Sarah, A New Century for Natural Resource Management, Island Press, Washington 1995, pp.349-366

ROLSTON Holmes, "Feeding People versus Saving Nature?" in (ed.) AIKEN William/LAFOLLETTE Hugh, World Hunger and Morality, 2nd ed., Englewood Cliffs, 1996, pp: 248–267

ROSEN Lawrance, Law as Culture, An Invitation, Princeton University Press, Princeton and Oxford, 2006

ROWE Stan J.," What on Earth is Environment?", The Trumpeter 6 (4):123-126. 1989

ROWE Stan, "Ethical Ecosphere", Home Place; Essays in Ecology. 1990. NeWest Publishers Limited, Edmonton. pp. 139-143, http://www.ecospherics.net/pages/RoEthicalEcosp.html

SASSOON John, Ancient Times and Modern Problems, intellect, Bristol UK, Portland, USA, 2004

SHACAR Ayelet, The Birthplace Lottery, Citizenship and Global Inequality, Harvard University Press, 2009

SINNOTT ARMSTRONG Walter, "Consequentialism", The Stanford Encyclopedia of Philosophy (Spring 2014 Edition), Edward N. Zalta (ed.), http://plato.stanford.edu/archives/spr2014/entries/consequentialism/

SPENCER BROWN G., Laws of Form, Allen & Unwin, London, 1969

STONE Christopher, Should Trees Have Standing?, 3rd edition, Oxford University Press, 2010

STAUDENMAIER Peter, "Fascist Ecology: The "Green Wing" of the Nazi Party and Its Historical Antecedents", http://www.spunk.org/library/places/germany/sp001630/peter.html

ÖZDEK Yasemin, İnsan Hakkı Olarak Çevre Hakkı, Türkiye ve Orta Doğu Amme İdaresi Enstitüsü, Ankara, Şubat 1993

TERDIMAN Richard, Introduction to the Force of Law of Bourdieu, Hastings Law Journal University of California, Hastings College of Law, 38, 805, 1987

TERRE François, "Variation de sociologie juridique sur les biens", Archives de Philosophie du Droit, Volume 24, Les Biens et les Choses, Sirey, 1979, pp. (17-29)

TEUBNER Gunther, "How the Law Thinks: Toward a Constructivist Epistemology of Law", Law and Society Review, V. 23, n. 5, 1989, pp. 727-758

TIMSIT Gérard, Archipel de la Norme, PUF, Paris

TODD S.C., The Shape of Athenian Law, Clarendon Paperbacks, Oxford, 1993

TUNÇEL Ahu, "The Ontology of Zoon Politikon", Synthesis Philosophica, 54 (2/2012), pp. (245–255)

UEKOETTER Frank, The Green and the Brown: A History of Conservation in Nazi Germany, Cambridge, Cambridge University Press, 2006

VARAUT Jean-Marc, Le Droit au Droit, Pour une Libéralisme Institutionnel, Libre Echange, PUF, 1986

VULLIERME J. L., "La Chose, (le bien) et la Metaphysique", Archives de Philosophie du Droit, Volume 24, Les Biens et les Choses, Sirey, 1979, pp. (31-53)

WEISS E.B., "The planetary trust: conservation and Intergenerational Equity", 11 Ecology L.Q. 495-581, 1984

WESTON Corinne Comstock/ GREENBERG Renfrow Janelle, Subjects and Sovereigns, The Grand Controversy over Legal Sovereignty in Stuart England, Cambridge University Press, 1981

WISE Steven M., "Entitling Nonhuman Animals to Fundamental Legal Rights on the Basis of Practical Autonomy" in Animals, Ethics, and Trade, Earthscan, 2006

WISE Steven M., "A Great Shout – Breaking the Barriers to Legal Rights for Great Apes" in Great Apes and Humans – The Ethics of Coexistence Smithsonian Press, 2001, reprinted in Animal Law (Clare Palmer, ed. The International Library on Rights, Ashgate Publishing, forthcoming 2008), and in The Animal Ethics Reader (Susan J. Armstrong and Richard G. Boltzler, eds. Routledge 2003)

WISE Steven M., "Arguments in Favour of Basic Legal Rights for Nonhumans", Reform (Australian Law Reform Commission March, 2008

WISE Steven M., "Legal status of nonhuman animals", 8, Animal Law 1, 2002

ZIMMERMANN Michael, "Heidegger and Deep Ecology"

Online sources

The Code of Hammurabi, based on the translation of L. W. King, on 1915, public domain, http://www.general-intelligence.com/library/hr.pdf

Britannica, http://www.britannica.com/EBchecked/topic/422462/Nun

The Great Soviet Encyclopedia, 3rd Edition (1970-1979).

Dictionary of Standard Modern Greek: http://www.greek-language.gr/

La convention de Berne : http://conventions.coe.int/Treaty/fr/Treaties/Word/104.doc

Lugano Convention: http://conventions.coe.int/Treaty/en/Treaties/Html/150.htm

Le Rapport du Coppens:

http://www.ladocumentationfrancaise.fr/rapports-publics/054000294/index.shtml

La Declaration Universelle des Droits de la Terre-Mère:

http://rio20.net/fr/propuestas/declaration-universelle-des-droits-de-la-terre-mere.

La convention de Berne : http://conventions.coe.int/Treaty/fr/Treaties/Word/104.doc

http://www.nonhumanrightsproject.org/2012/08/20/why-elephants-require-legal-personhood/

Stanford Encyclopedia of Philosophy, http://plato.stanford.edu/entries/ethics-environmental/#IntChaEnvEth

Rio Conference:

http://www.unep.org/Documents.Multilingual/Default.Print.asp?DocumentID=78&ArticleID=1163

Online Guide to Ethics and Moral Philosophy :

http://caae.phil.cmu.edu/Cavalier/80130/part2/sect9.html

MILL John Stuart, Utilitarianism,1863 http://www.utilitarianism.com/

Australian Environment Protection Act: http://www.environment.gov.au/about-us/legislation

Declaration of the United Nations Conference on the Human Environment, Stockholm June 1972, http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503

http://www.abolitionistapproach.com/media/pdf/ARAA_Pamphlet_Turkish.pdf

http://www.bianet.org/bianet/hayvan-haklari/161644-linc-edilen-domuz-icin-hukuk-yok