Reframing Legal Pathways to Sustainable Transition: A European Perspective on Ecological Constitutionalism in Light of the Cauca River Case in Colombia

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Abstract

The paper explores the constitutional impact of the shift from the proprietary understanding of nature to the recognition of new legal subjectivities, especially within the context of 'new constitutionalism' and the 'Andean' perspective. The case of the Cauca River is presented as paradigmatic, as it has been recognized not only as a legal subject, but as victim of the armed conflict in Colombia. Experiences like this confirm the crucial role that can be played by innovative doctrines in the era of 'transitions' and offer insights for further legal elaborations also in the European and Italian context.

Keywords

New Andean Constitutionalism, Ecological Constitutionalism, Indigenous Rights, Biocultural Rights, Legal Subjectivity, Cauca River.

I. Introduction: 'They Repeatedly Tear the Earth', or the Environment under Proprietary Understanding

The most well-known stasimon from one of the foundational texts of Western philosophical and legal tradition owes its notoriety to a description of the greatness of human beings:

> 'There are many formidable things,
> but none more formidable than
> are human beings.
> They sail over ocean's grey wastes
> with southerly storm-winds between
> towering waves.
> And the god most primeval of all –
> undying, unwearying Earth –
> by turning the soil
> they repeatedly rake her and tear,
> as horses pull ploughs back and forth, year after year (...)'.[1]

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Thus, as early as in the 5th century BC, Sophocles' *Antigone* showed elements of what today is commonly referred to as the proprietary understanding of the relationship between human beings and natural entities.

As a characteristic feature of the Western legal tradition, this conception has been typically studied by private law scholars.[2] Gaius' division between 'persons' and 'things' (linked by a relationship of domination of the former over the latter, guaranteed by the 'action') is typically mentioned as a conceptual root.[3] The success of this approach in the Middle Ages and in the Modern Era is well known: Spanish Scholasticism in the 16th century already defined the 'legal subject' as the entity to which the 'dominion over things' belongs.[4] In later centuries, this justified the exquisitely patrimonial and anthropocentric character of the category, which allowed the right to property to become the most paradigmatic of subjective rights in modern codifications.[5] In the words of Jean-Étienne-Marie Portalis, drafter of the Napoleonic *Code Civil*, 'all laws refer to persons or to property, and to property for the use of persons'.[6]

Over the last decades, however, the proprietary understanding of the relationship between persons and things has constituted the object of several critiques: indeed, theoretical instances as well as practical experiences have challenged the basic conception of the world that we live in as a mere set of natural 'resources' to be exploited – by 'repeatedly tearing the Earth', in Sophocles' words – and have proposed alternative conceptualizations. While various approaches in legal theory have long

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[1] Sophocles, *Sophocles: Antigone and Other Tragedies* (translated by Oliver Taplin, Oxford: Oxford University Press, 2020), 26.

[2] It has been suggested that the whole modern issue of rights revolves around the legal notion of *dominium* as the proprietary relationship between 'men' and 'things'. F. Viola, 'Antropologia e diritti' *Enciclopedia di bioetica e scienza giuridica* (Napoli: Edizioni Scientifiche Italiane, 2009), 536-554.

[3] See Gaius, *Institutiones*, 168-180. On the impact of this tripartition on modern legal thought, see R. Míguez Núñez, *Le avventure del soggetto. Contributo teorico-comparativo sulle nuove forme di soggettività giuridica* (Milano-Udine: Mimesis, 2018), especially 15-19; M. Maureira Pacheco, 'La tripartición romana del derecho y su influencia en el pensamiento jurídico de la época Moderna' *Revista de estudios histórico-jurídicos*, 269-288 (2006).

[4] R. Míguez Núñez, 'Soggettività giuridica e natura. Spunti per una riflessione civilistica' *Diritto & Questioni Pubbliche*, 29, 32 (2020), citing A. Guzmán Brito, *Los orígenes de la noción de sujeto de derecho* (Bogotá: Temis, 2012), 6.

[5] See R. Míguez Núñez, n 3 above, 61-64.

[6] J.E.M. Portalis, *Discours de présentation et exposé des motifs sur le projet de Code civil devant le Corps législatif*, 1801, translated by the author. By no coincidence, an analogous reference to Gaius' *summa divisio* also appears in the German Pandectistic doctrine: 'everything that is the opposite of a person is called a thing'. See A.F.J. Thibaut, *System des Pandektenrechts* (Goldbach: Keip Verlag, 2000. 100 Jahre Bürgerliches Gesetzbuch), translated by the author.

suggested the possibility to extend the concept of rights ownership beyond the sphere of human beings,[7] more recently, relevant studies, once again in private law, have reconsidered the anthropocentric reading of legal subjectivity and tried to broaden the category to encompass non-human entities.[8] Often, these proposals have been aligned with the reconfiguration of a more complex concept of personhood.[9] Also, in many cases, doctrinal studies have been inspired by relevant developments in comparative experiences, especially those characterized by the considerable influence of indigenous communities and culture.[10]

This particular aspect has raised the interest of public law and constitutional theory: indeed, scholars have considered how such worldviews have not only inspired constitutional reforms or milestone judgments, but may have even configured 'new' forms of 'constitutionalism' within the public law tradition.[11] In particular, Latin-American experiences have been examined, characterized as they are by the incorporation of ecologically oriented paradigms at the constitutional level.[12]

This paper explores such constitutional developments, firstly by contextualizing them within the conceptual framework of 'new constitutionalism' and the 'Andean' perspective (section II). Then,

[7] For an overview, see S. Dellavalle, 'Granting Rights to Nature? Considerations on Three Different Approaches to the Question' 9 *Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper Series* (2022).

[8] See M.R. Marella, 'Antropologia del soggetto di diritto. Note sulle trasformazioni di una categoria giuridica', in F. Bilotta and F. Raimondi eds, *Il soggetto di diritto. Storia ed evoluzione di un concetto nel diritto privato* (Napoli: Jovene, 2020), 57; see also R. Míguez Núñez, n 3 above, especially 71-94.

[9] See, among others: G. Oppo, 'Declino del soggetto e ascesa della persona' *Rivista di diritto civile*, 829 (2002); S. Rodotà, 'Dal soggetto alla persona. Trasformazioni di una categoria giuridica' 21 *Filosofia politica*, 365 (2007). For a comprehensive study on the 'person' in (private) law, see P. Perlingieri, *La personalità umana nell'ordinamento giuridico* (Napoli: Edizioni Scientifiche Italiane, 1972); Id, *La persona e i suoi diritti. Problemi del diritto civile* (Napoli: Edizioni Scientifiche Italiane, 2005). On the opportunity of expanding the concept of personhood beyond the boundaries of the 'human', see T. Pietrzykowski, *Personhood Beyond Humanism. Animals, Chimeras, Autonomous Agents and the Law* (Cham: Springer, 2018), 25.

[10] For an introduction, see S. Lanni ed, *I diritti dei popoli indigeni in America Latina* (Napoli: Edizioni Scientifiche Italiane, 2011).

[11] See R. Viciano Pastor and R. Martínez Dalmau, 'Fundamentos teóricos y prácticos del nuevo constitucionalismo latinoamericano' *Gaceta Constitucional*, 307-328 (2011); R. Viciano Pastor and R. Martínez Dalmau, 'El nuevo constitucionalismo latinoamericano: fundamentos para una construcción doctrinal' *Revista General de Derecho Público Comparado*, 1-24 (2011).

[12] See, for now, M. Carducci, 'Epistemologia del Sud e costituzionalismo dell'alterità', in M. Carducci ed, *Il «nuevo constitucionalismo» andino tra alterità indigenista e ideologia ecologista. Diritto Pubblico Comparato ed Europeo*, 2, 319 (2012); S. Baldin and M. Zago ed, *Le sfide della sostenibilità. Il buen vivir andino dalla prospettiva europea* (Bologna: Filodiritto, 2014), 73; S. Lanni ed, n 10 above.

Colombia will be presented as an example of 'ecological' constitutionalism (section III) and the peculiar case of the Cauca River will be presented as paradigmatic, as it has been recognized not only as a legal subject, but as a victim of armed conflict (section IV). By comparing and pinpointing the peculiarities of such a case *vis-à-vis* other examples of 'subject rivers' in different legal systems, even beyond the 'Andean' area (section V), the study highlights the crucial role that can be played by innovative legal elaborations in the era of 'transitions' and offers insights for further legal elaborations also in the European and Italian context (section VI).

II. Beyond Anthropocentrism: 'New' and 'Andean' Perspectives in Contemporary Constitutionalism

Over the last decades, Latin American constitutional developments have become a point of interest for legal scholarship far beyond the borders of the continent, marking a shift from the earlier notion, suggested by some, that many of the experiences in the area represented examples of 'failed constitutionalism'.[13] Today, scholars emphasize the innovative and original aspects of the region's constitutional dynamics: rather than viewing them as isolated and independent, these developments are seen as part of a broader, coherent phenomenon, whose most accepted denomination is 'new constitutionalism'.

According to the authors who proposed its configuration as a theoretical and doctrinal category,[14] the Latin American 'new constitutionalism' shares some elements derived from Euro-continental scholarship, such as the emphasis on the 'constitutionalization' of contemporary legal systems,[15] but still lacks a fully developed doctrinal structure in its original aspects: it appears as a phenomenon arising mainly from popular demand and social movements, rather than from coherently organized theoretical propositions. Still, it can be considered as an emerging constitutional current, given some identifiable and fairly well-

[13] K.S. Rosenn, 'The Success of Constitutionalism in the United States and Its Failure in Latin America: An Explanation' 22 *The University of Miami Inter-American Law Review*, 1-39 (1990).

[14] See R. Viciano Pastor and R. Martínez Dalmau, 'El nuevo constitucionalismo latinoamericano', n 11 above, 4. The expression echoes the well-known, and widely debated, doctrine of 'neoconstitutionalism' (which, in the perspective of the authors, is the well-established doctrine that offered the original conceptual basis to the 'emerging' doctrine of new constitutionalism). See S. Pozzolo, 'Neoconstitucionalismo y especificidad de la interpretación constitucional' *Doxa*, II, 339-353; M. Carbonell ed, *Neoconstitucionalismo(s)* (Madrid: Trotta, 2003); D. Lascarro-Castellar and J. Mejía Turizo, 'Nuevo constitucionalismo en Latinoamérica: Perspectivas epistemológicas' *Revista de la Facultad de Derecho, Universidad de la República Uruguay*, 24-48 (2019).

[15] R. Guastini, 'La constitucionalización del ordenamiento jurídico: el caso italiano', in M. Carbonell ed, *Neoconstitucionalismo(s)*, n 14 above, 50-57.

defined features common to different countries in the region.[16]

In this sense, the characterizing traits of 'new constitutionalism' would be peculiar focus on the democratic processes in the constituent phase and the commitment to substantive democracy over formal democracy.[17] From these basic aspects spring several other elements that are common to the Latin-American experiences, both of a formal and material nature:[18] among the latter, the most interesting for our study can be identified in the promotion of the integration in the constitutional discourse of historically marginalized sectors, such as indigenous peoples and worldviews.

This peculiar issue has often been traced back to the 'Andean' component of 'new constitutionalism', a specific feature or even a version of the phenomenon which is particularly palpable in countries crossed by the Andes mountains.[19]

In the Andean perspective, the conquests of liberal constitutionalism in terms of rights and freedoms are reaffirmed, while at the same time they are put in dialogue with the ancient traditions of the ancestral Latin American cultures. In this regard, some have spoken of 'mestizo constitutionalism' to refer to the resulting, original mixture of elements, in

[16] According to some authors, the experiences that showed relevant common elements were the constitutional reforms in Brazil (1988), Costa Rica (1989), Colombia (1991), Mexico (1992), Paraguay (1992), Peru (1993), Venezuela (1999), Ecuador (1998 y 2008) and Bolivia (2009). R. Uprimny, 'Las transformaciones constitucionales recientes en América Latina: tendencias y desafíos', in C. Rodríguez Garavito ed, *El derecho en América Latina: un mapa para el pensamiento jurídico en el siglo XXI* (Buenos Aires: Siglo Veintiuno, 2011), 109. Others have criticized the homogeneity of these experiences. See P. Salazar-Ugarte, 'El nuevo constitucionalismo latinoamericano (una perspectiva crítica)', in L.R. González Pérez and D. Valadés eds, *El constitucionalismo contemporáneo. Homenaje a Jorge Carpizo* (Ciudad de México: UNAM, 2013), 345-387.

[17] R. Viciano Pastor and R. Martínez Dalmau, 'El nuevo constitucionalismo latinoamericano', n 11 above; see R. Viciano Pastor and R. Martínez Dalmau, 'La Constitución democrática, entre el neoconstitucionalismo y el nuevo constitucionalismo' *El Otro Derecho*, 63-84 (2014).

[18] The formal elements are the originality as well as the significant length of constitutional texts, their ability to combine technically complex elements with accessible language, and the commitment to a direct involvement of the people for any constitutional change; the material aspects are the provision of new forms of participation, the presence of a long bill of rights, and the promotion of the integration of historically marginalized sectors. R. Viciano Pastor and R. Martínez Dalmau, 'El nuevo constitucionalismo latinoamericano', n 11 above, 14.

[19] Indeed, the 'new Latin American constitutionalism' is frequently referred to as the 'new Andean constitutionalism'. However, a complete overlap between these two concepts may not be correct, as other cultural components within the Latin American constitutional culture can be identified different from the Andean one. In particular, a significant void can be observed in the legal scholarship as regards the 'Caribbean' constitutional culture: for a preliminary study, see only S. Wheatle, 'Constitutional Principles: Forging Caribbean Constitutionalism', in R. Albert, D. O'Brien and S. Wheatle eds, *The Oxford Handbook of Caribbean Constitutions* (Oxford: Oxford Handbooks, 2020).

which the introduction of values and principles inspired by the indigenous perspective enriches those traditionally derived from the European legal culture, ultimately reflecting the historical 'pluricultural' characteristic of the continent.[20] In some cases, these approaches even allowed for the contributions and knowledge of ancestral peoples and cultures to be considered as an actual 'source' of constitutional law.[21]

Under these premises, the 'Andean' new constitutionalism also shows another relevant feature: the particular type of constitutional combination described above is often seen as the result of a violent encounter, to be understood in the historical and cultural context of anti-colonialist claims.[22] In this sense, the Andean perspective questions the cultural foundations of legal, political and economic systems, reflecting the historical processes of struggle of the autochthonous communities against European colonial powers[23] and the 'counter-hegemonic' proposals of 'post-development'.[24]

In this perspective, it comes as no surprise that the new (Andean) constitutionalism, while granting relevant space for the recognition of the indigenous 'otherness', also tends to highlight and value particular aspects of legal protection that, using Western categories, could be called 'ecological', but that actually correspond to a different worldview, alternative to the anthropocentric vision derived from Roman law.

The alternative 'holistic' vision that emerges here impacts on several classical issues of constitutional law, fostering, for instance, the transition from the 'welfare state' (*estado del bienestar*) to the 'state of caring', in a context that not only focuses on social integration, but on the possible reformulation of the relationships between humans and the natural environment, conceptualizing the latter as a constitutionally protected subject and owner of rights.[25] In particular, the notion of 'good living'

[20] Á. Echeverri Uruburu, *Política y Constitucionalismo en Suramérica* (Bogotá: Universidad del Sinú, 2015).

[21] L.A. Fajardo Sánchez, 'El Constitucionalismo Andino y su desarrollo en las Constituciones de Bolivia, Ecuador, Perú y Venezuela' *Revista Diálogos de Saberes*, 55-75, 58 (2017). See also L.A. Fajardo Sánchez, 'Fray Antón de Montesinos: su narrativa y los derechos de los pueblos indígenas en las constituciones de Nuestra América' *Hallazgos*, 20, 217-244 (2013).

[22] B. De Sousa Santos, *Refundación del Estado en América Latina. Perspectivas desde una epistemología del sur* (Quito: Abya Yala, 2010).

[23] L.A. Fajardo Sánchez, n 21 above, 57.

[24] S. Lanni, 'Diritto e «a-crescita»: contributo contro-egemonico alla preservazione delle risorse naturali' *Diritto pubblico comparato ed europeo*, 3, 593 (2017); A. Acosta, *El Buen Vivir en el camino del post-desarrollo. Una lectura desde la Constitución de Montecristi* (Quito: Fundación Friedrich Ebert, FES-ILDIS, 2010).

[25] See S. Bagni ed, *Dallo Stato del bienestar allo Stato del buen vivir. Innovazione e tradizione nel costituzionalismo latino-americano* (Bologna: Filodiritto, 2013); J.J. Bustamante Lozano, 'La naturaleza como sujeto de derechos: reflexiones en torno al constitucionalismo andino' *Tesla Revista Científica*, 135 (2022); S. Baldin, 'I diritti della

(*buen vivir*) has been studied, in opposition to the Western concept of 'welfare' (*bienestar*): an indigenous paradigm (*sumak kawsay*) that promotes the harmonious coexistence of humans and nature, based on the 'biocentrism' of the Andean perspective.[26]

This peculiar trait of the new Andean constitutionalism, which highlights the biocentric aspect of the indigenous cultural heritage, has gained special practical relevance in some Andean countries: particularly, in Colombia, progressive judicial decisions have granted legal personhood to natural entities such as rivers and forests, reflecting an evolving interpretation that has become interestingly stronger in the context of the country's post-conflict.[27]

III. The Colombian 'Ecological' Constitution Between Indigenous Perspectives and New Legal Subjectivities

Colombia's adoption of a new Political Constitution in 1991 marked a significant change in the country's institutional structure and fundamental principles, compared to the previous constitutional text that dated back to 1886. Although it can be considered relatively old in comparison to those of other Latin American countries, the Constitution of 1991 already showed innovative features in terms of environmental protection. Besides, an even more relevant hermeneutical work has been done by the Constitutional Court which has come to interpret it as an 'ecological constitution'.

According to the Court, a triple dimension can be underlined in this regard: 'On the one hand, environmental protection is a principle that irradiates the entire legal order, since it is the State's obligation to protect the natural wealth of the Nation. On the other hand, it results in the right of all people to enjoy a healthy environment, a constitutional right that is enforceable through various judicial channels. And, finally, a set of obligations imposed on authorities and individuals derives from the ecological constitution'.[28]

This milestone judgment marked a significant change towards the progressive overcoming of what was considered to be an 'Eurocentric' and

natura: i risvolti giuridici dell'ética ambiental exigente in America Latina' *Forum di Quaderni Costituzionali* (26 June 2014).

[26] See S. Bagni ed, n 25 above; R. Perona and A. Zavatteri, 'Il "buen vivir": note sul recepimento di un principio innovatore nell'ordinamento colombiano' *Osservatorio Costituzionale AIC*, 3, 373 (2018); L.A. Fajardo Sánchez, n 21 above.

[27] See R. Perona, M. Caro and M. Bin, 'La subjetividad jurídica de la naturaleza en el nuevo constitucionalismo andino: los casos de Ecuador, Bolivia y Colombia' *Revista Saber, Ciencia y Libertad*, 1, 126-141 (2023), also for an account of two other relevant experiences: Ecuador and Bolivia.

[28] Corte Constitucional de Colombia 25 September 2017 no T-760, available at www.corteconstitucional.gov.co, translation by the author.

'anthropocentric' original perspective of the constitution,[29] in favour of the adoption of a more holistic approach integrating human beings with their environment. The subsequent case law of the Constitutional Court completed this perspective by connecting the 'ecological' perspective with the protection of the indigenous communities, whose relevance within Colombian legality is particularly significant.

In this regard, the Constitution explicitly recognizes the ethnic and cultural diversity of the Colombian nation (Art 7) and guarantees the protection of the linguistic (Art 10) and educative (Art 68) diversity of indigenous peoples. Art 246 goes as far as to recognize the right of the communities to exercise special jurisdiction under some circumstances.[30] Furthermore, Art 329 recognizes the constitutional status of 'indigenous territorial entities' and acknowledges the right of indigenous peoples to their ancestral lands, ensuring the legal recognition and protection of these territories. In addition, any legislation affecting indigenous territories or rights must be consulted with the communities involved, in accordance with the principle of free, prior, and informed consent (see, among others, Art 330). These provisions are crucial for the preservation of the indigenous way of life, as land is intrinsically linked to their cultural and spiritual practices.

On one hand, this explains how the Constitutional Court was able to conceptually connect the 'ecological' vocation mentioned above to the preservation of the indigenous worldview. On the other, it is interesting to note the legal technicality used by the Court to that effect, which involved the construction of a new legal concept: 'biocultural rights'.

In the words of the Court: 'The so-called biocultural rights, in their simplest definition, refer to the rights that ethnic communities have to administer and exercise autonomous guardianship over their territories – in accordance with their own laws and customs – and the natural resources that make up their habitat, where their culture, traditions and way of life are developed based on the special relationship they have with the environment and biodiversity. Indeed, these rights result from the recognition of the profound and intrinsic connection that exists between nature, its resources and the culture of the ethnic and indigenous communities that inhabit them, which are interdependent and cannot be

[29] L. Estupiñán, L. Parra and M. Rosso, 'La Pachamama o la naturaleza como sujeto de derechos. Asimetrías en el Constitucionalismo del "buen vivir" de América Latina' *Revista Saber, Ciencia y Libertad*, 42, 49 (2022).

[30] For an introduction on these topics, see F. Semper, 'Los derechos de los pueblos indígenas de Colombia en la jurisprudencia de la Corte Constitucional', in *Anuario de Derecho Constitucional Latinoamericano* (Uruguay: Konrad-Adenauer-Stiftung, 2006), II, 761-778; Esther Sánchez Botero, *La jurisdicción especial indígena en Colombia* (Bogotá: IEMP, 2007).

understood in isolation'.[31]

This definition, a landmark within Colombian constitutional legality, was given by the Court in a case that was brought by several indigenous and Afro-Colombian communities from the Atrato River basin in the Chocó region. These communities argued that their fundamental rights to life, health, water, food security, a healthy environment, and their cultural rights were being violated due to severe environmental degradation caused by illegal gold mining. The mining activities led to mercury contamination, deforestation, and significant damage to the river ecosystem, profoundly affecting the communities' way of life and survival. The Court's decision, grounded in the concept of biocultural rights, recognized the Atrato River as a legal subject entitled to its own rights and ordered the Colombian government to take urgent measures to protect and restore the river, as well as to guarantee the rights of the communities that depend on it for their subsistence and culture.

No natural entity such as a river had been declared a legal subject before in Colombia. Thus, this ruling opened an evolving line of interpretation for Colombian judges: in subsequent years, several other rivers were declared subjects of law;[32] in 2018, the Supreme Court of Justice declared the Amazon forest a legal subject;[33] and once it started functioning in 2017, the JEP, the Special Jurisdiction of Peace, also began to adopt highly relevant decisions.[34]

IV. The Case of the Cauca River, Legal Subject and Victim of the Conflict

The case of the Cauca River was decided on 11 July 2023 in Colombia by a particular judicial body: the Chamber for the Recognition of Truth, Responsibility and the Determination of Facts and Conduct (*Sala de*

[31] Corte Constitucional de Colombia 10 November 2016 no T-622, available at www.corteconstitucional.gov.co, translation by the author.

[32] La Plata River (Juzgado Único Civil Municipal de La Plata 19 March 2019 no 00114, available at harmonywithnatureun.org); Magdalena River (Juzgado Primero Penal del Circuito con Funciones de Conocimiento de Neiva 24 October 2019 no 071, available at harmonywithnatureun.org); Quindío River (Tribunal Administrativo del Quindío 5 December 2019 no 030-002, available at harmonywithnatureun.org); Otún River (Juzgado Cuarto de Ejecución de Penas de Pereira 11 September 2019 no 036, available at harmonywithnatureun.org); Pance River (Juzgado Tercero de Ejecución de Penas y Medidas de Seguridad de Cali 12 July 2019 no 31, available at harmonywithnatureun.org).

[33] Corte Suprema de Justicia 5 April 2018 no STC4360, available at cortesuprema.gov.co.

[34] On the deep connection between the ecological perspective and the developments of transitional justice in Colombia, see R. Perona and A. Zavatteri, 'Il "buen vivir"', n 26 above, 373-392.

Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, SRVR), which functions within the framework of the Special Jurisdiction for Peace (*Jurisdicción Especial para la Paz*, JEP).

The latter is an extraordinary judicial system established in the country after the signing of the Peace Agreement between the national government and the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia*, FARC) in 2016.[35] Within the framework of the complex mechanisms of Colombian transitional justice, the JEP has the power to open macro-cases to investigate and judge large-scale and complex crimes committed during the civil armed conflict. These macro-cases refer to specific situations involving multiple victims, perpetrators and contexts, and can cover a wide range of crimes, from enforced disappearances and extrajudicial executions to abductions and sexual violence. The opening of a macro-case by the JEP not only seeks to clarify the truth about the crimes committed during the armed conflict, but also to contribute to reconciliation and the construction of lasting peace in Colombia.[36]

Currently, the JEP has 11 macro-cases open. Case 05 is one of these: it aims to prioritize the situation of a territory, specifically the north of Cauca and the south of Valle del Cauca. It is a macro case with the largest number of victims, amounting to more than 200,000, gathered in 129 collective subjects that bring together 45 indigenous peoples, 67 community councils and 8 victim organizations.[37]

Within the preliminary rulings adopted by the SRVR during the proceeding of this case, Auto 226 of 2023 has drawn particular attention.[38]

[35] The Agreement entered into force on 30 November 2016 and marked the formal conclusion of the civil conflict in Colombia and the beginning of an historical and political phase known as 'post-conflict'. The adoption of the Agreement was made possible by specific constitutional provisions, and its implementation saw the creation of several special institutions. For an overview, see R. Perona, D.E. Florez Muñoz and F. Luna Salas, 'Peace through Justice, Truth, Reparation and Non-Repetition: Normative and Judicial Developments of the Special Legal Framework of Transitional Justice in Colombia' 23 *Global Jurist*, 2, 207-236 (2023); F.A. Díaz Pabón, *Truth, Justice and Reconciliation in Colombia: Transitioning from Violence* (London: Routledge, 2018); L. Ferrajoli, 'La giustizia penale transizionale nella Colombia del dopo conflitto e le garanzie della pace interna' *Democrazia e Diritto*, 169-188 (2016).

[36] The opening of a macro-case by the JEP involves a thorough process of investigation, evidence gathering, and analysis of available information. Generally, this process is initiated based on complaints or reports that reveal the existence of systematic patterns of human rights violations or crimes against humanity. Once the JEP determines that there are sufficient elements to open a macro-case, a team of investigators and prosecutors is appointed to collect testimonies, documents, physical evidence and any other element that may be relevant to the case.

[37] See the details of the case on the official website of the JEP: www.jep.gov.co.

[38] Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, Auto 11 July 2023 no 226, available at relatoria.jep.gov.co.

The decision arose because of the petition made in 2019 by the Community Councils 'Cuenca del Río Cauca and Microcuenca de los Ríos Teta y Mazamorrero' and 'Cuenca Río Timba-Marilópez', which requested to be recognized as victims and extended this request to include the Cauca River. They submitted detailed reports showing that between the years 2000 and 2004 systematic conduct was allowed by public authorities and carried out by paramilitary groups that involved murdering individuals and throwing them into the Cauca River to prevent them from ever being found.

According to the communities, this caused 'degradation' of the river, and entitle it, together with the communities, to a right of reparation. In this perspective, the river had suffered direct damage and therefore was to be considered a victim.

Relevantly, the SRVR directly quoted the words of the petitioners in the judgment: 'The position of our communities [...] is that as a legal entity subject to rights that could be harmed, nature itself, and in this case, the Cauca River, can become a victim of actions or omissions that harm its rights. Additionally, humans may see their rights damaged as a consequence'.[39]

Furthermore: 'As part of our participation in the Integral System for Peace, our Council carried out a process of constructing community narratives surrounding the serious crimes committed by armed groups during the war, as well as the impacts generated by such actions. In these exercises, we not only identified individual and collective victims resulting from the criminal actions of legal and illegal armed groups, but also reflected on the damages inflicted upon the Cauca River [...]. It was argued that the river, like our Community Council, had become another victim of the armed conflict'.[40]

The local communities informed the Court of a significant initiative of theirs regarding the restoration to be given to the Cauca River, highlighting the profound ancestral meaning of their relationship with it. This aspect is once again quoted by the Court in the ruling: 'Seeking to restore the relationship between the community and the Cauca River, on 15 February 2019, we conducted an act of reconciliation with the Cauca River as an ethnic-cultural initiative to reclaim the bonds of harmony, spirituality, and shared development that unite human and non-human ecosystems after years of conflict. During this time, the river transitioned from being a source of life to a space of pain and mourning'.[41]

The recognition of the link between the indigenous worldview and environmental protection could not be more explicit. Besides, most

[39] ibid 2, translation by the author.
[40] ibid 5, translation by the author.
[41] ibid 5, translation by the author.

relevantly, the SRVR endorsed this perspective, accrediting the Cauca River as a victim.

A detailed legal analysis is carried out in the ruling in this regard. Firstly, the Court accepted the legitimization of the community councils to express the violation suffered by the environment and associated natural and cultural assets.[42] Then, the SRVR considered the evidence presented to support the river's victim status and provided an extensive description of the events, highlighting that between 2000 and 2004 the Cauca River became a mass grave with thousands of corpses, severely affecting both the river ecosystem and the cultural relationship of the communities with their natural environment.[43]

The decision was based on an analysis of international documents regarding environmental protection. Reference was made to the Advisory Opinion OC-23/17 of the Inter-American Court of Human Rights on state obligations regarding the environment.[44] The ruling also underlined that the Final Agreement incorporates environmental protection as one of its fundamental pillars and addressed the repercussions of legal and illegal mining activities and illicit crops in Northern Cauca, highlighting how these factors have damaged the environment and altered traditional relationships with the river. In addition, a previous decision of the Superior Court of Medellín was cited that highlighted the importance of protecting the Cauca River for its ecological and cultural value and as an essential water resource for the communities.[45]

Based on these arguments, the Court finally ruled as follows: 'First: Recognize the "Cauca River" as a subject of rights. Second: Accredit the "Cauca River" as a victim in Case 05'. This was an unprecedented decision that endorsed the claim of the petitioners and its conceptual background.

V. Other 'Subject Rivers' in a Comparative Context and the Specificity of the Colombian Case in the Era of 'Transitions'

The Cauca was not the first river to be declared a legal subject, nor is it the most well-known. Several other experiences can be found in the comparative scenario, even beyond the 'Andean' context, often linked to the protection of the indigenous worldview.[46]

[42] ibid 36-40.
[43] ibid 40-60.
[44] ibid 31.
[45] ibid 20.
[46] The short overview that follows only considers cases in which rivers have been declared legal subjects. A wider analysis should study and compare all the other cases in which other natural entities have been granted rights. See, for instance, Bagni, 'The Rights of Nature in Colombian and Indian Case-law' *Revista Análisis Jurídico-Político*, 4, 99-

In New Zealand, in 2010, the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act was passed, aiming to address the human-induced damage to the river. Acknowledging the spiritual bond with the river of the Iwi community, the act created a co-governance body comprised of members appointed by the Waikato River Clean-Up Trust, Iwi representatives, and the national government.[47] In 2012, the Ngāti Manawa Claims Settlement Act acknowledged the Ngāti Manawa's connection to the Rangitaiki and Wheao Rivers and their tributaries which are regarded as taonga and tipuna with their own mauri (life force).[48] In 2017, the Te Awa Tupua Act was passed, which declared the Whanganui River a legal person with fundamental rights. The Act's stated purpose is 'to record the acknowledgements and apology given by the Crown to Whanganui Iwi in Ruruku Whakatupua-Te Mana o Te Iwi o Whanganui' (Art 3) and to 'recognise, respect, and protect the special relationship of the iwi and hapū of Whanganui with the Whanganui River' (Art 69, para 8).[49] In 2019, another act was passed in New Zealand, the Ngāti Rangi Claims Settlement Act. The Ngāti Rangi are one of four Whanganui large natural groups, whose area of interest includes Ohakune and Waiouru, and borders Raetihi. The act declared Te Waiū-o-Te-Ika, a Whangaehu River catchment, as a 'living and indivisible whole from Te Wai ā-moe to the sea, comprising physical (including mineral) and metaphysical elements, giving life and healing to its surroundings and communities' (Art 107).[50]

In Australia, in 2017, the Yarra River Protection Act was adopted, recognizing the Yarra River as a living legal entity. This legislation includes the Wurundjeri people in the river's management and is notably the first Australian law to be co-titled in a traditional language.[51]

In India, on 20 March 2017, the High Court of Uttarakhand ruled that the Ganga and Yamuna rivers were at risk of disappearing and consequently declared them legal entities with rights. The Court designated two high-ranking state officials as legal guardians of these rivers to represent and protect their rights.[52]

In Ecuador, in 2021, the Constitutional Court found that the Ministry of Water had violated the rights of the Aquepi River by excessively allocating water from it. It recognized the Aquepi River as a subject entitled to rights under nature, affirming its right to have its structure and flow

124 (2022).

[47] Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, 7 May 2010.

[48] Ngāti Manawa Claims Settlement Act 2012, 5 April 2012.

[49] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, 20 March 2017.

[50] Ngāti Rangi Claims Settlement Act 2019, 31 July 2019.

[51] Yarra River Protection (Wilip-gin Birrarung murron) Act no 49 of 2017.

[52] *Mohd. Salim* v *State of Uttarakhand and others* [2017] High Court of Uttarakhand 126/2014, [2017] SCC OnLine Utt 367. The decision was later overturned by the Supreme Court: *State of Uttarakhand* v *Mohd. Salim* [2017] India Supreme Court 016879/2017.

respected.[53] On 5 July 2024, a Court in Quito declared the Machángara River, flowing through the city, as a legal subject. The case was brought as a Protection Action by the Kitu Karu indigenous people to address the severe pollution affecting the river.[54]

In 2019, a municipal ordinance from Orurillo in the province of Melgar, Puno region, Peru, recognized Madre Agua – Yaku-Unu Mama as a subject of rights. This designation includes subterranean aqueducts, springs, rivers, ponds, and lakes. The ordinance based its arguments on the indigenous Quechua worldview.[55] In the same year, another municipal ordinance, from Melgar, Arequipa, Peru, recognized the Llallimayo River as a subject of rights.[56] In 2024, the Superior Court of Justice of Loreto, Peru, ruled in favour of recognizing the Marañón River, a crucial tributary in Peruvian territory, as an entity with inherent rights, including the rights to exist, flow, and remain free from contamination. The ruling also designated the Kukama people (that brought the case) as representatives, guardians, and defenders of the Marañón and its tributaries.[57]

These experiences reveal how the recognition of rivers as subjects has become a common feature in several legal traditions, through various means (legislative measures, case-law developments, etc). Despite the profound differences between these systems, a common element can be identified: the link between such recognition and the protection of the indigenous worldview, which makes the former more frequent in countries where the latter has greater influence.

The case of the Cauca River aligns with this trend, but it also presents an unprecedented peculiarity: indeed, no river had been declared 'victim' of a conflict before. This highlights a deep connection between Colombia's 'ecological' constitutionalism and the developments of transitional justice within that system.

Although these two aspects might seem unrelated in theory, their practical convergence underscores that, in contemporary legal systems, no 'transition' occurs in isolation. On the contrary, if today's law is increasingly becoming a 'law of transitions',[58] it is clear that all the main

[53] Corte Constitucional del Ecuador 15 December 2021 no 1185-20-JP/21.

[54] Tribunal de Garantías Penales de Pichincha 5 July 2024, news available at www.garn.org.

[55] Municipalidad Distrital de Orurillo, Ordenanza Municipal 26 December 2019 no 006.

[56] Municipalidad Provincial de Melgar, Ordenanza Municipal 23 September 2019 no 018.

[57] Corte Suprema de Justicia de Loreto 19 March 2024, news available at www.garn.org.

[58] For a preliminary work, see R. Buchanan and P. Zumbansen eds, *Law in Transition: Human Rights, Development and Transitional Justice* (London: Hart Publishing, 2014); see also L. Ruggeri, 'Which Law for Transition? The Market and the

aspects of these changes – ecological, energy-related, technological, digital and constitutional – are intertwined. This conclusion holds significant relevance also for countries not currently undergoing a process of transitional justice: it suggests that understanding the interconnected nature of various transitions can provide valuable insights into addressing complex legal and societal challenges.

VI. Interest and Insights *vis-à-vis* European and Italian Legal Theory and Practice

The latter observation raises the issue of the interest of the experiences presented here for other legal contexts, as the discourse surrounding the 'rights of nature' – and their interrelation with the rights of the 'communities' – is gaining increasing relevance in European and Italian debates as well.[59] In this perspective, theoretical and doctrinal issues merit some exploration, as do some normative features as well as technical and procedural aspects.

From the theoretical standpoint, European and Italian scholarship that has studied the 'Andean' developments and their relevance for the old continent tends to challenge the assumption that those experiences really constitute a paradigmatic shift as they claim.[60] According to this view, the normative and judicial declarations of the 'rights of nature' would elude the conceptually fundamental issue of the definition of 'nature'.[61] This leads to

Person in a Prism of Sustainability', in L. Ruggeri and K. Zabrodina eds, *Making Production and Consumption Sustainable: A Global Challenge for Legislative Policies* (Vienna: SGEM, 2023), 35-64; on constitutional transitions, see F. Biagi, *European Constitutional Courts and Transitions to Democracy* (Cambridge: Cambridge University Press, 2019).

[59] In the European context, see H. Schoukens, 'Should Trees Have Standing also in the European Union?' *Journal for European Environmental & Planning Law*, 15(3-4), 273-274 (2018); K. Hovden, 'The Best Is Not Good Enough: Ecological (Il)literacy and the Rights of Nature in the European Union' ibid, 281-308; H. Schoukens, 'Granting Legal Personhood to Nature in the European Union: Contemplating a Legal (R)evolution to Avoid an Ecological Collapse (Part 1)' ibid, 309. In the Italian context, for an overview, see M. Carducci, 'Natura (diritti della)' *Digesto delle discipline pubblicistiche* (Torino: UTET, 2017), VII supplement; see also, among others, F.G. Cuturi ed, *La Natura come soggetto di diritti. Prospettive antropologiche e giuridiche a confronto* (Firenze: Editpress, 2020); A. Pisanò, *Diritti de-umanizzati. Animali, ambiente, generazioni future, specie umana* (Milano: Giuffrè, 2012); in the private law perspective, see R. Míguez Núñez, n 3 above; U. Mattei and A. Quarta, *Punto di svolta. Ecologia, tecnologia e diritto privato. Dal capitale ai beni comuni* (Sansepolcro: Aboca, 2018).

[60] M. Carducci, 'La solitudine dei formanti di fronte alla natura e le difficoltà del costituzionalismo "ecologico"' *DPCE Online*, 23(2), 205-219, 216 (2023).

[61] ibid. On this issue, see F. Ducarme and D. Couvet, 'What Does "Nature" Mean?' *Palgrave Communications*, 6, 14 (2020). Definitory issues are typical in the field of environmental rights. See C. Dazzi and G.L. Papa, 'A New Definition of Soil to Promote

contradictory provisions and even 'ruptures' in the Andean constitutional texts, which reflects how recognition of those rights would follow political revindications and anthropological perspectives rather than scientific evidence.[62] The example of 'rivers' is specifically mentioned in this literature, arguing that their recognition as 'entities' presupposes, depending on the context, different conceptions of nature and, thus, enables diverse forms of environmental protection with correspondingly different concrete effects.[63]

In the normative perspective, these theoretical doubts translate, *de iure condendo*, into the cautious conclusions of the documents commissioned by the European institutions to discuss the possibility of including the legal subjectivity of nature in EU law. Indeed, while the study *Towards an EU Charter of the Fundamental Rights of Nature* was prepared for the European Economic and Social Committee,[64] another study, commissioned by the Policy Department for Citizens' Rights and Constitutional Affairs of the European Parliament, concluded that the recognition of rights of nature (RoN) does not entail 'a shift of paradigm in law', as '[w]hen deconstructing the RoN concept, no radical new instruments come to light compared with what we have today'.[65]

De iure condito, this explains why, so far, these rights have not been recognized in EU law, nor in the domestic law of most Member States. The Italian example is paradigmatic: while the constitutional amendment of Art 9 in 2022 was due to 'the pressure to develop a reaction against the degradation of the environment',[66] it did not include any reference to the rights of nature.[67]

Soil Awareness, Sustainability, Security and Governance' 10(1) *International Soil and Water Conservation Research*, 99-108 (2022).

[62] M. Carducci, n 60 above, with a reference to A.C. Wolkmer, M.d.F.S Wolkmer and D. Ferrazzo, 'Derechos de la Naturaleza: para un paradigma político y constitucional desde la América Latina', in L. Estupiñán Achury, C. Storini, R. Martínez Dalmau and F.A. De Carvalho Dantas eds, *La naturaleza como sujeto de derechos en el constitucionalismo democrático* (Bogotá: Universidad Libre, 2019), 71-108.

[63] M. Carducci, n 60 above, 226.

[64] M. Carducci et al, *Towards an EU Charter of the Fundamental Rights of Nature* (Brussels: European Union, 2021).

[65] J. Darpö, *Can Nature Get It Right? A Study on Rights of Nature in the European Context* (Brussels: European Union, 2021).

[66] D. Di Micco and M. Graziadei, 'The Italian Way to the Rights of Nature', in M. Graziadei and M. Torsello eds, *Italian National Reports to the XXIst International Congress of Comparative Law – Asunción 2022* (Napoli: Edizioni Scientifiche Italiane, 2022), 79-100.

[67] As known, the constitutional amendment (legge costituzionale 11 February 2022 no 1) introduced the protection of 'the environment, biodiversity and ecosystems, also in the interests of future generations' and established that 'State law governs the ways and forms of protection of animals'. The reform was complemented by the addition of references to the protection of the environment in Art 41.

This is then replicated at the practical level of judicial decisions and in the technical perspective of litigation. In this regard, Italian judges show special caution. Indeed, not only has no recognition of legal subjectivity of natural entities occurred in the country but no positive decisions have been taken in situations where other similar European experiences already opened the way. The recent ruling in the *Last Judgment* case (*Giudizio Universale*) – if compared with the *Urgenda* case in the Netherlands – is a paradigmatic example: while dismissing the case for procedural reasons (lack of jurisdiction), the Court observed that 'decisions regarding the methods and timing of managing the phenomenon of anthropogenic climate change [...] fall within the sphere of competence of political bodies'.[68]

Evidently, the 'Italian approach' tends to distrust any risk of transcendence of judicial adjudication in the sphere of political choices.[69] This clearly echoes the theoretical postures mentioned above and marks a clear difference from the Andean and Colombian experiences (the rights of nature are not formally recognized in the Colombian constitution either, but this did not prevent creative interpretations in that context).

And yet alternative postures have been proposed in the literature. Some private law scholars in particular have proposed that certain natural areas may be considered already 'recognized as legal persons to protect their integrity' under current Italian law.[70] The case of national parks is referenced, as '[i]t is very difficult to distinguish the institution of a park

[68] Tribunale di Roma 26 February 2024 no 35542, available at www.giudiziouniversale.eu, translation by the author. On the case, see C.V. Giabardo, 'Qualche annotazione comparata sulla pronuncia di inammissibilità per difetto assoluto di giurisdizione nel primo caso di Climate Change Litigation in Italia' *www.giustiziainsieme.it*, 29 April 2024; L. Saltalamacchia, 'Giudizio Universale: Insights from a Pending Leading Case', in E. D'Alessandro and D. Castagno eds, *Reports & Essays on Climate Change Litigation* (Torino: Università degli Studi di Torino, 2024), 15-22. On the other hand, in the *Urgenda* case (The Hague District Court 24 June 2015 no 200.125.177/01, *Urgenda Foundation* v *The State of the Netherlands*, available at www.rechtspraak.nl; The Hague Court of Appeals 9 October 2018 no 200.178.245/01, *Urgenda Foundation* v *The State of the Netherlands*, available at www.rechtspraak.nl; Supreme Court of the Netherlands 20 December 2019 no 19/00135, *The State of the Netherlands* v *Urgenda Foundation*, available at www.rechtspraak.nl), the argument of 'future generations' was considered valid. See M. Wewerinke-Singh and A. McCoach, 'The State of the Netherlands v Urgenda Foundation: Distilling Best Practice and Lessons Learnt for Future Rights-Based Climate Litigation' 30 *Review of European, Comparative & International Environmental Law*, 275-283 (2021); R. Perona, J. Quintero-Lyons and F. Luna Salas, 'The Urgenda Climate Case: Reexamining Its Legal Rationale, Debates, and Implications Four Years Later' 19 *Saber, Ciencia y Libertad*, 1, 117-139 (2024).

[69] Which was an issue in the *Urgenda* case as well. See L. Bergkamp, 'A Dutch Court's 'Revolutionary' Climate Policy Judgment: The Perversion of Judicial Power, the State's Duties of Care, and Science' 12 *Journal for European Environmental & Planning Law*, 3-4, 241-263 (2015).

[70] D. Di Micco and M. Graziadei, n 66 above, 85.

over a certain territory from the environmental personhood now enjoyed by several natural entities across the world', like, once again, rivers.[71] Legge no 168/2017 is also mentioned, which 'recognizes for the first time [...] that certain original communities have normative primary powers concerning the management of the natural, economic and cultural heritage whose territorial basis consists of the collective property of certain lands'.[72]

The issue of collective property and the commons does not lack doctrinal elaboration in Europe and Italy.[73] Besides its inherent complexity, in the Italian debate this topic has been intertwined with proposed re-interpretations of pre-existing legal concepts, such as the '*usi civici*', or more recent normative provisions, such as those of the Code of Cultural Heritage and Landscape (decreto legislativo 22 January 2004 no 42).[74] Some literature goes as far as to suggest a general reframing of the concepts of property (or even contracts), challenging a purely economic understanding of the expression.[75]

Clearly, there is a profound difference between legal techniques focusing on 'non-individual' approaches to property or other rights, like the ones just mentioned, and those 'subjectivizing' legal entities, already common in the Latin American experiences described above. However, in both cases, some fading of the traditional dichotomy between 'persons' and 'things' can be observed, challenging the understanding of nature solely as

[71] ibid, with a reference to the Whanganui River in New Zealand.

[72] ibid, with a reference to legge 20 November 2017 no 168.

[73] For an overview, see M. Cornu, F. Orsi and J. Rochfeld eds, *Dictionnaire des biens communs* (París: PUF, 2nd ed, 2021). In the Italian context, see M.R. Marella ed, *Oltre il pubblico e il privato. Per un diritto dei beni comuni* (Verona: Ombre corte, 2012); S. Rodotà, 'Beni comuni. Una strategia globale contro lo human divide', ibid, 311-332. U. Mattei, *Beni comuni. Un manifesto* (Roma-Bari: Laterza, 2011); U. Mattei and A. Quarta, n 59 above; R. Míguez Núñez, 'Tres agitaciones (de)constructivas de los bienes comunes' 14 *Oñati Socio-Legal Series*, 2, 348-363 (2024). For a general contextualization within the theory of goods, see P. Grossi, 'Beni: itinerari fra "moderno" e "pos-moderno"' *Rivista trimestrale di diritto e procedura civile*, 4, 1059-1085 (2012); E. Capobianco, G. Perlingieri and M. D'Ambrosio eds, *Circolazione e teoria dei beni. Incontro di Studi dell'ADP, Lecce 21-22 marzo 2019* (Napoli: Edizioni Scientifiche Italiane, 2021).

[74] G. Garzia, *Difesa del suolo e vincoli di tutela. Attività amministrativa di accertamento e di ponderazione* (Milano: Giuffrè, 2003); C.A. Graziani, 'Terra e proprietà ambientale', in A. Donati, A. Garilli, S. Mazzarese and A. Sassi eds, *Diritto privato. Studi in onore di A. Palazzo* (Milano-Torino: UTET, 2009), III, 357. M. Renna, 'Vincoli alla proprietà e diritto dell'ambiente' *Il diritto dell'economia*, 4, 715-755 (2005); P. Grossi, *Il mondo delle terre collettive: itinerari giuridici tra ieri e domani* (Macerata: Quodlibet, 2019).

[75] S. Persia, 'Proprietà e contratto nel paradigma del diritto civile "sostenibile"' *Rivista quadrimestrale di diritto dell'ambiente*, 1, 4-20 (2018); M. Pennasilico ed, *Contratto e ambiente. L'analisi «ecologica» del diritto contrattuale* (Napoli: Edizioni Scientifiche Italiane, 2013); P. Perlingieri, 'Persona, ambiente e sviluppo', ibid, 321; R. Míguez Núñez, 'Beni a valore non prettamente economico: rilievi privatistici per un diritto "relazionale"' *Rassegna di diritto civile*, 431-444 (2023).

a resource for exploitation and suggesting new 'relational' views focusing on the holistic *continuum* between humans and the environment.[76]

Reference to the indigenous worldview found in the Andean and Colombian experiences regarding these developments is, then, particularly interesting: indeed, in that perspective, the two issues (the non-individual understanding of rights and the subjectivity of natural entities) are seen as inseparable. From a comparative standpoint, such an observation may stimulate deeper research and doctrinal elaborations to overcome the current conceptual shortcomings of the ecological constitutionalism mentioned above, as well as to foster potentially less cautious postures within the European context.

VII. For a Concluding Remark: 'Those Who Honour the Law', or the Responsibility of Today's Legal Scholarship

This leads to one last remark. Indeed, as mentioned above, the experiences of 'new constitutionalism' are considered today as fascinating possibilities to overcome Western categories, offered by cultural and legal systems over which those categories were frequently imposed in the past, disregarding their peculiarities. In this sense, the case of the Cauca River, 'subject' and also 'victim', goes even beyond other examples from the continent and above. This may invite other 'traditional' legal systems to reconsider their conceptualizations, in search of new horizons that offer innovative solutions to epochal challenges like that of sustainability, as confirmed by the growing interest in these new realities in legal scholarship.

However, this interest cannot lead to premature conclusions. On one hand, it would not be wise to advocate for a complete dismissal of classical categories, even while recognizing their current deficits. It would also be incongruous to suggest that Western legal systems could simply adopt these emerging perspectives, as a direct transplant could result in an equally contradictory and decontextualized operation as the one that led to the use of purely Western categories in those cultural contexts.

Instead, what might be appropriate is a re-evaluation and reframing of classical legal categories and principles within the Western tradition, in light of these comparative experiences. In this regard, the mentioned examples may actually be of great inspiration, not only, and perhaps not necessarily, for their conclusions, but for a methodological approach that

[76] See U. Mattei, n 73 above, 54, 62; R. Míguez Núñez, 'Né persone né cose: lineamenti decostruttivi per un rinnovamento concettuale della «summa divisio»' *Rivista critica del diritto privato*, 39, 359-388 (2021); R. Míguez Núñez, 'Beni a valore non prettamente economico', n 75 above.

recognizes and restores the central role of the law.

Indeed, confident in the strength of its refined legal tradition, the Western context appears sometimes reluctant to seek alternative legal solutions, deferring all responsibilities to the realm of political decisions, as seen above. Instead, what the experiences addressed here may suggest to Western legal thinking is the possibility to recuperate the 'role of the law', whose most ancient vocation lies precisely at the crossroads between purely philosophical speculation and mere technical governance, ie, in the construction and constant adaptation of conceptual elaborations, capable of addressing ever-changing social problems while preserving overarching principles.

Here lies the greatest challenge for today's and tomorrow's law, and one of the most delicate responsibilities of legal academia. Facing the most compelling issues of contemporary times, legal theoretical speculation and practical doctrines are invited to rethink and reframe their categories to preserve their efficacy.

After all, even Sophocles, while celebrating the exceptionality of humans, already acknowledged the limits of their action and the importance of the law in that regard:

'from death there's no release [...].
Humans turn their clever aptitude
sometimes to bad, and sometimes to good.
Those who honour the law,
revering the gods, raise their country secure:
yet there's no country for those veering off into ways of error through arrogance'.[77]

[77] Sophocles, n 1 above, 27.