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Legal anthropocentrism between nature and technology: the new vulnerability of human beings.

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Abstract

Reflection on the possible reform of the Italian Civil Code requires an analysis of the evolution of the relationship between subject and object of law in the legal systems of the Western area. From this perspective, we note the thrusts toward a recognition of legal subjectivity to nature, animals, but especially to devices endowed with AI. At the same time, on another side, strong tendencies toward objectification/reification of human beings (and animals) emerge, from their origin to the different stages of their development. Anthropocentrism implodes, heading toward a transhumanist drift that only an inclusive humanistic vision of every living being could stem.

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Keywords: subject of rights; object of rights; anthropocentrism; legal personality/ subjectivity; animals/plants; robots; civil code; novellation; technology; human beings; objectivity /reification; vulnerability; limit; humanism.

Summary: Introduction: The CODEX project and the prospects for the novellation of civil codes in Europe. – 1. Dichotomy between subject and object of law in the current code. – 1.1. Expansion of the categories of subject and object of right in opposite directions. – 2. Nature and natural goods: attribution of legal subjectivity and rights by public and private entities. – 2.1. A critique of the movement for the 'subjectification' of natural goods. – 3. Animals: failure to attribute legal subjectivity and enhancement of the status of object of rights. – 4. Robots: attribution of legal subjectivity and citizenship. – 5. Expansion of the legal objectivity of human (embryos) or human-related entities (synthetic embryos) as well as living entities, plant or animal. – Conclusion: Implosion of legal anthropocentrism and the sense of limitation.

Introduction: The CODEX project and the prospects for the novellation of civil codes in Europe.

The following reflections were expressed years ago at an important discussion of the academic community organized by Ugo Mattei at the University of Turin. For various and inexcusable reasons, they did not see the light of day, but the elapsed time does not seem to have erased their relevance, which - probably - has even increased due to further technological developments. The event from which this contribution draws is part of the broader cultural movement on the revision of the Civil Code.[1]

During the days of debate and discussion, and on the strength of Ugo Mattei's solicitation, different positions emerged from those already existing in the Italian academic world on the possible revisions of the Civil Code. Conceptions similar to those that have inspired the novellation of civil codes in other countries, such as Germany and, more recently, France, no longer appeared current. Instead, in Turin, the way has been opened to ideological reflection that can lead to a real change in the value paradigms underlying positive law choices.

If the theoretical, conceptual and categorical premises formulated during the

[1] It alludes to CODEX Conference - Ideologies and Techniques of the (re)codification of Private Law, 15-17 March 2018, carried out as part of 'Legacy,' i.e., the framework of study dedicated to the memory of Stefano Rodotà, organized by the International University College (of which Rodotà was president from 2008 to 2014) and the Collegio Carlo Alberto at the new headquarters of the University of Turin, under the supervision of prof. Ugo Mattei. Codex will be followed by Civitas, an in-depth study dedicated to the city between social public goods and common goods, according to the well-known taxonomy of the Rodotà Commission. See the Conference brochure to the link: https://www.dirittieistituzioniphd.unito.it/avvisi/att/121h.allegato.pdf The conference proceedings collection is available at this link: U Mattei (ed.), *Codex: Ideologie e Tecniche della (Ri) Codificazione del Diritto Privato* (2019) 25(1) The Cardozo Electronic Law Bulletin Review (free pdf https://www.academia.edu/40702536/Vol_25_1_Spring_Summer_2019_Codex_Ideologie_e_Tecniche_della_Ri_Codificazione_del_Diritto_Privato).

days of the Turin conference are to be translated into normative reality, it is necessary to move from thought to action and transform the scientific movement into a political movement, following the example of what Stefano Rodotà did in the past.

1. Dichotomy between subject and object of law in the current code.

This survey adopts a positive law perspective, setting aside broader considerations of philosophical rank. Let it be allowed only to highlight the questions that need to be answered in the effort to elaborate what might be new norms in Book I of the Italian Civil Code. Current legislation undoubtedly reveals a profound inadequacy with respect to the issues that affect both human beings and other living entities in the contemporary world: the gaps that exist today are now too wide and can no longer be ignored.

This perception was already present in Stefano Rodotà, who represents a scholar with the ability to see beyond and ahead because one of his recent works was to promote and edit, together with Paolo Zatti, the 'Treatise on Biolaw', a multi-volume work, including the one on the 'animal question' by Luigi Lombardi Vallauri, and others of fundamental importance such as the two volumes on the 'human body'. Already reading this treatise anticipates questions, anticipates answers, attempts to give guidelines that, today more than ever, deserve to be followed.

We are living what the Italian philosopher of law Enrico Giuseppe Opocher asserted: '*L'indissolubilità tra prospettiva filosofica e mondo dei valori trova la sua radice storica nell'umanesimo classico e più particolarmente in quella rivoluzione antropocentrica, per cui nell'Atene del V secolo a.C. l'uomo cessa di considerarsi come un piccolo anello dell'immensa trama del cosmo, sospinto ad ogni suo passo da una immanente necessità, e si pone arditamente al centro dell'universo, conscio della propria libertà creatrice e della forza oggettivante della sua ragione*'.[2]

So we are in the fifth century B.C., in the Sophistic revolution, and at that time we became the center of the world. This being at the center of the world, however, came with a very high price. A price that we are paying and that is immediately evident in the dichotomy present both in Book I of our Civil Code between ownership of the personal rights and legal capacity - a category in the process of being overcome as Giorgio Resta has pointed out[3] - and in Book III in the definition of property as the object of right.

Thus, the Art 810 c.c. constitutes a rule of foundational value in the Italian legal system and in continental legal systems in general; the distinction between what is a *good*[4] i.e., an object of law, and what is not, and what, consequently, should

[2] EG Opocher, *Lezioni di filosofia del diritto*, Padova, 2nd ed., 2000, 27; s. also A Pisanò, *Diritti deumanizzati. Animali, ambiente, generazioni future, specie umana* (Giuffrè Editore, 2012) 22.

[3] G Resta, *Le persone, I soggetti, le formazioni sociali: note a margine del pensiero di Stefano Rodotà*, in Mattei (ed.), *Codex: Ideologie e Tecniche della (Ri) Codificazione del Diritto Privato*, cit. sub n 1, 8.

[4] At present, however, there appears to be consensus on the idea that a good in the legal sense can be defined as any entity, material or immaterial, legally relevant, that is, capable of satisfying (human) interests assessed by the legal system as deserving protection (B Biondi, 'I beni', in *Trattato di diritto civile italiano* directed by F. Vassalli, (4) 1(2nd edn, Giappichelli 1995) 9; CM Bianca, *La proprietà, Diritto civile*, 6 (Giuffrè,

be a subject: it is a conceptual duality, there is no *tertium genus*; there is only the subject of right and the object of right.

Consequently, arguing that we need to eliminate the code is like saying that we need to eliminate the Constitution; in fact, it is necessary to remember that Codes come first, followed by the Constitutions, because the latters contains general declarations of rights that are, of course, very important, but in the day-to-day reality of application practice they play a completely different role than the Code.[5]

That being said, returning to the topic, it has to point out that at the state the distinction between the subject and object of law, as codified and as proclaimed by academic manuals in Italy, has been outlined by Alberto Trabucchi, in whose 'Istituzioni di diritto civile' it is given to read that 'all'uomo per legge suprema fu sottoposto il dominio del mondo esteriore' (page 527 of the 43rd edition, year 2007).

The idea that the object of law is everything that is not human, inasmuch as human being has dominion over everything other than himself, constitutes a traditional element that is now acquired and confirmed by articles 842 and 923 c.c. which sanction the reification of animal being but also the plant world.

On the other hand, however, the above mentioned distinction between human being as subject and all other entity as object no longer appears to be actual, since in the articles 1, 5, 11-14 c.c. the subjectivity of the natural person and also of the legal person is delineated and the last one is not existing, not tangible in real life, but it legally exists instead. In other words, in the Code text not only human beings but also other entities take place as subjects of rights.

1999) 49-50, 52, 54; F Bocchini, E Quadri, *Diritto privato* (4th edn, Giappichelli, 2011) 79. In case law, it has been clarified that if the interest that the entity satisfies is contrary to the law, it is not deserving of protection and the entity, which came into existence to satisfy an interest contrary to the law, is not and cannot be a legal good: the works that arose as a result of unauthorized allotment, inasmuch as its demolition is *ipso iure* presupposed by the system, cannot be objects of rights and are not, therefore, legal goods (s. Trib. Bari, 9 February 2005). The interest is identified with the content of the right that has the good as its object. More than one interest can be satisfied on the same good and, therefore, more than one right can exist on the same good (e.g.: think of the hypothesis of a land owned by Titius, object of the usufruct of Caius, leased to Mevius, on which Sempronius exercises a right of way (A Trabucchi, cit., 527). Similarly, it has been clarified that, since both public and private interests may concur on the same thing, the same thing can take on the configuration of different legal goods and be subject to a disciplinary regime that is both private and public (e.g., the so-called environmental goods for reasons of art, history or ecology: A Trabucchi, cit., 528 nt. 3; CM Bianca, *cit*., 51). The qualification of legal good is attributed by the legal system (legally or judicially); this qualification is independent of natural reality and does not consider the tangibility in the strict sense of what is identified as a legal good, being able to extend to anything, understood in the broadest and most abstract sense possible, which satisfies an interest worthy of protection of one or more subjects, private and/or public, who benefit from it, and this regardless of the utility in the economic sense that may derive from the use itself. Scholarly reflection has come to focus that they satisfy a (human) interest deserving of private and/or public protection and are, therefore, goods in the legal sense all 'things': patrimonial or non-patrimonial (e.g., life, liberty physical integrity, honor).

[5] This should be kept in mind not only for those who are legal scientists but also for those who actually practice law and necessarily have to interpret it, because only the text of the code allows for a truly democratic interpretation as it is made widely by all legal professionals, while similar exegesis is not possible for constitutional text, interpreted by about 15 people.

1.1 Expansion of the categories of subject and object of right in opposite directions.

Instead, we are currently witnessing an expansion of legal subjectivity and legal objectivity, i.e. of the elements that are part of the category of subjects and the elements that are part of the category of objects; this is a two-way expansion, profoundly contradictory, which must be analysed for the purpose of formulating rules that are suitable for protecting the interests at stake.

What is happening is that on the one hand there is a tendency to subjectivise natural elements, and there is a strong movement for the recognition of a new legal status for the animal, but at the same time there is a strong tendency towards the *subjectivisation* of humanoid robots or in general of embodied algorithms that represent expressions of the highest levels of artificial intelligence, anthropomorphic machines that represent the pinnacle of anthropocentrism not only legal but philosophical and ontological in general, in the sense that everything that resembles man is supposed to become a legal subject.[6]

This tendency towards the *subjectivisation* of robots is very strong because there are movements headed by the strong economic interests of the companies that produce these machines, but above all, there is also a very strong academic movement headed by very well-known scholars from US and even Asian universities who, with a series of papers and conferences, are predicting and promoting the recognition of the legal personality of robots, which would not only penetrate human life on a massive scale in the next half-century, but would (in many respects, it is already a reality) establish emotional relationships with human beings, to the point of *institutionalising* relationships such as marriage or other kinds of relationships that all these anthropomorphic robots are ready to satisfy.[7]

The situation is very complex; it is a reality that we smile about but instead has a planetary spread, around which very strong economic interests revolve. Here, the so called 'rampant capitalism' finds its most obvious manifestation.[8]

2. Nature and natural goods: attribution of legal subjectivity and rights by public and private entities.

The contradiction that emerges from this view of legal anthropocentrism that is imploding is the tendency of some areas of the planet (the first ones are not from the Western area) to recognize natural goods (rivers, mountains, forests) as legal subjects, i.e., as subjects holding rights such as, for example, the right of

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[6] U Ruffolo, *Intelligenza artificiale e responsabilità* (Giuffrè Editore, 2018) who fully addresses the theme of the personification of machines together with that of their responsibility; MC Gaeta, *Liability rules and self-driving cars: The evolution of tort law in the light of new technologies* (ESI, 2019). *See* also at web context, D Alesso, 'Robot e A.I.: questioni di soggettività giuridica', [2018] Cyber Laws ; S Carunchi, 'Robot e soggettività giuridica' [2018] *Fiscalfocus*; M Iaselli, *'Robot con intelligenza artificiale, verso una soggettività giuridica?',* [2017] *Altalex*; C Trevisi., 'La regolamentazione in materia di Intelligenza artificiale, robot, automazione: a che punto siamo' [2018] *Medialaws*.

[7] Already years ago on the point s. L Gatt, *'sub art. 810'*, in L. Gatt, S. Troiano (edrs.), *Commentario al Libro III del Codice Civile*, *Collana I codici d'Autore*, *Commentario* directed by CM Bianca (Dike, 2014) 6-7.

[8] U Mattei, L Nader, *Il saccheggio. Regime di legalità e trasformazioni globali* (Mondadori Bruno, 2010).

being protected from the destructive action of human beings. The reasons behind these positions are of different kinds and cover different areas, going from religious to ethics ones. They reflect the specific relationship between nature and humanity existing in some civilities/populations.[9]

This very recent phenomenon is also present in the Western area, but it is different from previous ones mentioned above in which the States are that recognized legal subjectivity; in this case, however, it is a private law entity - precisely: the Scottish JMT (John Muir Trust) Foundation [10] - which has recognized the highest mountain in Scotland, the United Kingdom and the British Isles, the Ben Nevis, as having legal subjectivity, and so the right to remain wild as a place and therefore to be protected as such.

In Italy only at the beginning of this year (Constitutional Law Feb. 11, 2022 No. 1) were Articles 9 and 41 of the Constitution amended and the protection of the environment, biodiversity and ecosystems was introduced among the fundamental principles of our legal system. In 2001 (Constitutional Law Oct. 18, 2001 No. 3), we had merely established a reservation of State law on the environment (art. 117 Cost.). With the above mentioned 2022 constitutional reform, the State law reservation was extended to animals.

The question remains whether the latter choice was reasonable and actually protective. On the other hand, it resonates in a positive sense that the protection of biodiversity (that is, of the animal and plant worlds), has been established as a constitutional principle.

Anyway, the Italian choice does not go in the direction of attributing legal subjectivity to natural and/or animal entities but - more correctly in the opinion of the writer (s. furthermore) - goes in the direction of recognizing special protection of these realities that therefore remain objects but become inviolable in the interest of future generations.[11]

2.1 A critique of the movement for the 'subjectification' of natural goods

The diffused trend of personhood attribution to nature should give pause for thought about whether the ownership of subjective rights and the recognition of personhood/legal personality to natural goods actually constitutes protection, as this puts them on a par with other private entities.

It has to ask if, in a hypothetical lawsuit filed by a company with an interest in establishing an industry at Ben Nevis, Ben Nevis would prevail. Wouldn't there

[9] Cf. R Míguez Núñez, *Le avventure del soggetto. Contributo teorico-comparativo sulle nuove forme di soggettività giuridica* (Mimesis, 2018) and R Míguez Núñez, 'Una nuova frontiera della soggettività: i diritti degli enti naturali', available at: Una nuova frontiera della soggettività: i diritti degli enti naturali (lindiceonline.com). With regard to the initiatives of Ecuador and Bolivia s. also L Perra, 'L'affermazione giuridica dei diritti della natura', available to this link: https://www.filodiritto.com/laffermazione-giuridica-dei-diritti-della-natura

[10] Cf. https://en.wikipedia.org/wiki/John_Muir_Trust

[11] Very interesting the article of MC Gaeta, 'Il problema della tutela giuridica della natura: un'analisi comparata tra Italia e Stati dell'America Latina' (2020) 4 Nuovo Diritto Civile, 313 – 343; more in details on the protection of future generation with regard to green technologies in transport sector M.C. Gaeta, 'Green and Sustainable Mobility in Road Transport. How Private Law Can Guarantee the Right Balance Between Environmentally Sustainable Development and Digital Transformation', European Business Law Review, Special Issue (forthcoming).

be better protection if instead States were more responsible and declared these natural areas protected independently of legal personality?

If we were to get out of this typically anthropocentric and Grotian-derived category of the subjectivization of law and of the legal personality (which, because of what has just been said, turn out in reality, to be a kind of double-edged sword) theoretically, States should protect certain goods as themselves, regardless of the attribution of subjectivity and parity to the legal subject intended as a human subject.

Another important point is that in the Ben Nevis case it is a private actor that recognizes legal personality to natural property. In this case, the court could also ridicule it and argue that there is no basis for this kind of operation; if, on the other hand, the courts recognize this power to private actors, it opens up important and 'disturbing' scenarios for the future.[12]

From this point of view, the Italian choice briefly described above, even with all its limitations, appears more supportable.

3. Animals: failure to attribute legal subjectivity and enhancement of the status of object of rights.

While we are seeing the recognition of legal personality to natural goods by some legal systems, especially non-European ones, the situation for animals appears more complex.

Indeed, there is a very strong academic movement pushing for an improvement in the legal status of animals[13]. Nonetheless, at the regulatory level, this recognition, or rather equalization between animals and humans in terms of legal subjectivity, has not yet happened, even in states such as Germany and Austria that have included animal protection at the constitutional level.[14] The same consideration can be made for Italy and its recent constitutional reform. The recently introduced reservation of state law for the protection of animals in Article 9 of the Italian Constitution - as mentioned above - does not recognize the personhood of animals, which remain objects, but above all does not recognize their dignity as living beings to be placed on the same level as human beings.[15]

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[12] About that s. the short but incisive consideration of the blog part of the research project 'Judges in Utopia. Judicial law-making in European private law', funded by the Netherlands Organisation for Scientific Research (NWO Vidi scheme). It aims to inform practitioners, policymakers, academics and law students of developments in European case law on private legal relationships, with a particular focus on the influence of fundamental rights and public policy. Particularly interesting the article titled '*Anthropocentrism in European Private Law and the Case of Ben Nevis*' available at this link: Judges in Utopia: Anthropocentrism in European Private Law and the Case of Ben Nevis

[13] Citing some important scholars among others who have dealt with this issue, we can remember: Luigi Lombardi Vallauri, Luisella Battaglia, Francesca Rescigno, Diana Cerini, Margherita Pittalis and, first of all, Stefano Rodotà.

[14] Similar choices have been made in Switzerland and India. In France in October 2013, a *bipartisan* appeal in favour of the animal cause was published by twenty-four intellectuals, calling for an amendment to the French *civil code* so that animals are no longer simply defined as 'things'. The state, according to the proposers, must finally recognise that they are 'living and sensitive beings'. These movements aim to bring Member States' laws into line with what has long been written in art. 13 of the Lisbon Treaty, which defines animals as 'sentient' beings.

[15] L Lombardi Vallauri, S Castignone, *'La questione animale'*, in Trattato di Biodiritto a cura di Stefano Rodotà e Paolo Zatti (Giuffrè, 2012), with particular regard to the chapter written by F Rescigno, *'L'inserimento della dignità animale in Costituzione: uno scenario di fantadiritto?',* 267 ff.

At present, in Western legal systems, subjectification and thus the equating of animal being with sentient being has not yet fully taken place.[16]

In any case, the crucial point is that this equalization has not only not taken place, but, contrary to what is said and written by academics, right now the reification of the animal is reinforced by the use of new technologies. And, on closer inspection, a similar fate befalls the human being-as will be said in a moment.

4. Robots: attribution of legal subjectivity and citizenship.

Nature and animals are involved in this attempt to expand subjectivity, that is, by this attempt to equate them or, more or less, to make them close to the legal level of human beings. This trend is going slightly better for nature (although it is a double-edged sword, as mentioned above), but it is going significantly worse for animals.

What is going well, however, is the subjectification of robots. Just think of 'Sophia' a robot created by the Hong Kong Company Hanson Robotics, with advanced AI and, above all, with accentuated anthropomorphic features, which, just before the end of 2017 was declared a citizen of Saudi Arabia.

It is evident how this choice has first and foremost an economic significance: Saudi Arabia aspires to become a center for the development of artificial intelligence and the planetary scale realization of these so-called humanoid-robots devices.

This episode can be analyzed from several perspectives. On the socio-political level, the granting of citizenship to Sophia created a series of protests: women rebelled as well as migrants due to the fact that Saudi Arabia sent a very specific message by granting citizenship to a robot while it has not yet granted full subjectivity to women nor citizenship rights to migrants.

Secondly, and from a different perspective, it can be noted that Sophia's case and, more generally, the tendency to grant legal subjectivity to the robot is not isolated: the subjectivization of robots was already being talked about in 2006 in the United Kingdom where a study was commissioned by the government on what human society will be with the arrival of robots. Reading the report reveals a society in which robots are regarded as subjects like the humans with whom they mix and even have the same rights.[17]

Thirdly Europe, at the legislative level, is proposing regulation of artificial intelligence, including the anthropomorphic robots. The proposal for the Artificial Intelligence Regulation (AIA) of April 2021 has recently been accompanied by the proposal for a directive on liability for damage deriving from artificial intelligence

[16] G Shyam, 'Is The Classification Of Animals As Property Consistent With Modern Community Attitudes?', (2018) 41(4) UNSWLawJl, 47; 1418, available at Shyam, Geeta --- 'Is The Classification Of Animals As Property Consistent With Modern Community Attitudes?' [2018] UNSWLawJl 47; (2018) 41(4) UNSW Law Journal 1418 (austlii.edu.au)

[17] Reference is made to the Report 'Robo-rights:Utopian dream or rise of the machines?', the result of the study commissioned back in 2006 by the British government to the company Ipsos-MORI, Outsights and Institute for The Future, and in which it analyzes a scenario in which robots could enfranchise humans and lead a life as private citizens with all that comes with regard to the protections to be provided including social security(!). Cf. L Gatt, 'sub art. 810', in *Commentario al Libro III del Codice Civile,* n. 7.

systems (AI Liability Directive) of September 2022, aimed at establishing uniform rules for the access to information and the easing of the burden of proof in relation to the harm caused by AI systems, ensuring wider protection for victims (whether individuals or businesses) and promoting the AI sector through an increase of guarantees. But the most relevant act about the examined issue (the subjectivization of robots) is the resolution of the European Parliament of 16 February 2017 with recommendations to the Commission concerning civil law rules on robotics[18] in which space is given to different approaches to the question of the complex attribution of liability for damage caused by a robot: from the application of strict liability institutions, to risk management, to the establishment of a compulsory insurance regime and, finally, the establishment of an ad hoc legal status: the *electronic personality ,* which makes it possible to hold the most sophisticated robots accountable for their harmful actions.

In the end, it is therefore clearly seen how at the European level the scenario is decidedly still open and the tendencies[19] to recognize full legal subjectivity to robots are decidedly consistent.[20]

5. Expansion of the legal objectivity of human (embryos) or human-related entities (synthetic embryos) as well as living entities, plant or animal.

What is happening is incredible: while we try to subjectify robots, and - perhaps - nature, what instead is objectified/resined at the highest level are not only animals but also human beings in their initial stage of life: human embryos, ova, gametes are now at the mercy of any type of experimentation that generates subjects without genetic identity or with untraceable identities[21].

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[18] Available at: Texts adopted - Civil Law Rules on Robotics - Thursday, 16 February 2017 (europa.eu)

[19] Cf. a Symposia titled 'Regulating intelligence: the challenge of consciousness in new forms of life', 27th April 2018, Centre for Life, Newcastle upon Tyne. This symposium seeks to highlight the difficulties in the interplay between consciousness, responsibility, and liability, and attempt to provide a basis for developing workable legal definitions of consciousness that may be applicable in many fields of law. More precisely it deals of a research project 'Regulating the Tyrell Corporation: Company Law and the Emergence of Novel Beings'. Biotechnology and advances in AI promise the advent of new forms of life, maybe even 'conscious', reasoning creatures as intelligent and as sapient as Homo sapiens. Dr David Lawrence and Dr Sarah Morley have received funding from the Wellcome Trust to conduct a project of research into this area, with a specific focus on controlling companies' development of these beings via regulation. Through a number of events, as outlined below, a new network of expertise will be created in order to consider these future technological developments and suggest practical legal definitions for the status of both conscious and unconscious novel beings, in service of later developing and providing proposals for appropriate regulation for the responsible development, operation, and disposal of the technologies.

[20] Some reactions to the Parliament Resolution mentioned above: L. Berti, 'La responsabilità civile dei robot: dalla risoluzione del Parlamento Europeo all'art. 2043 c.c.' [2017], available at: https://www.iusinitinere.it/responsabilita-civile-dei-robot-risoluzione-parlamento-europeo-art-2043-cc-6626; D. Alesso, *Robot e AI: questioni di soggettività giuridica*, 2018, available at: https://www.cyberlaws.it/2018/robot-e-ai-soggettivita-giuridica/. See also, S Thanopulos and M La Torre, I*l Manifesto La soggettività e la responsabilità nel mondo dei 'robot'* , available at: https://www.spiweb.it/cultura-e-societa/stampa/rassegna-stampa-2/rassegna-stampa-italiana/il-manifesto-11-ottobre-2019-la-soggettivita-e-la-responsabilita-nel-mondo-dei-robot-di-s-thanopulos-e-m-la-torre/

[21] But even when genetic identity is traceable, very complex scenarios open up, such as that of "embryo exchange" analysed by IA Caggiano, *Veridicità della filiazione ed errore nella procreazione assistita. Un rapporto possibile tra interpretazione della legge e studi empirici* (Pacini, 2018). Not to mention the very difficult compensation scenario resulting from malfunctioning medical artificial procreation facilities: cf. F. Di Lella, *Le attività pericolose nel settore bio-medico. Spunti per una rilettura dell'art. 2050 c.c.* (Pacini, 2020).

All this seems to be a contradiction and an implosion of juridical anthropocentrism.

Let's consider supernumerary embryos:[22] in Italy they are still an unsolved problem. The Italian Ministry of Health with a decree of 2004 imposes their conservation indefinitely at a national central bank but it is doubtful that they are actually constantly transferred to this bank. An empirical analysis conducted in the public and private hospitals and similar structures of the Italian territory shows that health professionals often ignore this transfer obligation. In Italy, voices have emerged from the National Bioethics Committee (CNB) which have proposed making cryopreserved embryos adoptable but this proposal, however, has not yet been accepted.

What will be done with these supernumerary human embryos produced by medically assisted procreation? This is not known. Law No. 40 of 2004 banned experimentation on embryos but it is still done because this ban is not punished and there are no controls.

Currently gene editing operations are being done on human embryos, but the most serious thing is that we have *SHEEF* - 'Synthetic Human Entities with Embryo-like Features' - that is, artificially created embryos by assembling cells[23] that are not necessarily only human[24], so there are questions about what they are and how to regulate them. There are questions about whether to extend to them the regulatory status of human embryos, and there are doubts because there is no clarity about the nature of these new organisms.

On February 18, 2018, for the first time, a human-sheep hybrid embryo, in which one out of every 10,000 cells is human, was created in the laboratory to explant organs to be given to humans.

Case law had already reached the idea that if a good is functional to an unlawful interest[25] it is not a legal good: for example, think of unauthorized buildings. A year earlier an embryo of man and pig had been made for the same

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In this context, the contract becomes the only instrument for protecting the individual: on this point see the important study by L. Valle, *Il contratto e la realizzazione dei diritti della persona* (Giappichelli, 2020).

[22] The current legislation provides an ambiguous discipline in which the indicated elements are considered both as objects and as subjects of rights (*see* Articles 8, 9, 13 L. 40/2004). It is not easy to identify the boundary of the legal configuration and this leads to great uncertainties in terms of protection, especially in case of abuse by health professionals but also by those (would-be parents) who resort to the aforementioned techniques. The complexity of the problem was recently attested in the ruling of the EC Court of Justice, October 18, 2011, C-34/10, Olivier Brüstle v. Greenpeace e. V., which, having to identify the scope of application of Directive 98/44/EC, ruled out the patentability of an invention if it requires the destruction of human embryos or their use as source material. The conclusion is even more interesting where attention is paid to the very broad notion of embryo elaborated by the Court, according to which it constitutes a 'human embryo' any human ovum from fertilization, any unfertilized human ovum into which the nucleus of a mature human cell has been implanted, and any unfertilized human ovum which, through parthenogenesis, has been induced to divide and develop. The decision appears, however, contradictory where it separates industrial and commercial purposes from research purposes, appearing to allow for the latter what is prohibited for the former.

[23] One very similar to a mouse embryo was recently described in *Science*, consisting of two types of stem cells supported by a three-dimensional 'scaffold.' In a report in *eLife*, scientists from Harvard Medical School discussed the criteria for testing these new entities, which, if they cannot be considered true embryos, might nevertheless in the *future look very much like them and display some characteristics of sentient beings, for example, feeling pain. In essence, the researchers wonder whether it is reasonable to place the same research rules for these new entities as for human embryos generated by gamete fertilization.*

[24] D Joy Riley, 'What Is a SHEEF, and Why Should We Care?', available at: https://tennesseecbc.org/2017/04/28/what-is-a-sheef-and-why-should-we-care/

[25] See above note n. 4.

purpose, now with sheep; this is contrary to the protection of animals, which are used and killed to explant organs: why should this not also be possible with human beings?

Cloning and hybridization are illegal in our legal system, but they are actually done everywhere in the world without relevant obstacles.

It can be seen, therefore, how the lack of control and the absence of shared regulation even at the European level has generated a structural vulnerability of human beings (but also of other living beings) in the face of technological applications that, currently, are capable, on the one hand, to artificially reproduce living beings of all species and to mix their genes without particular substantial limitations, and, on the other hand, favor the progressive affirmation of the non-living object; of the anthropomorphic artifice as a subject equated with the living subject, which results in a decay of the latter to the level of *object*. Not only SHEEFS but also synthetic human embryos (the so-called blastoids[26]) enter the circuit of genetic modifications and experiments.

Similarly, the so-called organoids provoke a complex and at present unresolved series of ethical-legal reflections. They are in the midst of development in the name of personalized medicine and are proposed as a neutral solution to problems of cloning and hybridization or creation of synthetic embryos for research and experimentation aimed at the creation and marketing of new drugs. However, the organoid, as a human-derived entity, also presents legal problems of qualification, regulation and destination, and this particularly in the case of organoid masses or brain organoids with respect to which a delicate problem of identifying the level of consciousness arises. On the subject, jurists are silent while only moral philosophers question themselves[27].

This extremely dangerous circular process on the level of the preservation of human being as such, is now underway and aggravated by the trends of 'legal conformism[28] that are widespread on a planetary level. This process appears, moreover, to be unstoppable and has generated an ontological vulnerability[29] of the living being (human and animal) in relation to technological evolution that now unequivocally presents a dark side that must be tackled with determination on the level of both strictly legal rules and strictly ethical rules. Although, in the writer's opinion, a proximity, if not even, where possible, an intersection of the two realms, would be desirable.

Conclusion: Implosion of legal anthropocentrism and the sense of limitation.

[26] DG Alberti,' Embrioni umani sintetici/ Creati da cellule modificate: come funzionano e perché' available at: https://www.ilsussidiario.net/news/embrioni-umani-sintetici-creati-da-cellule-modificate-come-funzionano-e-perche/2144917/

[27] Cf. the presentation of F. Battaglia, *Do ethical issues regarding brain organoïds rely on the metaphysics of the mind-brain identity theory?,* Seminars cycle "JM Chair PROTECH Debates "Studies on the legal aspects of medically assisted procreation and intersection between Ethics and Sciences - 14 April 2022, available at: https://www.protech-jeanmonnet.eu/event/the-question-of-sheefs-synthetic-human-entities-with-embryo-like-features-and-similarities-what-are-the-new-forms-of-life-created-in-the-laboratory/

[28] L Gatt, *Problema dei minori senza identità genetica nei (vecchi e) nuovi modelli di famiglia: il conflitto tra ordine pubblico interno e c.d. ordine pubblico internazionale* (2017) 2 Familia, 271-272.

[29] The concept of human vulnerability in the technological environment has been analysed during the PROTECH- Jean Monnet Chair project activity: https://www.protech-jeanmonnet.eu/.

It is necessary to mention Hans Jonas, who belongs to a particular historical period such as that of Nazism, who already in a 'dramatic epoch of human history had long reflected on the relationship between ethics and technology, focusing lucidly on the problem of the limit [of human action], and who wrote in fact about acting in such a way that the consequences of one's actions are compatible with the survival of authentic human life on earth.[30]

It appears to this writer that today Jonas's warning is not heeded at all and that this is leading to an irreversible loss of the centrality of the human being to the advantage of a transhumanist vision completely detached from any ethical substratum.

And, even more, it seems more persuasive in a modern eco-dynamic approach[31] the position of those who speak[32]of liberation from the now imploded anthropocentric paradigm must be married today, to promote a dialectic of humanism as a form of awareness of the limit that is inherent in every entity, event and process, including the human event. This means recognizing the common structure of finitude that every mortal shares. The process of emancipation cannot stop at gender, ethnicity, class. It will have some chance of being fulfilled only when it becomes a process shared with the animal and vegetable nature of which we are part and manifestation.

[30] H Jonas, Das Prinzip Verantwortung. Versuch einer Ethik für die technologische Zivilisation, Frankfurt/M., 1979, Translation ed. by PP Portinaro, Torino, 1990, 15.

[31] P.P. Franzese, A. Riccio, A. Scopa, *Valutazione della sostenibilità ambientale: verso un approccio ecodinamico,* in *Biologi italiani,* 7/2003, 60, available at: (PDF) VALUTAZIONE DELLA SOSTENIBILITÀ AMBIENTALE: VERSO UN APPROCCIO ECODINAMICO (researchgate.net).

[32] AG Biuso, *Dialettica dell'Umanesimo*, in Liberazioni. Rivista di critica antispecista, IX/ 34, 2018,26-37.