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Instances of legal subjectivity between the natural and artificial worlds: the new content of the legal subjectivity of the natural human being in a perspective of protection of vulnerability as the authentic content of sustainability

Istanze di soggettività giuridica tra mondo naturale e artificiale: il nuovo contenuto della soggettività giuridica dell'essere umano naturale in una prospettiva di tutela della vulnerabilità come autentico fondamento della sostenibilità

LUCILLA GATT
Full Professor of Civil Law and New Technology Law
Director of the JM Centre of Excellence – ReCEPL4STAI
Università degli Studi Suor Orsola Benincasa

Abstract

This article addresses the issue of legal subjectivity, arguing for its expansion. Although human beings have always been regarded as the quintessential subjects of law, recent legal developments in Europe are challenging this anthropocentric perspective, promoting a growing recognition of various forms of vulnerability and their legal protection. Thus, a transition is emerging toward a conception of legal subjectivity in terms of responsibility toward vulnerable living beings, which could extend beyond human beings and reflect a significant cultural and social shift.

Il presente contributo affronta il tema della soggettività giuridica, sostenendone l'espansione. Sebbene gli esseri umani siano sempre stati considerati i soggetti del diritto per eccellenza, i recenti sviluppi giuridici in Europa stanno mettendo in discussione questa prospettiva antropocentrica, promuovendo un crescente riconoscimento delle varie vulnerabilità e della loro protezione giuridica. Si profila così una transizione verso una concezione della soggettività giuridica in termini di responsabilità verso i viventi vulnerabili, che potrebbe estendersi oltre gli esseri umani e riflettere un significativo cambiamento culturale e sociale.

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Keywords: legal subjectivity; legal personality; legal responsibility; new category; vulnerability; sustainability; animals; plants; human beings; vegetarianism; medical experimentation; hunting

Summary: 1. The traditional conception of legal subjectivity. – 2. Signs of change: regulatory developments in Europe. – 3. Changes in the content of legal subjectivity: the relationship between vulnerability and environmental sustainability. – 4. The legal subjectivity of natural and legal persons, both public and private: from domination to the protection/care/safeguarding of vulnerable beings. – 5. Obstacles to the change in legal subjectivity in terms of the tutoral responsibility of human beings towards other living beings. – 6. Implications of the new category of legal subjectivity for the category of sustainability: vegetarianism and alternative medical experimentation. – 7. Conclusions.

1. The traditional concept of legal subjectivity.

The current civil code is rooted in the dichotomy between subject and object of law. This dichotomy is the culmination of a long journey that began with the Declarations of the 18th century and continued with the continental codifications of the 19th and 20th centuries, leading human beings to place themselves at the centre of the natural and legal world as subjects of law.

At the present moment in history, human beings are considered in the legal systems of the Western cultural area to be the subject of law par excellence, identified with the natural person without further qualification. Alongside the natural person as a subject of law, the legal person was created at the beginning of the 19th century by Heise and von Savigny (and in the wake of the canonistic tradition) as a subject of law that exists only in the reality and language of law. It is the result of the conceptual apparatus of law, which has literally invented and made legally relevant a subject that is different from the natural person: the legal person is a non-tangible subject that exists only in the legal world, unlike natural persons, who also exist in the natural world.[1]

In other words, law has historically demonstrated its ability to «take away and give», to attribute or not attribute the status of legal subject to the same natural persons, considering them different from one another for various reasons (race, sex, religion). To date, legal subjectivity – understood as the recognition of full accountability for rights and duties – is not attributed in the same way throughout the world, and there are still very significant differences.

There were differences in legal subjectivity between free individuals and slaves; there were and still are differences in some areas of the world between men and women, but also between believers of one religion and believers of another, and even between migrants from different countries. During Nazism, in the middle of the 20th century, and despite codification, some European legal systems deprived members of the Jewish population of legal subjectivity,

[1] E Gliozzi, 'Persona giuridica', *Enciclopedia delle Scienze Sociali* (1996) <https://www.treccani.it/enciclopedia> accessed 15 july 2025.

rendering them '*res*', but, as recent wars covered by the Western media have shown, forms of non-recognition of full legal subjectivity for human beings still emerge.

The historical perspective shows that legal subjectivity is an artificial *status*, a *status* that can be attributed or withdrawn in relation to the social, political and economic contingencies of a given legal system. Within a certain territory where certain rules apply and there is a power capable of enforcing them, it is possible to decide to attribute legal subjectivity to some subjects rather than others.

There are currently at least 18 conventions on fundamental human rights, from which it can be deduced that human beings are undoubtedly the subjects of law par excellence in legal systems (Western but not only).

However, far from being a point of arrival, this state of affairs is currently the subject of heated debate. There is a clear transition towards something else and, more precisely, towards the recognition of other legal subjects or even towards the recognition of a different legal subjectivity of human beings.

From a cultural, social, economic and therefore also legal point of view, there is a rethinking of the category of legal subjectivity as attributed exclusively to human beings as physical persons. This is a general rethinking because the relationship between human beings as physical persons and their surroundings (i.e. the natural world but also the artificial world, the world of machines, software and technology that creates non-natural entities) is changing. As a result of this progressive change in the relationship between human beings and the natural world and between human beings and the artificial world, the category of legal subjectivity is also changing. There is intense debate in academic circles about who, other than human beings, can be a subject of law, but there is also debate about the content of legal subjectivity, as it is (finally) being recognised that this content cannot consist exclusively in the ownership of rights over other natural and artificial entities.

The relationship between human beings and the natural world has been well summarised in the 43rd edition (2007) of Alberto Trabucchi's *Istituzioni di diritto civile* (Institutions of Civil Law, a classic work of civil law literature), where we read on page 527: *«by supreme law, man was subjected to the dominion of the external world»* (our translation). These statements can be found, in a more or less explicit form, throughout Italian private law textbooks, particularly since the 2000s (i.e., recently). These textbooks express the idea that the human being as a physical person is the subject to whom all possible rights are attributed, the one who can exercise them, a ruler, a subject who has dominion over the external world, which he can shape, modify, use and even destroy. This is because the concept of dominion also includes – as attested by the legal institution of property – a destructive power and not only a power of control or management.[2] The idea of dominating, controlling and potentially destroying (everything that is not human) is inherent in the concept of the human being as a subject of law as regulated by the rules of the civil code and described in private law textbooks.

[2] J Mason, *Un mondo sbagliato. Storia della distruzione della natura, degli animali, e dell'umanità*, trans. Massimo Filippi (Sonda 2015) 46 ff. and more recently the same Author has published *An Unnatural Order. The Roots of Our Destruction of Nature* (Lantern Publishing & Media 2021).

Western legal culture is therefore based on the ideology of domination and an anthropocentric conception of human beings, even though the phase of attributing legal subjectivity to some human beings at the expense of others has been overcome (a phase that is still ongoing in other legal systems). This overcoming leads to the denial – at least formally – of any legitimacy of the prevalence of some human beings over others, considered different or, rather, inferior for various reasons.

Italy (but one could say Europe) fits perfectly into this legal framework of the permanence of the ideology of domination with regard to the 'human-nature' relationship and the overcoming of this ideology with regard to the 'relationship between human beings'. The ideology of domination manifests itself in the structuring of the categories of subject and object of law and informs the institution of private property and power.

The Civil Code remains the main source of rules governing relations between legal subjects considered to be in an equal position, i.e. involved in private law relationships. In this context, the rules that most emphasise the dichotomy between subjects and objects of law are: Articles 1 and 5 (concerning the human body), Articles 11 to 14, Article 810, Article 842, and Article 923 of the Civil Code.

Article 810 of the Civil Code is important because it states that *«things that can be the subject of rights are property*» (our translation). In other words, all *things* that are the subject of law are *property*. Clearly, the subject of law who is the holder of the rights exercised over objects is excluded, and this subject of law is the human being (and, as mentioned, from a certain point in history onwards, it is also the legal person). The current validity of this article and its content unequivocally attests that human beings persist in the belief that they are essentially the rulers of the world and have granted legal personality to intangible entities such as legal persons because they act through natural persons[3] .

Animals are clearly indicated in the main private laws, and in Italian law in particular, as objects of law. Article 842 of the Civil Code, entitled *'Hunting and* fishing' (our translation), states: *«The owner of land may not prevent anyone from entering it for the purpose of hunting, unless the land is closed in the manner established by the law on hunting or there are crops in progress that are susceptible to damage. He may always oppose anyone who does not have a licence issued by the authority. The consent of the owner of the land is required for fishing»* (our translation).

It is clear from the text that hunting is an activity inextricably linked to *the ownership* of land and that anyone may engage in it. Article 923 of the Italian Civil Code is along the same lines, stating that: «*Movable property that is not owned by any r is acquired by occupation. Such property includes abandoned items and animals that are the object of hunting or fishing»* (our tranlsation).

Starting from these unequivocal regulatory provisions, ownership, as the structural modus operandi of the subject of law, has been greatly extended thanks to the broadening of the concept of property. The idea of property has developed and expanded, as has been clearly highlighted by the best civil law

[3] Gatt L, 'Commento all'art. 810 c.c.' in L. Gatt and S. Troiano (eds.), *Commentario al Libro III del Codice Civile*, directed by C.M. Bianca (Dike Giuridica 2014).

doctrine, which has emphasised the need to consider as property in the legal sense «*any legally relevant material or immaterial entity*».[4]

Therefore, while the category of legal subject remains limited to natural persons, since the enactment of the Civil Code in Italy (and, in general, in Western legal culture), the concept of property, *i.e.* the object of law, has expanded enormously. This extension has broadened the domain of human beings, and in this enormous and uncontrolled expansion, all non-human living beings are perceived as things to be used and/or transformed.

In particular, with regard to animals, we have witnessed and continue to witness 'metamorphoses' that are considered entirely legitimate: animals (but also other living beings) are transformed into food, clothing, entertainment, sport, research and teaching tools.[5] In almost all cases, this transformation results in the painful death of non-human living beings, their decimation, and often their definitive disappearance as a species, but in the logic of absolute and legitimate human domination, this does not represent a problem either in terms of private law or constitutional law. If, in fact, animals – as mentioned – appear in codified texts, albeit as objects of law, they are completely absent from texts in the broad constitutional sense and, in any case, from bills of rights, which remain [rights] human and only human.

2. Signs of change: regulatory developments in Europe.

This scenario in Europe remained completely unchanged until the end of the 1980s, when it began to change in the last two decades of the 20th century and underwent a rapid and crucial change in the first decade of the 21st century. The idea of the human being as the sole subject of law, the sole ruler, the holder and exerciser of rights over all other goods, *i.e.* over all other entities, living and non-living, material and immaterial, identifiable (not only on planet Earth, consider all the issues that arise regarding the colonisation of extra-atmospheric and extra-planetary space), there are different views in many European (and, above all, non-European) countries.

To briefly summarise some of the most significant milestones, it should be noted that in Austria, the process of 'dereification' of animals began as early as 1988[6] with the introduction of paragraph 285a of the ABGB, which states that animals are not things and are protected by special laws; the provisions applicable to things are valid only in the absence of contrary provisions. Subsequently, with Federal Constitutional Law No. 111/2013, Preamble §2, Austria undertook to guarantee the welfare of animals by introducing the concepts of sustainability, including with regard to research, global environmental protection and the guarantee of a healthy environment, as §2, Austria undertook to guarantee animal welfare, introducing the concepts of sustainability, including with regard to research, global environmental

[4] CM Bianca, *Diritto civile VI*, *La proprietà* (Giuffrè 2017) 33 ff.
[5] T Regan, *Gabbie vuote. La sfida dei diritti degli animali*, trans. M Filippi and A Galbiati with L Zonca in collaboration (Sonda 2009)
[6] D Franco Silva, 'Gli animali non sono cose: significato di un'affermazione' in MC De Cicco (ed), *Annali della Facoltà Giuridica dell'Università di Camerino, No 8/2019* (Università di Camerino Faculty of Law 2019).

protection and the guarantee of water and food supplies as fundamental principles of the Austrian legal system, thus completing the process begun with the Federal Animal Protection Act (Tierschutzgesetz – TSchG) of 2004.

In Germany, paragraph 90 was introduced into the BGB in 1990, reproducing the content of the provision of the Austrian Civil Code. However, Germany was ahead of Austria, as animal protection had already been enshrined in the constitution in 2002 with paragraph 20a of the *BundesGesetz*, according to which the state assumes responsibility for protecting the natural foundations of life and animals as its duty to future generations.

At European level, in 2007, the Treaty of Lisbon brought about an important change with the introduction of Article 13 into the consolidated version of the Treaty on the Functioning of the EU (TFEU), which states that both the Union and individual Member States, when acting in certain areas, must take into account the well-being of animals as sentient beings. This definition represents a step forward in the process of *dereifying* animals, although it cannot be considered a point of arrival. On the other hand, it should be emphasised that the above-mentioned national measures predate it and are not subsequent to it. With the exception of the Netherlands, where there have been no constitutional measures but only amendments to the Civil Code since 2011, when Article 2a of Book III of the BW was introduced, recognising animals as having a status different from that of objects but specifying that they are subject to the legal regime of *res,* in compliance with legal limits, obligations and principles based on statutory rules, unwritten law, public order and morality.

France remains resistant and, only several years after the Treaty of Lisbon, began a process of reflection that led in 2015 to an amendment to Article 514-15 of the Civil Code in order to define animals as «*living beings endowed with sensitivity*», while continuing to consider them as objects of law (*Les animaux sont des êtres vivants doués de sensibilité. Sous réserve des lois qui les protègent, les animaux sont soumis au régime des biens)*.

The Swiss legal system appears more advanced, where in 1999, under Article 80 of the Federal Constitution, the Confederation issued regulations on *the protection* of animals, specifically governing: «*their keeping and care; experimentation and any procedure conducted on live animals; the use of animals; the importation of animals and products of animal origin; the trade, transport and killing of animals*» (our translation). It should be noted that the cantons are responsible for ensuring the application of the laws on this subject, unless this competence is otherwise reserved to the Confederation, which is always competent to legislate on the use of genetic and productive material of animal origin, but must do so taking into account the dignity of living beings and the safety of humans, animals and the environment, protecting the genetic diversity of the plant and animal kingdoms (see Article 120 of the Federal Constitution). Through this constitutional provision, the Swiss legal system, more than other legal systems in the Western, is moving towards equal consideration of humans and animals, but above all it is taking into account an area that is currently undergoing enormous expansion due to the development of biotechnology, namely that of human-animal hybridisation aimed – mainly but not exclusively – at xenotransplantation.

In Italy, it was only at the beginning of the 21st century that the position of absolute domination of humans over animals began to crack. With Law 189/2004, Title IX-bis was added to the Penal Code concerning 'crimes against animal welfare' (Articles 544*bis*-544*sexies* of the Penal Code); Article 727 on the abandonment of animals was also amended, providing for severe penalties for those who abandon domestic animals. These are important measures in terms of instruments in favour of mistreated animals, although they are not yet decisive at a conceptual level, as they are still anthropocentric in nature, given that the protected good is man's feelings towards animals and not the animals themselves. The wind of change has not even touched the rules governing condominiums (Article 1138 of the Civil Code, as supplemented by Law No. 220/2012), which are also aimed at protecting the owners rather than the animals.

For a long time, nothing changed and the above-mentioned provisions remained unchanged until 2022. When read in conjunction, they unequivocally confirm that, in the Italian legal system, animals are classified as objects of law, without any overlap with the category of subjects from a legal perspective. Even the recent Constitutional Law No. 1/2022 does not formally affect the classification of animals as objects of law: the amendments to Articles 9 and 41 of the Constitution have specified that animals must be protected. In doing so, the constitutional law confirmed their legal nature as objects of law but removed them from the broad category of objects for which there are no protection obligations.

Not only that: the inclusion of a constitutional obligation to protect animals affects the content of the legal subjectivity of human beings. It does not therefore seem inappropriate to consider that, thanks to Constitutional Law No. 1/2022, the ideology of human domination over nature and animals has come to an end in our legal system, at least as far as the founding legal texts are concerned, and that the transformation of the legal concept of legal subjectivity has begun, even in our country.

3. Changes in the content of legal subjectivity: the relationship between vulnerability and the category of environmental sustainability.

Since the end of the first decade of the 21st century, the surge in technological development, climate and environmental emergencies, the launch of the Green Deal and the cascade of regulations from the European Union since the beginning of 2020 have led to an unstoppable transformation of the traditional dialectic between the subject and object of law, generating a new vision of the possible relationship between man and nature and configuring it no longer in terms of absolute domination but in terms of vulnerability.

The word 'vulnerability' (from the Latin '*vulnerare*', to wound) literally means «likely to be wounded». In a figurative sense, it refers to the precariousness of a condition characterised by the possibility of violation and limitation, often defined by varying degrees of weakness, dependence and lack of protection. The 1998 "Barcelona Declaration" represents an important event in the

recognition of vulnerability as a category in view of its possible public legitimisation.

The Declaration is the result of a three-year discussion between 1995 and 1998, undertaken by a group of 22 partners from different countries within the enlarged European Community and coordinated by the Danish Centre for Ethics and Law in Nature and Society (Copenhagen).

It is often better known as 'The Barcelona Declaration on Policy Proposals to the European Commission on Basic Ethical Principles in Bioethics and Biolaw'. It was a broad, multi-level discussion involving educators, researchers, professionals and, above all, European citizens.

The public debate was summarised in two large volumes (Basic Ethical Principles in European Bioethics and Biolaw vol I; Basic Ethical Principles in European Bioethics and Biolaw vol II) and led to the formulation of four principles of autonomy, dignity, integrity and vulnerability, known as the Barcelona Declaration, which were presented to the European Commission as a summary of the basic ethical principles underpinning the European community.

In the legal sphere, vulnerability is a relational concept in that it manifests itself and takes concrete form in the possible relationship between two entities.[7] It is a multidimensional and interrelated condition that is no longer a status linked to old age, minority, female gender or disability. In the current national and international legal framework, vulnerability has acquired a broader meaning that includes all living entities, from humans to animals or plants, when they operate in contexts – such as industrialised ones – where other actors (humans) are more powerful for various reasons: social, economic or cultural, physical strength, possession of weapons and, last but not least, the technological gap. A relationship of vulnerability arises when there is an imbalance in the starting positions, which determines the vulnerability of one living entity towards another living entity. This condition, in turn, means that one living entity is able to profit at the expense of another living entity or, more dramatically, to cause it pain or death.

On closer inspection, therefore, there are many relationships that can generate conditions of vulnerability; not only that between human beings and nature, but also that between men and women, adults and minors, white men and black men, Catholics and Muslims, indigenous peoples and colonisers, and so on.

Having identified the relationship of vulnerability in these terms, it seems plausible to assert that: 1) the abuse of a human being in a position of greater power/strength to the detriment of another living being is unjust, i.e. ethically unacceptable; 2) the entity in a position of greater weakness – i.e. the vulnerable entity – must be protected from any abuse of power/force by the stronger entity.[8]

From a historical perspective, therefore, it appears that Europe has long based its development on the concept of vulnerability. However, it is only

[7] L Gatt, 'Legal anthropocentrism between nature and technology: the new vulnerability of human beings' (2022) 1 EJPLT 15–26.

[8] L Gatt and IA Caggiano, 'Consumers and Digital Environments as a Structural Vulnerability Relationship' (2022) 2 EJPLT 8–16.

recently that a real awareness of what this choice means and, above all, of the consequences it has in terms of its application in the economic and legal spheres, has been gaining ground in European governance.

In other words, it is only relatively recently that the idea has penetrated Western European culture that greater physical, intellectual, cultural and economic strength does not entitle those who possess it to oppress in various ways those who cannot react with equal force.[9]

Only recently we have seen political choices and the enactment of legislation that reflect the idea that a position of greater strength translates into greater responsibility towards those who find themselves in a different position, i.e. one of weakness and subordination. This trend can be observed in European and non-European policies on the Green Deal and human-centred Artificial Intelligence (where the potential of these approaches is considered and they are not seen as mere expressions of law-washing).[10]

This trend has certainly been driven by the advancement of sustainability, which is itself a consequence of greater awareness of the impact of the ideology of human domination over nature: climate change, depletion of energy resources, extinction of animal and plant species, extinction or ghettoisation of indigenous peoples, reduction of dedicated spaces (think of the ongoing battle in Brazil to prevent deforestation and the seizure of territories from indigenous peoples, in addition to similar battles in Uganda, etc.)[11]. The destructive force inherent in the exercise of domination by the human legal subject has taken on a self-destructive dimension that has generated changes of course, reflections and demands for change.

This attests to an evolution in European culture (not only legal) of the concept of vulnerability in the sense of a transition of the vulnerable entity (*i.e.* the weaker entity) from an object of oppression or, in any case, of unconditional exploitation to a subject to be protected. That said, the tools that can be used to combat abuse and protect vulnerable subjects from abuse are preventive or repressive in nature. In both cases, the law comes into play, i.e. a mandatory regulatory framework with adequate provisions and corrective measures. These rules make abuse of vulnerable living beings unlawful, abuse that would otherwise be merely ethically unacceptable (unjust and, therefore, left to

[9] U Mattei, L Nader, *"Plunder". When the Rule of Law is Illegal* (Blackwell 2008) (Italian version: U Mattei and L Nader, *Il saccheggio. Regime di legalità e trasformazioni globali* (Mondadori 2010)).

[10] 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>).

[11] D Lema, A Vasquez, 'Forced Displacement of Indigenous Peoples in the Amazon Caused by Environmental Hardship: a Case for Human Security' (2022) PHRG 6(2), 159-180; M Mantovani, 'Cop della Foresta: l'Amazzonia tra tutela, sfruttamento e diritti indigeni' VALORI. <https://valori.it/cop-foresta-amazzonia-popoli-indigeni/>.

individual conscience, as is still largely the case today, given that this change in the content of legal subjectivity is still in progress).

From the perspective of regulatory interventions aimed at protecting vulnerability, specifically in relation to the relationship between humans and nature, we believe that the 2022 amendment to Article 9 of the Italian Constitution clearly represents the path to follow. The Constitutional Charter, in its original formulation, marked the overcoming of numerous conditions of vulnerability (those between genders, between followers of different religions, between human races, social classes, etc.). However, animals were not included, nor was the condition of human-nature vulnerability, and the constitutional law has filled this gap. The difficult journey of implementing this provision and its application at various levels now remains.[12]

4. The legal subjectivity of natural and legal persons, both public and private: from domination to the protection/care/safeguarding of vulnerable beings.

With the 2022 intervention, with the Italian State expressly assuming an obligation to protect the environment, biodiversity and ecosystems, also in the interests of future generations and animals, an important step forward has been taken towards overcoming the traditional content of the two dichotomous terms of subject and object of law. On an ideological and technical-legal level, the State has clearly stated its intention to protect animals, to protect them uniformly and well.[13]

The relationship of domination is beginning to crumble as the terms 'safeguard' and 'protect' gain ground: the Italian State has a duty to become an entity that protects weaker entities, a guardian, a caretaker, and must be vigilant. This obligation incumbent on the Italian State also falls on all Italian citizens, on every natural person, on every Italian human being who is a subject of law.

This obligation corresponds to rights in favour of the entities referred to in Article 9 of the Constitution. It should be noted, however, that legal subjectivity is not attributed to animals, just as it is not attributed to the environment, biodiversity, ecosystems or future generations. What has happened in other countries (Ecuador, Bolivia, Argentina, India), where legal subjectivity has been attributed to animals and natural entities,[14] has not happened in Italy. There is no doubt that at this moment in history, the legal and religious cultures of other areas of the planet (Latin America, India, Asia) are expressing advanced visions of a revision of the relationship between humans and nature, or more precisely, a formal and legal (re)affirmation of a conception that is profoundly different from that of Western cultures: respect and harmony between humans and the

[12] L Gatt, 'Evolution of legal subjectivity as private law category in the new Italian Constitution' in F Rescigno and D Cerini (eds.), *Sustainability and animal welfare: legal and scientific perspective* (Routlegde-Giappichelli Studies in Law 2025) 35-47.

[13] F Rescigno, 'La riforma dell'articolo 9 e gli esseri animali: un impegno verso una Costituzione biocentrica e animalista' in *One Earth – One Health. La costruzione giuridica del Terzo Millennio* (Giappichelli 2023) 13–21.

[14] M Pittalis, *Diritto degli esseri animali – Lezioni e commenti* (Cacucci Editore 2022).

natural world are cardinal concepts of the religions and cultures of many Latin American, Asian and Indian peoples.[15]

However, the failure to attribute legal subjectivity in our constitutional text does not seem to represent an obstacle to the changes taking place and, indeed, is itself a manifestation of the change that has taken place in , as it attests that the Italian State and Italian citizens, while remaining exclusive subjects of law, no longer have a position of dominance over nature and animals, but must, on the contrary, protect them.

In other words, attributing legal subjectivity to animals is not the solution to the problem of their vulnerability unless the very content of legal subjectivity as it relates to human beings is changed. The content must be one of care and protection towards the weak (animals, but also the environment, the plant world, biodiversity, etc.). By attributing this content to the legal subjectivity of legal persons and human beings in relationships of vulnerability, we see how the state and human beings become responsible towards all animals and, in general, towards all living beings that are unable to protect themselves autonomously.

The Italian constitutional reform has initiated this process; slowly, the awareness is emerging that being subjects of law does not mean being rulers but guardians; it means being those who must protect, preserve and avoid abusing everything that does not have the possibility of defending itself, protecting itself and protecting itself autonomously. A different concept of legal subjectivity is emerging, one that is more about duties and responsibilities than rights and powers, because this concept of legal subjectivity is becoming increasingly rich in elements of necessary relationality with what surrounds human beings, in particular with other living beings.

The Italian legal system is no stranger to these changes in the meaning and content of active legal positions. With regard to another topical relationship of vulnerability, that between minors and adults, the 2012-2014 family law reform replaced parental authority with parental responsibility (Article 316 of the Civil Code). This type of active legal position is full of duties and much less of rights, *i.e.* of powers of the adult towards the minor. On the contrary, the position of the minor is rich in rights and has very few duties.

A similar position should be taken by human beings towards nature, animals and plants: one could speak of tutorial responsibility.

The transformation of the content of legal subjectivity in relation to human beings also involves the legal personality of entities, especially states but also private entities. All legal subjects – natural and legal persons – are now called upon to exercise the powers connected with their legal subjectivity in the spirit of care and protection of non-human living beings.

[15] MC Gaeta, 'Il problema della tutela giuridica della natura: un'analisi comparata tra Italia e Stati dell'America Latina' (2020) 4 NDC 313–343.

5. Obstacles to the change in legal subjectivity in terms of the tutoral responsibility of human beings towards other living beings.

Against this process of profound change in the content of legal subjectivity, whether it refers to natural or legal persons interacting in contexts of relational vulnerability, there is a certain type of technological development that promotes, instead, the traditional dualism of legal subjectivity-autonomy, the latter understood as intellectual capacity and/or awareness/responsibility for one's actions, and supporting the attribution of legal subjecthood only to entities that possess it.[16]

These currents of thought, which are widespread internationally and combine moral philosophy, law and bioethics, at best endorse the extension of legal subjectivity to animals as a useful argument for extending it to autonomous artificial agents (robots in the broad sense) and to the environment.

Despite their good intentions, these schools of thought, anchored in the traditional conception of legal subjectivity, prevent the recognition of the content of care for non-human living beings; they prevent the development of an idea of protection and safeguarding that human beings should have towards other living beings, and instead push towards the attribution of legal subjectivity – traditionally considered exclusive to humans – to anthropomorphic robots.[17] Remaining closed within this conceptual bubble, it becomes difficult to understand that attributing legal subjectivity to robots should not mean making these artificial agents dominators of humanity and nature. On the contrary, it should mean programming them so that they can exercise care and protection of human beings and non-human living beings and also make them responsible for any damage caused to them. In other words, robots as legal subjects should be understood as entities obliged to protect and safeguard all living beings, and this could be relatively easy to achieve at the design stage if only this objective were clear.

While waiting for this perspective to take hold (which seems to be moving further away with the creation and widespread use of so-called weapon robots), the more 'progressive' currents are seeking to justify various forms of reification of human beings themselves, as well as non-human living beings.

In particular, the advance of biotechnology is cause for concern. This advance requires the use of all living beings, from humans to plants and animals, for specific purposes. Paradoxically, alongside the above-mentioned trends towards expansion or, in any case, transformative enlargement of the category of legal subjectivity, we are witnessing a simultaneous shift of all living beings, including human beings, particularly in their embryonic forms, towards the category of legal objects. This is happening with the use of biotechnology in the broadest sense: gene editing; human-animal hybridisation techniques; incubation and artificial procreation of triparental embryos and, above all, synthetic human embryos (Sheefs - Synthetic Human Entities Embryo-Like Features).

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[16] JC Gellers, *Rights for Robots: Artificial Intelligence, Animal and Environmental Law* (Routledge 2021).
[17] L Gatt, 'Legal anthropocentrism between nature and technology: the new vulnerability of human beings' (2022) 1 EJPLT 15–26.

It is clear that this scenario greatly slows down the development of legal subjectivity for persons (natural and legal, and why not robots equipped with AI) towards the care and protection of vulnerable living beings (including human beings).

On the contrary, in the aforementioned scenario, the idea of a human being who is still dominant for purposes (medical research; advancement of medical care; scientific progress, etc.) that he himself has placed above his obligations to protect even entities of his own species (human, in fact) is endorsed.[18]

In other words, technology, insofar as it places human beings in a position of absolute supremacy not only over other living beings but also over other humans (in their various stages of development), can represent and has so far represented an obstacle to the acceleration of the conceptual metamorphosis of the relationship between humans and nature, which is nevertheless evolving, albeit slowly but surely.[19]

From a different perspective, it must be said that this trend could well be reversed, making technological development a powerful ally in the decline of legal subjectivity in the sense of care and protection of living beings in vulnerable positions.[20]

6. The impact of the new category of legal subjectivity as care on the category of sustainability: vegetarianism and alternative medical experimentation.

The reversal of the trend regarding the possible uses of technological development is, in reality, already underway because there are regulatory data and technological discoveries of fundamental importance in Europe that allow us to take a clear and perhaps even rapid direction towards the effective sustainability of humankind on the planet.

The issue of sustainability cannot be reduced to a more or less rational attempt to hoard new sources of energy (perhaps at the cost of destroying other living beings) with the main, if not exclusive, aim of preserving the current lifestyle of Western people. This would ignore the deep link between sustainability and vulnerability, which is the core concept on which the new way of being and thinking of the next generations should be based.

Promoting a culture of sustainability means promoting a culture of relational vulnerability and the repositioning of human beings in relation to nature, natural environments, ecosystems and habitats that are home to animals, plants (but also humans who are culturally, economically, militarily and technologically weak).[21]

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[18] AG Biuso, 'Biotecnologie e antropodecentrismo' in L De Stefano (ed), *Tecnica e Coesistenza: Prospettive antropologiche, fenomenologiche ed etiche* (Mimesis 2024) 149–156.

[19] L Gatt, 'Essere umano e ambiente digitale come relazione di strutturale vulnerabilità' in L. Gatt and M.C. Gaeta (eds), *Building a New Strategy for European Protection Law in a Technological Environment* (Suor Orsola Benincasa University Press 2023) 11 ff.

[20] This concept also includes the human embryo in all its forms, see P Grimaldi, End of Waste (EoW) nell'attività di impresa tra sostenibilità, artificial intelligence e digital innovation (Suor Orsola Benincasa University Press 2024) 106.

[21] L Gatt, 'Il paradigma della sostenibilità nel diritto privato tra vulnerabilità relazionale e "principio responsabilità' in I.A. Caggiano and A.A. Mollo (eds), *Eu Green Rights: re-shaping fundamental rights for future*

The repositioning of human beings in the role of guardians of those who can only suffer without being able to defend themselves requires, first and foremost, the recognition and codification of:

a) the right of animals not to be killed for pleasure (abolition of all forms of use of animals for recreational and sporting purposes, even if long-standing in all its forms and in all countries of the world);

b) the right of animals not to be eaten in a serial and industrial manner or for religious reasons that often fuel the serial and industrial way of animal exploitation for food;[22]

c) the right of animals not to be subjected to medical experimentation (with or without vivisection).

These three rights and the related obligations incumbent upon public legal entities – states – and private entities, as well as upon human beings as such and as citizens – appear fundamental and indispensable: their recognition is a *sine qua non* condition for the repositioning of human beings and for the change in meaning and content of the category of legal subjectivity.

It follows that the promotion of vegetarianism and alternative techniques to animal experimentation must be the main objectives of technological development with a view to real sustainability.

It should be noted that we have actually been making good progress in this area for some time.

Consider the possibility of using robot animals to satisfy recreational and sporting needs for violent human-animal interaction.[23]

Consider cultured meat as a means of eliminating livestock farming. Cultured (or, erroneously, synthetic) meat was discovered in the 1970s and is already on the market in Asia (Singapore, South Korea) and will soon be available in other parts of the world.[24] The importance of this 'technology' has also been highlighted by P. Benanti.[25] Inexplicably, in Europe, various excuses

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*generations. La sostenibilità nella prospettiva europea dei diritt*i, ReCEPL Series (Suor Orsola Università Editrice, 2025) vol. 8 15-29; L Gatt and others, 'Vulnerabilità tecnologica: una prospettiva di diritto privato' in A Patroni Griffi (ed.) *Vulnerabili. Questioni giuridiche, dilemmi bioetici*, (Mimesis 2025), 611-655; AA Mollo, 'Vulnerabilità e sostenibilità: primi spunti per uno studio dell'impatto sulle persone con disabilità e sulle future generazioni dei dispositivi [neuro]tecnologici' (2023) Special Issue EJPLT 28–40.

[22] We wish to counter the common objection that the killing of animals in agricultural, rural and similar contexts is legitimate, by arguing that such contexts are fundamentally different from those mentioned in the text, where there is a complete lack of balance between the interests of humans and those of animals: in the food industry, in fact, humans totally exploit animals in order to excessively satisfy their own dietary needs (with negative consequences even for their own health).

[23] A mechanical bull is a machine designed to replicate the motion of a bucking bull. Originally developed for training rodeo riders, it lets people practice without the danger or harm to live animals. Today it's widely used as entertainment or competitive amusement in bars, fairs, and events. This is one of the clearest examples of a robotic substitute for a violent human–animal sport (bull riding). Experimental robot bulls (bullfighting alternatives) There have been prototypes like an autonomous bullfighting robot ("robot bull") designed to mimic the behavior of a bull in corrida-style scenarios. These are not mainstream yet but illustrate attempts to replace bullfighting with safe robotic simulators. Robotic "animal-like" systems used in competitive or aggressive sport contexts: Robot combat / robot "fighting sports". Robot competitions include: Robot combat (machines fighting each other); Android wrestling / boxing; "Creature-style" robots in combat arenas [topendsports.com], [youtube.com]. Events like the World Humanoid Robot Games include: kickboxing; contact sports [smithsonianmag.com]. These replace violence between humans or animals with machine-on-machine conflict, shifting aggression into a controlled technological domain.

[24] 'Carne coltivata', Wikipedia <https://it.wikipedia.org/wiki/Carne_coltivata> accessed 15 July 2025; L Battaglia, 'Verso nuovi stili di vita. L'avvento della carne a base cellulare' (currently being published).

[25] See P Benanti, *L'hamburger di Frankenstein. La rivoluzione della carne sintetica* (EDB 2017).

are put forward, but behind weak and unfounded ethical arguments lie the powerful economic interests of farmers and the food industry, which is based on the extermination and suffering of animals, which is truly unjustified today.

Numerous studies have proven the nutritional value, taste and production potential of cultivated meat with a significantly reduced impact on animal life. Nevertheless, there is a lack of political will to make truly sustainable choices, as demonstrated by the European governance's actions to date, including recent ones, in the field of cereal farming and intensive livestock farming, which have contributed to financing these practices and limited themselves to measures relating to emissions.

Moving on to alternative techniques to in vivo experimentation, here too technological progress is ready to offer valid solutions with the development in the laboratory of organoids from human and/or animal stem cells.[26] Similarly, 3D printing of organs is a viable option that should be implemented for various experimental purposes.[27]

In any case, even if further efforts are needed to achieve reassuring results, organoids are certainly a useful tool for avoiding xenotransplantation, *i.e.* the transplantation of organs taken from hybrid animals bred in laboratories solely as incubators for organs intended for humans. Xenotransplantation opens up another chapter in the serial and industrial exploitation of animals.

Here too, funding could go in one direction – that of sustainability in the name of protecting vulnerability – but instead it goes in another. The scientific community is calling for a further postponement of the entry into force in Italy of Legislative Decree No. 26/2014, implementing EU Directive No. 2010/63/EU on the protection of animals used for scientific purposes. The decree is at the centre of a strong controversy in the scientific community because it introduces (in Article 5, paragraphs 2d and 2e) stricter prohibitions than those provided for in the Directive itself regarding the use of animals for experiments on xenotransplantation and for research on substances of abuse. In 2016, the EU Commission itself initiated infringement proceedings against Italy for incorrect transposition of the Directive: these proceedings are still ongoing and have not been referred to the Court of Justice.

The current government had further postponed the entry into force of Article 5 of the Legislative Decree until 2025, while the ban on the breeding of dogs, cats and non-human primates for experimental purposes (Article 10, Legislative Decree No. 26/2014) continues to be in force in our legal system. This ban is also ineffective as it is not accompanied by a ban on the use of non-breedable animals, which are therefore imported from abroad and used for experimental purposes!

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[26] S Landini and others, 'Ethical-legal aspects of organoids and their use in research. Manage risks and legal constraints for the development of ethical research' (2023) EJPLT 34-44; M Cassotta and others, 'Modernizing gut-brain axis research in nutritional science: The role of human-centered New Approach Methodologies' (2025) 159(4) Trends in Food Science & Technology 137, 133–142. Recently the really important lecture of Prof. Anna Maria Bassi 'Il progresso nella tecnologia e le alternative etiche e scientificamente superiori ai metodi tradizionali di sperimentazione animale' (Seminars Cycle of Italian Institut of Bioetics: <https://www.istitutobioetica.it/>), has clearly lightened the role of organoids in the medical research.

[27] G Schinaia, 'Stampa 3D di organi umani, nasce in Italia il primo laboratorio' Wired (29 July 2024) <https://www.wired.it/article/stampa-3d-organi-umani-medicina-universita-statale-milano/>.

On 2 December 2025, Legislative Decree no. no. 183 which amended Legislative Decree no. 26 of 4 March 2014, implementing Directive (EU) 2024/1262, amending Directive 2010/63/EU as regards requirements for establishments and for the care and housing of animals and as regards methods of killing animals. (25G00191). The measure entered into force on 19/12/2025 but does not reduce the number of animals that can be used; it does not prohibit particularly sensitive species (primates, dogs, cats); updates suppression methods, but does not delete them; It focuses on structural requirements, not a mandatory transition to alternative methods.

Adding to this contradictory picture are the latest news reports[28] on xenotransplantation, which continues to be rejected or, in any case, does not integrate with the human host body, as was already reported years ago by the most active animal rights associations[29] and continues to be highlighted today, especially by the medical research community, which is attentive to these issues and genuinely intent on finding alternatives.[30]

It should be noted that divisions have also emerged on this issue within the National Bioethics Committee (CNB), which in March 2020, with 26 members in favour and 6 against, approved a motion to revoke the prohibitions laid down in the implementing decree of Directive 2010/63. However, the six votes against raised strong ethical objections to xenotransplantation. In particular, Luisa Battaglia of the University of Genoa, bioethicist and President of the Italian Institute of Bioethics, stated that xenotransplantation is a 'serious' case of animal exploitation and that the shortage of donors should be resolved by increasing human donations.

It should also be remembered that Article 13 of Law No. 40/2004, entitled «Experimentation on human embryos», is in force in our legal system, which categorically prohibits, without distinction as to purpose, «the fertilisation of a human gamete with a gamete of a different species and the production of hybrids or chimeras»; the wording of the provision is very broad and essentially establishes a general prohibition on the production of hybrids or chimeras, regardless of other operations. Regardless, therefore, of the implementation of Directive 2010/63, the ban on the production of hybrids or chimeras for any purpose (in which no obstacles to the inclusion of xenotransplantation appear to be found in terms of technical interpretation) has been in force in our legal system for some time, and a careful interpretation of the same would place it ahead in the process of repositioning human beings in their relationship with other living beings, at least on this level.

In this area of in vitro experimentation as an alternative to in vivo experimentation, there is also a clear lack of political will at various levels to make real sustainable choices. Thus, the logic of human domination over all

[28] E Mullin, 'Perché un rene di maiale ogm trapiantato in una donna è durato due mesi' Wired (9 June 2024) https://www.wired.it/article/trapianto-rene-maiale-rimozione-lisa-pisano/.

[29] M Kuan, 'Embrione pecora-uomo, ricerche fallimentari alimentano business e false speranze' LAV (19 February 2018) <https://www.lav.it/news/embrione-pecora-uomo>.

[30] L Battaglia, *Un'etica per il mondo vivente: Questioni di bioetica medica, ambientale, animale* (Carocci 2011); C Rovida, 'Sviluppo e applicazione di metodi in vitro e in silico avanzati nella UE' (December 2023) EJPLT Observatory <https://www.ejplt.tatodpr.eu>; IR Pavone, 'L'attuazione della Direttiva 2010/63/UE in Italia: profili critici' (December 2023) EJPLT Observatory <https://www.ejplt.tatodpr.eu>.

other living beings and over the weakest members of their own species continues to be perpetuated.

7. Conclusions.

In 2022, it was written in our Constitution that the Italian Republic must safeguard, protect, preserve and, therefore, not kill or destroy animals, the environment and ecosystems. But how much are these words worth if, instead, the rights not to be eaten industrially and not to be subjected to medical experimentation are not effectively recognised for non-human living beings?

There is still a long way to go because the relational idea of vulnerability, which sees the subject of law as a guardian and no longer as a dominator, is a long and complex path, and at this moment we are not even halfway there because it is easier to avoid facing the complexity of our role.[31]

Today, some of the humans living on the planet kill animals for pleasure, eat them industrially, exploit plants without limits (even genetically modifying them), experiment on animals causing them suffering and death, and ghettoise indigenous peoples, depriving them of their natural habitats.

Human rights are extolled on paper, but we are enveloped in a drive to reify living beings, involving human beings themselves in their most fragile and vulnerable forms, such as economically weaker peoples, culturally diverse peoples, but also embryos and genetic heritage (not to mention the numerous wars currently underway, which represent a real setback in the evolutionary process of human beings as guardians of vulnerable living beings).

Our journey towards protecting other living beings, both animal and vegetable (and human), is effectively only just beginning. We are only now becoming aware that not everything is permitted simply because human beings (in some parts of the planet) have, for various reasons, attributed to themselves legal subjectivity, understood as the power of life and death over other living beings around them.

The hope is that the new generations will take up these demands for sustainability, understood as the protection of the vulnerability of non-human living beings (but also of the weakest humans), and carry them forward with courage, directing technological development towards the genuine well-being of the planet first, and then of humanity.

[31] L Battaglia, *Uomo, natura, animali: Per una bioetica della complessità* (Altravista 2016).