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Liberalism and Ecology: Brief Reflections on Compatibility and Limits in the Context of European Union.

ABSTRACT

The aim of my contribution is to analyse the extent to which liberalism and ecology are compatible. First, we will briefly analyse some concepts that could be problematic for the theoretical dimension of liberalism (such as the obligation towards future generations). Then I will focus on the difficulties of environmental protection and climate justice within contemporary liberalism, especially in the practise of one of its most complete forms: the process of European integration. I will mention the European Green Deal, the European Union's action plan that aims to make Europe the first climate-neutral continent by 2050. Finally, I will try to justify the doubts about the compatibility of the normative ideal of liberalism with climate justice.

KEYWORDS

Anthropocene, Liberalism, Climate Crisis, European Green Deal, Climate Justice.

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1. The 'Problem' of Liberalism.

In recent years, new, meaningful words have found their way into our legal lexicon. Ecology, sustainability, climate crisis and climate justice have burst into the scientific debate, partly because of the importance that these terms take on in government decisions.

They are concepts that create new needs and stimulate reflection on the necessary policies. Scientists are debating on several levels with the aim of outlining a possible balance between economic growth, sustainable development and measures to combat climate change. However, these reflections cannot avoid addressing the problem of social inequalities, which will increase precisely because of the climate crisis.

For all these reasons, it becomes even more urgent to find new lines of legal and ethical discourse. On the one hand, legal rules play a key role in regulating the interactive dynamics between the individual and nature, in a framework that is inevitably changeable and requires the protection of the environmental good. On the other hand, a radical rethinking of the ethical status of the relationship between the individual and the natural world is necessary. Indeed, environmental ethics addresses new moral patients (for example, non-human beings as well as future generations) and forces us to question the anthropocentric philosophical paradigm.

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The time in which we live can be defined as the Anthropocene², Capitalocene³ or Arguriocene⁴: Each term emphasises the impact of human activity on the world and its technological development, especially on the climate and the ecosystem⁵. As Ignatieff says, the moral imperative of the individuals of this era is to take responsibility for having acted as “masters of nature”⁶. In a time of severe environmental crisis, such as the one we are experiencing, it is legitimate to ask whether or not a change in behavioural patterns that can take into account the interdependence between the individual and nature is necessary. Arne Naess’s *ecological self*⁷, Nicolai Hartmann’s *ontology*⁸ and Hans Jonas’s *imperative of responsibility*⁹ are in this direction: even if they sometimes start from different assumptions, they all have in common the theoretical and ethical rethinking of the natural dimension.

A particularly relevant concept when we talk about these issues is that of climate justice¹⁰. Although it is a concept with many nuances, it is not always given the importance it deserves in the academic scientific debate. This is because it is a concept that not only sets in motion the idea of a climate emergency in the technical sense, but rather a principle that emphasises how differently the climate crisis affects societies depending on their socio-economic conditions. In this sense, the emergence of climate justice has made it possible to highlight the impact on rights, socio-economic inequalities and power asymmetries. Indeed, the introduction of the concept of climate justice into the scientific debate forces us to reflect on the fact that “we cannot think of solving the crisis of the century without first reducing inequalities, redistributing responsibilities and creating instruments for protection, recognition and reparation”¹¹.

However, it would be difficult to look for references to nature as a being with intrinsic value in liberal theories as well as in contemporary authors who invoke utilitarianism or contractarianism¹².

Looking at the different meanings of the term ‘liberalism’ (philosophical, political and economic)—as well as its recent developments in modern times (ordoliberalism and neoliberalism), certain recurring elements can be recognised from an ethical and legal perspective. These include the central importance attached to the protection of human freedoms, the imposition of limits on sovereign power and the pursuit of a desirable and efficient economic order.

Emphasising this “long-termism”, as well as the issue of intergenerational differences and sustainability requires a kind of politics that finds no conceptual prisms in liberal theories. The complexity of the environmental crisis would require corrections determined by long-term planning, as well as a significant change in the political and economic management of resources. It is in the nature of things that these measures concern interests and preferences that are not directly attributable to the citizens of our time (the so-called future generations) or to living beings (the entire ecosystem).

Through the lens of one of the theoretical foundations of liberalism (the right to property), some of the most important liberal philosophers, such as Edmund Burke¹³ and John Locke¹⁴, viewed the earth as the common property of generations. Those who have looked more closely at the differences between generations today – such as Brian Barry¹⁵ – have tried to see an indirect reciprocity between generations. According to Barry, today’s generations are called upon to leave their children capital

² Crutzen, Stoermer 2002: 23.

³ Moore 2015: 70.

⁴ Porciello 2022: 13.

⁵ Atzeni 2024: 13-14.

⁶ Ignatieff 2020: 23.

⁷ Naess 1995: 227.

⁸ Hartmann 2012.

⁹ Jonas 1985.

¹⁰ Bertuzzi, Imperatore and Leonardi 2021.

¹¹ See M. Di Pierri, Preface of P. Imperatore and E. Leonardi 2023.

¹² Menga 2023.

¹³ Brown Weiss 1990.

¹⁴ Locke 1980.

¹⁵ Barry 1978: 242-244.

of at least equal value because they have inherited it from their parents. There is therefore a kind of obligation of the current generation towards the previous generation. However, as Axel Gossieres stated: “For a state to justify its sustainable development policies by reason of obligations to the dead is a challenge to the liberal requirement of neutrality on the part of the state towards various metaphysical conceptions and views of the good life”¹⁶.

Furthermore, the endeavour to improve the future situation must be carried out from a liberal perspective, in compliance with fundamental freedoms and in accordance with the individual needs of the present day.

For example, as Robert Nozick¹⁷ points out, it would be unjust to restrict the exercise of property rights in order to promote the welfare of future generations; just as it would be unjust to impose bans on pollution if the individual who is called upon to adopt environmentally friendly practises is not prepared to bear the negative effects because they are uneconomical.

With the *just savings principle* John Rawls¹⁸ looks to future generations by arguing that one of our duties is to guarantee them sufficient material capital savings. However, the so-called “social minimum” is not aimed at protecting and preserving the ecosystem, but rather at leaving future generations what is necessary for the existence of good institutions.

According to Rawls, the status of the natural world and our proper relationship to it are neither essential constitutional elements nor questions of fundamental justice. Therefore, Rawls’ idea leaves environmental protection largely to the individual preferences expressed by the majority: If individuals do not feel a duty to future generations, their protection would be excluded from public policy action.

Two questions arise from this very brief overview: if we strive for an ethics of responsibility, a radical shift of perspective to future generations is required. Therefore, those who act must accept future generations as their “creditors”. As Barry says, we must return to our children a capital that is at least equal to what we have received. However, not because we have received it from those who have gone before us, but as if we had borrowed it from those who will come after us.

Secondly, we need to understand to what extent the protection of freedoms can be combined with a democratic political strategy that takes into account both the danger of the climate crisis and its anthropogenic nature.

2. Liberalism and the Process of European Integration.

So what freedoms are at stake in contemporary liberalism? Are they compatible with a philosophy of ecology and nature?

To answer this question, I refer to the process of European integration, which represented the most important attempt at liberal harmonisation between the individual European systems.

This process pursued the ideal of a co-operating community for a free and united Europe (we remember the Ventotene Manifesto). At the same time, this project required a necessary link between supranational and internal structures. From the second post-war period, the union between the European Communities was realised in a positive way by imposing a series of measures based on democratic principles on the Western systems. The same happened with the treaties, charters and conventions that established the recognition of human rights in various forms.

¹⁶ Gossieres 2008: 64.

¹⁷ Nozick 2013.

¹⁸ Rawls 2001 and 1971.

However, as many scholars have noted¹⁹, this particular union between states was realised under the political, legal and economic profile of a “negative” integration²⁰, which was thus conceived above all for market freedoms and aimed at their homogenisation.

It is therefore a functional union, in the sense that the efforts of the European institutions are mainly focussed on the economic sphere. And it is precisely for this reason that there has been much discussion in recent years about *neoliberal* or *ordoliberal* Europe²¹. According to Jürgen Habermas²², this unique shared sovereignty was not achieved through the ethical and moral constitutionalisation of its inspiring principles, but through the constitutionalisation of the system of economic freedoms. From the creation of the European Coal and Steel Community in 1951 to the signing of the Treaties of Rome in 1957, the realisation of the Customs Union and the Common Market and the Economic and Monetary Union in 1992, the four fundamental economic freedoms were recognised as the main means of achieving European integration. In this way, the “ever closer union of the peoples of Europe” announced in the preamble to the EEC Treaty could be achieved.

Over the last ten years, the constitutionalisation of economic freedoms has been significantly exacerbated by the crises in the European Union (think, for example, of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union). These crises have accelerated the consolidation of a series of economic measures that were born as emergencies. But they have also meant that a large part of collective life and political-legislative decisions in the economic sphere have been largely removed from democratic control. For this reason, there is often talk of a European *democratic deficit*, of a tension between liberal ideals and the principle of popular sovereignty²³.

Although it is plausible to believe that there are objective differences between the theoretical programmes of contemporary liberalism – based on the geographical location of the Austrian School, the Freiburg School and the Chicago School – there is a convergence in the recognition of a worldview between the contemporary forms of liberalism, ordoliberalism and neoliberalism. There is, in fact, a certain order (the “ordo” of which the ordoliberals Franz Böhm and Walter Eucken spoke²⁴) and a certain governance, both destined to form the premises of a competitive model outlined by an economic constitution capable of containing the role of economic power and the pluralism of interests expressed in contemporary societies. In this sense, contemporary liberalism – regardless of its names – presents itself as the political-theoretical basis of an economic order with a market that cannot exist without the state. The institutional framework thus becomes an essential instrument of the free economy, capable of ensuring a market policy based on economic freedoms and competition, as Warner Bonefeld²⁵ explains.

The European management of the ecological crisis seemed to respond perfectly to these needs: in 2019, the European Commission presented the European Green Deal project, a strategy aimed at tackling the environmental problem through a series of measures. In parallel, EU Regulation 2021/241 (establishing the Recovery and Resilience Device²⁶) was adopted in response to the Covid-19 pandemic crisis with a focus on the environment. However, one of the main objectives was to equip the European Union with a modern, competitive and resource-efficient economy. One of the most important instruments for reducing gas emissions was certainly the system of Directive 2003/87/EC: a system for the exchange of greenhouse gas emission permits, flanked by a cap-and-trade mechanism centred on the emission allowances allocated to each company. Each limit entitles the company to emit one tonne of carbon dioxide (CO₂).

¹⁹ Wilkinson 2021; Menéndez, Olsen 2020.

²⁰ Scharpf 1996; Majone 2006.

²¹ Bonefeld 2017.

²² Habermas 2012: 345.

²³ Goldmann and Steininger 2016: 712.

²⁴ See Zanini 2022.

²⁵ Bonefeld 2017

²⁶ Regulation (Eu) 2021/241 Of The European Parliament And Of The Council [2021] L57/17.

Under the cap, companies receive or buy emission allowances, which they can trade among themselves if necessary. The system does not have the direct effect of imposing a ban on polluting companies (such as multinationals), but allows them to implement a real market, reminiscent of the carbon market and the biodiversity offset system. In this way, the purchase of the right to pollute is facilitated by clearly privileging the most competitive and polluting multinationals. This concept seems to update and concretise Nozick's theory of the sale of transferable pollution rights for certain quantities²⁷.

3. Ecological Crisis in the European Union.

However, the European Green Deal does not prescribe that environmental protection must be systematically prioritized, but sets out the obligation to balance the various interests: an assessment of environmental protection needs and a reconciliation of these with the economic interests that characterise the Union's policies and actions. Indeed, the Recovery and Resilience Device (5.2) provides for financial support for the adoption of measures to protect the environment and stipulates that only measures that comply with the 'Do No Significant Harm' principle can be financed: the measures described in the national RRP's must not cause significant harm to the environment. However, the threshold is not specified²⁸.

As already mentioned, the neoliberal style of climate policy is based on the assumption that climate change can only be effectively combated on the basis of further 'marketisation'. In this sense, the approach of international environmental policy is based on a regulative idea based on prohibitions and sanctions, and the biosphere is positioned as a 'naturalistic' sphere of intervention, separate from the rest of human activities. In this last sense, it emphasises the detachment of the idea of a policy relating to the ecosystem as a sphere separate from other spheres, such as that of industrial policy, to which it ultimately has an obvious subalternity²⁹.

While these legal provisions allow governments to intervene to limit individual actions that violate or threaten to violate individual rights, they do not protect the ecosystem. In fact, they appear as simple palliative measures that mitigate the effects of climate change without actually influencing it³⁰.

The political initiatives of the European institutions seem to be far removed from contemporary ecological perspectives. They are certainly far removed from Serge Latouche's more radical degrowth paradigm³¹. According to Latouche, industrial civilisation can only avoid catastrophe if it renounces its consumerism and productivism. For the French economist, economic theory must encompass a range of good practises, from the self-management of territories to opulence frugale, which serve environmental sustainability and social justice.

European legal-political practises, however, seem to be far removed from the milder perspective of Herman Daly, who, starting from demographic control, identifies three indispensable conditions for the sustainability of the functioning of the economic system: the balance between the rate of utilisation of renewable resources and their rate of regeneration; the idea that the release of pollutants

²⁷ Nozick thus introduces Dale's idea of selling transferable rights to pollute in certain quantities. See Dales 1968. The only problem Nozick (2013: ch. 4) points out with this "elegant proposal" by Dale is that it "involves central decision as to the desirable total amount of pollution".

²⁸ From this point of view, the definition of *nomocene* is interesting. It is a concept that takes into account the extensive environmental regulations. As has been argued, the concept would allow us to provide an adequate theoretical space for reconstructing the impact of environmental law on the environment in substantive terms, i.e. the actual effectiveness of environmental law. See Viola 2024: 2.

²⁹ Imperatore and Leonardi 2023: ch. 1.

³⁰ On the possible critical issues of recent legislative interventions, see: Buono 2023.

³¹ Latouche 2010.

and waste into the environment must not exceed the carrying capacity (or disposal) of the environment itself; the constancy over time of the stock of non-renewable resources³².

Supranational policy, however, is far from both of these points of view: the proposed regulatory models seem to follow a kind of American libertarian model of climate development. Libertarians generally believe that government action should be limited and that the solution to any crisis should lie in the actions of the individual. This also applies to the climate issue - in libertarianism there is an “awareness of the moral problems concerning air pollution”³³. It has been argued that libertarianism can expect today’s generations, especially in wealthier countries, to correct the excessive emissions caused by their ancestors. The air pollution factor is seen as a threat or harm to individual innocent victims or their private property. However, it is not perceived or considered as harm to the ecosystem as a whole³⁴. In such circumstances, the so-called ‘non-aggression principle’ can be activated when individual emissions cross the personal or protected boundaries of others without their consent. When this happens, the victims of the unwanted emissions can be compensated. Torpman argues that libertarianism is not indifferent to climate risks. Libertarians might conclude that these are genuine rights violations against which individuals can exercise a right of self-defence. However, he himself recognises that libertarianism can provide some, if only modest, protection for members of future generations³⁵.

This means that for libertarian thinkers, society is fully responsible when it is intersubjectively responsible, i.e. when actions are carried out in awareness of the harm they could cause. The theoretical consequence of this, however, is the idea that individuals can solve the environmental problem themselves. This seems to be a fallacy, also because the actions of the individual are tiny compared to the pollution and exploitation of resources by multinational corporations. Therefore, a reference to libertarianism itself seems insufficient from the point of view of its moral basis³⁶.

Rather, any government action to protect the environment at the international level must necessarily take into account the responsibility of industrialised countries for the environmental unsustainability of current economic systems. Since climate change, as we have seen, is a problem that has an indefinite temporal extension, it affects people of different generations who will be affected by the effects of the environmental crisis. It is therefore absolutely necessary to introduce concrete methods of authentically sustainable development into the political and academic debate. At the same time, however, any strategy runs the risk of being completely ineffective if the industrialised countries are not prepared to adopt not only a new way of doing business, but also a new way of organising society.

4. Concluding remarks.

I therefore conclude by saying that the transition to a sustainable system appears more as an opportunity to increase corporate profitability than as a genuine realisation of the environmental crisis. Globalisation is rewriting the balance between the market and politics, creating a clear imbalance in favour of politics. And as Luigi Ferrajoli has repeatedly emphasised – most recently in *Towards a Constitution of the Earth*³⁷ – market reinforces the valorisation of nature as a productive element rather than mitigating it: In the Anthropocene, nature loses its intrinsic, transcendent and

³² Daly 1999.

³³ Torpman 2016: 9.

³⁴ See Rothbard 1973: 319: “The vital fact about air pollution is that the polluter sends unwanted and unbidden pollutants [...] through the air and into the lungs of innocent victims, as well as onto their material property. All such emanations which injure person or property constitute aggression against the private property of the victims”.

³⁵ Torpman 2016: 79.

³⁶ See the idea of “a morality of individual rights” in Zwolinski 2015: 515-529.

³⁷ Ferrajoli 2020.

ontological value in order to gain its individual power, which corresponds to the principle of the existence of homo oeconomicus.

As Alessio Lo Giudice³⁸ emphasizes, climate justice aims to protect the most vulnerable people, as they do not have sufficient resources to cope with the environmental and socio-economic impacts of climate change. The privatisation of common goods, the exploitation of resources for economic growth and the system of financial exchange of polluting capacities, on the other hand, go in a completely different direction. This type of action forces us to reformulate the concepts of responsibility, legitimacy and justice in the light of a contemporary social context that raises profound questions about our development model.

Over the last twenty years, social systems in the West have been confronted with two main problems. On the one hand, the demand for social protection has increased due to new social risks. On the other hand, available resources have decreased due to the economic crises of 2008 and the 2020 pandemic. In this context, the incomes of families and workers have fallen in real terms over the last fifteen years. Poverty and inequality have increased, jeopardising social and democratic stability.

Climate change creates new social risks: it threatens people's health, the sustainability of economies and worsens conditions for vulnerable communities by increasing poverty, inequality and migration.

The concept of climate justice explains the idea that the impacts of climate change are not evenly distributed and that there are significant disparities in the distribution of both responsibility for the climate crisis and its impacts. However, not only do the most vulnerable regions suffer more from the effects of global warming - even though they have contributed less to global emissions - but even within the most industrialised regions, those who pay the price for the crises are most affected by social and structural inequalities³⁹.

Therefore, the liberal normative ideal – which aims to prevent excessive interference by institutions in the freedoms and rights of all – is difficult to reconcile with the need for collective, international and intergenerational action now dictated by tackling the climate crisis. Capitalism, the privatisation of common goods, the exploitation of resources for economic growth, the system of financial exchange of polluting capacities are inadequate, and harmful, in the face of the crises in which we find ourselves. In this sense, a set of national and supranational legal rules that integrate humanity and the Earth system and redefine the concepts of responsibility and environmental justice is indispensable.

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³⁸ Lo Giudice 2020: 124.

³⁹ Moore 2023.

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