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Environmental Protection: Between Religion and Law

OCHRONA ŚRODOWISKA: MIĘDZY RELIGIĄ A PRAWEM

Streszczenie

W artykule podjęto problematykę ochrony środowiska oraz ujęto ją w zintegrowanej perspektywie prawa i teologii, ze szczególnym odniesieniem do kontekstu włoskiego. Analiza wychodzi od niedawnej nowelizacji artykułów 9 i 41 Konstytucji, które uznają ochronę środowiska, bioróżnorodności i ekosystemów za podstawowe wartości konstytucyjne, również z myślą o przyszłych pokoleniach. Te zmiany konstytucyjne oznaczają ewolucję włoskiego prawa publicznego w kierunku większej wrażliwości na zrównoważony rozwój środowiskowy jako wartość założycielską i istotne ograniczenie wolności gospodarczej.

Wychodząc z tego kontekstu prawnego, autor artykułu analizuje relację między wymiarem normatywnym a etyczno-duchowym horyzontem proponowanym przez religie, zwłaszcza chrześcijaństwo, które poprzez encyklikę *Laudato Si* proponuje wizję „ekologii integralnej” opartej na trosce o stworzenie. Dokument ten stanowi jeden z najważniejszych współczesnych punktów odniesienia w refleksji teologicznej nad środowiskiem, oferując ujęcie, w którym wymiary środowiskowy, społeczny, ekonomiczny i duchowy są ze sobą nierozzerwalnie powiązane.

Taka perspektywa znajduje również rezonans w innych tradycjach religijnych (judaizm, islam, religiach wschodnich), które dostrzegają w naturze rzeczywistość świętą – stworzoną lub będącą manifestacją boskości – z którą należy obchodzić się z szacunkiem i umiarem. Zestawienie prawa konstytucyjnego z teologią ukazuje istotne zbieżności: obie dziedziny wiedzy uznają środowisko za dobro wspólne i podkreślają odpowiedzialność wobec przyszłych pokoleń, sprawiedliwość społeczną oraz konieczność nowego paradygmatu rozwoju. W tym ujęciu ujawnia się możliwa synergia między językiem prawnym a językiem teologicznym – oba są ukierunkowane na promowanie etyki troski, umiarkowania i solidarności. W tym kontekście prawo nie ogranicza się jedynie do regulacji, lecz staje się również wyrazem wspólnego etosu, zakorzenionego w duchowej wizji istnienia.

Słowa kluczowe: ochrona środowiska, społeczna doktryna Kościoła, encykliki, konstytucja, reforma konstytucyjna

Introduction

The growing awareness of the problems that may arise from the environmental crisis requires reflection on the role of civil and religious institutions in protecting our planet. The comparison between the doctrine of the Catholic Church and the Italian Constitution represents fertile ground for questioning how ethical, spiritual, and legal values can collaborate in promoting real environmental protection.

A first question concerns the position of Italian constitutional law. With the 2022 reform, Article 9 of the Constitution was amended to explicitly include the protection of the environment, biodiversity, and ecosystems. This change marks an important step towards recognizing the environment as a primary legal asset, but it leads to a logical reflection: what will be the concrete effectiveness of this rule, if it is not supported by coherent policies and widespread cultural change?

The thought of the Catholic Church fits well into this context, particularly as expressed by the encyclical *Laudato Si* by Pope Francis. In it, the Church becomes the spokesperson for an integral ecological vision, which sees the environment not only as a set of resources to be protected, but as a dimension of creation with which human beings are called to live in harmony. This document presents itself as a significant doctrinal innovation, which sets aside the traditional idea of man's dominion over nature and instead affirms a relationship of custody, care, and respect.

The connection between the theological and juridical visions is based on ethical principles such as solidarity, justice, and the common good, which can constitute a shared foundation also in political and legislative debate, provided they are translated into universal terms and are respectful of cultural pluralism.

A further question that finds space in this area is the classification of environmental protection as a right or a duty. It is probably both, since it is a right because every person has the right to live in a healthy environment, but also a duty because everyone is called to adopt responsible behavior, both as a citizen and as a believer. Therefore, environmental education becomes important and involves the union between civic sense and spiritual ethics, capable of generating a necessary cultural change.

The dialogue between the Italian Constitution, with its recent openings, and the doctrine of the Catholic Church, with its profound ecological renewal, demonstrates that it is possible to build an alliance between religion and law to address the environmental challenge and thus to protect the environment. These two visions, although starting from distinct areas, invite the adaptation of a responsible

and supportive gaze. In this way, environmental protection takes on the characteristics of a shared mission for the future of humanity rather than merely a legal obligation.

In order to elaborate the above concepts and draw the relevant conclusions, an interdisciplinary and comparative analysis was conducted, aimed at relating the legal principles of the Italian Constitution to the ethical and theological perspectives offered by the social doctrine of the Catholic Church.

Specifically, the encyclicals concerning environmental protection were examined, with particular attention to *Laudato Si* and *Laudate Deum*, as well as some documents of the papal *Magisterium*, as to reconstruct the vision of the Catholic Church on the relationship between human beings and the environment, mentioning the ethical-theological foundations of integral ecology. The normative and jurisprudential sources identified were then also taken into consideration, namely the Italian Constitution and the main rulings of the Constitutional Court and the Strasbourg Court, with the aim of identifying the evolution of the principle of environmental protection in Italian law, without neglecting the European and international references.

Through the comparison between the constitutional principles and the values of the social doctrine of the Church, an attempt was made to identify a possible convergence between the two areas, despite the difference in languages and purposes, in order to understand if and how the Christian vision can contribute to the public debate in a secular and pluralist State, enriching it on an ethical level.

1. Catholic Church and environmental protection

All religions are concerned with environmental protection, and proof of this statement is that Buddhism, Judaism, and Islam, always attentive to the conservation of Creation, are evolving today to the point of recommending the use of solar panels or the renunciation of plastic bottles during pilgrimages.¹

Remaining within the Catholic Church and the doctrine it has developed, with the invitation to listen to the cry of the earth, Pope Francis renews a “dialogue” with every person who inhabits this planet regarding the suffering that afflicts the poor and the devastation of the environment. The planet continues to become warmer, partly due to human activity; 2024 was the hottest year on record, the first calendar year in which the global average temperature exceeded the pre-industrial level by 1.5 °C and this causes droughts, floods, fires, and increasingly severe

¹ A. Cozzolino, I. Muggianu Scanu, *The Dalai Lama: «Religion and science should work together to respect the Planet and Man»* “Pianeta 2000” 5 April 2020.

extreme weather events. Climate change also contributes to the heartbreaking crisis of forced migration. «The world's poor, who are least responsible for climate change, are the most vulnerable and are already suffering its effects».²

The central question around which the most recent Church document on the environment revolves, namely the encyclical letter *Laudato Si'*, is the following: “what kind of world do we want to leave to those who come after us, to children who are growing up?”. Will every person have access to the goods indispensable for survival? Such a world must be built and requires good management. Human beings can no longer rely on nature and its resources as available and inexhaustible for man; instead, they assume a moral responsibility towards the environment and consider the existence of possible «phenomena of exhaustion and pollution of the elements».³

This question, «not only concerns the environment in isolation; the issue cannot be approached piecemeal» (160, LS). If, on the one hand, in fact, “everything is connected” (and therefore problems cannot be addressed in merely environmental terms), on the other hand, the meaning of our very existence on Earth is at stake here. The “ecological conversion” to which we are called involves a real and deep change, which does not only concern the mechanisms that each one of us puts into action, but also the meaning underlying them. The change strongly desired by the Pope does not involve the abolition of economic rules and principles, but rather their innovation; it represents the engine of the new humanism, which allows the development of a humanity capable of taking care of the common home, in which it is possible to operate according to the rules of a new economy, a new politics, new relationships, and a «new ecclesial style of communion».⁴ The economy, “the great sick”, must be healed and not eliminated, since economic knowledge is essential for integral ecology and for the care of the common home.⁵ It is therefore necessary to redefine progress, and for this purpose it is necessary to change the global development model; this involves a responsible reflection “on the meaning of the economy and its purposes, to correct its dysfunctions and distortions” (194, LS).

2 Message of Pope Francis for the celebration of the World Day of Prayer for the Care of Creation, 1 September 2016.

3 B. Bignami, *The quality of development: The ecological ethics of Carlo Maria Martini*, “Aggiornamenti sociali” February 2020, p. 152.

4 G. Dammacco, C. Ventrella, *Food and environment: Manipulations and protections in canon law*, Cacucci, Bari, 2015, p. 106.

5 Cf. P. Foglizzo, *An economy for the common home*, “Aggiornamenti sociali”, August–September 2016, p. 600.

The right to a healthy natural environment, first deducible from the internal and European jurisprudential elaboration carried out, respectively, by the Constitutional Court⁶ and the Court of Strasbourg,⁷ and then sanctioned by Article 37 of the Charter of Fundamental Rights of the European Union, constitutes an essential element for the enjoyment of other fundamental human rights and for the concrete achievement of the common good, an objective for the achievement of which mutual collaboration between the State and the Church must be evident, as provided for by Article 1 of the Villa Madama Agreement (1984). Environmental issues, therefore, would also be among the issues for which mutual collaboration between the State and the Church would be desirable, given the similar views and the common commitment in this area.

In Italy, the Constitution distinguishes between the orders of the State and the Churches and establishes the principle of bilateralism as a necessary element for the regulation of mutual relations and for the peaceful resolution of any conflicts; both precepts constitute the main foundation of the more general rule of the common duty of correctness and contractual loyalty, together with mutual collaboration.⁸ Therefore, all the initiatives implemented by the Church to protect the environment are both permitted by the legal system and constitute the expression of the commitment to mutual collaboration with the State to achieve the common good, provided for by Article 1 of the New Agreement.⁹

- 6 The jurisprudence of the Constitutional Court has attributed its own dignity to the environmental asset, the object of autonomous subjective legal positions, recognizing it as a public interest of constitutional, primary, and absolute value, in rulings no. 151 and 210 of 1986. The environment as an intangible, unitary, and composite legal asset, to the point that each of its components can constitute the object of a distinct protection, without this excluding unitary protection as a whole. From this arises a precise duty of individuals, the community, and institutions to safeguard and protect it, since “the obligation to conserve the environment is essential to every type of right”. The constitutional position of the protection of the environmental asset, its numerous characteristics, such as unitarity, transversality, autonomy and essentiality of protection have recently been reaffirmed by the Consulta in ruling no. 7/2019. For further information on the issue, cf. C. Gambelunghe, *Environmental protection between law and economics*, <http://www.salvisjuribus.it/la-tutela-dellambiente-tra-diritto-ed-economia/> [accessed: 03.09.2024].
- 7 For an analysis of European case law on the matter, cf. F. Vollero, *The right to a healthy environment in the development of Strasbourg case law*, <https://www.diritto.it/diritto-ad-un-ambiente-salubre-nellelaborazione-della-giurisprudenza-strasburgo/> [accessed: 25.04.2024].
- 8 Cf. G. Casuscelli, *The economic crisis and the mutual collaboration between the Churches and the State for the “good of the country”*, “Stato, Chiesa e pluralismo confessionale” October 2011, p. 13.
- 9 Cf. F. Balsamo, *Religious institutions and environmental protection*, “Stato, Chiesa e pluralismo confessionale” March 2015, p. 11.

In this regard, the position taken by the encyclical letter *Laudato si* is relevant, as it was welcomed as a contribution of the Holy See to the general commitment to reach a global agreement for the international negotiations on climate, since it was published a few months before the COP (Conference of the Parties) 21, which was held in France in December 2015.¹⁰

The defence of creation, the relationship between man and the environment, and the balanced use of natural resources, in order to protect them, have always been issues on which the Catholic Church has focused. The Catholic Church, in fact, partly anticipated the explosion of public debate on environmental protection since this issue immediately emerged in its social doctrine. Already in the encyclical *Rerum novarum* by Leone XIII (1891) we can find some of the characteristic elements of Catholic ecology, which, taken up and developed by subsequent pontiffs, constitute the doctrinal horizon on which the reflection on the relationship between man and nature is grafted. In particular, the social teaching of the Church has always distinguished itself by an ecological vision that emphasizes human responsibility towards creation and that qualifies anti-ecological conduct as sinful.¹¹

Paying attention to more recent times, John Paul II, in the encyclical letter *Sollicitudo rei socialis* (December 1987) addressed the ecological question and its biblical reasons, highlighting how the limitation that was imposed in the beginning by the Creator, symbolically represented by the prohibition to eat “the fruit of the tree”, «shows with sufficient clarity that, towards visible nature,» we have a responsibility not only of a biological nature, but also of a moral nature, whose laws we absolutely cannot transgress. In 1990, with the Message for the XXIII World Day of Peace, the Pope of that period, dwelt on the theme of peace with God the Creator; in it, he talked about global warming and the effects of climate change even before the terms entered common usage. A real «right to a safe environment, as a right that must be included in an updated charter of human rights», was affirmed, but above

10 It can be seen as a new beginning, considering the failure to achieve the objectives set in the previous phase. The Agreement entered into force on 4 November 2016. Although it is binding, not all requirements are obligations in the strict sense and some of them leave room for broad discretion. Moreover, even for not respected obligations, it does not provide for real sanctions and there are no effective tools to ensure compliance. It also provides for forms of flexibility for developing countries. The Paris Agreement presents an important long-term goal: to keep the increase in average global temperatures below 2 C° compared to pre-industrial levels, aiming however to go below 1.5 C°. For an in-depth analysis of the Agreement, see L. Aristei, *The Paris Agreement: objectives and discipline*, “Quarterly Journal of Environmental Law” 3 (2017), pp. 73–96.

11 See. A. Andreotti, *Environmental protection in the social doctrine of the Church*, “Stato, Chiesa e pluralismo confessionale” 9 (2023), pp. 1–2.

all he underlined the urgent «moral necessity for a new solidarity, especially in relations between developing countries and highly industrialized countries».

In the encyclical letter *Centesimus Annus* (May 1991), John Paul II introduces the term “human ecology” and a first reference to its meaning, extending the ecological paradigm beyond the environmental question to focus attention on the respect, typical of man as a being “given to himself by God”, for his own “natural and moral structure, with which he has been endowed”. He also expresses the hope for a corresponding “social ecology” within the many human activities.¹²

His successor Benedict XVI also dealt with the environment and ecology, first in the Message for the XL World Day of Peace (1 January 2007), in which he took up and consolidated the inseparable triad between “ecology of nature”, “human ecology” and “social ecology”, and then in the Message for the XLIII World Day of Peace (1 January 2010), in which he invited people not to remain indifferent to climatic phenomena, desertification, degradation and loss of productivity of vast geographical areas, and pollution and dwelt on the phenomenon of the so-called environmental refugees.¹³ We cannot forget the relevance of the encyclical letter

12 In general, John Paul II set the parameters for the Church’s reflection on this worrying, then relatively new challenge. Destroying environmental harmony is a sin, because it alienates human beings from themselves and from the earth. Central to this is the “relationship” between humanity and the rest of creation, which must be nurtured with love and wisdom. The environmental crisis is not only scientific and technological: it is fundamentally moral. Since the *Message Peace with God the Creator. Peace with All Creation* of 1990 and the Rio Summit of 1992, the discussion has been ongoing for 25 years. Of course, the issues at stake are complex: first at the scientific level, then at the political level, and finally at the economic and commercial level. See “La Civiltà Cattolica”, quad. 3960, vol. II, 2015, p. 537.

13 In *Laudato si’*, Pope Francis touched on an emerging problem, that of “environmental migrants.” Few relevant people had done so in the past, despite the fact that the problem is important and – with its risks, its dramas, its tragedies, but also with its opportunities – one of the greatest that humanity will face at least until the end of the century. The definition of environmental migrant is rather fragmented, in the sense that experts are divided on both the name and the adjective. So much so that it is possible to list a series of more or less analogous alternative pairs: “environmental refugees,” “climate refugees,” “climate migrants”. The official definition of the International Organization for Migration is: “Environmental migrants are people or groups of people who, due to pressing causes of sudden or progressive changes in the environment that adversely affect their life and living conditions, are forced to leave their habitual residence or who, in any case, choose to do so, temporarily or permanently, moving elsewhere, whether within their country or elsewhere.” Therefore, “environmental migrants” are all those who leave their home due to environmental or climatic causes (such as energy production through the use of fossil fuels as the primary energy resource and source of pollution, deforestation, agriculture and intensive livestock farming) and generally due to the negative consequences that natural disasters have brought to the places in question, such as desertification, major droughts, floods and the like. Cf. F. Moretti, *Environmental refugees*, “Altalex”, 6 February 2021, <https://www.altalex.com/documents/news/2021/02/06/profughi-ambientali> [accessed 3.03.2024].

Caritas in Veritate, in the clear representation of the “green thought” of Pope Ratzinger,¹⁴ in which he brought together the ecological, the juridical, the economic, the political, and the cultural, because he considered nature closely linked to social and cultural dynamics.¹⁵

In the 20th anniversary of the Rio Conference on Environment and Development, celebrated in 2012, Benedict XVI also addressed the ecological theme and invited the international community to recover a new “integral ecology”. In fact, as is known, it was in Rio de Janeiro, in 1992, that the Earth Summit opened, the second Conference on the environment organized by the UN, thanks to which the key concept of the most modern environmental policies, called sustainable development, found space in the world vocabulary for the first time.¹⁶ It was precisely at the Rio de Janeiro Summit, in which the Catholic Church also participated, that the ecclesiastical institutions expressly recalled the duty of ethics over selfishness, reiterating the need for a more equitable distribution of the wealth available on Earth.

During the work of the 1992 United Nations Conference, the participants, including the Holy See, addressed the issue of the common attempt to reconcile the duty to safeguard the environment with the right to development, which is

14 Benedict XVI has been called the “Green Pope,” because he often talked about environmental and ecological issues, cf. “National Geographic” 28 February 2013.

15 In the general audience of 26 August 2009, Pope Ratzinger, inspired by the Encyclical under examination, recalls “the urgent moral need for a renewed solidarity” (no. 49) not only in relations between countries, but also between individuals, since the natural environment is given by God for all, and its use entails our personal responsibility towards all humanity, in particular towards the poor and future generations (CV 48). Aware of the common responsibility for creation (CV 51), the Church is not only committed to promoting the defense of the earth, water, and air, given by the Creator to all, but above all she works to protect human beings against self-destruction. In fact, “when ‘human ecology’ is respected within society, environmental ecology also benefits”. Is it not true that the inconsiderate use of creation begins where God is marginalized or even His existence is denied? If the relationship of the human creature with the Creator is lost, matter is reduced to selfish possession, human beings become its “last place” and the aim of existence is reduced to a frantic race to possess as much as possible. Creation, intelligently structured by God, is therefore entrusted to the responsibility of human beings, who are able to interpret it and actively reshape it, without considering themselves its absolute owners. Human beings are called instead to exercise responsible governance to protect it, make use of it, and cultivate it, finding the resources necessary for a dignified existence for all”. Cf. https://www.vatican.va/content/benedict-xvi/it/audiences/2009/documents/hf_ben-xvi_aud_20090826.html [accessed 03.03.2024].

16 The concept of sustainable development had already been introduced by the Brundtland Report of 1987. This report is also known as “Our Common Future” and is a document released in 1987 by the World Commission on Environment and Development (WCED) in which, for the first time, the concept of sustainable development was introduced.

fundamental and relevant for all people. In this perspective, the civil commitment of the universal Church was realized on a global level in order to reach a renewed conception of development, understood as an opportunity to remove, while also respecting Christian values, every inequality between peoples and generations.

This is the reason why the Catholic Church, since then, has believed that all environmental programs should move in the direction of, or rather, around the concept of human dignity and the freedom of each individual. The Holy See therefore believed it necessary to emphasize the anthropocentric dimension of the notion of environment, which is closely linked to everything that surrounds the human person, establishing the human person, his dignity and his integral development as the origin and goal of environmental policies.¹⁷

2. The evolution of the environment in papal letters

The last decade has been the scene of radical changes at all levels: economic, digital, and bioethical revolutions, accompanied by new forms of poverty and complex environmental situations such as climate change, deforestation, and loss of biodiversity. Today we can speak of “ecological spirituality,”¹⁸ namely the spirituality that Pope Francis talks about, which goes beyond the arrogant anthropocentric relationship with nature and invites us to recognize with humility that we must be minor and subject to all, including creation (*subditi omnibus*, says St. Francis). There can be no ecology without an adequate anthropology. This new relationship of respect, wonder, amazement, and gratitude should be the foundation of this new relationship, but it becomes necessary that spirituality be translated into action. There is a call to an “ecological conversion” of the heart that implies gratitude and generosity, sobriety and moderation, and the ability to be happy with little. This new lifestyle has a good ally in the concept of minority, that invites human beings to renew their *modus vivendi*, to be a little less consumptive, in order not to be a predator of the environment.¹⁹

17 Cf L. Colella, *Environment, religion and law in the “Time of Creation”: First comparative notes between the ecological foundations of the Catholic Church and Indian Sikhism*, “Rivista legale Ambiente Diritto” 4 (2019), pp. 1–31.

18 For an interesting analysis of the topic, cf. P. Malavasi, C. Calabria, *Ecological Education and Spirituality. An Interpretation of the Sixth Chapter of the Encyclical Letter Laudato Si*, “Human Development and the Environment: The Search for a Shared Ethics after the Encyclical Laudato Si” “Piccola Casa Editrice”, 2019, pp. 108–122.

19 Ordine dei Frati minori, *The cry of the earth and the cry of the poor. A handbook of the order for the care of creation*, Rome, 2016, pp. 8–9.

As can be seen from *Laudato Si*, paragraph 25, climate change is a global problem that brings with it serious environmental, social, economic, distributive, and political implications and represents a major and current challenge for humanity. Many poor people live in areas particularly affected by phenomena related to warming and, what is worse, their means of livelihood are heavily connected to natural resources and to what are defined as ecosystem services: agriculture, fishing, and forestry resources. Furthermore, they have no other type of economic availability or other resources with which to survive by adapting to climate impacts and also have little access to social and protective services. The same paragraph of the Encyclical denounces the indifference and lack of reaction of all, in the face of these tragedies, which is a clear sign of the loss of the traditional sense of responsibility that characterizes every civil society. Worrying is the tragic increase in migrants fleeing poverty aggravated by environmental degradation and who, as already highlighted, are not recognized as refugees in international conventions and consequently are “abandoned” and not legally protected subjects.

The *Laudato Si* is certainly a text that invites reflection on environmental problems, with particular relevance from an ethical point of view, but not only, given that the text allows interesting considerations on the consequences for human beings of environmental degradation, also looking at those who are led to migrate by environmental degradation and climate change and who, unfortunately, are neither legally recognized nor socially welcomed and hosted.

If, as explained in the encyclical letter, the earth is one and was given by God to humanity, the right of exclusive dominion does not exist, and rights and duties extend to all human beings not because they belong to a specific territory, but because they are part of humanity. Therefore, environmental refugees who are outside of any legal recognition and protection are also holders of rights and duties.²⁰

The papal document emphasizes that «there are not two separate crises, one environmental and the other social, but a single and complex socio-environmental crisis» (13 LS). The concept of “integral ecology”²¹ is crucial in this sense: building good vital relationships between all living beings in the context of nature and history, without excluding future generations, is a single operation,

²⁰ See C. Venturi, R.M. Micalef, *Environmental displaced people in the light of Laudato si'*, in: H.M. Yanez (ed.), *Laudato si. Interdisciplinary reading lines for the care of the common home*, Gregorian&Biblical Press, Rome 2017, p. 220.

²¹ The concept of integral ecology constitutes the leitmotif of the entire encyclical. It moves within the relational conception of the relationship between man and the environment, of which it constitutes an evolution. In this sense, cf. A. Andreotti, *Environmental protection in the social doctrine of the Church*, “Stato, Chiesa e pluralismo confessionale” 9 (2023), pp. 18–19.

even if it shows many different aspects. It is a question of building on a moral foundation, on an «objective truth», on «universally valid principles» (123 LS), which alone can establish a change. Integral ecology arises from the affirmation that “everything is connected”: the mutual implication between human beings and nature means that it is essential to avoid partial solutions to problems that require systemic solutions.²²

We are therefore talking about «agreed paths» and agreements between countries with «global regulatory frameworks» (173 LS): the model is that of agreements in which no community, no people, or country (not even the largest) can delude itself into thinking that it can do it alone, and therefore the essential logic is totally contrary to that of sovereignty, but rather to that of cooperation and laborious mediation between plural interests. On the other hand, «the care of the world must be flexible and dynamic»: there are no single centralized solutions, but respect is needed for the enormous variety of reality (144 LS). In this sense, the need for positive interrelations expressed above is completely different from the indistinct uniformity of a “globalism” that develops a single dominant culture, a “single thought” or a single model replicated everywhere. Common patterns of cooperation and attention to the pluralism of the world are two sides of the same coin: they must go together and grow hand in hand. One of the merits of the papal text is to show, as already said, that everything is connected, that is, climate change, poverty, migration, and wars are the manifestations of a single crisis that, before being ecological, is ethical, cultural, and spiritual. The *Laudato si* does not want to turn back the hands of time and bring us to pre-industrial forms of life, but rather identifies “the processes of self-destruction triggered by the pursuit of immediate profit.”²³ Therefore, it is necessary to review the paths of an ecological ethic, so that they are useful for growing in solidarity, responsibility, and care based on compassion, founded on the “ability to go out of oneself towards the other” (208 LS).

Since its publication, the relevance of the encyclical under examination was understood and was clear that it was destined to leave its mark not only on the social doctrine of the Church, but also on the political, economic, and of course, ecological processes of our globalized societies.

22 Cf. O. Zanato Orlandini, *Creation as a common home: Care, responsibility, sharing in the encyclical Laudato Si of Pope Francis*, “Studium Educationis” XVI, 3 (October 2015), p. 55.

23 A. Tornielli, *Laudato Si, an encyclical to look to the future after the pandemic*, <https://www.vaticannews.va/en/pope/news/2020-05/laudato-si-encyclical-pope-francis-tornielli-coronavirus-future.html> [accessed 07.06.2024].

Today we have proof, even after having lived through the dramatic pandemic experience, of the “prophetic” intuitions of the text and its strength, a dynamism that is expressed mainly in the ability of the document to connect aspects that were previously treated in isolation.

To clarify the content of the encyclical, it is necessary to specify that it is not a green encyclical but a social encyclical, underlining the importance of the development of an integral ecology as a priority at international, national, and individual levels, and expressing the hope for greater sensitivity to ecological issues with the adoption, by many nations, of the sustainable development goals agreed upon with the United Nations.

The particular attention of the Pope towards the environmental issue is demonstrated by a second encyclical on this topic, issued in October 2023, in which new elements were taken into account, such as the further increase in temperatures, extreme weather events, the COVID-19 pandemic, and the war in Ukraine. Divided into 6 chapters and 73 paragraphs,²⁴ *Laudate Deum* delves into what was already stated in the previous text on integral ecology, as well as issuing an alarm and a call for co-responsibility in the face of the climate change emergency, before it becomes too late.

Pope Francis invites everyone to evaluate with concern the season in which we are living. The economic and health crises of COVID-19 have not been sufficiently understood, neglecting the call to convert to more sober and fraternal lifestyles. Superficiality and delays in acting have dramatic consequences and create great suffering, especially for the poorest populations. We need to resort to a sort of “ethical sting” that shows the dignity of man: «In conscience [...] the question of meaning is asked: what is the meaning of my life, what is the meaning of my time on this earth, what is the ultimate meaning of all my work and effort?» (33 LD).

The encyclical clearly highlights that the environment is not a value in itself but is directly and inextricably linked to the other fundamental values of our society, such as freedom, equality, social justice, and the right to life.²⁵ It therefore seems interesting to verify whether and how the principles deriving from the encyclicals have been received in Italian law.

²⁴ Cf. Pope Francis, Apostolic Exhortation “Laudate Deum”, https://www.vatican.va/content/francesco/en/apost_exhortations/documents/20231004-laudate-deum.html, [accessed 08.06.2024].

²⁵ Cf. G. Amendola, *Ethics and law: The value of the environment in the encyclical letter Laudato si’ and in Italian Law*, “Questione e giustizia” June 2019.

The exhortation is addressed “to all people of good will”, not including any religious or confessional characterization of the recipients, so as to constitute a sort of “global magisterium” that has as its object the relationship between the Church and the world and the role of the Holy See in ecumenical and interreligious dialogue. In the apostolic exhortation, the Pope addresses the climate crisis with an urgent appeal, highlighting new challenges and revealing the profound connection between ecology, human dignity, and social justice. The incipit of the document reiterates and insists on the tone of concern and solicitude already expressed in *Laudato si*, underlining how the world is continuing to deteriorate and is dangerously approaching a breaking point. Pope Francis emphasizes that the impact of climate change is increasingly damaging the lives of millions of people around the world, manifesting itself in multiple fields, such as health, work, access to resources, housing, and forced migration. In *Laudate Deum* it is highlighted that climate change is not simply an ecological issue, but a question of social justice; the recognition of the connection between environmental protection and human dignity is crucial to understanding the extent of the problem.

Man’s responsibility in causing climate change can no longer be questioned, warns the Pope, and the speed with which the phenomena are manifesting themselves depends on «the enormous novelties that have to do with unchecked human intervention in nature in the past two centuries» (LD 14). Some elements that characterize this climate crisis, such as the increase in global ocean temperatures, acidification, and the reduction of oxygen, the reduction of sea ice, are irreversible for hundreds of years.

Nevertheless, we must not adopt a surrendering attitude and give in to catastrophic diagnoses, but rather acquire a broad and rational vision that allows us to marvel at the wonders of progress and «also to pay attention to other effects that probably could not even be imagined a century ago» (LD 18).

As much as «all attempts to deny, conceal, gloss over or relativize the issue, the signs of climate change are increasingly evident» (LD 5) and a significant and common commitment is needed to slow down the process of deterioration that we are witnessing.

The Pope emphasizes that climate change is a consequence of global inequalities and unsustainable development models, and this requires profound transformations in the structures of society. He calls for an ecological conversion, which includes modifications in consumer habits, in the economic system, and in politics, as well as highlighting the urgency of acting to avoid the irreversibility of the situation.

The strength of the Exhortation lies, above all, in the criticism of the weakness of international politics, too often the expression of elite powers unconnected to a collective ethic. To achieve solid and lasting progress, we need to resort to common action: «preference should be given to multilateral agreements between States» (LD 34), but not only that. Bergoglio insists on the need to recognize the contribution of aggregations and organizations of civil society capable of «compensating for the shortcomings of the international community, its lack of coordination in complex situations, and its lack of attention to fundamental human rights» (LD 37). The bottom-up multilateralism promoted in the Exhortation is a declination of that principle of subsidiarity central to the social doctrine of the Church. This presupposes the use of new decision-making procedures, the use of «spaces for conversation, consultation, arbitration, conflict resolution and supervision, and, in the end, a sort of increased “democratization” in the global context, so that the various situations can be expressed and included» (LD 43). Institutions must not lean towards the strongest, but be capable of preserving the rights of all. Multilateralism, reviewed in this way, leads to the involvement of the responsibility of subjects at various levels.²⁶

The heartfelt invitation is to a global ecological conversion and a structural change in societies, becoming aware of being a universal family, a sublime communion of all creatures, founded on human dignity and divine filiation. It is an urgent call to address the climate crisis and protect our common planet.

3. Environmental protection in the Italian Constitution

On 8 February 2022, amendments to Articles 9 and 41 of the Constitution were approved,²⁷ introducing the protection of the environment, biodiversity, and animals among the fundamental principles of the Constitutional Charter.

This operation appeared to be remarkably important, given that for the first time since 1948 an amendment has been made to an article of the Constitution, containing the so-called “Fundamental Principles” of the constitutional system (Articles 1-12).

²⁶ Cf. C.M. Pettinato, *Comment to “Laudate Deum”*, “Diritto e Religioni” 8 October 2023.

²⁷ Article 9 of the Constitution: “The Republic promotes the development of culture and scientific and technical research. It protects the landscape and the historical and artistic heritage of the Nation. It protects the environment, biodiversity and ecosystems, also in the interest of future generations. State law regulates the ways and forms of animal protection”.
Article 41 of the Constitution: “Private economic initiative is free. It cannot be carried out in conflict with social utility or in a way that causes harm to health, the environment, safety, freedom, human dignity. The law determines the appropriate programs and controls so that public and private economic activity can be directed and coordinated for social and environmental purposes”.

With the amendment of Article 9, the constitutional law introduces the protection of the environment, biodiversity, and ecosystems among the fundamental principles, also in the interest of future generations, and establishes that the law of the State regulates the ways and forms of animal protection.²⁸

The second paragraph of Article 41 has also been reformed. The new wording states that private economic activity is free and cannot be carried out in conflict with social utility or “in such a way as to cause damage to health, the environment, safety, freedom, or human dignity”; furthermore, it is established that the law determines the “appropriate programs and controls so that public and private economic activity can be directed and coordinated for social and environmental purposes”. Thus, the current Article 9 of the Constitution no longer protects only the landscape, but also the environment, biodiversity, and ecosystems and, thanks to the provisions of Article 41, private economic initiative cannot be carried out in conflict with health and the environment. This means, for example, that in the construction of new works, the decision to undertake new construction must no longer exclusively consider the protection of the landscape, but also other assets such as the environment, biodiversity, and the ecosystem, determining a serious balancing of interests to be carried out at an administrative level.

The purpose pursued by the legislator, based on what emerged during the parliamentary work, appears to be, first of all, that of giving articulation to the principle of environmental protection, with greater impetus than that mentioned in Article 117, paragraph 2, of the Italian Constitution regarding the “protection of the environment, the ecosystem and cultural heritage”. Together with the protection of the environment, there is the additional task of the Republic to protect biodiversity and ecosystems and, moreover, the legislator introduces a particular reference “to the interest of future generations”, unprecedented in the entire constitutional text.

28 The protection of animals in the constitutional amendment meets, on the one hand, a widespread request from “within”, that is, from Italian society, to take into consideration the welfare and protection of animals, also at a regulatory level; on the other hand, it listens to the needs for coherence coming from “outside,” with reference to the Community source (Article 13 of the Treaty on the Functioning of the European Union – TFEU) and to the European and non-European constitutions that have taken into consideration the protection of animal welfare for some years. For a careful analysis of the issue, see D. Cerini, E. Lamarque, *The protection of animals in the new Art. 9 of Italian Constitution*, “Federalismi.it. Rivista di diritto pubblico, Italiano ed Europeo” 24 (2003), pp. 31–65, https://www.federalismi.it/nv14/articolo-documento.cfm?Artid=49421&content=La+tutela+degli+animali+nel+nuovo+articolo+9+della+Costituzione&content_author=%3Cb%3EDiana+Cerini+e+Elisabetta+Lamarque%3C/b%3E, [accessed 09.07.2024].

The legislator wanted to conceive the protection of the environment, the ecosystem, and biodiversity in the broadest and most systemic sense, in continuation with the interpretative evolution of those principles affirmed by the Constitutional Court over the years, according to the constitutional provisions in force.

Therefore, the environment is considered not only an asset, but a real primary and systemic value, where the care of the landscape extends to the entire territory, even when degraded or apparently devoid of value.²⁹

Consequently, the protection of the landscape referred to in Article 9 of the Constitution is interpreted by constitutional jurisprudence as landscape-environmental protection,³⁰ with an expansive reading, from landscape to environmental protection: this interpretative evolution was also influenced by the reform of Article 117, paragraph 2, of the Constitution, which introduced the protection of the environment and the ecosystem as a matter of exclusive legislative power of the State, leaving, instead, the enhancement of environmental assets to the concurrent power of the Regions, so that they cannot prejudice environmental balances.

The definition of the environment is quite simple if considered in general terms, but presents some difficulties if applied in a legal context, since there is no definition that is unanimously recognized, which is why both legal doctrine and jurisprudence have attempted to formulate one.³¹ Having clarified this, it seems useful to underline how the legislator, in the constitutional revision, has not foreseen the “incorporation/absorption” of the landscape into the concept of environment, as had happened previously. These two terms take on a different meaning, since the landscape is identified with the morphology of the territory and the environment in its visual aspect. Article 9 of the Constitution, therefore, establishes the fundamental principle of landscape protection without any other specification; the real novelty of a terminological nature can be found in paragraph 3 of Article 9 of the Constitution, in which the Republic protects - in addition to the environment and ecosystems already present in Article 117, paragraph 2, letter s) of the Constitution, biodiversity.

The same constitutional revision also intervenes in Article 41 of the Constitution, regarding the exercise of economic initiative. In particular, paragraph 2 is modified, establishing that economic initiative “cannot be carried out in conflict

29 Cf. G. Trenta, *Reflections on the recent amendment of Articles 9 and 41 of the Constitution and the valorization of the environment*, “Rivista legale Ambiente Diritto” XXII, 4 (2022), p. 14.

30 See Constitutional Court, ruling no. 179, 23 May 2019.

31 Cf. P. Colasante, *The search for a legal notion of environment and the complex identification of the competent legislator*, “Federalismi.it. Journal of Italian, comparative and European public law” 24 June 2020, pp. 122–141, <https://www.federalismi.it/nv14/articolo-documento.cfm?artid=43693> [accessed 9.07.2024].

with social utility or in a way that causes harm to health, the environment, safety, freedom, or human dignity” and, thus, to the previous constraints of safety, freedom, and human dignity are added those of health and the environment, «with the aim of giving substance to the new Article 9, elevating to constitutional rank principles already provided for by ordinary rules»³². Furthermore, the third paragraph of Article 41 is modified, with the addition of the direction and coordination of public and private economic activity also for environmental purposes, in addition to the social ones already provided for in the previous constitutional provision.

In this sense, the jurisprudence had already been oriented in more than one ruling, by carrying out a “balancing” between various constitutionally protected principles, with regard to the right to work, the right to health, and environmental protection.

In the aforementioned decisions, reference is made to the balancing between the various constitutionally protected principles, involving simultaneously the right to work, the right to health, and environmental protection.³³ Therefore, the point of balance must be determined, first by the legislator and then by the judge of the laws, only through criteria of proportionality and reasonableness.³⁴

In essence, with the amendment of Article 41 of the Constitution, limits are introduced to the free exercise of private economic initiative, which, if exceeded, could cause damage to health, the environment, safety, freedom, and human dignity. These limits must be assessed, from time to time, both by the legislature and by the judge, with explicit references aimed at balancing all the fundamental values and principles involved, balancing the needs of the person with social duties, according to the new needs that arise.

All this highlights the legal principle of solidarity on which the relationship between law, economy, and religion is based, the result of a long journey that started from a purely religious value and extended to a legal and then also economic value.

32 G. Trenta, *Reflections on the Recent Amendment of Articles 9 and 41 of the Constitution and the Enhancement of the Environment*, p. 19.

33 See Constitutional Court, rulings no. 85 (2013) and no. 58/2018, from which the judges’ will emerges to establish that all the fundamental rights protected by the Constitutional Charter are placed in a “relationship of mutual integration”, so that none of them can prevail in an absolute manner over the others, otherwise it would cause the unlimited expansion of one of them, that would become a “tyrant” towards the other legal situations protected and recognized by the Constitution.

34 Cf. V.I. Gigante, *The “constitutionally” protected principles and their opposition. Note from ruling no. 85/2013 Constitutional Court to ruling no. 58/2018*, “Rivista legale Ambiente Diritto” 4 (2019), pp. 1–17, https://www.ambienteditto.it/dottrina/i-principi-costituzionalmente-tutelati-e-la-loro-contrapposizione/#google_vignette, [accessed 10.07.2024].

The principle of dignity becomes a prerequisite for every human activity, in which the market cannot exclusively follow economic dynamics.

The environmental issue must be understood as the intrinsic limit and parameter of legitimacy that shapes economic activity and be considered on a par with dignity, freedom, and security. Only in this way can it become a legally relevant and indispensable element for sustainable development, capable of not neglecting even the “needs of tomorrow” or those of future generations. This last reference gives the action of public authorities in protecting the environment an intergenerational depth, in the image of other European constitutions and, even before, of the principle of sustainable development, recognized at all levels. In compliance with that principle, it is in fact necessary to pursue a development that ensures the satisfaction of the needs of the present generation without neglecting the ability of future generations to realize their own (World Commission on Environment and Development, 1987).³⁵

The duty to protect the environment concerns all subjects, both private and public, without distinction, and in the path towards sustainable development, it is appropriate to coherently combine both economic development and the principle of solidarity.

In conclusion, the constitutional amendment briefly illustrated has certainly carried out an important and useful operation, but has also given rise to numerous reflections in doctrine that have seen two different schools of thought in opposition. If, on the one hand, the constitutional innovations are considered an important change, even just for their intrinsic value,³⁶ on the other hand, it is believed that this action, rather than innovating, has consolidated the already existing interpretations of constitutional justice, thus carrying out an unnecessary and partly inappropriate intervention.³⁷ The decidedly irrefutable innovations brought about by the revision are undoubtedly the provision on the protection of animals and the inclusion of the interests of future generations.

35 M. Allena, *What changes with the environment protected by the Constitution*, 5 May 2022, <https://lavoce.info/archives/94827/cosa-cambia-con-lambiente-tutelato-dalla-costituzione> [accessed 12.07.2024].

36 «But as Plato stated, a good Constitution makes good citizens. The new constitutional proposal takes on a promotional and highly pedagogical meaning that serves to solicit a shared commitment to safeguarding the environment, the only lifeline for tomorrow». Cf. I.A. Nicotra, *The entry of the environment into the Constitution, an important signal after Covid*, “Federalismi.it. Rivista di diritto pubblico italiano, comparato, europeo” June 2021, pp. 1–5, <https://www.federalismi.it/nv14/articolo-documento.cfm?Artid=45614>, [accessed 12.07.2024].

37 R. Montaldo, *The constitutional protection of the environment in the modification of Articles 9 and 41 of the Constitution: An appropriate and necessary reform?*, “Federalismi.it. Rivista di diritto pubblico italiano, comparato, europeo” 4 May 2022, pp. 187–212, https://www.federalismi.it/nv14/articolo-documento.cfm?Artid=47139&content=&content_author=, [accessed 12.07.2024].

Conclusions

From all of the above, it is clear that it is possible to relate and highlight the connection between the new Article 9 of the Constitution and the encyclical letter *Laudato si*. These are two texts that, although containing clear formal differences, show significant conceptual elements that unite them, among which emerges the common attention towards the value of intergenerational equity, strengthened mainly through the promotion of the principle of sustainability, starting from the environmental one. The latter, which has now become a constitutional norm in the Italian legal system, appears connected with what is written in the encyclical, for example where it is argued that the «urgent challenge to protect our common home includes a concern to bring the whole human family together to seek a sustainable and integral development» (13 LS), because things can certainly change, just as young people ask.

Again, the Pope's letter focuses on the acceleration that characterizes the changes of humanity and the planet, noting that even if «change is part of the working of complex systems, the speed with which human activity has developed contrasts with the naturally slow pace of biological evolution»(18, LS). Pope Francis is concerned about the rubble and deserts that we could leave to future generations and recalls that the attenuation of current imbalances depends on everything we do today, especially if we think of those who will have to bear the worst consequences.

The attenuation of the effects of the current imbalance depends on how we act today, especially if we think of the responsibilities that the future victims of our actions will attribute to us.

The inability to think of tomorrow's generations is based on the inability to broaden the horizons on the issue and the concerns that derive from it. Therefore, in addition to intergenerational loyalty, it is important to consider the urgent moral need for a renewed intergenerational solidarity.³⁸

The Author argues that, in light of the analysis carried out on the amendments made to Articles 9 and 41 of the Constitution, as well as the evolution of jurisprudence and doctrine relating to environmental protection as a constitutional value, it is possible to affirm that such constitutional revision was not only necessary, but also it carried out in an inappropriate and inattentive manner, in particular when compared to the current state of interpretation. The constitutional reform has not in fact introduced significant innovations with respect to what has already been clearly stated by doctrine and constitutional jurisprudence.

³⁸ Cf. F. Clementi, *The reform of the Art. 9 of the Constitution and the Encyclical Laudato Si: Three common perspectives*, "Jus" 2 (2022), pp. 331–348.

The substantial connections that emerge from the comparison between what is extrapolated from *Laudato Si* and the new constitutional text, the first preceding the second by seven years, make it difficult to believe that the encyclical was not among the sources consulted by the authors of the reform.

Therefore, the two documents, although very distinct in nature and function, are not conceptually distant. The constitutional reform, in addressing the issue of the needs of the future, for the legislator of today and tomorrow, extends over a broad and interdisciplinary conceptual panorama, so as to consider the recognition of the right to a healthy environment in a broader perspective than the usual legal sphere. Within this global vision of rules and perspectives, the dialogue with the encyclical letter is also identified, which becomes a conceptual reference point that deserves to be taken into consideration.

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ENVIRONMENTAL PROTECTION: BETWEEN RELIGION AND LAW

Summary

This article addresses the issue of environmental protection by placing it in an integrated perspective between law and theology, with particular reference to the Italian context. The analysis starts from the recent modification of Articles 9 and 41 of the Constitution, which recognize the protection of the environment, biodiversity, and ecosystems as fundamental constitutional values, also in the interest of future generations. These constitutional innovations mark an evolution of Italian public law towards greater attention to environmental sustainability as a founding value and a substantial limit to economic freedom. Starting from this legal framework, the contribution examines the relationship between the normative dimension and the ethical-spiritual horizon offered by religions, in particular by Christianity, which, through the encyclical *Laudato Si*, proposes a vision of integral ecology based on the care of creation.

This document represents one of the highest points of current theological reflection on the environment, offering a vision of “integral ecology” in which the environmental, social, economic, and spiritual dimensions are inseparable. This perspective also finds consonances in other religious traditions (Judaism, Islam, Eastern religions), which recognize in nature a sacred reality, either created by or as a manifestation of the divine, to be lived with respect and moderation.

The comparison between constitutional law and theology shows significant convergences: both fields of knowledge recognize the environment as a common good and emphasize responsibility towards future generations, social justice, and the urgency of a new development paradigm. A possible synergy emerges between legal language and theological language, both oriented towards promoting an ethic of care, sobriety, and solidarity. In this framework, the law is not limited to regulating, but also becomes the expression of a shared ethos, rooted in a spiritual vision of existence.

Keywords: Environmental protection; Social doctrine of the Church; Encyclicals; Italian Constitution.

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