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Sustainability: The Italian Case of Eco-Sustainable Contract

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Purpose: *The ecological analysis of contract law allows one to grasp the evolution of the role of contract from that of its traditional function of exchange or circulation of individual goods to that of shared enjoyment and management of common goods.*

Methodology: *Development becomes sustainable in terms of the realisation of human wellness and quality of life, when the full and free development of the human person is assured. The concept of sustainable development brings with it the complexity of values and principles that must be coordinated by using proportionality as an ordering criterion. Environment, market and property constitute a unitary experience.*

Findings: *An eco-sustainable contract is one of the options available for the construction of another economy, one that is circular and shared, supportive and sustainable, in which one asks not only for a product or a service on which the quality of both present and future life depends but for true social and environmental interaction.*

Originality: *Contract loses its proprietary connotation in order to be able to achieve economic benefits that are not directly proprietary, compatible with the full development of human beings, in the light of personalism and solidarity, supporting a move away from proprietary rights in the civil law.*

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1 Sustainability and the Principle of Sustainable Development

This work examines how sensitivity to environmental impact has begun to influence contract law. The goal is to identify the legal framework best suited to the parties' pursuit of their respective interests in a manner that is both constitutional and at the same time in keeping with the tenets of sustainability, solidarity and subsidiarity.

Ideally, the best framework would be both technically sophisticated and flexible, with a focus on applying law to facts, allied to an ability to adapt as the stakeholders' needs require. After all, a framework that is unyielding would be unable to keep pace with the swift changes that technological development is generating in contemporary society.

The interplay between the marketplace (driven by metrics of productivity and the securing of a competitive edge) and the environment (which in turn is intertwined with principles of human dignity and social justice) meets through the principle of sustainable development (Persia, 2018). The assertion of fundamental human rights becomes the means through which a sustainable market can be cultivated, one that might stem the tide of our current environmental crisis. Business operations that are not sustainable harm the individual and the community, to be sure, but they also harm the market's social economy. Competition in the market must be coupled with social stability in order to combine what is useful with what is just.

Sustainability is something quite different from a kind of arbitrary pursuit of *environmental protection*, which fails to take into account the demands for development. The essence of sustainability lies in the understanding that true environmental protection is geared towards protecting humans, and it cannot come about if the needs of the current generations for development are unduly frustrated.

Sustainability predicated solely on environmental protection cannot be reconciled with the need for development, which is intrinsically connected to the protection of the human race. Consequently, sustainable development is not only the point where progress and the environment meet but also a concept that affirms their mutual interdependence, exposing it for the symbiosis that it really is. There is no protecting the

environment without allowing current generations to thrive, and there is no future growth of generations without safeguarding the environment (Cappelli, 2019).

The principle of sustainable development entails a broader dimension than just the environment. For this reason, environmental concerns are not simply ranked with other values, but rather must be viewed through a more complex and more holistic lens (Cappelli, 2019). However, there is no well-defined idea of what is meant by sustainability and the rules of conduct through which that concept is expressed. It is a question of trying to reflect on the ordering potential of the *indeterminateness* of principles so as to establish whether it is necessary to identify rules of conduct that can be classified as eco-sustainable or whether indeterminateness, which is typical of rules based on principles (an example is the Italian Constitution), is not an advantage at all.

From this vantage point, one can see the important role that contracts play. They are the pre-established tool intended to govern not the clashing of opposing interests but rather the pursuit of a plurality of convergent interests (Pennasilico, 2018). The goal is to meet the needs of current generations without jeopardising the quality of life and the opportunities available to future ones (Article 3-*quarter*(1) of the Italian Environmental Code). A review of the elements of contract is called for so as to enable an assessment of the influence of environmental concerns (i.e. the reasonable and responsible use of natural resources) in the implementation of the principle of sustainable development. A contract may overcome the constraint of privity (see Article 1372 of the Italian Civil Code, which provides a "contract has the force of law as between the parties") and serve instead as an agreement that protects unknown third parties, and in so doing become eco-sustainable.

2 Ecologically Oriented Contracts and the Right of Ownership in Italy

The best known definition of sustainable development is contained in the 1987 Report of the World Commission on Environment and Development (the so-called Brundtland Report): it is development "that meets the needs of the present without compromising the ability of future generations to meet their own needs".

This notion "carries with it antinomian tensions, since, on the one hand, it postulates a constant need for society to evolve towards greater wellbeing, while, on the other hand, it sets a sustainability limit to development, which refers to the needs both of environmental protection and of rationality in the use of natural resources" (Pennasilico, 2016).

During the World Summit on Social Development, the pillars of sustainability were set out: "freedom, equality, solidarity, tolerance, respect for all human rights, respect for nature and shared responsibility" (Art. I.4, United Nations General Assembly Resolution A/60/1 of 15 September 2005). The Earth Charter also seems to contain the basis for "a sustainable global society founded on respect for nature, universal human rights, economic justice and a culture of peace" (The Earth Charter of 2000).

There have also been attempts to translate the principle of sustainability into specific rules of conduct. As in the case of the UNEP (United Nations Environment Programme) and the UNWTO (United Nations of the World Tourism Organization), which have listed some rules of sustainable tourism.

In particular, "tourism businesses are required to make optimal use of environmental resources, maintaining essential ecological processes and helping to conserve natural heritage and biodiversity, and to respect the socio-cultural authenticity of host communities" (Landini, 2016). Moreover, Article 3(3) of the Treaty on European Union clearly states that the Union "shall work for the sustainable development of Europe based on balanced economic [...] and a high level of protection and improvement of the quality of the environment", while at national level Article 4(4)(a) of the Italian Environmental Code states that environmental impact assessments must ensure a high level of environmental protection and that plans and programmes are to "contribute to the conditions for sustainable development".

The idea of sustainability is based on integrating principles and values, even if they are apparently at odds with each other. In this sense, the principle of sustainable development requires one to reason not in a logic of hierarchy of values and principles but in a logic of complexity of values and principles coordinated by using proportionality as an ordering criterion (Landini, 2016).

The ecological analysis of contract law allows one to grasp the evolution of the role of contract from its traditional function of exchange or circulation of individual goods to that of shared enjoyment and management of common goods. The concept as codified in Article 1321 of the Italian Civil Code, which defines a contract as "an agreement between two or more parties for the purpose of establishing, regulating or terminating an economic legal relationship between them", appears insufficient unless it is accompanied by notions of solidarity and sustainability in the responsible use of natural resources, such that today contracts would give rise not only to proprietary rights but also to the right to claim *sustainable* proprietary rights, which are intended to satisfy the needs of human beings (Pennasilico, 2016).

In this context, contracts would not only express their function in terms of reward or utility, but they would also have a corrective function in the marketplace against the waste of natural resources, overconsumption and environmental damage. The goal that *ecologically oriented* contracts hope to reach is not to protect nature per se but rather to safeguard humanity's ability to survive in a manner consistent with the principle built into Italy's and Europe's constitutional framework, which is the "full development of human beings" (see Article 3, paragraph 2, of the Italian Constitution and the Preamble to the Charter of Fundamental Rights of the European Union).

In Italy, such a contract has not yet been embodied in law, but the aim is to arrive at considering it not as another merely descriptive allegory but as a category capable of grasping and fostering new interpretative, applicative and systematic developments, in accordance with the Italian-European constitutional public order (Pennasilico, 2018).

Indeed, the proprietary model by itself appears incapable of providing a suitable answer, since the idea of ownership under the law has primarily developed around the owner's right of alienation. The model is that of the circulation of assets subject to the law, under the aegis of a marketplace focused exclusively on production and trade (S. Persia, 2018). Adherence to that purely individualistic approach, with the owner at the fulcrum, can be seen, *inter alia*, when one analyses the right of use and enjoyment intrinsic to the right of ownership. The crucial attribute is that of having the power to exclude others from using or enjoying the asset subject to the interest.

The traditional structure of ownership intentionally glossed over the multi-dimensional

quality of the concept, ignoring the fact that certain assets constitute an intersection amongst a variety of legally cognisable interests, each deserving of protection, which transcend the owner's official status and instead focus on a plurality of parties.

The *theory of communal property*, without delving into the complexity and the challenge of that particular debate (Carapezza Figlia, 2008), can be credited with embracing the existence of interests other than proprietary interests in the relationship between humans and assets, interests that relate more closely to the fundamental values of the person and to social solidarity (Persia, 2018).

In light of the strict connection between communal property and fundamental human rights (health, for example), an individual's ownership and proprietary claims must co-exist with the non-proprietary interests of the community.

From this perspective, there are certain ancient forms of communal property rights that provide a paradigm. In those times, land was considered the theatre and fulcrum for the values of the local community, the environment, and the landscape. These were not strictly defined structures but rather an uninterrupted generational chain, where the position of any individual would never be detached from the organic structure of the person's home community (Pennasilico, 2018). And it is precisely a view of land as an *ideal value*, a non-proprietary asset, and thus one intended for conservation, with value beyond mere economic value.

From this perspective, the interest held by the owner would not fall into the traditional *use and enjoyment* and *rights of alienation* under Article 832 of the Italian Civil Code (which provides that "the owner has the right to enjoy and dispose of things fully and exclusively, within the limits and in compliance with the obligations established by the legal system").

The enjoyment of the land ends up being a *consideration* such that the right of use and enjoyment, in order to be exercised, demands that the asset be protected from deterioration. The right of alienation, in turn, can be nothing other than functional to such right of use and enjoyment, and is identical to the right to manage the asset in order to protect it from deterioration. Thus, ownership is unshackled from that traditional concept of income, it is no longer the economic profit of the individual arising from use

of the *asset*, but rather a communal interest, which makes the common interest in the ideal enjoyment of the asset legally cognisable.

On the one hand, the debate takes up the interest in a more circular than individual management of assets. On the other hand, it requires the sloughing off of the 19th-century-style doctrine of exclusive ownership rights. Natural resources are relevant first and foremost in terms of their preservation and protection against waste. Only then can the circulation of legally cognisable interests therein be considered. They require models of management that ensure communal enjoyment of the asset in accordance with the tenet of intergenerational safeguarding of their utility.

Article 42, paragraph 2, of the Italian Constitution (which provides that "[p]rivate property is recognised and guaranteed by the law, which prescribes the ways it is acquired and enjoyed as well as its limitations so as to ensure its social utility and make it accessible to all") allows for the imposition of limits on proprietary absolutism in order to safeguard certain constitutional values, such as human health, and environmental protection pursued in the interest of the community as a whole.

The desire to align the proprietary interest in using the asset and the non-proprietary interest in preserving natural resources influences the rights of alienation and use/enjoyment held by the person in whom the proprietary interest is vested, and determines the ecological compliance thereof (Persia, 2018).

It appears to flip one of the central issues of the law on its head: the scope of the interest. One can no longer define the *minimum reach*, meaning clarifying the limits within which the legislator might influence the rights of ownership, which are potentially unlimited. Instead, it involves defining the *maximum reach*, meaning setting the limits beyond which a proprietary interest can no longer exist. One must gain an understanding that certain rights, if not functional to the (non-proprietary) interests of the community, are per-se *beyond the scope of ownership*. The maximum reach of the interest does not encompass the right to influence the life of the land and of other persons. This means that beyond ownership lies a communal asset, the community's access to and enjoyment of which cannot be denied, in that it serves the function of satisfying fundamental, constitutionally protected collective interests. In other words, proprietary rights would end where a communal asset begins (Pennasilico, 2018).

Land is a living and vital reality that stands alone in terms of independent value as a productive asset (*res frugifera*) worthy of attention and care because, thanks to its fecundity, it ensures a community's survival.

3 Sustainable Development and the Constitution

The issue of the environment and sustainable development must be tackled using a comprehensive and holistic approach, leveraging the plurality and diversity of available sources (Pennasilico, 2012; Perlingieri, 2016). Development becomes *sustainable* not because of a country's GDP, but through the degree of wellbeing generated, and the quality of human life, when it ensures the full and free development of human beings (Perlingieri, 2016).

On the one hand, sustainability has long since made its way into the realm of individual rights through the implementation of the principle of subsidiarity codified in Article 118 of the Italian Constitution. In franchising agreements, for example, the franchisee might be requested to abide by certain eco-sustainability standards; supply agreements between businesses might require the supplier to commit to producing products according to production standards which are based on a set of sustainability criteria (Landini, 2016). Consequently, citizens, whether alone or in association with one another, have ever greater standing in terms of asserting communal interests. If subsidiarity and contracting can serve to subject communal interests to a set of rules, then a contract is no longer simply a tool to govern the individual and self-centred interests of the parties to the contract (Perlingieri, 2016).

On the other hand, whilst the principle of social utility under Article 41 of the Italian Constitution does not represent an external limit to freedom of enterprise, it does serve to shape it. This requires abandoning a structuralist view of the law and subscribing instead to a more functional approach in order to provide measured responses to concrete needs.

Moreover, the Treaty of Lisbon (Articles 11, 191, 192 and 193) and European case law (ECJ, 14 October 2004, C-36/02) stand for the proposition that human beings should be placed

at the centre of the legal system.

Environment, market, and ownership join together in a holistic experience, under which the contract loses its purely asset-driven connotation (Perlingieri, 2016) but instead becomes an option for generating economic utility that is not strictly ownership-based and that is compatible with the full development of a human being. Such in light of the principles of personhood and solidarity, following the trend in the law to move away from a focus on proprietary interests (Perlingieri, 2016).

The impossibility of reconciling the demands of economic development with protecting the ecosystem is a myth that has now been debunked, as made clear by the influence and expansion, both in terms of systems and in terms of mores, of the Italo-European principle of sustainable development. Contracts, in this circularity between environment and market, are now a bearer of not only proprietary but also non-proprietary interests, are consonant with the full development of human beings and are gaining traction as the source of standing to assert non-proprietary interests in sustainability.

The classical notion of contract under Article 1321 of the Italian Civil Code proves insufficient unless complemented by the principles of solidarity, subsidiarity and sustainability. Moreover, the Italian Environmental Code, which provides that any human activity, be it public or private, must abide by the principle of sustainable development (Article 3-*quarter*(1)), bolsters the requirement that any contracting – whether in the public or private sector – must be informed by and comply with the demands of environmental sustainability, "in the communal interest of safeguarding the type of environment where a healthy life can be enjoyed now and in generations to come" (Pennasilico, 2018).

This context would seem to be witnessing the emergence of the concept of a so-called *eco-sustainable* contract, which aspires to claim the role of a new type of contract even if at first sight it seems similar to consumer contracts and contracts between business enterprises in terms of information asymmetry and the consequent need to rebalance contractual positions.

According to its supporters, an eco-sustainable contract differs from the latter because "the environmental interest penetrates and colours the purpose of the contract,

emphasising both the convergence of the interests of the contracting parties on environmental benefits, despite the initial asymmetry of information, and the duty to rationally use natural resources for the benefit of future generations". From that standpoint, the principle of sustainable development constitutes a parameter for judging the worthiness of such contracts, with the consequence that, for example, a *green* contract, even if it pursues a lawful purpose, may not be worthy of protection if it is not apt to achieve the concrete environmental interest and hence would not be upheld by the legal system.

The role of contract evolves from the traditional function of exchange or circulation of individual goods to that of shared enjoyment and management of common goods. The very notion of contract pursuant to Article 1321 of the Italian Civil Code would therefore need to be complemented by principles of solidarity and sustainability in the responsible use of natural resources, with the consequence that contracts, today, would be a source not simply of economic legal relations but of sustainable *economic* legal relations (Pennasilico, 2016).

The contract is thus enhanced because the values implicated therein are set by a higher authority, that is the Italian Constitution. In this respect, one notes that contracts are predicated on the principle of reasonableness, or the set of values and principles of the law and the State, on which any analysis of the contract's framework would be premised (Perlingieri, 2016).

4 Moving Beyond Privity of Contract - the Concept of Wellbeing

It is in the very interplay between contracts and the environment that we might move beyond the limits of privity (Article 1372 of the Italian Civil Code). Indeed, the effects of an eco-sustainable contract would not be limited to those in privity of contract, but would impact third-party (current and future generations) interests in using and enjoying communal property. Within this framework, self-governance in the private sector plays a role in establishing rules for, and exercising, common interests, such that the legal acts stemming from private initiative that satisfy general environmentally related interests

(communal property for the use and enjoyment of many) create standing in third-party beneficiaries.

Contractual standing will take on a much more dynamic and intergenerational dimension, one poised to involve anyone who, whether before or after the execution of the contract, interacts with the asset. Contracts will be intended to help realise human fundamental rights, and in so doing, contribute to the implementation of social justice. Thus, the equilibrium between the performances on either side of the contract becomes the ideal foundation for the judicious circulation of assets and for a fruitful cooperation of individual freedoms and activities (Persia, 2018).

Although the Italian Constitution does not make express reference to sustainable development nor, consequently, to any responsibility toward future generations, individual standing to protect the environment and the ecosystem is based on an extrapolation from Article 2 thereof as well as on the constitutional principle of *horizontal subsidiarity*, which serves as the legal basis, under Article 118, paragraph 4, of the Italian Constitution for the "the right of citizens, whether individually or as an association, to take action in the pursuit of the common good". Thus, from action taken by the citizenry (using instruments available within civil law) comes an effective means of safeguarding environmental interests for the good of the community too.

A more *evolved* interpretation of certain constitutional provisions allows some issues relating to sustainable development to be grafted thereon and hence covered thereby. Just think of the concept of "social utility" (Article 41, paragraph 2, of the Italian Constitution), the extraordinary breadth of which allows the text of the constitution to adapt to the new frontiers of economic development and environmental sustainability.

Additionally, Article 9, paragraph 2, of the Italian Constitution by virtue of which the Republic of Italy "protects the landscape, and the historical and cultural heritage of this nation", appears to provide the necessary constitutional premise for managing the land in a way that is either mindful of or instrumental to the demands of both the environment and economic development. Or Article 44, paragraph 1, of the Italian Constitution which justifies the imposition of legal duties and encumbrances on private property, in the pursuit of the "rational exploitation of the land" (Pennasilico, 2016).

Supranational sources on environmental issues are likewise on point, where traditional economic and proprietary values are coupled with values relating to personhood and solidarity (see Article 11 TFEU and Article 37 CFREU).

Moreover, by taking a more holistic and comprehensive approach to understanding the State and the law, centred around the value of the human being, a person construing the law – whether for questions of constitutionality or the merits of a contract claim – would be led to base their decisions on the fundamental values that shape the legal system itself, in accordance with the above-mentioned European environmental protection standards.

If the environment can be construed to fall within the scope of Article 2 of the Italian Constitution as an asset to be protected in order to safeguard the full and free development of human beings, then the environment is a constitutional value. Consequently, any judicial review, whether on procedural or substantive grounds, predicated on the guiding values of the system, must construe the contract in a way that takes into account the environment value, thereby undertaking a veritable *ecological* review of private agreements (Jannarelli, 2016).

From this perspective, any independent negotiation that contrasts with the communal interest in protecting the environment (protection of health, psycho-physical wellbeing and human dignity in general) will not warrant legal protection. This merit-based review must be completed by applying law to facts for any given contract, whether of a standardised form contemplated by statute or otherwise, so that one does not run the risk that a private agreement, lawful on its face, is not legally cognisable because it does not achieve an actual environmental interest (Persia, 2018).

In this sense, sustainable development is increasingly gaining space in contractual relationships which, although not expressly defined as *eco-sustainable* contracts, are so in substance.

A few examples of *ecologically oriented* contracts of European origin can be given:

- Green Public Procurement, "in which the public authority, without altering the competitive structure of the market, includes *green clauses* among the award criteria, aimed at selecting competitors who are able to offer eco-efficient products and services, thus promoting environmentally sound management of public procurement and public works" (Pennasilico, 2018).
- Green franchising, "referring to franchisors who also provide their franchisees with know-how in terms of reducing pollutant emissions and whose codes of conduct require franchisees to comply with certain ecological standards" (Landini, 2016).
- Energy Performance Contracts are "agreements whereby a supplier (energy saving company) commits itself, with its own or a third party's financial means, to carry out a series of integrated services and works aimed at upgrading and improving the efficiency of an energy system (a plant or a building) owned by another party (customer or beneficiary). The defining characteristic is the combination of activities and services instrumental to the improvement of energy efficiency, which is the purpose or function of the contract, which goes far beyond the interests of the parties" (Pennasilico, 2016).

Thus, the analysis of the relationship between constitutionality and sustainable development serves to clarify that the latter cannot but align with the priority afforded by Italo-European positive law to the values of personhood and solidarity.

Therefore, it is within the system's axiology that a solution can be found to the conflict between economic and technological demands, and the interests in preserving and safeguarding the environment, with the further understanding that respecting human rights serves to expand the notion of *sustainable development* beyond mere environmental protection (Pennasilico, 2016).

True development, therefore, consists not in the possession of technology or tangible goods, as much as in the process of social transformation which eliminates the principal sources of *restraint on liberty*: hunger, poverty, sickness, a lack of democracy, and an indiscriminate use of resources. The pursuit of prosperity should be limited to improving overall quality of life (Perlingieri, 2005). Therefore, if the environment is the backdrop for understanding a person's outlook, then each contractual relationship must be viewed in light of its implications not only for the contracting parties but also those who are

impacted, to a greater or lesser extent, by its terms.

Eco-sustainable contracts, together with other practices that have already been implemented (including ethical finance, fair trade and social tourism), would allow for a different approach to be taken in terms of the economy and consumption (Pennasilico, 2016). That contract would be one of myriad tools available to build a different economy, one that is circular and shared, fair and sustainable, in which any given person is not simply requesting a good or a service, but through that good or service (on which their quality of life depends, not only in the present but in the future) is asking for a true social and environmental interaction (Pennasilico, 2016).

This issue must be tackled in a systematic and axiological way, that is, predicated on the values of the system. Take, for example, Article 30(1) of Legislative Decree No. 50 of 18 April 2016 (the "Italian Public Procurement Code") where the cost effectiveness criterion "may" (but need not) be secondary to environmental protection but "shall" be secondary to other elements that impinge on fundamental human rights.

In that sense, a purely dogmatic approach is unhelpful. There is no *standard* contract or *archetypal* contract, there is only an actual contract with specific characteristics (Perlingieri, 2016). Jurists must weigh the principles that are in play. The idea of sustainability can pave the way for harmonising principles and values which, on the surface, appear to conflict. The concept of sustainable development implies a plurality of values and principles which must be coordinated having regard to the criterion of proportionality (Landini, 2016).

Where sustainability and contract meet, the issue is not justice, but rather reasonableness, in terms of evaluating the contract's framework. Consequently, person, contract, ownership, and business must all be interpreted not merely through the lens of special legislation (the Italian Environmental Code for example) but in terms of personhood and solidarity, in order to create the greatest possible improvement in the lives of people. Only then can one reach truly *sustainable development* (Perlingieri, 2016).

5 Limitations and Outlook

However, the concept of sustainability today appears to be anchored to purely conventional definitions. As a result, the use of the expression *sustainability* for commercial purposes could be a means of influencing the economic conduct of consumers in particular, determining their choices without there being any possibility of verifying the truth of the commercial statements referring to it, thus orienting entire market sectors.

It is no coincidence that part of the literature points out that the concept of sustainable development, despite the fact that it is amply reflected in Articles 3(3), 5(5), 21(2)(d) and 21(2)(f) TEU and Article 11 TFEU, is on the one hand an *insincere* principle, at least whenever it refers to non-renewable resources, while on the other hand, with respect to renewable resources, "it does not give rise to a notion of particular originality, appearing as a modern reinterpretation of the 'traditional criterion of the rational use of natural resources', already afforded constitutional value in Article 44 of the Constitution" (Pagliantini, 2016).

If one wishes to avoid the sacking of natural resources to the detriment of posterity, one must predicate rules on conservation and the use of resources and environmental assets on the principle of intergenerational responsibility. What is needed is a *green* culture, from which to draw inspiration for proper conduct which is *responsible in the long term*.

The real limitation of the principle of sustainable development is how to implement it in practice in our legal system. In our time, the artificial duality of sustainable development and solidarity seems to be more a rallying cry than anything that manifests as concrete action. The waste-disposal industry provides an example of a situation in which there is an upstream rejection of the predicates for sustainable development and solidarity, in the name of extreme forms of individualism and hometown hubris, as exemplified by the sad situation in the Campania region of Italy, which became so dire that it required the army's intervention to restore law and order (Pennasilico, 2018).

The authoritative economist Redclift (2009) noted that the expression *sustainable development* is an oxymoron. Development construed as economic growth is based on

increasing profits rather than on social benefits.

A recent series of European Directives (Directive 2004/18/EC, Directive 2014/23/EU, Directive 2014/24/EU, Directive 2014/25/EU and Directive 2004/35/EC) has, make no mistake about it, raised awareness regarding the creation of environmental sustainability within the traditional marketplace, a goal which would seem to hinge on individual wellbeing rather than on maximising consumption. Yet, this is simply another way of doing business which leverages a user's environmental and economic sensibilities, where the archetypal person under the law is more consumer than human being (Pagliantini, 2016). Giving priority to low-environmental-impact production systems requires sizeable investments (as they are predicated on specialised manufacturing techniques), and thus trigger the risk of upsetting market competition (a guiding principle of the European Union) and discriminating against small and medium-sized enterprises (the beating heart of Italy's economic fabric) for the benefit of a few large-scale companies (ECJ, 10 May 2012, C-368/2010).

In light of the foregoing, the greatest limitation of an *eco-sustainable* contract is that it runs the risk of remaining an elegant descriptor rather than a tool for analysing contract law in accordance with the principles and values of the legal system, one that captures and facilitates new developments in interpretation, application, and in the system overall. Think of that attitude summed up by "Not in My Backyard", which generally crops up during protests against works envisioned for the common good that have or are suspected of having a serious environmental impact. Citizen groups that take to the streets in pursuit of specific objectives are taking a political stance against choices made by national and local governments, but they also represent a kind of dissociation from one's duties of social solidarity, and the environment (Pennasilico, 2015).

Environmental protection cannot be predicated on the mere repression of unlawful behaviour or incidents of uncivil disobedience. The public authorities must make a renewed commitment to promote not only a culture of law-abidingness but also one of environmental solidarity.

6 Conclusions

The issue is therefore to reinterpret proprietary-based institutions: ownership, obligation and contract - in light of pre-eminent non-proprietary values, such as personhood and solidarity. This interpretation dovetails into the current trend in civil law, which is to move away from proprietary interests and to turn towards the placement of the person at the centre of the legal system (the approach taken by the Treaty of Lisbon) (Perlingieri, 2016).

However, whereas in the field of obligations, the law requires the creditor's non-proprietary interests to be taken into account (Article 1174 of the Italian Civil Code, which provides that "the performance that is the subject matter of the obligation must be capable of economic evaluation and must correspond to an interest, including an interest of a non-pecuniary nature, of the creditor"), a contract is defined as an agreement that governs legally cognisable proprietary interests between the parties, leading one to believe that the contract's nature is solely proprietary.

In point of fact, an increasingly more relevant use of a contract as a legal instrument "is represented by its ability to generate economic utility through sacrifices which are not proprietary per se, but which are compatible with the full development of a person" (Perlingieri, 2016).

Thus, for example, one would need to approach Article 30(1) of the Italian Public Procurement Code with caution. In that provision, the cost effectiveness criterion "may" be made secondary to environmental compliance. Yet, under that same Code it "shall" be secondary to other elements that impinge on fundamental human rights.

Eco-sustainable contracts, even if not yet expressly regulated by law, lead one to reconsider contracts as an instrument of realisation of proprietary relations only, because "the environmental interest penetrates and colours the purpose of the contract, emphasising both the convergence of the interests of the contracting parties on environmental benefits, despite the initial asymmetry of information, and the duty to rationally use natural resources for the benefit of future generations" (Pennasilico, 2016, Persia, 2018).

In that respect, perhaps considering the *eco-sustainable* contract as an *autonomous* contract, or as a new contract paradigm might be an overreach: what actually exists is a *particular* contract between *particular* parties with a *particular* purpose, executed at a *particular* moment in time, under *particular* conditions. Its peculiarities must lead the person construing it to identify the best solution, without pigeonholing the facts into a pre-existing contract type, an attempt that would prove pointless, day in and day out, given the complexity of real life (Perlingieri, 2016).

The challenge with the environment, and the application of sustainable development must be viewed not only in accordance with the rules of the Italian Environmental Code, but moreover through the fundamental principles of the system, which places the development of personhood and the protection of human dignity front and centre.

Contract, business, and property may be viewed through a lens that takes the *wellbeing* of persons into account, so that their existence might be the best one possible. Reaching sustainable development means, to be sure, economic development that ensures an acceptable quality of life, but economic development must be measured in terms of the reasons for its very existence. There cannot be market just for the sake of market, nor production for the sake of production.

The usefulness of *eco-sustainable* contracts, beyond codification, is that they would make it possible to consider the contract as an expression not only of purely individual interests but also of general environmental interests while respecting the principle of personal protection, allowing a different approach to the economy and consumption. The contract would become an *elective* tool for building *another economy*, "a 'circular' and 'sharing' economy, based on solidarity and sustainability" (Pennasilico, 2016), in which the consumer does not simply ask for a good or service but to contribute effectively and efficiently to safeguarding the planet.

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