

Introduction

"Il n'y a pas seulement pour l'humanité la menace de disparaître sur une planète morte. Il faut aussi que chaque homme, pour vivre humainement, ait l'air nécessaire, une surface viable, une éducation, un certain sens de son utilité. Il lui faut au moins une miette de dignité et quelques simples bonheurs"
(Yourcenar, 1980, p. 5).

1 The Challenge of the *Coeur* of the Book

There is only one Earth, and it is endangered. It has already survived ages of natural destruction and reconstruction; however, for the first time, the present dangers Earth is facing do not derive from a natural revolution, but from a whole variety of human activities, which have pushed the Planet to its limits (Speth, 2008).

Furthermore, our age is characterised by a global ecological crisis; indeed, since the largest problem is the environmental one, every other issue is in one way or another, linked to this crisis. For instance, wars are slowly but surely becoming environmental conflicts for the control of food and water, as well as being a cause of increased poverty. The negation of fundamental human rights stems more and more often from environmental issues¹. Finally, the economic crisis was provoked by irresponsible management of natural resources.²

¹ For instance the problem of the environmental Refugees. This topic will be briefly analysed in Chapter I

² For instance the petroleum. Commoner, 1992, p. 15.

Since immemorial time, humans have depended on and struggled against nature: they were both the causes and victims of environmental degradation (Bjerler, 2009). Indeed, no other living creature is so desperately dependent on nature, and thus so overtly vulnerable to any environmental change that occurs. No other species possesses such extensive capability to pollute and destroy the environment.

Initially, Earth was characterised by dynamic equilibrium and a number of biogeochemical cycles, with humans as an integral part of this system. But times have changed; humans have developed science and technology, and created an alternative world, which has been called "technosphere" (Commoner, 1992, p.3).

Humans created a new world within the biosphere, with its own processes and events, which now does not fit into the above-mentioned system of cycles and equilibrium. The *technosphere* has been placing too much pressure on the functions of Earth (Vonkeman, 1997, p. 319), leaving a deep footprint on its face and seriously endangered the fragile biological balance. The human attack on the biosphere has started an "ecological counterattack" by nature through climate change and natural disasters, shortages, rising sea levels, severe droughts and a decreased ability to provide for basic human needs (Commoner, 1992, p. 7). The "two worlds are at war"; an ecological war (Commoner, 1992, p. 7).

Legal instruments and the legal approach have also contributed to unleash this conflict. The first cause is the failure of natural resources law and environmental law, which were never fully aligned with ecological reality. The laws have addressed environmental problems by compartmentalising resources into separate categories according to each legal treatment and without taking into account the biological principles. These biological principles recognise the full ecology of nature and the interrelationships among all elements (Noss, 1994, p. 893). In fact, in the biosphere "groundwater is connected to surface water, migratory birds are dependent on water areas and forests. The forests areas are vital to the carbon cycle, and so is the entire workings of nature, operate together as a full ecology system" (M. C. Wood, 2009, p. 43; M. C. Wood, 2009, p. 91).

The second factor is the government's failure to protect natural resources on behalf of its citizens. The ecological problem has pointed out the weakness of this political system. The flop of "Copenhagen" in December 2009 has confirmed the truth of the above statement. Consequently, the Nation State, in particular national democracy, does not effectively address the ecological crisis.

Does this mean that the choice of democracy is wrong? This political model has to find a new, yet a traditional, ground. The delegation of power is not a solution anymore; the ecological issues are so complex and embedded so deeply in human life, that it has become necessary to rediscover the idea that democracy is government by the people.

A healthy environment is for the public good and a goal that must be protected against deterioration - through appropriate regulations which reflect the views of citizens directly involved in public decision-making to protect their stake, in others words the Earth's stake (Mathiesen, 2003, p. 38).

Thus, if the environment is polluted, suffering from bad management and a negligent attitude by former and present governments and generations, a theoretical possible solution to achieve ecological aims could be found through a radical change of political and legal structures of power, as well as, in a widespread alteration in the behaviour of individuals.

Therefore a variety of questions arise: How can the ecological war be stopped? How can the ecological crisis be resolved?

Alternatively, from a legal point of view, the question could be how political and legal structures could contribute to avoiding environmental damage and threats of an ecological crisis. How could legal structures begin to reform and restructure actual political institutions so that they are more in line with environmental considerations?

How can states and their citizens act and organise themselves to answer to the current ecological crisis?

While commentators in the economic arena increasingly suggest alternative economic models such as "natural capitalism" (Hawken, Lovins, & Lovins, 2000), the legal theory, unfortunately, is at best a clumsy institution to effectuate massive change, as it lacks innovative thinking.

This book suggests the construction of an environmental democracy, which would address the aforementioned questions. This proposal is a traditional response, since it underpins the power of a democratic government, on the other hand it is "revolutionary". This proposal provides, first, a necessary normative shift from a human-centred to an Earth-centred approach, where every governmental decision should consider and value every possible impact on the environment using a more eco-centric approach, where the short-term considerations of human welfare must be balanced with the long-term interests of Earth. Second, such process of assessment should include individuals and their functions to exercise control over acts of government, thereby participating and contributing to decision-making in environmental matters.

This form of democracy creatively and constructively involves all the voices of the community. Such effort means revitalising democracy to meet the ecological challenges and change the role of human "from conqueror of the land-community to a plain member and citizen of it" (Leopold, 1949, p. 204).

Further, environmental democracy is more than the balance of the good of humanity and of Earth. It is more than a path for better management of the behaviour of technology and civilisation; it is a way to build a new civilisation.

In order to move in this direction, it is important to develop strategies for modifying human behaviour towards environmentally benign practices and

away from environmentally damaging ones. Law is an important tool since it creates legal frameworks for environmental rights and ecological duties, which lead each individual as a citizen of social and ecological communities to become aware of the incredibly powerful role they can have in this crisis.³

These rights enable individuals to make choices and exercise their power in their everyday lives in addressing environmental matters. These rights even at the lowest level include environmental goods such as clean air and water, but also extend to procedural rights to be included in decision-making about the environment (WHAT, 2000, p. 7). This stakeholder approach acknowledges not only ecological duties vis-à-vis present and future generations, but also the ecological wellbeing of the Earth.

The mentioned rights and duties can only emerge through a legal process, which according to this book can be achieved through a construction of environmental democracy.

Hence, it is necessary to mobilise all mentioned rights and duties to make the transition from, in Bosselmann's words "Homo economicus to Homo ecologicus", to eventually justify the name Homo sapiens" (Bosselmann, 2009, p. 330).

What may be needed now is a clear vision of what the new form of democracy might look like.

2 A Theoretical Solution

Once the causes of the ecological crisis have been clarified, it is necessary to return to a legal point of view and try to link different points expressed above, some of which are not purely legal but are nevertheless the basis of such legal issues.

The idea of an environmental democracy comes from the attempt to seek a theoretical legal solution without twisting the political system and finding a different way to use the democratic concepts and tools.

In order to achieve this objective, Chapter I "**Environmental Democracy: A Theoretical Construction**" presents the conceptual building blocks of this book's approach, suggesting the possible transformation of the actual political and legal structures into an "environmental democracy".

Before speaking about the elements – form, space and actors – which compose the environmental democracy, it is necessary to analyse in Section I of this

³ Some scholars have suggested techniques for modifying human behaviour can be thought of as falling into two types: incentives and disincentives. Wilkinson, 2002, p. 10. See also Pathak, 1992, p. 205-206.

Chapter, titled **"Environmental Democracy"**, what the notions of "democracy" and "Environment" in this book's prospective encompass.

This section deals with two main issues: the first explores different theoretical forms of democracy, in particular, the participative and deliberative theories, which are both fundamental for the purpose of this book and the meaning of the term "environment". The second is to unify the two analysed notions into one concept, called "environmental democracy", and to contribute to a construction of a form and spatial dimension of this new type of democracy.

This section will argue that an ideal form of environmental democracy should include elements of deliberative and participatory democracy, as well as their processes and mechanisms where the citizens have a real possibility to participate. There seems to be a generally accepted view that the public should be involved directly in environmental decision-making. Hence, the emphasis on public democratic participation, participatory and deliberative, is the most significant theoretical solution proposed to answer to "certain disillusionment with the authority of the state to regulate for environmental protection", and is being more and more mirrored in International, European and domestic environmental law (Lee, & Abbot, 2003, p. 80).

From a spatial perspective, environmental democracy should be set up at the global and local levels to manage global and local ecological problems. Firstly, this takes place through international environmental law, and secondly, through regional and national regulation (Newigl, & Fritsch, 2009, p. 197).

The second point, which will be studied in the Section II of Chapter I, called **"The Actors of Environmental Democracy: The Environmental and Ecological Citizen"**, is related to the actors of environmental democracy, either citizens as individuals or individuals that have organised themselves as associations.

This book is focused on the power of the individual, since the term environmental democracy reflects the recognition that environmental issues must be addressed by all those affected by their outcome, not just by government. The starting point is the belief that every single person can really act to protect and improve the environment, and the fact that a single person is alone does not mean that s/he is weak *vis-à-vis* the future choice. Every individual has to rediscover what their environmental rights are, s/he exists as a human being and that without their explicit granting, they nevertheless exist.

At the same time, just as with regard to environmental rights, ecological duties exist beyond any recognition. In other words, from the mere fact that we are alive, we have rights and duties *vis-à-vis* ourselves and Earth.

Such moral and ethical acknowledgements have to be included in the legal concept of the individual, in particular in the notion of citizenship. The new citizenship comprises two aspects: first, environmental citizenship, which entails environmental rights, and second, ecological citizenship, that covers ecological duties.

However, both rights and duties may remain unfulfilled “as long as persons do not have the capacity to act in a civil society” (Stec, & Casey-Lefkowitz, 2000, p. 17). Thus, new processes and more participation in decisions, which affect the environment have to be concretely planned and organised by regulation.

Finally, the role of the association will be briefly analysed, as it has been defined as the “blood and sinew” of society since it is “the gate to transforming the industrial state and revivifying community” (Morrison, 1995).

Hence, the actions of individuals and associations could balance the power of the central state and contribute to the shift towards the creation of an environmental democracy.

From this perspective, Section II of Chapter II has been divided into two parts. After an analysis of the theoretical construction of a new citizenship,⁴ the first part, in particular, will deal with the environmental citizen and his corresponding substantive and procedural environmental rights. The second part will focus on ecological duties corresponding to ecological citizenship.

3 Concrete Solution

As mentioned above, environmental democracy should be implemented at global and local levels to better answer to global and local environmental problems.

In the light of the theoretical construction of environmental democracy and its elements, Chapter II, titled “**Environmental Democracy in an International Context**”, examines environmental democracy at the global level by referring to international legal instruments. An overview of democracy at the local level would have been too extensive for the framework of this book, which focuses only on the global level.

3.1 Global Environmental Democracy

Chapter II explores whether the theoretical construction of environmental democracy, examined in Chapter I, can be found to exist totally or partially on a global level. At this level, the creation of environmental democracy would be achieved through international environmental law, which encompasses in particular treaties the tools by which the international relationship is determined.

⁴ The first Author which spoke about environmental citizenship was M. J. Barker, 1970, p. 33.

It examines the situation and the steps already taken at the international level, in particular, through the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.⁵

This treaty has been chosen because it could serve as a model for the democratisation of international environmental decision-making processes and for the construction of an environmental democracy at a global and then at a local level (Marshall, 2006, p. 126; Redgwell, 2007, p. 163). The Convention aims at promoting and developing in a concrete form the environmental democracy and corresponds more closely to the theoretical construction of this new democracy (Wates, 2005b, p. 393). At the same time, this international instrument also recognises the environmental rights and ecological duties of the individual.

Before talking about the substantive and procedural environmental rights and ecological duties in international law and in the Convention, Section I of Chapter II **"Elements of Environmental Democracy at the Global Level"**, intends to outline briefly the conceptual framework of "democracy" and "environment" in international law and in the Aarhus Convention, and additionally intends to give a panoramic view of the steps already taken at the international level towards an environmental democracy.

Section II **"Procedural Environmental Rights in the Aarhus Convention"**, focuses on the provisions of the Aarhus Convention and deals with the three official pillars, Access to Information, Participation and Access to Justice and the two additional pillars, Enforcement of Environmental Law, and the Review of Compliance Mechanism, which are recognised by the treaty.

The aim of this part is not to consider all of the detailed provisions of the Convention but rather to take a broader look at the Aarhus version of the theoretical model of environmental democracy; but to show that the Aarhus pillars represent concrete examples of tools which could help introduce some elements of the theoretical model of environmental democracy primarily at a global level but also at a local level.

It must be pointed out here that several problems and ambiguities in the Aarhus Convention have been identified by the legal doctrine. It has been therefore considered a "fairly weak legal document, given its quite vague and permissive character and the absence of adequate enforcement mechanisms" (Lee, & Abbot, 2003, p. 81). Nevertheless, it can be stated that the Convention makes a *potentially* powerful proclamation with regard to the significance of

⁵ See Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Participants, June 25, 1998, 38 I.L.M. 517 (1999), entered into force Oct. 30, 2001.

public participation in an ample variety of decisions, and it should therefore not be forgotten that the treaty constitutes a “floor, not a ceiling” (Stec, & Casey-Lefkowitz, 2000, p. 45-47).

States have the obligation to provide for broader access to information, more extensive public participation in decision-making and a wider access to justice in environmental matters than required by the Convention. In other words, the Convention sets forth few requirements that parties must meet *at a minimum* in order to provide the basis for global and international environmental democracy, namely the effective recognition of aforementioned procedural rights in environmental matters.

Hence, the ratification process by the states of the Aarhus Convention solves some of the mentioned difficulties.⁶ Indeed, it is well known that for international environmental law to be effective, it relies upon its implementation within domestic orders as well as its enforcement.

Furthermore, building environmental democracy has to be reflected at the local level through regional and national regulation. Thus, some of the obligations within the Aarhus Convention, which are considered as *weak*, are likely to be given some real teeth *via* regional legislation and national legislation (Wates, 2005b, p. 393).

6 “It is notable that the Aarhus Convention makes no comparable attempt to broaden participation. The real emphasis in the Aarhus Convention is on the involvement of NGOs. However, we should always be aware of the dangers of claiming that NGOs ‘represent’ anybody, and of the possibility that a small (even if larger than before) number of participants will wrap up important decisions. More generalised public participation of course faces real obstacles”. Lee, & Abbot, 2003, p.107-108