ECOLOGY OF PROTEST. HOW JURISPRUDENCE OBSERVES DISOBEDIENCE

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Abstract (EN).- The contribution describes the theory of systems as an ecological theory of ecological movements, capable of radicalizing the relationship between the system and the environment and overcoming the epistemological limits of every anthropocentric and appropriative perspective of nature. The No Tap movement, established in Salento to oppose the construction of a gas pipeline financed by the European Union, is seen as a paradigmatic case of the modern forms of legal and administrative regulation of the conflict, of the immunization techniques of the protest. The Arendt's question of the relationship between disobedience and law will then be addressed, questioning the function of legal proceedings against the protest and how the legal system can treat the risk, that is the ignorance of the future.

Keywords: *movimenti di protesta, rischio, processi partecipativi, procedimenti giuridici, protest movements, risk, partecipatory processes, legal proceedings*

1. Observing the society of risk and protest

In 1990, Niklas Luhmann and Raffaele De Giorgi established the *Centro di Studi sul Rischio* (*Center for the Study of Risk*) in Lecce, in the conviction that modern society was (already) the *society of risk* (and of danger). A society without external points of reference, and therefore a society abandoned to itself, to taking decisions in conditions of uncertainty, that is of *not-knowing the future* (Luhmann 1998). A society that in every decision that it takes (or does not take) produces possible damage, or risks for the *decision-makers* and simultaneously dangers for those *involved*, that is, for the majority. A society, therefore, that produces, even continually, situations akin to protest, because it constantly confronts the problem of threat and of a future that is not realised in the expected way (Corsi 2003: 285). Therefore the society of risk is also the society of protest, or the *society of movement* (Meyer and Tarrow 1998).

One might suppose that the birth of the *Centro di Studi sul Rischio* in Lecce was connected to a particular territorial attention to the problem of risk or, at the most, to that which might favour risk. But this is not the case. And it is not the case, in spite of the fact that in 1990, only a few miles from Lecce, some of the most imposing European industries had already been active for decades: the Ilva steelworks in Taranto and Eni Petrochemical in Brindisi. And it is not the case in spite of the fact that in Cerano, just 33 kilometres from Lecce, the Enel coal station had just been built. In a completely surprising and paradoxical way, the topic of the risk of pollution from fossils

fuels had almost no resonance whatsoever in the territory of Salento. In fact, communication was (still) being channelled into the possibilities of *developing* the territory, possibilities which were ironically identified as much in the creation of *plans* for industry and work, as in the promotion of tourism for those seeking *uncontaminated* landscapes. On the other hand, it was believed that precisely uncontaminated nature (and life) constitute(s) the distinctive trait of southern identity, that is, its difference from the north. In the last decade, however, this self-description has imploded in the face of scientific evidence from the first epidemiological studies, which have demonstrated a connection between the emissions of the fossil fuel industries, and a percentage of tumours much higher than the European average.

The territory has thus slowly begun to focus attention on the connection between industrial risk and illness, that both of organic systems and also of psychological ones. However, the political and economical decision-makers have continued to hold fast to their own semantic constructions of the territory, and to their own expectations; in consequence, before this obstinate persistence, it seems that those who had been *involved* disappeared from the public sphere and enclosed themselves privately in a *spiral of silence* (Noelle-Neumman 2002) and of shame: shame for their previous self-descriptions, for the credulity they had manifested toward the rhetoric of development and even for the guilt of their own illness. This *spiral of silence* was partially broken by the 2011 European and Italian intention to approve a project to build a 4000-km-long mega gas pipeline, for the transport of gas from Azerbaijan to Europe. The No TAP movement was constituted against the landing of this pipeline on the coast of the province of Lecce. After years of protest and legal-administrative conflict, the project was definitively approved and launched in 2017. However, in spite of this institutional seal of approval, the No TAP opposition movement was progressively broadened, along with the forms of conflict and juridical regulation of the protest. On the other hand, the territory's self-description has radically changed in these years: the environmental movements have indeed contributed to increasing the resonance of the topic of industrial danger, arousing the spectre of fear and transforming the uncertainty of risk into certainty of damage, and not-knowing regarding the future into knowing regarding this tragic wait for a dystopia.

The present contribution does not intend to analyse the No TAP movement, but rather intends through it to try to describe and to utilise the theory of social systems of Niklas Luhmann (1984) as an ecological theory of environmental movements. Reference to the No TAP protest movement[1] might be useful, therefore, for verifying the empirical-explicative potential of a theory that was constructed with claims to abstraction. It would be interesting to understand *whether* systems theory can answer the principal

1 Over the last three years I have observed the activity of the No TAP Movement, and have carried out a series of in-depth interviews with their principal activists. I have also observed the days of participatory democracy – organised by the Puglia Region – and various demonstrations and public meetings organised by the movement. I have moreover analysed certain measures and acts of the Lecce Police Prefecture against the movement and, finally, I have observed how old and new media interpreted these events, and in particular, how TAP and the protest movement built their image and sought resonance in the media. This empirical research gives rise to the present theoretical reflections.

social and philosophico-juridical questions raised by this topic, which were posited already by Hannah Arendt (2017) in her reflection on *Civil Disobedience*. What is the compatibility between *civil disobedience* and law? What is the legitimacy of the social contract, that is to say the relation between tacit consent and explicit dissent? And in consequence: what is democracy's capacity to relate to disobedient minorities and to the desire for change of social movements? In short: what *conception* of jurisprudence is (environmental) protest compatible with?

To try to respond to these questions, it is necessary, however, to clarify some points about systems theory. Often, indeed, it is thought that this theory not only does not concern itself with analysing the *concrete* problems of society, but also that it is a conservative theory, one not interested in the subject of social change and therefore of disobedience and social movements. On the contrary, as early as the eighties Luhmann had confronted the subject of the *new social movements* and of protest (Luhmann 1986), of ecological threats and of environmental risk (Luhmann 1989), as propaedeutical reflections for the future construction of a *Sociology of Risk* (Luhmann 1993). Protest movements have been seen as *new social movements*, born starting from the end of the sixties, when the student movements and then the feminist, pacifist and environmentalist movements spread through Europe.[2] According to the German sociologist and philosopher, the *originality* of the new social movements does not lie in any innovative ideology or in 'scattered remnants of a once powerful call for legality and economic solidarity, but in a new type of protest: in the rejection of situations in which one could become the victim of the risky behaviour of others" (Luhmann 1993: 136). The new social movements, therefore, are orientated ever less toward internal disorders – that is, toward systemic inequalities – and ever more toward external disorders – that is, toward environmental or ecological imbalance (Luhmann 2013). They proliferate on the anguish generated from not-knowing the future, and the conflict that they live is precisely over the interpretation of not-knowing: they feel themselves to be spectators of a (self-) announced destruction, and they protest against the decisions-makers.

The second necessary clarification concerns the prejudicial accusations of conservatism advanced against systems theory. Contrary to what its detractors think, this theory does not deal with the *stability* of social structures, but rather with their *evolution*, described as an improbability that renders itself probable.[3] The systemic perspective indeed refuses every normative-eschatological representation of reality,

2 As Pieroni points out (2002: 240), it was above all the feminist movement, centred on the ethics of care and of the relationship, to anticipate the stakes of contemporary society's conflicts, as well as those of the environmental movement.

3 Indeed, Luhmann, though he was inspired by Parson's structural-functionalism, radically revisited it, transforming it into functional-structuralism – that is, into a theory which is not interested so much in the way that social structures might obtain and guarantee their stability, as in their functions and their sense in determinate situations: social structures are no longer considered, therefore, as "finalised data". On the other hand, his critics "simply confuse for defects and deficiencies what, from Luhmann's perspective, is instead the result of a conscious choice of diversification, worked not only on the contents but also in the explicatory claims of other theories" (Febbrajo 1975: 30 and 38).

which evidently derives from the desire to place oneself in the position of him who knows, better than others, in what direction society is going or *should* go. Luhmann (1996), instead, is interested in telling us only where society *is*. For this reason, those who believe that systems theory is conservative might ask themselves if it is not rather reality itself that is being conservative: political reality, economic reality, legal reality, and so on. Starting from this theoretical premise, the problem is no longer *whether* systems theory can answer the questions posed by Hannah Arendt, but rather *how* it observes these questions and, in consequence, *how* it responds to them. It is now evident, indeed, how the systemic approach does not indicate and cannot indicate what *conception* of jurisprudence is compatible with (environmental) protest; let alone can it propose – as Arendt does (1972: 83) – to constitutionalise civil disobedience. Luhmann, as a matter of fact, constructs a theory which observes how *reality* factually responds to the questions posed, helping to describe what the *effective* conception of jurisprudence (and of politics and economy) is; at most, it permits us to understand whether or not this conception is compatible with protest.

Therefore, through the framework of systems theory we will try to respond to these new questions, in the attempt to demonstrate how observation of the No TAP Movement can establish a paradigmatic case of the modern forms of the juridical *regulation* of conflict and, in particular, of one of its two sides: that of protest. Following the growth of protest, indeed, a 'dislocation of the problem"[4] occurred within legal and politico-administrative boundaries. That is, albeit in different spheres, the conflict has been progressively *juridicised*, insofar as even the administration resorted to the use of *juridical* procedures, defined as such not because they operate exclusively within the juridical system, but insofar as they are "juridically regulated", in the sense of finalised toward the production of *binding* and legitimate decisions (Luhmann 1969). Such juridicisation occurred in two principal phases. The first phase involved the TAP multinational and the Government, which were both interested in legally legitimating their claims through respect for certain *administrative procedures* (Luhmann 1969) – as much for authorisation procedures (both national and European), as for *democratisation* procedures, that is, for popular involvement in the final deliberation. The second phase, on the other hand, consisted in the use of specifically *juridical* procedures: at first, the social actors involved had recourse to all possible legal procedures to resolve the conflict, which was paradoxically enhanced by the administrative procedures; subsequently, after jurisprudence deliberated in favour of the multinational and of the Government, the No TAP movement reacted to the disappointment of their juridical expectations by opting for the organisation of defences and non-violent protests in the vicinity of the gas-pipeline construction site; thus, before the persistence of protest and its *deinstitutionalisation*, the legal system no longer acted merely as an arbiter, but actively intervened through juridical procedures of *exception*, consistent with its exhibiting its monopoly on physical force and on the

4 Luhmann (1974) speaks of "dislocation of the problem" to indicate one of the social strategies used to translate the extreme complexity of the environment into internal complexity, "which permits us to identify the problem as a problem of the system, rendering it soluble within the range of possibilities defined by the system itself" (De Giorgi 1998: 225).

adoption of repressive legal-administrative measures, such as arrests or expulsion orders. To briefly describe these stages of the juridicisation of the conflict means also to succinctly answer the previous theoretical questions on the relation between disobedience and jurisprudence, effectively translating them into questions about the function of participatory processes vis-à-vis of protest, about the relation between jurisprudence and not-knowing, about the force of the law, about the (evolutionary) function of protest and, finally, about the ecologically explanatory potential of systems theory.

2. The juridical regulation of the conflict

In the realisation of large works, the administrative authorities resort ever more to the use of procedures for the *democratisation* of decisions: the so-called participatory (grassroots) processes, which aim at *popular* involvement in the decisional processes preliminary to construction. These attempts, however, rather than signalling the beginning of an involvement of the territories, signal almost always the initiation of a progressive proceduralisation of the conflict. It is indeed important to remember what is hardly ever remembered by those who organise these participatory processes: namely, that European directives require that the approval of the EIA (Environmental Impact Assessment), that is, one of the primary authorisations to be obtained, be *conditioned* on the fulfilment of procedures which permit the evaluation of the opinion of the community and of the local administrations, in order to obtain a "co-ordination between institutions". Therefore, the involvement of the territories is not *participatory*, as some would have us believe, but exclusively *procedural*: its function is not to favour a horizontal management of the problem, but rather to respect the juridico-administrative procedures imposed by Europe. However, the European norms do not define the modality of their implementation, but simply impose certain objectives; in the same way, the procedures, in form and in structure, do not establish *a rigid succession of determined actions* (Luhmann 1969). Thus, full interpretative and effective liberty is left to the administrative organs, which in the case of TAP has been translated into a formal but not substantive respect of European "restrictions". Therefore, the first phase of the democratisation of decisions – even in the case of the No TAP movement – signals, rather than the beginning of an involvement of the territories, the start of a first attempt at *regulating* dissent. On the other hand, as Luhmann claims, the function of the participatory procedures is to legitimate the power of the involved, but only toward the end of *bridling it*. Through the use of code words like *participation* and *co-management*, one suggests to the involved the false awareness that they have power:

> Thus *emancipation* became *management's* last trick: denying the difference between superior and subordinate and thus taking away the subordinate's power base. While pretending to level power, in reality nothing else is done than reorganise that part of power which, all things considered, is already in the subordinate's hands (Luhmann 1979: 190).

In this way power is transformed into a controlled power, into a *closed* power (Canetti 1984).[5] The expedient of the democratisation of power consists, therefore, in levelling power toward the end of recognising to the "subordinates' a formal (fictitious) power and of depriving them of their uncontrolled potential (substantive) power. Thus protest might be channelled into forms of civil and regulated disobedience, and not into forms that compel the use of physical force, which moreover would require the bearing of economical and political *costs.* Indeed, when a power is compelled to resort to violence it manifests all its weakness: one is much stronger when one controls without exerting any control (Luhmann 1979). On the other hand the exercise of force carries an elevated risk of losing consensus, which has to be counterbalanced by investments in communication in order to discredit protest and position it in an extra-juridical space. Therefore, to understand "*management's* last trick" means to understand that the procedures of participation are only a juridico-administrative fiction, a new economy of power, much more cost-effective and less risky, but one whose latent function is equivalent to the function exercised by the use of physical force: to render the economical system immune to protest and, simultaneously, the political and juridical systems.

If a protest movement resists the first attempts at institutionalisation and regulation effected through participatory processes, it finds itself standing before the alternative of raising the level of the conflict from communicative to physical, or using every possible juridical procedure to obstruct the project. Thus, for example, the No TAP movement called upon jurisprudence, activating juridical procedures toward the end of observing the legitimacy of the administrative procedures. In this way, a movement can focus attention on its protest within the juridical system, thus legitimising its own disobedience.

From the analysis of the TAP conflict, however, the limits of this use of jurisprudence appear evident – limits that seem connected to the problem of the treatment of risk (Corso 2011). The question is: what is really able to observe and negotiate right in the face of *not-knowing* the future? (Luhmann 1998). Politico-economic decisions often obtain consensus precisely thanks to this not-knowing of the future, or in other words only because their consequences cannot be predicted. The ignorance of the future becomes a condition for the possibility of current politics (Luhmann 1995). Thus, capitalism *discharges* onto the future and onto the environment (nature, bodies, psychological systems) its principal social costs, with the advantage of hiding their very nature as *costs* in an earthly beyond. The intransparency of the future, therefore, "becomes the grand excuse for all the misdeeds of the new industrial society" (Luhmann 1988: 159). Indeed, in this way industrial capitalism succeeds in permitting the economy and politics to escape from the control of the juridical system. The politico-economical employment of the intransparency of the future renders jurisprudence helpless vis-à-vis the present, a time in which no damage is done, but in

5 For an examination of the subject of power *closure*, it is interesting to read the analysis of Canetti (1960) on the domestication of the religious masses, beginning from the concept of open and closed masses.

which there is the risk/danger of damage that might possibly be observed (and adjudicated) only in the future. In this case jurisprudence shows itself as a structural system for *tolerating* coexistence with risk, because it leaves the citizens in fear of danger and allows the economy and politics to run risks in (juridical and) more or less calculated form, since they are limited only by standardised *limit-values*, that is, values which are not instituted on the basis of the various ecological-territorial contexts in which large works are built (D'Alessandro 2012). "My impression", affirms Luhmann, is that the arbitrary component in the juridical rules is expanding. It is necessary to establish artificial limits and deadlines. The units of measurement must be defined. It is above all necessary to establish an approach to risks, for which neither the certainty of predictability exists, nor tolerance for socially admitted risk. Fireproof pyjamas are offered for children, but it is not possible to exclude with certainty the possibility that these might have a carcinogenic effect (Luhmann 1996).

Therefore, the conflict between jurisprudence and social movements is above all a conflict over the *distribution* of risk, in which everybody, even jurisprudence as an arbiter, is orientated on the basis of their *not-knowing*. Risk, then, is a temporal constraint that enables debate on the not-knowing, building structures and establishing reasoned expectations so as to produce advantages for the *decision-makers* who take risks (the economy and politics), and possible disadvantages for the *involved*, that is for whomever stands before danger and can only choose between remaining helpless or protesting. On the other hand, the operative capacities of jurisprudence can be neutralised both through the postponement to an indeterminate future of risk/danger assessment, but also through the proceduralisation of risk, so that the economico-administrative operations can return within juridical limits. It is indeed no coincidence that TAP was able several times – as the protest movement has claimed – to elude "the popular will by leaning on juridico-legal technicalities": the most resounding example is the circumvention of the Seveso Law, a European directive that requires the Member States to identify their at-risk industrial plants and to follow specific authorised procedures. The TAP has been able to elude the inspections provided for by the directive by separating the building of its plant into two different structures, and in this way succeeding in making it look, according to the regional administrative tribunal of Lazio, as if "a *non*-industrial type of plant, in which neither processing nor storage, but only transportation, of gas is effected". Even the State Council has excluded the applicability of the Seveso directive, and has confirmed both the regularity of the Environmental Impact Assessment and its "respect for the principle of co-operation between the Powers of the State in the procedure of overcoming the dissent expressed by the Region against the realisation of this work". Essentially, in the current society of risk, economy and politics demonstrate that they have the instruments to continue operating in the juridical field by anaesthetising jurisprudence, either through the intransparency of the future or else by following procedures and evading the law without violating it. Thus, after the juridical procedures legitimated those administrative procedures followed by TAP and the Government, at the end of March 2017 on-site construction began. Hundreds of people, including 15 mayors, tried to prevent the displacement of 211 centuries-old

olive trees, out of the more than 10,000 that are planned for removal. Law enforcement in anti-riot gear attacked the protesters: jurisprudence, to which the No TAP front had recourse to legitimate themselves, suddenly became a system immune to protest, a deaf interlocutor, which prescribes the removal of olive trees as legal, and the peaceful disobedience of the protesters as illegal. This is the beginning of a physical conflict, which however will bring the movement to considerably increase the number of its supporters, and also the number of its initiatives of confrontation and debate, on both the local and the national level. But this is also the beginning of a more concrete juridical regulation of the protest and of *exception*: jurisprudence manifests its monopoly on the *Force of Law* (Derrida 1992) and on violence (Benjamin 1920), its preventive measures, its greater attention to those who are disobedient rather than to the forms of disobedience, on bodies rather then juridical persons, and its identification of criminals even before the crime (Foucault 1975). Indeed, shortly after these confrontations, the Lecce Prefect provided for the creation of a provisional *red zone*, fenced with walls and barbed wire: 52 protesters who peacefully happened to be in the vicinity of the red zone were attacked by policemen in anti-riot gear, taken into custody for hours, and punished with heavy administrative fines; two of them, for the mere crime of non-authorised protest, and with the aggravating factor of their accompanying "individuals with police records for crimes of the same kind", were issued a restraining order, as provided for by the Code of the anti-mafia laws, and an *expulsion order* which forbids them to "return to the territory of the municipality of Lecce and Melendugno for three years". Immediately after these arrests and the issuance of these expulsion orders, the Government intensified its repressive attitude and introduced into the budget law an *exception* measure, that is, an amendment which transforms the construction site into a "site of national strategic national interest", thus permitting the militarisation and the arrest (anywhere from three months to one year) of anyone entering the construction site without authorisation. The amendment, however, has been blocked, inasmuch as it infringes Article 16 of the Constitution.

Thus, in a territory already ravaged by pollution, the juridical system has permitted the right of business to prevail over fundamental rights like the right to health, constructing, thereby, a hierarchy of constitutional values and of more or less legally enforceable rights. In consequence, the treatment of the protest has become ever more policed and administrative, because the State has regulated the exception, transferring it to the ever less juridical peripheries of power (Foucault 1975), which are occupied by agencies of the neo-liberal *governance*: the sectors of juridical power, the police apparatus, the economic institutions and the means of communication. A gradual juridical inclusion of the TAP's operations has thereby been obtained, as well as an exclusion of the protest movement from the confines of jurisprudence. Consequently, civil disobedience was quickly degraded to common criminality, despite the fact that civil disobedience cannot be labelled as a particular case of violation of the law, because while criminality acts in a concealed way and for its own advantage, civil protest challenges the law in a manifest way and, though acting as a minority, protests for the rights of the entire community of citizens (Arendt 1972). On the other hand, in

spite of the fact that the No TAP protest was stigmatised and criminalised (through arrests, heavy administrative fines and expulsion orders), it had never employed forms of aggressive violence, but at most of defensive. And the form of non-violence is what distinguishes civil disobedience from revolutionary disobedience: "...the civil disobedient acts within a framework of laws whose legitimacy he accepts," as Carl Cohen clarifies (Arendt 1972: 54). Indeed, the No TAP movement, by using all the procedures the juridical system had placed at its disposal to oppose the realisation of a major project, has fully demonstrated its acceptance of the established order, and has inscribed its *explicit* dissent within the *tacit* consent of the social contract. Therefore, if movements dissent, since otherwise it is as if they were expressing a tacit consent, the political and juridical systems in the same way should recognise that "dissent implies consent, and is the hallmark of free government" (Arendt 1972: 88). But this regime of liberty, evidently in a counter-ideal way, seems to shrink ever smaller.

3. The ecological function of protest and of systems theory

Before the boundless strength of the economy, politics and jurisprudence, one wonders what might be – for systems theory – the efficacy and the social function of a protest movement? If society is understood as a universe of social communication, the function of the protest movement can only be described as purely communicative. Indeed, in systems theory, the ecological threats themselves do not represent *objective* facts that take place in the environment, but rather phenomena exclusively internal to society, which do not have any social relevance as long as they are not communicated:

It is not a matter of objective facts, for example, that oil-supplies are decreasing, that the temperature of rivers is increasing, that forests are being defoliated or that the skies and seas are being polluted. All this may or may not be the case. But as physical, chemical, or biological facts they create no social resonance as long as they are not subject to communication. […] Society is an environmentally sensitive (open) but operatively closed system. Its sole mode of observation is communication. It is limited to communicating meaningfully and regulating this communication through communication. Thus it can only *expose itself to danger* (Luhmann 1989: 28-29).

If industries pollute and people die, but nobody communicates this, it is as if it were not happening: "The environment can make itself noticed only by means of communicative irritations or disturbance, and then these have to react to themselves" (Luhmann 1989: 29). Therefore, the function of the protest movement can only be that of giving *resonance* to facts and changes to the environment, whether these be real or possible. Their function is to alter the relations of relevance between values, to change the order of attention, to compensate the deficiency of reflection in modern society, "to do it differently but at least as well" (Luhmann 2013: 338). These movements, therefore, do not have the possibility to change society – as is often claimed – but only to select and focus attention on the problem, to produce

awareness, in the hope of inclusion in the political agenda. They supply contributions to the self-description of society from within society, despite the fact that they behave as if they were *outside* of society. In this way they structure an opposition between centre/periphery: they are the periphery of society protesting against its centre (Luhmann 1996). However, their successes might consist in *alarming* society and verifying how the *centre* reacts to this alarm, whether it reacts with indifference or not: "Like a watch dog, it has an urgent need to restore order or at least to prevent deterioration. And like a watch dog, it has a choice only between barking and biting" (Luhmann 1993: 143).

Described in this way, the function of protest movements does not seem to have many possibilities to effecting social change. And, indeed, it could easily be maintained that the cases in which they succeed in effecting social change are sporadic. Yet, it is thanks to protest movements that today's society is what it is; that the public opinion has changed and has gradually accepted the revolutionary ideas of certain minorities; and that the rights of the person have notably increased. Therefore, it might be appropriate to try to clearly understand what the explicative potential of systems theory is, and how its observation of protest movements might furnish an *ecological* contribution. Someone might even object that Luhmann does not really speak on the *substance* of the social and philosophical questions raised at the beginning; however, it cannot be denied that he does do this, yet more radically, in his *method.* His systems theory, indeed, is not only interested in ecological protest, but is itself constructed as an *ecological* theory, because "the ecological question is, in reality, *the* question of social theory, if this is not understood merely as an environmental fact, as a question of pollution, but rather as a relation between system and environment" (Luhmann 1996). Indeed, the systemic perspective first of all overcomes the limits of every anthropocentric approach, insofar as it refuses to construct a social theory beginning from the concept of man, but replaces the traditional foundational distinction subject/object with that of system/environment, thus highlighting how the concept of 'environment" is not strictly naturalistic: not only society must deal with its environment, but every social system faces the problem of coming to terms with the complexity of all that from which it differentiates itself, but with which it is interconnected. From this perspective, ecology is not a discipline relating only to the relation between man and nature, but it is an epistemological methodology that regards in a transversal way every scientific observation, which begins precisely from the distinction between system and environment. And since every system is, according to this perspective of observation, both system and environment, the same binary distinction system/environment no longer has any symbolic imbalance, nor any evaluative connotation. The first theoretical consequence relevant to the relation between man and nature is that this relation ceases to have any nexus of verticality or of appropriation: there is no longer any kind of hierarchy, any supremacy of man over nature. Thus, Luhmann's systems theory, as a theory on difference and interconnection, invites one to transcend not only juridical anthropocentrism, but also the *appropriative* logic of jurisprudence, that is, the reification of nature as a good in man's possession. In doing so, it furnishes social and juridical theory with the instruments

to make that epistemological revolution so much desired by the new doctrine dealing with *Wild Law* and *Earth Jurisprudence*.[6] The obvious, but revolutionary, presupposition of the systemic approach is that whenever the existence of an environment is compromised, the survival of the system, too, will be compromised, because, in distinction, one part cannot exist without the other. And just as jurisprudence and politics can compromise both themselves and democracy by denying protest movements (or vice-versa), in the same way society can compromise its own survival if it refuses to accept, theoretically and empirically, its interconnectedness and interdependency with its own environment.

If systems theory is, therefore, an ecological theory, it can easily be maintained that the function of protest too is an *ecological* function, regardless of whether or not the protest in question is an environmental protest. Protest can indeed be described as an invitation to observe the periphery, that which is relegated to the environment – the other part concealed by latency. Protest reveals that there is always an environment, whether this be nature or the *involved*: those who do not decide, but who are impacted by the decisions of the *decision-maker*, those who can become decision-makers. Protest reveals that *there is* another part, that society's self-description – which is constructed in its *centre* by the political, economical or juridical system – is only *one* description, without any character of necessity. The ecological function of protest is to show the contingency of reality, to carry the centre to the periphery and the periphery to the centre: revealing that alternatives exist, indicating the *unmarked space*, the other part left in the shadows. Protest is ecology of the *otherness* of the viewpoint of the other: it is the ecology of multiplicity.

The final question, then, is whether or not we are witnessing, in today's society, a reduction of the possibility for protest, of the chance for new social movements to effect social change. In other words: although we are living in the *society of protest*, are we paradoxically standing before a contraction of the collective claims to rights? Are we standing before a simultaneous amplification of the techniques for regulating protest or for its exclusion from the boundaries of jurisprudence? And, if so, would not be democracy itself excluding itself? Indeed, it would seem – notwithstanding the heterarchical society – that the economical system assumes ever more a primary and top-heavy function, favouring only those developmental acquisitions (and those

6 In the juridical field, besides *Wild Law* and *Earth Jurisprudence*, various theoretical routes to construct a new ecological epistemology have been taken, in the attempt to reject the subject/object dialectic and to topple the juridical scheme of belonging, since it is man who belongs to living systems and not the other way around. On the other hand, the ecological approach permits the exploding also of other juridical schemes, such as that of contract and of responsibility: since on the one hand the man/nature interdependency is non-negotiable and, on the other hand, aggression to the sustainability of the coexistence of man/nature cannot be restored through forms of posthumous compensation. There are at least four theoretico-juridical routes taken to accomplish this epistemological revolution: recognising juridical subjectivity to biological non-human entities, precisely as was attempted by *Wild Law* and *Earth Jurisprudence*; recognising and promoting eco-juridical principles on the doctrinal level; substituting subjective rights with the duties of solidarity (of defence and protection), seeing the environmental law as a sub-area of administrative law; finally, in a more limited way, treating natural resources as common goods, maintaining the subject/object distinction (Monteduro and Tommasi 2015).

juridical operations) that do not obstruct a constant expansion of its possibilities, that is, that do not obstruct the supremacy of money – as *a symbolically generalised medium* (Luhmann 2013) – over the *media* of other social systems (Schwartz and Shuva 1992: 205-223). For this reason, movements seem to be fighting an unequal battle in which the systems of economy, of politics and of jurisprudence do not seem to be each one the environment of the other – that is, free and independent, as instead they ought to be in a modern society. In fact, politics seems to use the code words of jurisprudence to legitimate its choices and to render the economy immune to the dangers of its own environment, understood as the dangers deriving mostly from the various forms of dissidence, which are nowadays ever more sporadic in their effective practice.

If one observes present reality, it is difficult to criticise Luhmann of ideological conservatism: it is rather the *episteme* of the present that narrows the horizons of social change. Therefore, if a protest movement, "like a watch dog ... has a choice only between barking and biting" (Luhmann 1993: 143), the only hope is that the net in which the dog is imprisoned might be torn or might fall away. Or else that it will be the dog, or nature, to destroy the net or to move, with it, the juridical limits between the legal and illegal, thus putting an end to the criminalisation of disobedience and to the appropriative anthropocentrism of the human animal. Only in this way, perhaps, can (European) society and its jurisprudence free themselves from their fossilisation, and access the viewpoint of the other. Thus, inspired by the *nuevo costitucionalismo* of the Andes (Carducci 2013), they will imagine a new social contract: one not only between physical persons, but between nature and animals, both human and not human.

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