

Transcendental Philosophy and Ecology: Politics as Jurisprudence

Giacomo Gambaro (Università di Padova)

My talk aims to share with you some significant results achieved in recent years by the research group “Metamorphosis of the Transcendental” at the University of Padua of which I am a member.

I have decided to organize the talk as follows.

First of all I will try to briefly present what the objective of our group consists of, then I will offer a definition of “transcendental philosophy” trying to highlight its intrinsically “ecological” and “environmental” vocation. Finally, moving from the definition of the transcendental as “ecological philosophy”, I will attempt to explain some of the most important assumptions of our idea of the political problem in the time of ecological crisis.

As you can understand from the title of the paper, our idea concerns the possibility of delineating a “politics as jurisprudence”, that is, a political practice based on an ecological use of law that escapes the logic of modern political science and twentieth-century political philosophy.

As I will illustrate, with the concept of “jurisprudence” our group seeks to make many contemporary ecological struggles intelligible.

These struggles are characterized, on the one hand, by punctual disputes that take place in specific local contexts and are carried out by contextual alliances, and, on the other hand, by the decisive intervention of courts and tribunals, whose rulings support the battle for the environment without involving traditional political actors, such as parties and institutions of political representation.

Well, let’s begin with a presentation of our group and its main lines of research.

“Metamorphosis of the Transcendental” is a research group led by Professor Gaetano Rametta and composed of many scholars dealing with the history of transcendental philosophy.

The interest in the history of philosophy, however, should not be misunderstood: the objective of our group does not consist only in the deepening of figures and moments of the past, but interacts with the history of philosophy in order to interrogate contemporaneity.

In this regard, our main points of reference are philosophers of the late eighteenth and early nineteenth century - such as Immanuel Kant and Johann Gottlieb Fichte -; the philosophical traditions of the first half of the twentieth century, such as the phenomenology of Edmund Husserl and the neo-Kantianism of Emil Lask; finally, the thought of the last great exponents of transcendental philosophy in the twentieth century, such as Gilles Deleuze, a philosopher who is very relevant for us in the political field, since he coined the concept of “jurisprudence” that I will explain later.

Well, what do all the names I have just mentioned have in common? What does Kant have in common with Husserl, for example, or Fichte with Deleuze?

In short, the elements that link a large part of the exponents of transcendental philosophy and that in many ways constitute the fundamental features of the transcendental as such are two:

- 1) The conception of philosophy as the practice of creating concepts;
- 2) The role of reflection on “conditions of possibility”.

On the basis of a definition offered by Gilles Deleuze, philosophy, unlike scientific disciplines, is characterized by being a practice, and more precisely a practice aimed at the creation of concepts.

Transcendental philosophy, then, is philosophy insofar as it creates concepts, which are not “copies” or “representations” of reality, but those specific instruments through which philosophy intervenes *in reality*.

Unlike other traditions of thought, however, the philosophical practice of the transcendental is characterized by an additional feature: on the one hand it creates concepts, on the other hand it reflects on the conditions that make such a creation possible. The productive and creative issue is constantly connected to the reflective one in order to reconstruct the so-called “conditions of possibility” of thought, that is, all those elements that underlie the philosophical practice and make it possible.

Starting from this mutual implication between concepts and conditions of possibility, it is also possible to introduce another fundamental assumption that distinguishes the perspective of our research group on the “metamorphosis of the transcendental”.

In this regard, it is necessary to focus on the reflection on the conditions of possibility and its implications that, as I will try to explain, will already lead us to the problem of ecology or of the transcendental as “ecological philosophy”.

In the history of transcendental philosophy, it is precisely at the level of the reconstruction of the conditions of possibility that an authentic “metamorphosis” takes place, a sort of “turn” that begins with the last Fichte and continues until the second half of the twentieth century, with Deleuze’s post-structuralist approach.

This metamorphosis consists in a fundamental acquisition: the “subject” of thought does not hold any primacy, but is determined through the removal and concealment of relationships, circumstances, preconditions - the conditions of possibility, precisely - that allow him to think.

The subject, therefore, is never a “principle” of itself, it cannot claim to be autonomous or self-sufficient, and for transcendental philosophy it is exactly this experience of de-subjectification or decentralization of the subject that occurs first and foremost in the very exercise of thought.

Fichte, for example, introduces the concept of an “original life” that underlies the subject and that the subject, through reflection, can recognize as its own condition of possibility; Husserl treats the “world

of life” and the “passive syntheses” as an indispensable horizon for having experience; Sartre formulates the concept of the “impersonal field” that makes possible every activity of our consciousness and that has nothing to do with our “I”; Deleuze, finally, coins the notion of “plane of immanence” where there is no subject, but only impersonal flows and molecular connections.

In short, for transcendental philosophy to think always means to experience a radical *de-subjectification*: the search for the “conditions of possibility” forces us to deal with a dimension that precedes the subject, with a set of conditions, relationships, cases and circumstances on which every activity and every existence depends.

On the basis of this acquisition, we can understand why, in our opinion, the transcendental constitutes as such an “ecological” and “environmental” philosophy based on the deconstruction of the primacy of the subject and on the consequent overcoming of the dualism between subject and object, between I and world.

Indeed, the idea that thought depends on conditions that can be grasped only through the dismissal of any transcendence of the subject indicates an intrinsically “environmental” perspective.

Once the hierarchy between subject and object has been demystified, the reflection on the conditions of possibility is transformed into the reconstruction of the set of circumstances, cases and contexts that constitutes the “environment” on which every life depends.

What I have just argued about transcendental philosophy as “ecological philosophy” is crucial in order to introduce our current research on “politics as jurisprudence”.

From the beginning, our attempt has been to offer a political translation of transcendental philosophy able to face the scenario of the dramatic ecological crisis and, above all, to offer some tools to read the new forms of politics in the time of the so-called “Anthropocene”.

As you know, this expression was introduced in 2000 by the Dutch Nobel Prize-winning chemist Paul J. Crutzen in order to indicate the current geological era, characterized by the devastating effects of human action on the Earth’s environment from the physical, chemical and biological point of view.

Global warming, the depletion of material resources and livelihoods, floods and other terrible natural disasters, as well as the destruction of ecosystems essential to the reproduction of life on the planet and the spread of unprecedented epidemics such as the Covid-19 pandemic itself: these are just some of the terrible effects of the ecological crisis caused by anthropogenic impact.

Faced with this dramatic scenario, it is in our opinion necessary that philosophy also offers its contribution, trying to elaborate keys to interact with new phenomena and to intervene in an increasingly complex world.

Unlike other theoretical perspectives, however, we have always been convinced of one fact: the radically *political* nature of the ecological crisis. Interacting with the contemporary scenario, then, means for us to bring out the political, historically and socio-economically determined matrix of the “Anthropocene” era.

The Anthropocene is not the product of a humanity conceived in a generic and abstract way, as if there were no differences within it. It is not the human being as such that has caused the current crisis, but a precise way of organizing both the relationship of humans with non-humans and the relationship between humans. The so-called “Anthropocene” has its roots in the social and economic formation of capitalism, in the capitalist way of structuring relations between humans according to the accumulation of profit and at the same time in the way of organizing the exchange with the environment aimed at the massive extraction of resources needed to achieve this accumulation.

For this reason, our approach converges with the fundamental assumptions of the research developed by Jason W. Moore, who in many contributions has underlined the capitalist substrate of the ecological crisis: *below the “Anthropocene” we always find the so-called “Capitalocene”*.

Consequently, the first task of a philosophy aware of the historically determined nature of the phenomena mentioned above is to develop a critique of the *political ecology* of capitalism (and no longer just a critique of *political economy* as in Marx).

It is therefore necessary to criticize on the one hand the “Capitalocene” from the point of view of the material processes that it deploys, and on the other hand the ideological assumptions that are not only inadequate, but also are actually a constitutive part of the problem.

We believe that the ecological crisis, in short, highlights in all its evidence how the transcendental exercise of thought can play a decisive role, translating itself into a real political stance.

However, this certainly does not mean trying to restore the paradigm of the “engaged philosopher” that has often characterized the relationship between thought and political intervention during the twentieth century. We do not want in any way to restore the ideological welding between philosophy and militancy typical of the twentieth century, which today appears to us in all its limitations.

On the contrary, a transcendental philosophy aware of its role in contemporaneity can be politically productive only by expressing its critical potential, that is, by acknowledging to the “philosophical moment” its necessary autonomy. By preserving its autonomy, philosophy can develop a critique of the assumptions of the dominant discourse and at the same time create concepts in order to open up alternatives.

Regarding this last point, it is necessary to lay the foundations for a different way of conceiving politics, overcoming the logic of modern political science still prevailing during the twentieth century. In fact, the logic and concepts of political science and political philosophy of modernity, based on the

idea of the sovereignty of the state as the exclusive holder of political legitimacy and on the neutralization of the political nature of everything that comes out of the mechanism of representation, reveals more and more its obsolescence.

First of all, modern political science is anachronistic with respect to the ecological crisis and the dynamics triggered by it, which exceed the territorial delimitation of nation-states (such as climate change, pandemic waves, migration flows, energy dependence).

Secondly, the same logical-conceptual assumptions of political modernity prove to be part of the mechanisms of power, exploitation and appropriation lying at the basis of the "metabolic rift" of the balance in the relationship between human beings and environment produced by capitalism, a fracture analyzed for example by John Bellamy Foster, Brett Clark and Richard York in *The Ecological Rift. Capitalism's War on the Earth* (Monthly Review Press, New York 2010).

Finally, continuing to assume the political concepts of modernity fails to acknowledge the undoubted political significance of the new processes and movements that have taken place in recent years.

In recent years, in fact, we have observed the spread of an ecologism that is new in many respects, which in our opinion still needs a philosophical-political lexicon capable of assessing both its radicality and its complexity.

Our aim in this regard is precisely to offer a theoretical contribution that can shed a light on the new forms of agency, revealing the peculiar political dynamics that characterize contemporaneity.

Well, when we talk about a "new ecologism", we are not only referring to movements like Fridays For Future or Extinction Rebellion.

Certainly, we are close to the demands of these movements and we believe that these mobilizations represent an indispensable element to transform the status quo.

However, our thesis concerns a growing set of practices and struggles from which an alternative political direction emerges both with respect to modern and twentieth-century politics and to some, albeit relevant, forms of mobilization and ecological activism.

We believe that these new practices can be adequately understood in their novelty and recognized in their radically political nature precisely moving from the concept of "jurisprudence" or, rather, from the idea of *politics as jurisprudence*.

In the philosophical field, the concept of "jurisprudence" has been used by Gilles Deleuze in order to outline a way of conceiving politics alternative to the one linked to the idea of representation and Law conceived exclusively as an internal component of the State and its articulations.

On the contrary, with the concept of "jurisprudence" Deleuze was referring to a politics of "cases" and disputes, which obviously does not misrecognize the relevance of institutional actors, but

nevertheless assumes them as part of a plural and composite, variable and contingent field of forces within which multiple relationships and new alliances are articulated and developed.

Our goal has been to develop Deleuze's thinking on “jurisprudential politics” by highlighting that processes of politicization are no longer realized on the basis of modern legitimation and representation, but are produced through the interference between the institutional plane of courts and tribunals and the concrete contexts in which disputes and mobilizations are activated.

In order to understand this point, I will provide three examples that allow us to understand how the ecological challenge cannot be reduced to summits, proclamations and international conferences, but is played out at the level of punctual political interventions that involve, on the one hand, contextual forms of alliance and self-organization (committees, associations, movements) aimed at local disputes, and on the other, sentences, pronouncements, judgments and rulings expressed by the courts of justice of every order and degree.

The Urgenda Case

The Urgenda case represents the first case that ended, after a long court case that lasted from 2013 to 2019, with the final conviction of a State. The case began in 2013 with an appeal filed by the environmental association Urgenda to the Territorial Court of the Hague. The appeal asked the courts to force the state authorities to reduce greenhouse gas emissions by 40% by 2030 or at least 25% by 2020. The Supreme Court upheld the conviction of the State by referring to the obligations established by the Intergovernmental Panel on Climate Change (IPCC), taken from the United Nations Framework on Climate Change (UNFCCC) to which the Netherlands adheres.

The Shell Case

With the ruling dated May 26, 2021, the Dutch Hague District Court upheld the appeal filed by environmental associations, non-governmental organizations, and more than 17,000 citizens and ordered Shell to reduce carbon dioxide emissions of 45% by 2030 from 2019 levels. The claimants argued that Shell had breached its duty of care under the Dutch Civil Code and breached Article 2 (right to life) and Article 8 (rights to private family life and home) of the European Convention on Human Rights. This was the first time that a court has ordered a company to align its corporate policy with the carbon dioxide emissions reduction targets under the Paris Agreement.

The Affaire du siècle

On October 14, 2021, the Administrative Court of Paris condemned the French state for its inaction in the fight against climate change, ordering it to take all necessary measures to repair by December 31, 2022 the ecological damage caused by the exceeding of carbon budgets between 2015 and 2018. The decision came after three years of mobilization and legal proceedings by the promoters of the so-called “Affaire du Siècle”: Notre Affaire à Tous, Fondation Nicolas Hulot, Oxfam France and Greenpeace France, as well as 2,3 million signatories.

The cases I've just listed are just a few examples of the conflicts - known as "climate litigations" - that are rapidly spreading around the world in recent years: in 2017 climate litigations were 884 and involved 24 countries; in 2020 they are 1550 and involve 28 countries (including the Netherlands, Germany, Italy, France, Pakistan, Colombia, etc.).

When we speak of the “collective exercise of jurisprudence” as a new practice of ecological struggle, we are referring precisely to this overwhelming process that we believe is destined to grow exponentially.

I will now attempt to thematize what this political process consists of from a philosophical-political perspective.

Politics as jurisprudence seems to have two main characteristics:

- 1) the decisive importance of the more or less temporary and more or less organic constitution of contextual forms of alliance;
- 2) the increasing prominence of courts, tribunals, and their rulings as key players in political processes.

Both of these factors have innumerable elements of specificity and difference from the logic of modern, twentieth-century politics.

With regard to the first point, in the perspective of jurisprudential political processes, the ability to form networks of alliances proves crucial, although these do not take place under the banner of an identity connotation based on belonging to a shared ideology. On the contrary, these alliances are based on claims and aims inextricably linked to the contexts and circumstances in the name of which the political mobilization takes place.

The construction of a high-speed rail line, the building of a waste disposal plant, the contamination of water caused by a petrochemical industry hub, for example, are the “cases” that provoke the claims that, in turn, produce the processes of political composition.

As can be seen, a jurisprudential politics is not a politics of collective subjects, but of cases and contextual connections.

This means that the political process is no longer reduced to the organization on a national scale of communities that aspire to represent collective interests. Instead, it is about processes that take place primarily at the territorial level - Deleuze and Guattari would say “molecular” - moving from singular disputes in order to achieve concrete goals.

This relevance attributed to “cases” is certainly also at the basis of the precariousness of the movements under consideration. In fact, the contextual and circumstantial nature of the claims may prevent these alliances from lasting over time, supported by solid organizational forms, struggles and mobilizations.

In this regard, a weak point that in my opinion needs to be studied in depth concerns exactly this limitation linked to the problem of *duration*: in this sense, the “time factor” constitutes an essential theoretical and political issue insofar as it represents one of the major obstacles of politics as jurisprudence and, from another point of view, one of the most effective tools that interest groups can use to prevent any kind of change.

This weakness, however, is at least partially offset by the second feature previously mentioned: the increasing prominence of courts, tribunals, and rulings.

If we carefully consider the cases I mentioned earlier, such as the Shell case, we can see a fact of fundamental importance. Associations, movements and ecological committees have not mobilized to raise awareness in the media in an attempt to condition the actions of governments, but have from the beginning called into question the role of the courts as crucial political players.

In such cases, the function of law no longer occupies the same position established by the modern legal-political system, according to which law must be conceived first of all as an internal component of the State’s competences, as happens with the legislative power of Parliament.

On the contrary, we are in the presence of a political involvement of the courts of justice by the movements, which in this way realize politics as a collective exercise of jurisprudence.

All this does not mean denying or neglecting the political relevance of the institutional components, but highlighting that these components no longer fulfill their traditional role. Rather, the juridical-institutional level represented, for example, by the courts is grafted onto a horizon of contestation and negotiation of political arrangements, often converging with conflicts which, although no longer represented by traditional collective political subjects such as parties, nevertheless act and produce far-reaching political effects.

I would like to conclude my talk by quoting from an important essay by Professor Gaetano Rametta, namely from the *Appendix on Politics and Jurisprudence* contained in *Deleuze interpreter of Hume*

(Mimesis 2020). In fact, I think this quote effectively expresses the sense of my discussion of “politics as jurisprudence” that we employ to understand the new ecological struggles.

The concept of jurisprudence aims to bring the forms and practices of political experience in a further dimension than the one that has characterized the modern state, leading the law to its political root, in a multiplicity of collectively shared practices, and at the same time helping to de-structure the institutional stratifications that (...) find in the state their field of consolidation and organization. In this sense, jurisprudence coincides with the execution of law no longer bound to the legal stratification in a complex of laws, understood as the universally valid expression of the “general will”. It is not a matter of a jurisprudence without law, but rather of a law that, in the multiple practice of jurisprudential production, returns to approach the concreteness of the singular “case”, and is therefore freed from its determination in the universal form of the law (G. Rametta, *Appendice su Politica e giurisprudenza*, in *Deleuze interprete di Hume*, Mimesis 2020, p. 58).