

THE LAW ACCORDING TO A SYSTEMIC ORIENTATION

A systemic perspective for regenerated relationships

I have been working as a lawyer for over 15 years and, for at least 8 years, I have started doing research in the field of conflict in order to acquire useful tools to decode human behaviors and to find regenerative ways of relationships in conflict resolution. The field of greatest interest, from the perspective I will discuss in this article, is that of conflicts with a family background (separations and divorces, inheritances) as well as with a corporate background (generational transition and contracts and commercial relations).



Very early in the course of my profession I realized that cultivating "only" technical skills and studying the rules of codes and civil process was not enough if I wanted to find a way to help people to agree and maintain effective and efficient over time the contracts concluded once the dispute was negotiated.

So I asked myself: when faced with similar types of conflict, why can some people find their way while others continue to fight? Why are similar contracts in the settlement content effective over time for some people and not for others? When people manage to find lasting agreements over time, what have been the tools to achieve these goals?

In my daily practice as a lawyer I see how conflicts arise and, above all, how they are perpetrated and mistreated in the long term. I frequently meet people who are not even satisfied with the outcome of a trial that is favorable to them or who are so disillusioned by the (mistaken) expectations placed in "justice" that they have lost faith in the system. All too often, I note that the professional's intervention is required when the situation is already almost compromised, so much so that, regardless of wrong or reason, the cost and duration of the conflict is still prejudicial to people.

Everyone's disoriented and suspicious. All too often, professionals simply repeat their clients' requests without going into them in depth, thinking that this is the way to work in their interests.

Long disputes, high costs (even if the length of time taken to deal with a dispute is not necessarily linked to high cost, nor a short time to low cost), unhappy people, dissatisfied and challenged professionals, courts that are asked to make decisions in relational areas that seem not to belong to the law. And they don't like sentences because especially in the field of family relationships (and family businesses) they're not enough. It is almost obvious that this is the case: the law is a body of legal rules that does not aim to regenerate the relationship and the Court is not the place to do so.

In other words, I have understood that the way to agree is a road, and in order to make this journey and conclude agreements that will last over time, other instruments are also needed.

What is needed, then, for to find the solution?

What perspective to adopt?



About conflict

In the dialogues of the famous master Krishnamurti we read:

"You have probably lived a long time in conflict, pain, suffering, fear, and said to yourself, 'It's part of my life, I accept it,' and you kept going on like that. You have not asked yourselves what the conflict felt in the brain, in the psyche of a human being. If we are constantly targeted, bombarded by conflict, do you know what happens to the brain? It crumples. It becomes small, limited, ugly. That's what happens to everybody. But an averagely intelligent person wonders, 'Why do I have to live in conflict all my life?' And start looking into the conflict. There is conflict where there is division, internal or external. This division, basically, is between me what I observe. So the two separate activities come into action, which is false, because you are the anger, you are the violence. If you grasp this point and understand that the observer is what he observes, there is a completely different activity".

The underestimated dimension of the conflict.

I realized that quarreling is actually a way that people use to stay connected.

If you don't know any other way to express your needs and relational expectations, quarreling or anger becomes the only way not to definitively "lose" contact with the person you are quarreling with. Becoming aware of this dynamic allows you to take a step forward to orient yourself towards a change of perspective.

A second basic assumption that is not very well considered is that conflicts, or even "simple" disagreements, exist and are part of the relationship. It is a real mistake to believe that discussing, sometimes even with passion, is a symptom of a relationship that does not work. Disagreement is an opportunity to learn about oneself and others. This does not mean encouraging arguments, of course, but it does mean that we can accept with serenity a fact that concerns human beings. While it is true that finding the answers is important, I think it is equally important to ask the right questions and discuss with the prospect of understanding each other becoming possible.

I have also experienced that when the "unspoken relational" is included in the negotiation, at any level, and then transferred into the contractual fabric, people are more satisfied and inclined to maintain the agreements reached over time.

The law according to a systemic orientation.

This, I have begin to write about *law according to a systemic orientation*: a way of approaching conflict management that is at the service of the relationship, with the aim of making people more autonomous and aware of what emerges from the conflict process.

At one point, however, I found myself in a stalemate: it seemed difficult to express nonlinear concepts using traditional linear patterns of

communication and thought (wrong-reason, right-wrong).

The underlying conceptual framework was offered to me, almost like an illumination, by the systems view. I refer to that profound and revolutionary change in the view of life that in science has led to the overcoming of the Cartesian paradigm of the world as a machine. Modern science has confirmed our uniqueness and identified as a unique model of organization for all forms of life (microorganism, cell, plant, animal, human being, social group, organization, ecosystem) that of the network. All living organisms are structured according to networks and all living organisms relate to each other through networks. The arrival of this awareness in science was certainly not the result of a simple path, but brought about a revolution and the overcoming of a paradigm that for centuries has informed and conditioned all areas of human knowledge: the division between mind and matter. The division, the parcelling out, the decomposition of the whole into individual parts, to measure and catalogue, with the declared aim of controlling natural processes and dominating them for the benefit of the individual or small groups of individuals. The result of this separation in law is the vision of conflict exclusively in terms of wrong and reason.



The system view has involved the adoption of a holistic paradigm and turned (as in a journey home) the attention to the unification of body and mind, to look at the whole, to map it and know the process of organization, even before understanding how it works. *The whole is more than the sum of its parts.*

This approach has led to the observation of all the most relevant problems in the modern world - energy, environment, climate, economic inequality, wars - as related problems, interdependent systemic problems. The solution to these problems can only be of the same nature as the problems themselves: a systemic solution that requires a change of perspective, of way of thinking and of values to be shared. The challenge is to work for a sustainable society designed and maintained to respect and collaborate with life's innate capacity to sustain life.

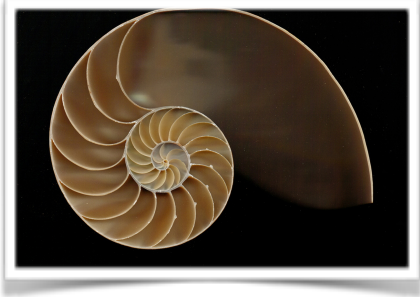
The field of law is not exempt from understanding these issues because we are the society. The same "we" who go to court to argue and then go shopping, to the cinema or take our children to school. And to young people, from whom we have so many expectations for the future, we must set an example now. Each one in his or her own field.

All living systems share a set of common properties and common principles of organization. This means that systemic thinking can be applied to understand a certain group of phenomena and can be used to integrate the most diverse academic disciplines. For example, systemic understanding of health can be applied to the health of a living being, but also to the health of a society, a company or an ecosystem. Shifting attention back and forth between the different levels of different systems, which ultimately corresponds to different levels of awareness, can reveal similarities that are useful for our understanding and which, when put into practice, allow us to live in harmony with ourselves and with others.

From what do the qualities of the whole derive that are more than the sum of the qualities of the parts? They derive from processes and patterns of relationships that are unique to all living systems and must be mapped and understood in their uniqueness, rather than measured and broken down to be controlled. The systemic approach is one of process thinking that goes beyond the linear vision to adopt the nonlinear one, typical of living systems: it is the approach that is needed to understand conflicts and find creative solutions.

The law according to a systemic orientation is at the service of the relationship.

It can therefore be said that the overcoming of Cartesian dualism has as its direct consequence the overcoming of dualistic thinking in the conflict between right and wrong. From this point of view, the



Systemic thinking

The systemic approach was born in a multidisciplinary context in the 20s and 30s of the 20th century, starting from a series of dialogues involving biologists, psychologists and ecologists. In all these fields, scholars came to the same results, sometimes even without the knowledge of each other. According to this approach, a living system, be it an organism, a social system or an ecosystem, is an integrated whole whose properties cannot be reduced to those of its smaller parts. Systemic properties are those that result from the whole and that none of its parts possess on their own.

What's a system?

To fully understand the concept of the system, let's think of a group of clothes coming out of the washing machine and the human body. If I take a T-shirt from the group of washed clothes, can the function of that group of clothes be said to have changed? If, on the other hand, I take an organ from the human body, then surely the vital function of the whole system will be compromised. With the term "system", then, is meant the one in which the function or quality of the whole is more than the sum of the function or quality of its parts



The whole is more than the sum of its parts.

In the biological field the systemic approach has led to a profound understanding that the whole is more than the sum of its parts. The properties of the whole are more than the properties of the individual parts. To understand the functioning of living organisms it is not enough to understand that of its individual parts. The network structure of every living system continuously exchanges energy and matter flows with the environment and learns from this exchange the processes of generation and regeneration of itself. Development is therefore a cognitive process, which learns by training and self-organizing itself. The living system (the cell, the plant, the animal, the human being, the city, the social group, the company, the school...) are autonomous systems as far as organization is concerned and cognitive as far as the exchange of information and growth processes are concerned and continuously moving and changing as far as interdependence with the environment is concerned.

fact, processes are sustainable because they are regenerative processes.

When I started hearing about the ecology and sustainability of the systemic approach, I had no idea what these terms meant. Then I realized that sustainability doesn't mean "keeping things the way they are" (balance, moreover, precarious!), but putting in place tools useful for the use of resources in an ethical way for oneself and for those who come next. Ecology is the science of relationships because the network is the epistemological key to understanding reality, made of biological-social networks. It means passing from a logic of quantity to one of quality, from measurement to mapping, from right/wrong to integration what is needed for the solution. In short, from conflict to relationship.

The sustainability of conflict thus becomes the container of an ethical approach to the relationship.

As living organisms, we humans also respond to this structure and

solution to the conflict is seen as the consequence of a way of managing it in which the relationship is considered the network structure that contains the meanings and uses useful tools to make them emerge in a process of context and personal values.

In the structure of the relationship, "the way of managing" is the process. And it is the way of managing that finds the solution, not the other way around.

It is no longer a current thought that a lawyer should only do trials. The capacity for relational and practical organization is not at a different level than conflict management, it is not the icing on the cake, but its yeast and, beyond the metaphor, the ability of a business vision that generates value. A professional negotiator knows that in order to serve the interests of his client, the defense does not always involve a winner and a loser as the only solution. He must also be able to recognize the process of emergence of a new possibility of order in the conflict and help people go down this path.

The solution cannot be the same for everyone and must be found together. The legal dress is only a next step, necessary and useful to translate one's decisions into legal instruments. Putting the basic assumptions into play and creating an approach that reflects the indicators of ecological culture, which is a science of relationships, means giving value to a basic principle whose development originated in science: life creates favorable conditions for life. In nature, in

Sustainability

From a systemic perspective, development corresponds to the notion of qualitative growth. Sustainable approach means overcoming the interest in division and fragmentation to look at the mapping of the network (structure) and how it works (process). A society is sustainable if it is able to satisfy its needs without diminishing the possibilities for future generations.

The operational definition of sustainability that has to do with the dynamic process of co-evolution of living and non-living systems comes from the systemic scientific perspective: a sustainable human community must be designed in such a way that its pace of life and work, economy and social structures do not interfere with life's innate ability to sustain life.



functioning: the more our understanding of nature and its processes, the more we can create and recreate sustainable relationships.

Nature is sustainable because it is regenerative.

Even law applied with a systemic approach can be regenerative if the objective is to "see" the conflict from the point of view of the meanings it conveys.

I therefore asked myself: can the field of civil law dealing with conflicts also be considered a living system? The answer I have learned from the study of systemic thinking is that it is a system of a dual nature. If we consider the formal aspect, consisting of the body of codes and special laws, then it is an

The network as a unifying structure of all living systems

The systemic approach in biology has understood that the universal structure of living organisms, of all living organisms, is the network; and if you want to understand how the network works, you have to look at its whole. Therefore, to understand what life is, it is necessary to look at the world, its origin and its evolution, like a network. The net should not be broken down or divided, but mapped. Its functioning is a process in continuous movement. As living organisms, we humans also respond to this structure and process of functioning and the more our understanding of nature and its processes, the more we can create and recreate sustainable relationships

organized system in which the violation of the norm is followed by a responsibility and its consequence predetermined by the general law or the contractual clause. If one considers the non-formal aspect, i.e. the persons to whom the rules or contractual clauses are addressed, one must then consider the network of relationships and its meanings, determined by context, values, ideas, objectives that are intertwined in a nonlinear way with the formal structure. These two aspects of the system work in a different way and it is necessary to integrate them if we want to create a form of law that respects the diversity of which the parties are carriers.

Systems science has understood that the network structure of every living system continuously exchanges energy and matter flows with the environment and, by virtue of this exchange, learns the processes of generation and regeneration by itself. Development, therefore, is a cognitive process, which forms and self-organizes the network itself. The living system (the cell, the plant, the animal, the human, the city, the social group, the company, the school) are autonomous systems in terms of organization and cognitive in terms of information exchange and growth processes, as well as continuously moving and changing in terms of interdependence with the environment.

Interdependence with the environment does not occur directly and imposed on the system, but in terms of disturbance, so that the system can only be influenced to the extent and in the manner in which it allows itself to be influenced. The machine (in the Cartesian sense) can be modified, the network (in the systemic sense) only disturbed.

In other words, the environment can cause continuous structural changes in the system, but it cannot determine or direct them: the living system decides for itself if and how to change and, with the same external stimuli, it can change in different ways according to its own state of the moment. The fact that the response to an external disturbance occurs according to personal self-organization is a key concept in all areas of life. Change is brought about by the right stimuli and not by imposition.

It is certainly clear which intuition is valid for the field of conflictual relations from the point of view of the systemic law approach to conflict. An approach that maps upstream the needs and motivations that drive people to disagree, motivates them to negotiate effectively to reach a shared solution on the assumption that the relationship is a value that deserves protection by the law and can be integrated into the cause of the contract.



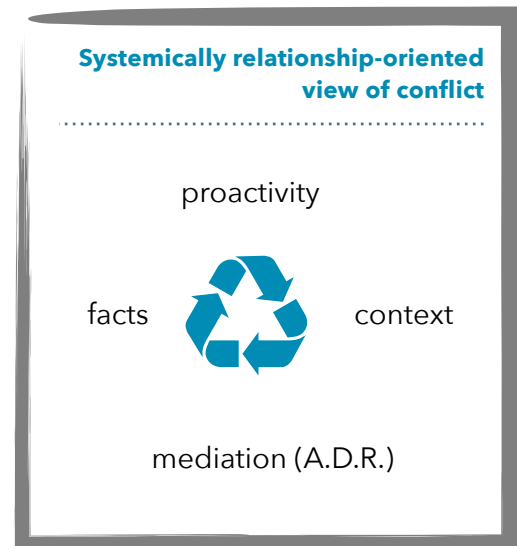
If the imposition may not result in a change, the stimulus or the use of tools useful for understanding oneself and the meaning that the conflict conveys for the relationship, it is what at the point of bifurcation between right and wrong supports the negotiation to go beyond the conflict and find solutions.

Therefore the field of law becomes a field in which the clauses governing a contract are generated by parties who want a business or personal relationship that is sustainable over time and respectful of their values within the framework of the lawfulness of the legal system.

There is talk in this regard of proactivity in law, from a relational point of view.

A proactive approach is also being discussed at European level with regard to the way in which rules of law are created.

According to the opinion of the European Economic and Social Committee (published in the Official Journal C 175 of 28/07/2009), *since civil and commercial rules influence the behavior of the people to whom they are addressed (private users, entrepreneurs, organizations) they must be able to take into account their needs, interests and objectives. Regulatory production should therefore promote society's objectives in the best possible way in a clear and effective way.*



In my opinion, the same approach is extremely effective in both family and corporate organization. Within the company, moreover, creating proactive procedures that constitute the company's know-how with respect to the management of personal and business relationships can be a strong point for creating, maintaining and developing quality relationships. It means giving value to the non-formal structure, the living one, made of people. It means giving value to the creativity and vitality of the system or organization. Commercial agreements are usually supported by contractual clauses built on a give/take in terms of obligation and penalty for non-performance. The specificities of the parties involved are rarely taken into account and equally rarely is there an awareness of how much the ability to know oneself and others significantly influences contractual choices. Let us take as an example the respect of the deadline for the delivery of goods by a supplier. It can be obtained (if it is obtained!) either because a penalty clause for delay has been properly included in the contract (general and generic mode reflecting linear thinking), or because it has been discussed in advance with that customer, agreeing on the specific and most effective mode that can ensure the exact fulfillment, in the concrete case (nonlinear thinking, systemic thinking). The ability to be proactive refers not only to the ability to produce new ideas, but also to the ability to manage personal relationships between the parties and with oneself. From this point of view I see the instrument of mediation, introduced in the Italian civil law as an alternative procedure for the resolution of disputes (A.D.R.), which can become the appropriate place for the field of conflict and systemically oriented relations. It is a place where it is possible to free oneself from the narrow mesh of procedural rules and, in compliance with lawfulness, to deal in a single procedure with the complex issue involving the parties in dispute and also to find agreements on how to prevent subsequent litigation. This also means letting the litigation that is destined to run along those tracks and that kind of Court rules (right and wrong) take place in the Court

In mediation the following development can take place in the awareness of the parties:



- change of perspective;
- stimulus to openness;
- facilitating the emergence of the relationship in the conflict;
- creative translation into contractual clauses.

The ability to be proactive is a skill that allows you to manage relationships with yourself and with others and is an attitude that includes a number of basic soft skills: acceptance and management of change, propensity to experiment, familiarization with uncertainty, listening skills, effective communication, ability to create collaborative and efficient networks. All these resources are the result of the emergence of a new nonlinear awareness, possible on the basis of a systemic understanding of life.

We're all connected and interrelated. Nature is sustainable because it is regenerative. Even the applied law can be regenerative if the objective is to "see" the conflict from a relationship perspective.

Francesca Todeschini

Note

The contents in the boxes relating to systemic thinking are taken from the Italian edition of the book "The System View of Life," "Vita e natura: una visione sistemica," quoted in bibliography and from the material of the Capra Course Autumn 2019 edition.

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