

Consuming the Future, Deciding Today: Ex Ante Liability.

Economic rationality; corporate governance; legal-institutional architecture; ex ante liability; loss of future options; irreversibility; CHDI; common human development; index civil economy; fides publica; environmental justice; Art. 191 TFEU; ECHR; Cannavacciuolo v. Italy; Land of Fires; rights of nature; sustainability; common good; future generations; Art. 9 Italian Constitution; environmental law.

The currently prevailing economic rationality tends to identify "rationality" with what is measurable and comparable within a short-term horizon, primarily through monetary terms, growth margins, shareholder returns, and accounting indicators (Sen, Caillé).

Although this framework often appears technical and neutral, it is fundamentally the product of a set of legal and institutional rules that dictate what the economic system renders visible, evaluable, and consequently decidable (North; Simon).

In this context, corporate governance operates not merely as a coordination tool but as a mechanism for selecting concretely pursuable objectives, establishing the criteria for performance, informational transparency, and the condition of accountability.

A critical juncture arises where the consequences of economic decisions are treated as exogenous or residual to the decision-making process itself.

Numerous strategic choices can produce irreversible effects on environmental, social, territorial, or technological levels without the loss of "future options" being qualified as a legally relevant injury. Consequently, the system facilitates decisions that "consume the future" while maintaining technical legality and short-term efficiency.

Instrumental rationality may optimize the alignment of means to ends, yet it remains structurally deficient in internalizing the temporal dimension and long-term externalities (Weber). In this perspective, the problem does not consist simply of "externalities," but in the fact that the institutional architecture tends to make such effects scarcely imputable and often non-deliverable at the moment of decision. Markets are not neutral institutions, but institutions that reflect and reinforce incentives and evaluation criteria, selecting what is recognized as value and marginalizing crucial dimensions such as trust, cooperation, quality of relations, and widespread well-being (Becchetti). Where these components remain invisible, the system erodes its own social and economic sustainability.

To operationalize a concept of welfare beyond mere monetary reductionism, it is essential to bridge institutional critique with "beyond GDP" metrics (Kuznets). The capabilities approach highlights that development must also be evaluated in terms of substantive freedoms and effective long-term opportunities, rather than immediate outputs (Sen). In the tradition of civil economy, trust is the fundamental infrastructure of economic life: Genovesi defines it as "Fides Publica", the civil prerequisite for exchange and prosperity. Accordingly, multidimensional indicators (BES, Better Life Index, Stiglitz, Sen) demonstrate that progress cannot be captured by a single metric. The Common Human Development Index (CHDI) proposed by Becchetti extends the HDI by including a socio-relational dimension linked to the "sense of community", rendering observable components of well-being that are otherwise invisible (Becchetti; Bova).

This perspective challenges the orthodox paradigm of economic theory and corporate governance, which asserts that maximizing economic value is the most socially desirable objective of the firm. In this vision, economic rationality is assumed as a starting point and governance primarily as a function of reducing agency costs and aligning the interests of managers with those of owners (Jensen; Meckling). Negative consequences on the social or environmental level are treated as correctable deviations, toward which the law intervenes primarily ex post: it regulates, compensates, redistributes, and sanctions.

Even when the list of objectives is expanded through sustainability and social responsibility, integration often occurs without modifying the structure of the decision or the temporal horizon of responsibility. A decisive limit derives from this: when effects are irreversible, downstream correction risks intervening only when alternatives have already been foreclosed. Furthermore, if the role of the "rules of the game" and motivations not reducible to monetary incentives are underestimated, trust in the sole capacity of the market and ex post regulation to guarantee well-being and progress becomes fragile (Becchetti, Titmuss, Frey). The idea that the cost of the future can be managed "later" is problematic because some consequences are not fully reversible.

Economic rationality is the result of an institutional design: if rules define what is evaluable, then changing economic rationality means intervening in the conditions of the decision, not only correcting its effects (North; Simon). Cost-benefit analysis should be reformulated to include sunk costs and negative externalities that produce irreversibility and transfer burdens over time. Empirical signals, such as Earth Overshoot Day and the

depletion of groundwater reserves, demonstrate that the loss of future options is an active, often irreversible process. Multifactorial indicators and tools like the CHDI make social and relational dimensions more visible, strengthening an extended horizon of well-being. This approach recalls the theme of environmental justice as a matter of rights, distribution of damage, and protection of the future. Clear evidence is found in the ECHR judgment of January 30, 2025 (Cannavacciuolo and others v. Italy), relating to the "Land of Fires". The Court framed the inadequate management of grave and protracted pollution as a violation of fundamental rights, showing that certain prejudices are not mere side effects correctable ex post.

Similarly, while the "polluter pays" principle (Art. 191 TFEU) offers a criterion for the imputation of costs, it encounters tensions in practice, as seen in the reclamation burdens of the former Cementir area in Bagnoli. On a comparative level, the recognition of the rights of nature and of Pachamama in Latin American jurisdictions (Ecuador, Bolivia) signals a shift toward a logic where the protection and restoration of ecosystems assume autonomous legal relevance.

The proposed thesis advocates for the introduction of legal ex ante liability for the loss of future options. This would mandate that when strategic decisions involve the structural and foreseeable reduction of future possibilities, management must provide a reasoned assessment not only of expected benefits but also of the options being eliminated and their degree of reversibility. This is not a generic impact assessment, but a specific evaluation of "foreclosed options". The decision is read for what it produces today and for what it prevents tomorrow. This direction is coherent with Art. 9 of the Italian Constitution, which protects biodiversity and ecosystems in a perspective of intergenerational justice. This recalibration of governance raises the standard of due diligence, ensuring the long term becomes a formal object of imputation and aligning economic rationality with the mandates of sustainability and the common good (Jonas, Sen, Becchetti, Genovesi, Rousseau).