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Pollution and Law

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Abstract. Pollution comes from latin word polluero-ere, and means dirty, profane. It designates an action through which the man degrades -"dirty" - its own environment. Modern dictionaries contain both short definition for pollution, limited to its effects over environment as well as a general view of the pollution which contains a large group of negative influences. Pollution can be chemical, physical, biological, genetic, esthetic etc. Due to many environment tragedies during the first half of the XX century, many nations imposed extensive laws that are designed to repair the damages caused by previously uncontrolled pollution and to prevent further environments contaminations. Pollution, through the nature of social-economic and humanitarian consequences that produces and of their influence area is an issue with national and international implications.

Keywords. pollution, environment, noise pollution, moral pollution

Introduction

The word "pollution" comes from the Latin "polluero -ere" and it means to stain, to desecrate, to profane. It indicates the action of the man who degrades, "stains" his own environment. Such an action is not characteristic only for the man stepping into a period of accelerated development, for the contemporary man or the man generally speaking.

Detailed definitions given by the Environmental Law are often unable to distinguish between what pollution is and what it is not. More definitions on the other hand tend to be so vague or general that they lose their validity given different contexts. This confusion created by the definitions is not valid only for the ones found in the Environmental Law. Definitions of pollution in anthropology are even less precise. All these errors can create confusions for the ongoing effort of examining different causes of the pollution before it occurs. (Nagle, 2009)

In the environmental protection domain two classical institutions of the civil law are applicable: the rules concerning the good neighborliness, (Lazar, 2016), setting both the acceptable limits for the pollution and the correlative obligation for the one polluting to pay for the damages and sometimes rules stipulating the tort liability, but more as an option and not as a solution because civil law doesn't protect the interests to recoup the losses in the domain of the environment because it protects private interests while the ecological prejudice regards the public interest.(Lazar, 2008)

Definition of Pollution

Environmental Law addresses many definitions of pollution that represent the object of legal controls. Environmental Law relies on three alternate solutions to define pollution:

1. Treat anything added to the environment as pollution (the comprehensive solution);
2. Rely on detailed lists of polluters (the lists solution);
3. Rely on the effects of a supposed polluter (the effects solution).

Unfortunately none of these methods clearly identify what pollution is or is not. The comprehensive solution is found in the statutes that regard any new thing added to the environment as pollution; for example CAA (Clean Air Act) defines *air polluter* “any physical, chemical, biological or radioactive substance spread in the air”. This definition includes everything, from soap bubbles that kids blow in the air, to the smoke of the candles, the butterflies freed in a garden and many other cases extremely rarely perceived as polluters.

For example a statute regarding pollution from Arizona defines “air polluters” as “smoke, vapors, burned paper, dust, soot, gas, odors, particles of matter, particles carried by wind, radioactive materials or any other type of materials”.

The solution of the “lists” is found in many environmental statutes consisting of detailed lists of specific polluters. Nebraska has this approach and it defines pollution of the soil as “junk” presence; the term “junk” is later defined as “old scrap, *copper*, brass, iron, steel, rope, rags, batteries, paper, trash, rubber debris, waste, dismantled or wrecked automobiles, or parts of ferrous or non-ferrous material”. The American federal law of the environment gives examples of lists of polluters with five federal statutes listing a total of 1134 polluters. (Nagle, 2009)

Unfortunately the lists from these statutes are inconsistent because some of the polluters are found on many lists and others on none. As professor John Dernbach concluded “each list can be reasonably explained, but there’s no reasonable explanation for the connections between the different lists”. (Dernbach, 1997)

The solution of the “effects” identifies the polluters by their effects and not by specifying specific polluters. For example, Clean Water Act (CWA) defines pollution (and not polluters) as “any alteration produced or induced by man on the chemical, physical, biological or radiological integrity of the water.” A statute from New Mexico defines “water contamination” as “any substances that freed or spilled could alter the physical, chemical, biological or radiological properties of the water”. (New Mexico Statute., 74-6-2(B), 2008) Wisconsin defines “toxic polluters” if they cause “death, illness, behavioral abnormalities, cancer, genetic mutations, functional disabilities, including reproductive issues or physical deformities of the bodies or of their descendants”. (Wisconsin Statute, 283.01(17), 2008)

The statute defining pollution by referring to a certain substance limit, also points out the solution of the effects. For example, a statute in Arkansas indicates that pollution exists when a substance is present and its “quantity, characteristics or duration in time is damaging”. (Arkansas Code Annotated, 8-4-303(5), 2009)

A more strict statute in Idaho affirms that a substance is “an air contaminant” if it exceeds “the natural composition of the atmosphere”. These statutes and many others amend the problem of identification by ruling that there is “pollution” only if there is a prejudice. This transfers the inquiry from investigating the limit that represents pollution to a factual inquiry on the effects of certain substances on the relevant environment. To conclude, none of the methods of approaching pollution in the US environmental legislation is not successful in identifying a more “general” term for pollution.

Our country's environmental legislation defines pollution as "spreading directly or indirectly a polluter that can prejudice health and/quality of the environment, prejudice to the goods or causes a deterioration or hinders environmental use for recreational or for any other legitimate purposes".

Pollution has the same above meaning as it is defined by Montreal 1982 rules, for the trans-boundary pollution. Pollution, generally speaking, as article 1 stipulates, means "any type of introduction in the environment, directly or indirectly, of substances or energies with damaging effects by the human being, capable of endangering man's health, damage the biological resources, ecosystems and material property, to diminish the benefactions and other legitimate use of the environment".

According to the GEO no. 195/2005 regarding the protection of the environment, with the subsequent amendments, *polluter* is "any substance, preparation, solid, liquid, gas or vapors or energy, electromagnetic radiation, ionized, thermic, phonic or vibrations that, introduced in the environment, modify the balance of its constituents and the living organisms and it produces material damage to the goods".

Polluter is a factor that present in the environment in quantities exceeding the tolerance limits of one or more living creatures, prevents their reproduction or their normal growth through a toxic action.

For every species of living creatures the first category of polluters is the waste of its vital activities, which allows the growth of parasite bodies. This category of polluters represents the so called *natural pollution*. (Marinescu, 2007)

Currently the level reached by economic development on one side and the growth of the globe population and the general aspiration to wellbeing on the other side led to unprecedented growth of the pollution phenomenon. Pollution is also considered to be a problem of our times because the amplitude and the gravity of the pollution processes and the scientific and technic achievements of the modern man allowed the development of the risks of pollution and as a result setting extremely severe measures to prevent and fight the degradation of the environment. (Marinescu, 2007)

At least three human occupations cause pollution in the contemporary world: industry and the urban environment it promotes, intensive and industrialized agriculture and transportation – domains where the state controls the internal processes with a system of notes and authorizations (Ghencea, 2013), without which activities can't be completed.

Industrial activities and the whole technology related is confined in restricted areas and the natural resources (air and particularly water) used for production processes can be purified by different methods. If the polluting industries are condensed in a single area or in some surface limited areas, pollution can be successfully controlled with relatively insignificant financial investments. If the polluting industries are homogeneously spread along wide areas, pollution is out of control. (Soran, Borcea, 1985)

In agriculture pollution has a more dramatic character for at least three reasons: firstly, pollution in agriculture affects the essential natural element for the agricultural activity – the soil. It represents the main means of production which can't undertake any process of cleansing. A polluted soil can be cleansed only by means of a very slow action of the natural factors; secondly pollution in agriculture covers wider areas than the industrial one, thirdly pollution in agriculture is dangerous because it involves a contamination with toxic substances of the food stuff. (Clifford, 1971)

Pollution can be chemical, physical (radioactive, thermic, phonic, electromagnetic via vibrations), biologic, esthetic, cultural, judicial, ethical and moral and so on.

Phonic Pollution

One of the most common forms of physical pollution which disturbs the environment and influences the ambient where the modern man's life and activity take place, especially in the cities is *phonic pollution* caused by noise. To a large common understanding, *noise* has been defined as a complex of sounds that produces not only a disagreeable sensation but also an aggressive one.

The intensity of the audile sensation produced by a noise is the one targeted by the phonic pollution domain, and it must not be confused with the physical one. The strength varies according to the frequency.

Keneth Wilson, in his book *Columbia Guide to Standard English*, rejects the references to the phonic pollution as a graphic explanation of the word pollution, which he considers to be obsolete. Wilson's comment didn't consider the massive concern regarding phonic pollution during the environment actions in the 60's and 70's.

The first annual report of the US Council on Environmental Quality classified phonic pollution in the same group with pesticides and radiations. Only in 1970 a couple of treaties and laws were written and they addressed "a real important environmental issue", namely *phonic pollution*.

American Congress answered by elaborating the Noise Control Act in 1972.

This statute anticipated the enforcement by the American State of the federal noise levels in a similar manner to the implementation of the air quality standards, according to CAA. The law describes phonic pollution as similar to air or water pollution in both cases.

In our country, in order to avoid, prevent or reduce the ambient noise produced by major sources, especially by road or railway vehicles and their infrastructure, aircrafts, industrial equipment etc., certain measures are stipulated by law: determining the exposure to ambient noise by drafting noise maps, informing the people about the ambient noise and its effects, adopting, based on noise maps, action plans in order to prevent and reduce ambient noise where it has acceptable levels. (Marinescu, 2007)

Local administrative authorities draft the noise maps for the crowded areas that they administer, strategic noise maps and their correspondent action plans (Ghencea, 2021).

Cultural Pollution

The complaints regarding cultural pollution surfaced during the political and popular debates in the 90's in US. In case of a violent entertainment, the polluter is represented by the violent images and the words used in different forms of entertainment. But not all violent images are equal.

Pornography is also the topic of the frequent complains concerning cultural pollution. These complaints have a hard time in identifying the polluter, reason for which the difficulty to determine what is or isn't pornography has reached mythological proportions.

Setting the debates aside for a moment, the polluter is supposed to contain graphic sexual images and sometimes, graphic sexual type of words.

Sceptics reject such complaints of cultural pollution as political jargon. But the economist and political scientist James Hamilton in his book *Channeling Violence* offers a pedagogical explanation for the TV violence representing a fundamental pollution issue. Hamilton explains why TV violence is similar to the risk of cancer that an individual is exposed to when exposed to a chemical toxic substance. The violent show is the chemical toxic substance, the nature and the level of the violence set the toxicity of the show, and the level of exposure is set by the time a person spends watching that particular show. "TV violence causes negative externalizations", Hamilton writes, the same way pollution does. (Hamilton, 1998)

Millions of children who watch TV violence even when it doesn't directly target them, demonstrate easily the externalization character. They are manifested on the level of current violence and increasing of the aggressive level associated with exposure to TV violence.

Pollution from an anthropological perspective

By the end of the 19th century, many anthropologists examined the rituals practiced by different societies in order to set the limits for what is considered to be pure or impure. Many times these limits regard sexuality, food, hygiene and other familiar activities.

Anthropologists often focus on cultural distinction between purity and pollution because it allows them to explain other cultural phenomenon, human ecology and the source "of the most important beliefs" that "trigger powerful feelings of worship and disgust for the ones who share them". The distinctions are of a real interest for the structural anthropologists who focus on the contrast between life and death, man and woman and other human experiences.

The classical treatment is Mary Douglas's book "Purity and Danger: An Analysis of the Concepts of Pollution and Taboo". Her study of many "primitive" cultures helped identifying two ways in which the idea of pollution acts as a response to exceeding the limits of the society, firstly by qualifying as pollution something trying to influence other people's behavior; secondly the term pollution can protect the general views on the social order. (Douglas, 1966)

"A person causing pollution is always wrong" in any circumstance. Douglas and Aaron Wildavsky conceived these perspectives 16 years later in "*Risk and Culture*", work that investigated "the sudden amplitude on a trans-boundary level of the prevention of environmental pollution and personal contamination in the West world and mainly in USA". (Douglas, Wildavsky, 1983)

Douglas and Wildavsky identified two meanings for the use of the term pollution: a technical meaning for the air and water pollution "when the physical adulteration of a previous state can be precisely measured" and a non-technical meaning emphasizing the moral flaw defining "pollution as a contagious, harmful state caused by external interventions of mysterious origins". The last beliefs concerning pollution support the social categories that separate the moral from immoral, thus asserting the views of a better society. (Douglas, Wildavsky, 1983)

References

- [1] Clifford, B., (1971), *Noise pollution:the unquiet crisis*, University of Pennsylvania Press, p.54;
- [2] Dernbach, J., (1997), *The Unfocused Regulation of toxic and Hazardous Polluants*, 21 Harvard Environmental Law Review, pp.14, 27;
- [3] Douglas, M., (1966), *Purity and Danger: An Analysis of Concepts of Pollution and Taboo*, Routledge Publishing House, New York, p.113;
- [4] Douglas, M., Wildavsky,A.,(1983), *Risk and Culture:An Essay on the selection of tehcnical and environmental dangers*, University of California Press, pp.36-37;
- [5] Ghencea, F., (2013), *Autorizarea administrativa. Teorie. Practica. Jurisprudenta*, Universul juridic Publishing House, Bucharest, p. 59;
- [6] Ghencea, F. (2021), *Drept administrativ*, vol.I, Prouniversitaria Publishing House, Bucharest, p.183;
- [7] Hamilton, J.,(1998), *Chanelling violence :The economic market for violent television programming*, Princeton University Press, pp.37-38;
- [8] Lazar, P., (2008), *Drept civil. Drepturile reale. Note de curs*, Europolis Publishing House, Constanta, p. 45;

- [9] Lazar, M.,L., (2016), *Drept civil. Teoria generala a obligatiilor*, Sitech Publishing House, Craiova, pp. 71-75 ;
- [10] Marinescu, D., (2007), *Tratat de dreptul mediului*, Editia a 2-a revazuta si adaugita, Universul Juridic Publishing House, Bucharest, pp.23-25;
- [11] Nagle, John, (2009), *The Idea of Pollution*, Law Review, University of California, Davis,(UC Davis), School of Law, Vol. 43, No.1, pp.29-30;
- [12] Soran, V., Borcea, M., (1985), *Omul si Biosfera*, Ed.Stiintifica si Enciclopedica, pp.185-186;
- [13] New Mexico Statute., 74-6-2(B), 2008;
- [14] Wisconsin Statute,283.01(17), 2008;
- [15] Arkansas Code Annotated, 8-4-303(5), 2009.