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Heloise Siqueira Garcia
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(Organizers)

ENVIRONMENTAL AND SUSTAINABLE CHALLENGES AND PERSPECTIVES IN THE 21ST CENTURY



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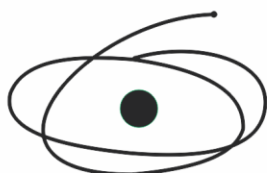


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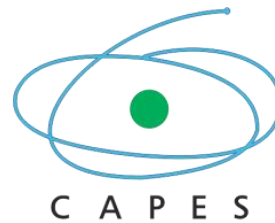
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INTRODUCTION

The Masters and Doctorate Courses in Legal Science of the Stricto Sensu Postgraduate Program at the Universidade do Vale do Itajaí - Brazil have as an intrinsic characteristic the scientific production of quality corroborated whenever possible with internationalization, so that the exchange of knowledge between the theories studied in the Program can also be explored in programs of institutions not only National, but International. It is believed that this enables the aggrandizement and better dissemination of knowledge.

The institutions of the University of Perugia - Italy, the University of Alicante - Spain, the University of Minho - Portugal, the University of Caldas - Colombia and the Widener University - USA are moving in the same direction, so that all of them, together, provides to the academic and scientific community productions of excellence, designed in a globalized world, attentive to the realities and challenges faced in the 21st century.

In this vein, the production carried out in the courses of such institutions always seeks the scientific improvement of worldwide relevance contents, among them, one of the most relevant, the focus of numerous joint researches between that universities is "Environmental Law, Transnationality and Sustainability", true globalized themes and concerned with the dynamics experienced in our century.

It is important to note that all Universities have an international reputation and prestige. UNIVALI's PPCJ, in fact, is one of the 10 best master's and doctoral programs in Brazil, having a concept 6 with CAPES and being characterized as a program of excellence.

Based on such prerogatives, it is with great satisfaction that we present this work that reflects all these intrinsic characteristics sought by the institutions and their researchers, contributing to the national and international scientific research of the legal interfaces between Environmental Law, Sustainability and Transnationality, giving special focus to current and responsive issues.

The discussions dealt with in each of the chapters are a reflection of the proposed theme and expressed in the book title: "ENVIRONMENTAL AND SUSTAINABLE CHALLENGES AND PERSPECTIVES IN THE 21ST CENTURY".

Meanwhile, the first chapter, written by Ricardo Stanziola Vieira, deals with an extremely current and relevant topic: the 2030 Agenda/SDG and the challenges of implementing sustainability in Brazil, translating into an initial digression necessary to the central theme of this work.

The concept of sustainable development coined by the Brundtland Report in 1987, presented two central categories, needs and limits. From Eco-Development, going through the popular incorporation of the three dimensions: environmental, social and economic, the debate currently reaches the moderate scope of the 2030 Agenda and the SDG. It is in this context that challenges are introduced for the practical realization of sustainable development: human capital and financial capital. The concept of governance helps to understand this movement to increase the participation of civil society and other non-state actors in decision-making processes. Guided by the inductive and bibliographical/research documentary method, this chapter seeks to analyze how this process of governance (transnational and multi-actor), considered, today, a principle in the implementation of the 2030 Agenda, can encourage the emergence of leadership and new forms of financing and promotion of practices for sustainability. Considering the gap between the International Environment and the Development Agendas, with the predominance of the latter, the paper analyzes the extent to which the International Conferences on Financing for Development are a possibility to bring these two agendas together and launch a Global Action Agenda with financial instruments towards the achievement of the Sustainable Development Goals.

In the sequence, Denise Schmitt Siqueira Garcia and Heloise Siqueira Garcia, develop a little more the Sustainability theme, focusing on one of its dimensions, sometimes forgotten or even not recognized, the Ethical Dimension of Sustainability.

Sustainability is a vital theme in the discussions around the world when it comes to maintaining life on the planet. This sustainability must be supported by its five dimensions: environmental, social, economic, technological and ethical. This paper will deal with the ethical dimension, which analyzes the necessary change of life of human beings with the observance of ethical principles and virtues. This dimension is born by the existential issue of man, the guarantee of life, the need to rethink, reflect, re-understand that the human being is part of the biosystem and depends on it. Therefore, in this chapter, the discussion will be based mainly on sustainability; on the ethical dimension of sustainability and on the principles and virtues of ethics for

sustainability, having as general objective to analyze the content of the ethical dimension of sustainability and the need to change values and attitudes to reach this dimension.

In the same vein, in the next chapter, Liton Lanes Pilau Sobrinho deals with Humanistic Sustainability from the perspective of the challenges of globalization and the environmental crisis.

This chapter aims to demonstrate the challenges of globalization in postmodernity. It also analyzes the current environmental crisis, as well as it demonstrates the paradigm of sustainability, in order to propose the perspective of a humanistic sustainability.

Within the aspect of the challenges of the environmental crisis, Maria Claudia da Silva Antunes de Souza and Greyce Kelly Antunes de Souza deals with the issue of invisible polluters, focusing on environmental, economic and social impacts as a threat to water quality.

The object of this chapter is a discussion on the environmental, social and economic impacts of invisible pollutants as a threat to water quality and sustainability. This study is justified by the need to mitigate degradation of water quality as a threat to sustainability, as well as revise water monitoring indexes, since conventional monitoring does not meet environmental requirements any longer. This is a critical situation, since all impacts of these molecules are still not entirely known.

Another evident and critical challenge of our century is the Climate Urgency, a theme worked on by Gilson Jacobsen and Napoleão Bernardes Neto in the fifth chapter of the work, linking it to the emergence of paradiplomacy from environmental governance and sustainability.

In the chapter, the authors address the issue of climate urgency caused by global warming and also demonstrate the reasons for an increasing role of paradiplomacy in the scope of environmental governance, including by states and municipalities, in the effort to promote environmental sustainability. They conclude that these subnational governments have the legitimacy to supplement the central states in terms of sustainability, for the benefit of present and future generations.

Following the theme of Environmental Governance, Paulo Márcio Cruz and Márcio Ricardo Staffen, in the next chapter, deal with multilevel environmental transnational governance.

This chapter allows an analysis of transnational governance perspectives for the protection, defense and management of natural resources of planetary dimensions, such as the Amazon, which has been strongly impacted by the recent burnings of widespread media dissemination,

heated diplomatic debates and the performance of non-state actors. The problem that is analyzed is the adequate understanding of the meaning of nation state and sovereignty, as well as its repercussion in the effective protection of juridical goods with planetary dimension. The approach starts from an analysis of Amazonian burning and the challenges of good environmental governance; discusses the state crisis and state sovereignty as concepts that demand redefinition. Finally, it argues for the need for multilevel environmental transnational governance, as a joint strategy to promote sustainability in a global perspective and to defend and protect the Amazonian natural resources.

Still within the theme of global Environmental Governance, the seventh chapter, authored by Heloise Siqueira Garcia and Denise Schmitt Siqueira Garcia, develops it from another extremely relevant and worrying theme for the 21st century reality: Environmental Justice.

This chapter deals with the theme of Global Environmental Governance to the achievement of Environmental Justice, presenting as general objective to analyze the importance of the first in its public, business and civil society spheres for the regulation and guarantee of the second. Noting up at the end that the Environmental Justice, as a common humanitarian problem, presents itself as the main objective of Global Environmental Governance.

Still in the context of the problems experienced in the present century, in Chapter 8, Zenildo Bodnar deals with Land Regularization from an instrument perspective for urban sustainability and for the realization of the Right to the City.

This chapter evaluates land regularization as an instrument of sustainability in the historical scenario of polarization of urban space. Using the inductive method, the dichotomous structure of urbanity shaped by the capitalist industrial construction of cities is analyzed. The right to the city and the set of other related fundamental rights are described. The need for adequate public policies for cities is discussed and land regularization as one of the main instruments is also advocated. As a result, it is concluded that land regularization, as an instrument of urban policy, has the ability to positively interfere in the most diverse dimensions of sustainability and the realization of fundamental rights.

The ninth chapter, written by Marcelo Buzaglo Dantas and Tainá Fernanda Perдини, deals with stakeholders as actors in ecological conception in law. The purpose is to analyze the participation of stakeholders, through the systemic view, to the construction of ecological thinking

in Law. Therefore, initially, the historical basis of systemic ideas is made, with regard to the time lapse in which there was an overcoming of holistic visions to mechanists, as well as, in the end, the new vestment attributed, called systemic. Then, the study of systemic theories is deepened, mainly in Luhmann, which clashed with mechanistic ideals. Finally, we identify the stakeholders and the possibility of contributing to the ecological “autopoiesis” of the Law.

Within the perspective of Transnational Law, the following chapter, written by Paulo Márcio Cruz and Carla Piffer, deals with an extremely current theme that will certainly become emblematic of our century: the COVID-19 pandemic.

The reflections made in this writing, bring to discussion the importance of transnational law, in light of the occurrence of the current pandemic. From this, considerations are made about the transnational law produced by WHO against Covid-19. Also, an analysis is made of the central categories and their relationship with the prefix “trans” and transnational law. Subsequently, the WHO is discussed, its emergence and performance in the elaboration of a transnational legal framework to be considered when internalizing its guidelines by each Member State. In the context of final considerations, it is emphasized, in addition to the importance that should be attributed to transnational law, that the work of WHO, as a transnational actor, practices materialized acts such as transnational law, both in terms of guidance and in connection with public health matters.

Finally yet importantly, the last chapter of the work, authored by Marcelo Buzaglo Dantas, deals with the environmental public civil action and the jurisprudence of the Superior Courts.

The objective of this final chapter is to analyze the main and most recent conclusions reached by the Brazilian Superior Courts (in particular, the Superior Court of Justice) regarding the controversial procedural aspects of Law no. 7.347/85. In effect, after so long in force, the rule was adapted to reality, with jurisprudence, in this context, playing an important role in the interpretation of legal provisions and, in some cases, making them effective. However, not all the conclusions reached are capable of completely removing the doubts and controversies arising from life situations, which the Law is called to regulate. The author tries, as far as possible, to point out some hypotheses in which the judge, or even the summary, can give a direction, leaving the interpreter to follow the most appropriate course to the solution of the controversy that is posed to him.

From the briefly exposed in this presentation, we can already see that the content of this book has a discussion of great value and relevance, relating the most important topics in the area of environmental and transnational rights and sustainability today, which makes us extremely happy and honored for the coordination and organization of this production, wishing that it reverberates in the academic world in the same way.

It is important to highlight that the research that supported this work, as well as its final result, would not be possible without the promotion and support of CAPES - Coordination for the Improvement of Higher Education Personnel through the Academic Excellence Program (Proex).

November 2020.

Dra. Heloise Siqueira Garcia

Dr. Ricardo Stanziola Vieira

Dr. Zenildo Bodnar

2030 AGENDA/SDG AND CHALLENGES OF SUSTAINABILITY IMPLEMENTATION IN BRAZIL: A STUDY ON THE IMPORTANCE OF SOCIAL AND FINANCIAL CAPITAL FOR IMPLEMENTATION OF SUSTAINABLE DEVELOPMENT GOALS

Ricardo Stanziola Vieira¹

INTRODUCTION

This reflection is based on the question of how sustainable leadership and finance are contributing to the challenges of implementing the 2030 Agenda and the SDG in Brazil. In the early 1970's, what would come to be called sustainable development came up with a broader approach, by the name of Eco Development. It was presented and defended by several leaders and with good omen for the publication of the Club of Rome report, which proclaimed zero growth as a way to avert environmental catastrophe in a context of controversy over the relationship between economic growth and the environment²

This issue was discussed initially, as Bellen³ points out, by the World Conservation Union in the document entitled 'World's Conservation Strategy', which states that in order to have sustainable development, it is necessary to consider aspects related to the social and ecological dimensions, as well as the economic aspects of living and non-living resources and the short and long-term advantages of alternative actions. Subsequently, the focus that was fixed on environmental integrity shifts its emphasis from the Brundtland Report, especially to the human element, demanding a balance between the economic, environmental and social dimensions. In the second half of the 1980s, the most well-known and widespread concept of sustainable development emerged after the creation of the World Commission on Environment and Development (WCED), linked to the United Nations Organization, which resulted in the Brundtland

¹ Professor at the Graduate Program in Legal Science (Vale do Itajaí University – UNIVALI, Brazil). Coordinator of the project "Citizenship and Sustainability: leadership training for sustainable development".

² MAY, P. H.; LUSTOSA, M. C.; VINHA, V. (Org.). **Economia do meio ambiente**: teoria e prática. 2. ed. Rio de Janeiro, Elsevier, 2010

³ BELLEN, H. M. Van. **Indicadores de sustentabilidade**: uma análise comparativa. 2. ed. Rio de Janeiro: Fundação Getúlio Vargas, 2006, p. 45.

Report: “Substantial development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs”⁴ The Report points out:

[...] sustainable development is a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are all in harmony and enhance both current and future potential to meet human needs and aspirations

The relevance and recognition of the conceptualization adopted by the Brundtland Report is that it involves necessity and limitation. The need, in particular, for the essential needs of the underdeveloped countries of the planet, for which attention needs to be prioritized, and the limits on the use of technology and social organization to maintain the environment’s ability to meet the needs of present and future generations.

It is still evident from the concept of sustainable development that there is no static state, as the growth process can continue to occur without the prevailing self-destructive logic. Nevertheless, it is necessary to establish, for conceptualization, criteria and consensus in order to define what is “not to compromise the ability of future generations”, since what is primordial for current generations may not be of such relevance to the future generations. According to the UN Committee on the Environment and Development, the main policy objectives derived from this concept of sustainable development are: to resume growth as a necessary condition for eradicating poverty; to change the quality of growth to make it fairer, more equitable and less intensive in raw materials and energy; to meet the essential human needs of employment, food, energy, water and sanitation; to maintain a sustainable population level; to conserve and improve the resource base; to reorient technology and manage risk; and to include the environment and the economy in the decision making process.

Regarding the concern with the issue of sustainable development, Sachs⁵ adds the cultural, geographical and political dimensions in order to explain sustainability and the consequent sustainable development, stating that acting on the system - social, economic, environmental and institutional - will lead to balance. According to the author, in the economic dimension, the eyes should be focused on balanced intersectoral economic development and attention to food security, search for continuous training of production instruments, diversification of products and markets and guaranteeing income generation. He also explains that in the social dimension, it

⁴ World Commission on Environment and Development. **Brundtland Commission Report: Our Common Future**. 1987. Retrieved on August 30, 2019 from http://www.tjst.edu/slomansonb/11.2_Brundtland.docx

⁵ SACHS, I. **Caminhos para o desenvolvimento sustentável**. Rio de Janeiro: Garamond, 2009.

would be necessary to maintain social homogeneity, fair distribution of income, job creation, quality of life and equal access to resources and services. In environmental terms, he emphasizes the respect for the capacity of self-purification of natural ecosystems, preservation of the potential of natural capital in its production of renewable resources, as well as the limit and correct use of non-renewable resources. And finally, in the institutional dimension, it would be necessary to ensure the commitment and capacity of the state to implement policies and projects aimed at the development of society, as well as to maintain a reasonable level of social cohesion⁶. In this sense this reflection seeks to try to point out the bottlenecks and propose alternatives to overcome them. We seek to contribute to the integration of the two agendas, pointing out the incongruities and mechanisms of overcoming them.

1. SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL GOVERNANCE AS PRIVILEGED CATEGORIES

In this new scenario of incorporation of sustainability values through public policies, it is verified that the Environmental Law has been evolving from technicism to socioenvironmentalism and also the categories of Sustainable Development and Environmental Governance have undergone important transformations. The concept of sustainable development itself is already the result of an important and more complex axiological awareness: how can we react with growth in order to reverse inequalities and poverty without deteriorating the legacy of future generations? The concept has witnessed an unprecedented evolution, recognizing the three dimensions: economic, environmental and social, the basis of what would later be an increase in citizen participation in a globalized context.

The same can be said about Environmental Governance. This recent category, which would have seemed a utopia a few decades ago, is currently a necessity and has set the tone for national (local environmental governance) and international (global environmental governance) discourse. This is especially clear after the entry into force of treaties such as the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol. Both of the above concepts have led to a new format for Governance and Environmental Public Policies, which are now marked by greater participation of civil society in decision-making and environmental management processes.

⁶ SACHS, I. **Caminhos para o desenvolvimento sustentável**, 2009.

These are recent experiences and as such the challenges are numerous, especially in the practical field. We highlight rights of access to information, public participation in decision-making and access to justice on environmental matters - social and environmental citizenship. In this regard, the role of organized civil society has evolved. The implications and challenges described require an interdisciplinary approach involving themes related to Economics (Sustainable Economic Development) and Public Management (Public Policies; new management models: democratic and participatory) and Culture (with the emergence of new environmental goods as the clear case of knowledge of traditional populations).

How should one finally understand this governance? According to the World Bank, governance is “the process through which state and nonstate actors interact to design and implement policies within a given set of formal and informal rules that shape and are shaped by power”⁷. Unlike the World Bank’s conception of governance as a process, Delmas and Young⁸ present governance as a social function centered on efforts to guide societies or human groups in order to avoid undesirable outcomes (e.g. tragedy of the common goods) and to achieve socially desirable outcomes (such as maintaining a good climate system). On the other hand, government is an organization, or set of specialized organizations, to address governance issues in a well-defined environment (e.g., a nation state).

Rosenau⁹ also differentiates governance from government: while government suggests activities supported by a formal authority, “by the police power that ensures the implementation of properly instituted policies”, governance is a broader phenomenon that encompasses governmental institutions, but also informal, non-governmental mechanisms that make “people and organizations within their area of conduct have a determined conduct, meet their needs and respond to their demands”.

On the one hand, while the function transmits the idea of an activity or role to be performed, the process brings the notion of a set of activities that usually take place in a logical sequence. On the other hand, in the definition of governance, there are those who combine these concepts, as is the case of Partidário, when defining governance as a “set of rules, processes and

⁷ World Bank. **World Development Report 2017: Governance and the Law**. Washington, DC: World Bank, 2017, p. 03. Retrieved on August 30, 2019 from <https://www.worldbank.org/en/publication/wdr2017>

⁸ Delmas, M. A., & Young, O. R. **Governance for the environment: new perspectives**. Cambridge: Cambridge University Press, 2009

⁹ Rosenau, J. N. **Governança, ordem e transformação na política mundial**. In J. N. Rosenau, & E.-O. Czempiel (Eds.), *Governança sem governo: ordem e transformação na política mundial*. Brasília: Universidade de Brasília, São Paulo: Imprensa Oficial do Estado, 2000, p. 15-16.

practices that concern the quality of the exercise of power, essentially with regard to accountability, transparency, coherence, efficiency and effectiveness”.¹⁰

It should be noted that, according to the above, it may seem that the theme of sustainable development has a consensus on its conceptualization. However, it is marked by several obstacles in its operationalization, on what is really a sustainable development. Some of the challenges and obstacles are the subject of this study, namely the importance of leadership (endogenous development - social capital or other equivalent terms) and the existence of financial mechanisms (either from sources of domestic public resources/public policies; or within the non-state sector: civil society and market).

Thus, in spite of all the discourses, history of principle, rhetorical and legal advances around the sustainability category (from eco development - Stockholm 1972 to the SDG – 2030 Agenda), the pathways for the implementation of sustainable development pass precisely through the determinants of who (actors) and how (with what resources). Over these 45 years of the sustainability category, these point-bottlenecks have proved to be more than mere formalities, to the point of – as well stated by Veiga¹¹ - having a situation of distance from two major agendas: Development (which is doing very well) and Sustainability (which still faces important challenges for its realization). As the sustainability category itself shows, these two agendas should work together, reinforcing each other. What can be seen in all contexts and scenarios of planetary governance is a clear prevalence of the development agenda, to the point where we risk a semantic depletion of the sustainability or sustainable development category.

2. ABOUT THE IMPORTANCE OF SOCIAL CAPITAL/LEADERSHIP FOR IMPLEMENTATION OF THE SDG AND SUSTAINABILITY PRACTICES

In this item, we develop the theoretical foundation related to the central variables of the study: leadership, formation of a leader and sustainable leadership. Defining leadership is a challenge as the number of publications brought to the public has multiplied. Although the interest is known to be as old as man himself, it acquires new features and growing interest at every moment. With the emergence of numerous concepts about leadership, difficulties arise to

¹⁰ Partidário, M. R. **Guia de boas práticas para Avaliação Ambiental Estratégica**. Retrieved on August 30, 2019, p. 38. from http://apambiente.pt/_zdata/AAE/Boas%20Praticas/Guia%20Boas%20Praticas%20para%20a%20AAE.pdf

¹¹ Veiga, J. E. L. da. **Da (des)governança global da sustentabilidade**. São Paulo: Editora 34, 2014.

delineate more accurately and completely the scope of the subject.¹²

Key definitions of leadership include:

- Leadership is the behavior of an individual when directing the activities of a group towards a common goal.¹³
- Leadership is a special type of power relationship, characterized by the perception of members of a group, in the sense that another member has the right to prescribe behavioral patterns with respect to the quality of the member in that group.¹⁴
- Leadership is personal influence exerted on a situation and directed through the communication process towards a specific goal¹⁵
- Leadership is an interaction between people, in which one presents information of one kind and in such a way that others become convinced that their results will be improved if they behave in a suggested manner¹⁶
- Leadership is the beginning and maintenance of structures in terms of expectation and interaction.¹⁷
- Leadership is the increment and maintenance over and above of a mechanical submission with routine organizational guidelines.¹⁸
- Leadership is the process of influencing the activities of an organized group toward achieving a goal.¹⁹

Leadership can be summed up in the ability to influence people to work enthusiastically in order to achieve the goals identified as being for the common good, inspiring confidence through the strength of character and personal traits of the leader.²⁰

2.1. The formation of a leader

There is no doubt that some people prematurely demonstrate an aptitude to lead. By

¹² BERGAMINI, Cecília Whitaker. **Liderança**. 2. ed. São Paulo: Atlas, 2009, p.2-3.

¹³ HEMPHILL, L.K & COONS, A.E. **Development of the leader behavior description questionnaire**, in R. M. Stogdill & A. E. Coons (eds.), *Leader behavior: Its description and measurement*, Columbus, OH: Bureau of Business Research, Ohio State University, 1957.

¹⁴ JANDA, K. F., **Towards the explication of concept of leadership in terms of concept of power**, U. S. A., *Human Relations*, 1960, p.358.

¹⁵ TANNENBAUM, R., WESCHLER, I. and MASSARIK F. **Leadership and Organization: A Behavioral Approach**, New York: McGraw Hill Book Co, Inc, 1961. p.24.

¹⁶ JACOBS, T. O., **Leadership and exchange in formal organizations**, Alexandria, VA: Human Resources Organization, 1970, p.232.

¹⁷ STOGDILL, R. M., **Handbook of leadership**, N. Y., MacMillan/ Free Press, 1974, p.411.

¹⁸ KATZ, D. & KAHN, R. L., **Psicologia Social das Organizações**, S. P., Editora Atlas S. A., 1966, p.528.

¹⁹ ROUCH, C.F., & BEHLING, O. 1984. **Functionalism: Basis for alternate approach to the study of leadership**. Elmsford, New York: Pergamon Press, p.45-62.

²⁰ HUNTER, James C. **O Monge e o Executivo**. 13 ed. Sextante. Rio de Janeiro, 2004. s/p.

observing the dynamics in any playground, it soon becomes evident that some children have an innate ability for leadership. Some of them, the influence comes from their size or strength. Others have imagination and creativity, inventing games and gathering other children around themselves. Some children are charismatic and pleasant to other children.

Many world leaders have given premature signs of their leadership ability. As a boy, Napoleon Bonaparte organized intricate battles with his classmates. As a child, Winston Churchill staged elaborated battle maneuvers with 1,500 toy soldiers and became interested in politics at a very young age.

Kotter²¹ one of the leading researchers in leadership, concludes that there are people who were born leaders and others who have learned to develop their leadership skills over decades. Being an innate skill or not is already considered as an unnecessary discussion in the face of having to rely on effective leaders.

The key to forming a leader is not the experiences, good or bad, but the answers that gives them. Some struggling people become grudging or fearful and stop trying, others suffer, but decide to learn from the crisis and become stronger. Leaders are not people who have never failed, but people who have overcome adversity. Failures and personal crises do not disqualify anyone for leadership.

The President of the Independent Association Bankers of Texas argues that: True leadership is not something that can be learned. It can only be improved when an individual already has a natural ability to do so. Leaders can be trained to become better, but they are born with the ability to lead.

2.2 Leader for Sustainability: “Sustainable Leader”

To Ricardo Voltolini²² one of the sustainable leadership researchers, sustainable leaders are individuals who “lead with values”. According to him, these people have a great capacity for self-knowledge and know the exact measure between rationality and emotionality. They have good insights about themselves, the people being led, and the company, and make decisions driven by intuition and well-established beliefs and principles. They are above conventional leaders precisely

²¹ KOTTER, John P. **Liderando Mudanças**. Tradução de Leading Change. Rio de Janeiro: Campus, 1997.

²² VOLTOLINI, R. **Conversas com Líderes Sustentáveis**, São Paulo: Editora Senac SP, 2011.

because of their higher capabilities.

It is to lead with values. A sustainable leader is one who practices sustainability values in managing his/her business and these values are basically: respect for others, respect for the environment, diversity, ethics and transparency. This leader must understand that the economic system depends on the environmental system. That the business model is not allowed to be a detriment to the Planet and society.

To Nanus and Dobbs²³, the sustainable leader is the one who organizes the intellectual, personal and capital resources in order to achieve the right and sustainable direction. The authors also report that the leader in these organizations has four directions that ends up following in the works under his/her domain: source of motivation and inspiration, helping the commanded in the unfolding of activities; resource seeker, acting outside the organization in an attempt to get help and support from employees; controller of the quality of services offered to society, striving for the organizational effectiveness indexes; and also anticipator of tendencies, being a visionary in order to predict events that will be important to the organization.

About leaders, Zaleznik²⁴ points out that these usually, besides taking risks inherent to the position exercised, also “look for” situations of this nature, especially in cases where they identify that there are opportunities and rewards that can be considered favorable. Taking this concept to the sustainability perspective, we have a dimension of the importance of the role of the leader in the society that seeks sustainability, since such people know how to react to the times when resources need to be rationalized in order to grow and also the times when it is necessary to invest for later reward.

Moreover, it should be noted that the leader will not always be present, so a task assigned to him/her refers to the preparation of his/her succession, since the work carried out will continue to be developed in subsequent years, regardless of factors such as the manager’s death or other disabilities that make it impossible to perform duties.

Voltolini²⁵ sets a standard for sustainable leadership competencies. Based on this standard, he listed 20 attributes belonging to sustainable leaders, namely:

²³ NANUS, Burt; DOBBS, Stephen M. **Liderança para o terceiro setor: estratégias de sucesso para organizações sem fins lucrativos.** Tradução de Cynthia Azevedo. São Paulo: Futura, 2000, p.113.

²⁴ ZALEZNIK, Abraham. **Gerentes e líderes são diferentes?** São Paulo: Nova Cultural, 1986. (Coleção HARVARD de Administração, n. 17).

²⁵ VOLTOLINI, R. **Conversas com Líderes Sustentáveis**, Editora Senac: São Paulo, 2011.

- ✓ Command the elaboration of a consistent sustainability strategy for the company, seeking cooperation between the different areas and the issues/causes most relevant to the business and its sector of activity; make the concept permeate the organizational culture, transforming it into a corporate value relevant to the definition of the company's identity.
- ✓ Ensure coordination between the various corporate functions of the company in order to maximize sustainability performance.
- ✓ From an ongoing scenario analysis, assess risks and opportunities related to sustainability issues for the company and the industry.
- ✓ Ensure that the company clearly identifies all negative social and environmental impacts caused by its operations; take care to minimize or eliminate them.
- ✓ Define specific policies and scenarios for the future, setting measurable short, medium and long-term goals.
- ✓ Engage and educate employees and collaborators, adopting training and development programs as well as solid incentive systems.
- ✓ Realize performance monitoring and measurement based on specific metrics regarding, for example, water management, energy, greenhouse gas emissions, pollution, effluents and biodiversity.
- ✓ Account for strategy execution essential corporate areas such as Purchasing, Marketing, Human Resources, Legal and Institutional Relations, ensuring that none of them act in conflict with the company's sustainability commitments and objectives.
- ✓ Align strategies, goals and incentive structures of all operating units with the company's sustainability objectives and commitments.
- ✓ Analyze each link in the value chain, mapping impacts, risks and opportunities.
- ✓ Involve suppliers in the sustainability strategy; sensitize, train and enable business partners; monitor how well they are aligned with company commitments and practices.
- ✓ Review processes and ways of producing; develop products and services or design business models that contribute to promoting sustainability.
- ✓ Make social investment aligned with the company's competences and the operational context of its business, framing it in its sustainability strategy; always act in tune with correlated public policies to ensure greater effectiveness in the results.
- ✓ Integrate public campaigns and initiatives, making, in the communications (lectures, magnificent classes and articles), commitments to the most relevant sustainability issues.
- ✓ Coordinate efforts with other organizations – of the first, second and third sector - to leverage investments and not nullify other sustainable development initiatives.
- ✓ Cooperate with peer organizations and other stakeholders on initiatives that help find answers to common challenges, locally or globally, with emphasis on those that will enhance the positive impact on the value chain.

- ✓ Mentoring companies in the same or other sector that are still in the early stages of implementing sustainable practices; as a reference in sustainability leadership, facilitate access to information by those who wish to know the company's policy.
- ✓ Broadly communicate the results and evolution of sustainability practices, with a view to reporting to stakeholders and society; and also emulate the sustainable behavior of other companies.
- ✓ Engage and educate stakeholders so that they know the company's policies and participate, in their own way, in their daily pursuit.
- ✓ Command the process of change, to incorporate the social and environmental dimensions into the notion of business success, to overcome inertia and attachment to consecrated models, establishing a vision and mission of sustainability.

3. FINANCIAL CHALLENGES FOR IMPLEMENTATION OF SUSTAINABLE DEVELOPMENT: AN ANALYSIS FROM THE CONTEXT OF THE SDG - SUSTAINABLE DEVELOPMENT GOALS

Current growth patterns are known to be unsustainable. "(...) a daunting \$90 trillion will be required to tackle sustainable development challenges in the coming years", yet "the cost of inaction would ultimately be far deeper, with humanity's very future hanging in the balance."²⁶

The concept of sustainable development along its path has been consolidated with its 'three pillars': economic, social and environmental, as well as its relationship with global trade, financing and environment agendas, such as the International Conference on Financing for Development²⁷. Today's sustainable development efforts are based on the 2030 Agenda with its global goals as set in 2015 at the UN, the Sustainable Development Goals (SDG).

The 2030 Agenda is a global agenda that sets guidelines, principles, and a methodology. It includes a set of goals to be followed in the coming years by all countries and people in the world. The Agenda was formalized and adopted by all 193 UN Member States in September 2015 in New York at the World Summit on Sustainable Development preceding the 70th session of the General Assembly. Continuing the achievement of the Millennium Development Goals (MDG), it seeks to mobilize a global partnership in order to achieve sustainable development by encouraging the adherence of all stakeholders to the effective completion of the agenda.

²⁶ United Nations Development Program. **Transformando Nosso Mundo: a Agenda 2030 para o Desenvolvimento Sustentável**. 2016. Retrieved on August 30, 2019 from <http://www.br.undp.org/content/dam/brazil/docs/agenda2030/undp-br-Agenda2030-completo-pt-br-2016.pdf>

²⁷ LAGO, A. A. C. do. **Conferências de Desenvolvimento Sustentável**. Brasília: FUNAG, 2013, p. 15.

Armada, Moura, & Vieira²⁸ point out that sustainable development must be economically feasible, ecologically appropriate, socially fair and culturally equitable without discrimination. There is, the authors continue, a possible convergence between two antagonistic situations: preserving the environment and “the need to encourage socioeconomic development.

As noted by the former UN Secretary-General Ban Ki-moon²⁹ “business and sustainable development agendas are converging in new and thought-provoking ways”, thus creating the possibility and expectation of generating new business and new ways of financing ventures and actions that contribute to the achievement of the Sustainable Development Goals (SDG). Still, according to Thomsom, president of the United Nations General Assembly, “estimates suggest that financing the Sustainable Development Goals will require an annual investment of approximately \$ 6 trillion.”³⁰

In a study on the influence of international standards on the activities of financial institutions, the current tendency towards sustainable development is reiterated. This is expressed in the global conjuncture with a movement that encourages sustainability in various sectors of society; and behavioral change in the business sector, in spite of financial institutions.³¹

Thus, in recent years, the emergence of new instruments for the promotion of sustainability is noted, with the transformation of multilateral financial institutions in the initiative to link sustainable development to their financial mechanisms. This fact is considered “the most important advance of environmental protection in recent decades”³².

In 2017, 44 countries pledged to submit Voluntary National Reviews (VNR) at the United Nations High Level Political Forum (UN), and Brazil was one of them. In this context, civil society organizations have documented and analyzed,³³ the information reported by countries in order to

²⁸ ARMADA, C. A. S; MOURA, M. T; VIEIRA, R.S. **A influência do direito internacional ambiental na atividade das instituições financeiras**: análise dos principais instrumentos e mecanismos de governança corporativa e compliance. 20º Congresso brasileiro de direito ambiental, São Paulo: Instituto O Direito por um Planeta Verde, 2015.

²⁹ United Nations Development Program. **Transformando Nosso Mundo: a Agenda 2030 para o Desenvolvimento Sustentável**, 2016. Retrieved on August 30, 2019 from <http://www.br.undp.org/content/dam/brazil/docs/agenda2030/undp-br-Agenda2030-completo-pt-br-2016.pdf>

³⁰ United Nations Development Program. **Transformando Nosso Mundo: a Agenda 2030 para o Desenvolvimento Sustentável**.

³¹ ARMADA, C. A. S; MOURA, M. T; VIEIRA, R.S. **A influência do direito internacional ambiental na atividade das instituições financeiras**.

³² International Council on Trade and Sustainable Development. **Novos atores para o desenvolvimento sustentável**: as instituições financeiras, 2008. Retrieved on May 17, 2019 from <http://www.ictsd.org/bridges-news/pontes/news/novos-atores-para-o-desenvolvimento-sustent%C3%A1vel-as-institui%C3%A7%C3%B5es-financeiras>

³³ Canadian Council for International Co-operation (CCIC). **Progressing national SDGs implementation**: An independent assessment of the voluntary national review reports submitted to the United Nations High-level Political Forum on Sustainable Development

understand the situation, the challenges and progress in implementing the SDGs in the countries. Ten key pillars, emergence of good practices, and recommendations on how countries can leverage such institutional means as an opportunity for mutual peer learning, knowledge sharing, and support for the effective implementation of the 2030 Agenda for Sustainable Development, are recognized.

The Voluntary National Reviews³⁴ demonstrate that most countries have somehow “incorporated the SDG into their national development plans and related policies” and are able to present concrete actions from their move towards the 2030 Agenda. The challenges, therefore, are in the sense of “begin to integrate the SDGs into national and local budgets to ensure that resources are allocated for implementation, based on the good practice of identifying financial sources to implement the 2030 Agenda at a country level”.

The assessment of VNRs identifies that most countries “do not articulate plans to fund implementation or sources of funding”. A best practice is to “clearly articulate [in VNR] the challenges in implementing the 2030 Agenda to inform how the country can best receive domestic and international support.”³⁵

Official Development Assistance (ODA) is considered a relevant support mechanism for the implementation of the 2030 Agenda, to which developed countries commit to provide assistance of 0.7% of gross national income to developing countries and 0.15% to the least developed countries (LDCs). Domestic resources and investments are also considered important, as well as international partnerships.³⁶

FINAL CONSIDERATIONS

The debate on sustainable development, therefore, has a considerable trajectory and to some extent happens in the discussion about the relationship between economic growth and the environment (humanity and nature). The concept of sustainable development, as coined by the Brundtland Report in 1987, presented two controversial categories (needs and limits) that are worth considering carefully. From Eco Development, through the popular incorporation of the

in 2017. Ottawa, 2018

³⁴ In order to be accountable to citizens, to support “effective international cooperation, foster good practices and mutual learning”, countries submit Voluntary National Reviews (VNR) to the United Nations High-Level Political Forums annually.

³⁵ Canadian Council for International Co-operation (CCIC). **Progressing national SDGs implementation**, p 30-31.

³⁶ Canadian Council for International Co-operation (CCIC). **Progressing national SDGs implementation**, p 30.

three dimensions: environmental, social and economic, the debate is currently within the moderate scope of the 2030 Agenda and the SDG. However, the non-static notion of the concept must be considered, since growth, “development”, has the possibility of occurring in models other than the current and self-destructive logic of competition.

It is in this context that challenges are posed for the practical implementation of sustainable development: human capital and financial capital. The concept of governance helps to understand this movement of increasing participation of civil society and other non-state actors in decision making. It is also demonstrated in the incorporation of sustainability concepts within public policies and international environmental law (international, national and local governance), valuing the multiplicity and interdisciplinarity of actors and approaches that value the traditional knowledge of native peoples. Understood as a process or function, governance, now considered a principle in the implementation of the 2030 Agenda, may encourage the emergence of leadership and new ways of implementing sustainability in practice.

Leaders are those who can influence people to achieve goals. Disengaging from the idea of holding third parties responsible for the problems of society, the protagonism, the creation of networks and partnerships and the search for unconventional forms of solutions indicate as tendencies of action and leadership.

The distance between the International Environment and the Development Agendas, and the predominance of the latter, is another challenge for achieving sustainability (balance between all dimensions), where the human being is in the middle. The International Conferences on Financing for Development are a possibility to bring these two agendas together. The last conference held in Addis Ababa, the capital of Ethiopia, had as its product a Global Action Agenda that provides best financial practice guidelines for achieving the Sustainable Development Goals.

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ETHICAL PRINCIPLES AND SUSTAINABILITY: THE RECOGNITION OF THE ETHICAL DIMENSION OF SUSTAINABILITY¹

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Heloise Siqueira Garcia³

INTRODUCTION

Within the context of a capitalism that generates unbridled and unprecedented consumption, in which the main objective seems to be the accumulation of wealth, regardless of the means used for this purpose, the environment has been the biggest victim. Humanity is often faced with data that point to a consumption of natural resources so that they will be depleted for the next generations.

This eagerness for “having” is making relationships liquid, human beings with no ‘direction’, without stimulus, depressive and, therefore, unable to think of such important and vital issues to sustainability. Within this sad reality arises the debate about the sustainability that consists in the reach of the environmental, economic, social, technological and ethical dimensions, in order to guarantee the permanence of living organisms on the Planet, with dignified and just conditions. However, for this to happen it is necessary that there are more virtuous and concerned human beings with fundamental principles related to ethics.

The problem that led to the research was: Is there a need to change values and attitudes with the adoption of Principles and virtues to reach the ethical dimension of sustainability? Within

¹ Article adapted by published at the *Sostenibilidad: económica, social y ambiental* Review: GARCIA, Denise Schmitt Siqueira; GARCIA, Heloise Siqueira. Ethical dimension of sustainability: the need to change values and attitudes. **Sostenibilidad: económica, social y ambiental**, v. 2, p. 33-47, 2020.

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this problem, the objective of this work was to analyze the content of the ethical dimension of sustainability and the need to change values and attitudes to achieve this dimension.

This research is necessary because, due to this consumist and immediatist reality, where 'having' is more important than 'being', man is increasingly more individualistic and selfish, leaving aside the basic principles and virtues for achieving sustainability.

In this paper, the motivations for which the referred dimension is so important for sustainability will be presented. For this purpose, this paper is divided into four parts: the first deals with sustainability; the second concerns the ethical dimension of sustainability; the third addresses the principles for an ethics for sustainability; and the fourth discusses the virtues for sustainability. For the elaboration of this paper the inductive method was used, operationalized by the techniques of the registration and bibliographical review.

1. TALKING ABOUT SUSTAINABILITY

In the 1970's, the dream of unlimited growth came to an end, as the limits of Earth and life model were unsustainable. This realization stems from the great increase in environmental, social and economic problems on a global level.

Some of the environmental problems are: the depletion of natural resources; contamination and scarcity of drinking water; contamination of soil and air; the loss of biodiversity; overpopulation; genetic manipulation; global warming with the increase of volcanic eruptions, glacier thawing, greenhouse gas concentration, and a number of other problems. As economic and social problems, there was an increase in social injustices; technological dependence of developing countries on developed countries; the increase in environmental displacement⁴; increase in infant mortality; worsening of formal education and increase in poverty.

As for environmental displacements, mainly linked to climate disasters, there are around 25 million people who are forced to leave their countries, and, according to estimates of the Internal

⁴ Souza (SOUZA, M. C. da S. A.; OLIVEIRA, M. R. de. **Migrações e refugiados**: um olhar multidimensional e os dilemas da contemporaneidade. Belo Horizonte: Editora Vorto, 2017, p. 8) affirms: Environmental displaced persons would be the persons who are forced to leave their traditional habitat, migrating internally or internationally, temporarily or permanently, due to a certain environmental disturbance (natural and/or caused by a person) that, without setting an environmental persecution, compromises their existence and/or seriously affect their quality of life.

Displacement Monitoring Center (IDMC), by 2050, this number will reach one billion people.⁵ These data demonstrate the seriousness and urgency of the situation, making a supportive and ethical thinking necessary.

The problem of poverty at national and global levels is very alarming. On average, 1.49 million Brazilian people live in extreme poverty, which would be people living up to BRL 13.00 per month. More than 113 million people from 53 countries worldwide were victims of extreme hunger in 2018.⁶

Bittar⁷ points out: Hunger, violence, inequalities, economic crisis, misery, ideological anesthesia, loss of referential, individualist vacuum, dilution of the family, loss of public spaces, relativization of social behavior, indifference, social cynicism, consumerism, as some of the issues of our times. According to Bittar⁸, the pragmatization of society, post-Industrial Revolution, post-Atomic Revolution has also made ethics obsolete, depriving it of meaning, causing it to constantly suffer from discrimination against the predominant monetarist mentalities, which dissolve all human values in economic values, and reduce all capacity to a productive and labor capacity. Faced with this alarming picture began a migration of paradigm at a global level, starting from the paradigm of freedom lived in modernity for a transition to the paradigm of sustainability of postmodernity, as a political, ethical, social and care crisis is being lived.

Sustainability can be defined as: “*Enough, for everyone, everywhere and always*”.⁹ The idea is that we should consume what is necessary for our lives, and reduce abusive and predatory consumption so we can guarantee life for all, encompassing all forms of life, in a biocentric vision, everywhere in the world and for the present and future generations. Well, the sentence expressed so little and, at the same time, so much.

For this sustainability to be effective, a global awareness for this world in crisis must arise. It is the idea brought by Jeremy Rifkin¹⁰ in his work *La Civilización Empática* (Empathic Civilization).

⁵ UNITED NATIONS BRAZIL. Mudanças climáticas devem intensificar deslocamentos forçados, dizem especialistas. **ONU Brasil**, June 22, 2017. Retrieved on April 11, 2019 from <https://nacoesunidas.org/mudancas-climaticas-devem-intensificar-deslocamentos-forcados-dizem-especialistas>

⁶ EFE Agency. Mais de 113 milhões de pessoas foram vítimas de fome extrema em 2018. **Exame**, April 2, 2019. Retrieved on April 11, 2019 from <https://exame.abril.com.br/noticias-sobre/mudancas-climaticas/>

⁷ BITTAR, E. C. B. **Curso de ética jurídica: ética geral e profissional**. São Paulo: Saraiva, 2016, p. 83.

⁸ BITTAR, E. C. B. **Curso de ética jurídica: ética geral e profissional**. São Paulo: Saraiva, 2016, p. 86.

⁹ This simple and complete concept was taken from a variation of graffiti on a wall during the World Conference on Sustainable Development held in Johannesburg in 2002.

¹⁰ RIFKIN, J. **La Civilización Empática**. La carrera hacia una conciencia global en un mundo en crisis. Madrid: Paidós, 2010.

It was with this idea of a global vision of these social, environmental and economic problems that in the year 2000 the United Nations (UN) presented the eight Millennium Objectives¹¹ that were goals to be achieved by the year 2015. Continuing this work, in August 2015, the UN presented the Sustainable Development Objectives that are composed of 17 objectives¹² with 169 goals. These attitudes are very important, since they provide a direction for various sectors, whether public or private, to adopt measures to strengthen sustainability in its various dimensions. Thus, sustainability has foundations, which are its dimensions: environmental, social, economic, technological and ethical.

In the environmental dimension, it is discussed the importance of protecting the environment and consequently environmental law, which aims to ensure the survival of all species of living organisms on the planet. The social dimension¹³ is seen as human capital and consists of the social aspect related to the qualities of human beings. It is based on a process of improving the quality of life of society, reducing the discrepancies between opulence and poverty, leveling the income pattern, access to education, housing and food, etc. This confrontation of social problems necessarily involves a correction of the framework of confrontation of social inequality and the lack of access of the poor to their basic social rights, which, by the way, is a potentiator of environmental degradation. Therefore, it aims, at least, to guarantee the existential minimum that must be identified as the core of human dignity¹⁴, including as a proposal for its realization the rights to basic education, health, assistance in case of need and access to justice, all of which are legally enforceable in a direct way, since they are provided for in the 1988 Brazilian Constitution.¹⁵

The economic dimension¹⁶ aims to reduce the negative externalities of production, seeking

¹¹ 1. To eradicate extreme poverty and hunger; 2. To achieve universal primary education; 3. To promote gender equality and empower women; 4. To reduce child mortality; 5. To improve maternal health; 6. To combat HIV/AIDS, malaria and other diseases; 7. To ensure environmental sustainability; 8 – To develop a global partnership for development.

¹² 1. No poverty; 2. Zero Hunger and Sustainable Agriculture; 3. Good health and well-being; 4. Quality education; 5. Gender equality; 6. Clean water and sanitation; 7. Affordable and Clean energy; 8. Decent work and economic growth; 9. Industry, Innovation and Infrastructure; 10. Reduce inequalities; 11. Sustainable cities and communities; 12. Responsible production and consumption; 13. Climate Action; 14. Life Below Water; 15. Life on Land; 16. Peace, justice and strong institutions; 17. Partnerships for the goals. Retrieved from <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>

¹³ For further information, see: GARCIA, D. S. S.; GARCIA, H. S. Dimensão social do princípio da sustentabilidade: uma análise do mínimo existencial ecológico. In: SOUZA, M. C. da S. A. de; GARCIA, H. S. (orgs.), **Lineamentos sobre Sustentabilidade segundo Gabriel Real Ferrer**. Itajaí: UNIVALI, 2014, p. 37-54.

¹⁴ For further information, see: GARCIA, D. S. S. Uma nova perspectiva para o Direito Ambiental: o direito ao ambiente como direito fundamental da pessoa humana. **Interesse Público**, v. 18, p. 95-110, 2016.

¹⁵ For further information, see: BENDLIN, S. L.; GARCIA, D. S. S. Dimensão social do princípio da sustentabilidade frente ao artigo 6º da constituição da república federativa do Brasil de 1988. **Revista Eletrônica Direito e Política**, v. 6, n.2, p. 419-441, 2011.

¹⁶ For further information, see: GARCIA, D. S. S. Dimensão Econômica da Sustentabilidade: uma análise com base na economia verde e a teoria do decrescimento. **Veredas do Direito**, v. 13, n. 25, p. 133-153, 2016; GARCIA, D. S. S. A busca por uma economia

an economy concerned with generating a better quality of life for people. There is a great link between the economy and environmental law, both of which aim at improving the quality of life of people in order to achieve a social, economic and cultural development of quality.

The technological dimension¹⁷ is linked to individual and collective human intelligence accumulated and multiplied, which can guarantee a sustainable future. It is linked to the use of new technologies that are more sustainable and, therefore, less impacting on the environment. Finally, the ethics debate is necessary because what is currently happening is the death of traditional ethics. Bittar¹⁸ affirms: a growing process of disintegration and frenetic ethical-cultural transformation is in full force today: the passionate rise of the cult of passions; the propaganda of the liberation of the instincts; the disruption of secular traditions; the victimization of the ego by the imposition of forces of consumption habits; the exacerbation of indiscriminate voluntarism; the disappearance and the general feeling of the absence of models; the immoderate relativization of all possible patterns of behavior; the institutionalization of minority unilateralism, further fragmenting the understanding of human integration and cooperation; the creation of a victorious consensus (capitalism, democracy and neoliberalism) packaged for international sale; the imposition of the logic of terror with a single mechanism of contradiction with the prevailing forces and determinants of the structuring of social-human relations; once again, the renewed vigor of the fundamentalist instincts of all kinds (racial, cultural, national, religious and ethnic ...); the fall and disappearance of the great ideologies - political radicalism of right and/or left wing - and its contemporary revival, as a way of longing of the political struggles and *re-politicization* of the general apathy of the popular conscience.

All of this demonstrates the importance and timeliness of the debate about the ethical dimension that is the focus of this paper and that is dealt within the next item.

2. ETHICAL DIMENSION OF SUSTAINABILITY

It is perceived that there is an urgent need for life changing action because it is already proven that the environment is finite and that life on the planet is threatened. Thus, the ethical

ambiental: a ligação entre o meio ambiente e o direito econômico. In GARCIA, D. S. S. (coord.). **Governança Transnacional e Sustentabilidade**. Itajaí: UNIVALI, 2014, p. 7-27.

¹⁷ For further information, see: CRUZ, P. M.; REAL FERRER, G. Direito, Sustentabilidade e a Premissa Tecnológica como Ampliação de seus Fundamentos. **Sequência**, v. 36, n. 71, p. 238-278, 2015.

¹⁸ BITTAR, E. C. B. **Curso de ética jurídica: ética geral e profissional**. São Paulo: Saraiva, 2016, p. 84.

dimension deals with an existential issue, since it is something that seeks to guarantee life, not simply related to nature, but to a whole relationship between the individual and the environment around it. In order to address this issue, therefore, we first need to talk about ethics.

2.1 Ethics

The word ethics comes from the Greek *éthos* (Greek singular), which means the human dwelling, that space of nature that we reserve, organize and take care of to make it our *habitat*. Ethics need to be born from the essence of the human, there must be a feeling of human happiness; “feel at home”. The man with conscience, intelligence, will and love is the caretaker of the Earth.

This idea is closely linked to the 2000 UNESCO Earth Charter¹⁹: “To realize these aspirations, we must decide to live with a sense of universal responsibility, identifying ourselves with the whole Earth community as well as our local communities”²⁰.

Nalini²¹ points out that ethics studies the relationships between the individual and the context in which he/she is situated, that is, between the individualized and the world around him/her. It seeks to state and explain the rules, norms, laws and principles that govern ethical phenomena. Ethical phenomena, as stated by the author, are all the events that occur in the relations between the individual and his/her context.

The effectiveness of ethics lies in its use/practice. One can know a great deal about ethics, but the true value of ethics does not lie in this accumulated knowledge, but in the applied use of acts and behaviors that can be made out of them, as Bittar²² reports. The author affirms that ethics as practice consists in the concrete and conjugated action of will and reason, an interaction from which results are extracted that are embodied in different forms. Thus, ethical practice must

¹⁹ “Universal Responsibility To realize these aspirations, we must decide to live with a sense of universal responsibility, identifying ourselves with the whole Earth community as well as our local communities. We are at once citizens of different nations and of one world in which the local and global are linked. Everyone shares responsibility for the present and future well-being of the human family and the larger living world. The spirit of human solidarity and kinship with all life is strengthened when we live with reverence for the mystery of being, gratitude for the gift of life, and humility regarding the human place in nature.” (UNESCO - United Nations Educational, Scientific And Cultural Organization. **The Earth Charter**, 2000. Retrieved from http://www.unesco.org/education/tlsf/mods/theme_a/img/02_earthcharter.pdf, p. 1).

²⁰ UNESCO - United Nations Educational, Scientific And Cultural Organization. **The Earth Charter**, 2000. Retrieved from http://www.unesco.org/education/tlsf/mods/theme_a/img/02_earthcharter.pdf, p. 1.

²¹ NALINI, J. R. **Ética geral e profissional**. São Paulo: Revista dos Tribunais, 1999, p. 73.

²² BITTAR, E. C. B. **Curso de ética jurídica: ética geral e profissional**. São Paulo: Saraiva, 2016, p. 34.

represent the conjugation of permanent attitudes of life, in which, inwardly and externally, attitudes managed by reason and administered before the senses and appetites are constructed.²³

According to the author, the one who knows much about ethics but practices little cannot be called prudent or virtuous simply by knowing. A distinction must be made between ethical knowledge and ethical practice²⁴. Therefore, the following characteristics of ethics for sustainability are identified:

1. Systemic view of the world and life.
2. Recognition of limits on the use of nature and the finiteness of natural resources
3. Commitment to the construction of sustainable development, in a present and future perspective.
4. Satisfaction of basic, material, cultural and psychosocial needs.
5. Respect for cultural, ethical, political, religious and gender diversity.
6. Appreciation of others.
7. Individual and social responsibility with our attitudes.
8. Recognition of the right to life with our attitudes.
9. Commitment to human rights, democracy, peace, justice and love.²⁵

From everything that has been said so far, there is no doubt that when it comes to sustainability we need ethical practice.

3. PRINCIPLES FOR AN ETHICS FOR SUSTAINABILITY

In order to effectively achieve the ethical dimension of sustainability, it is necessary to be based on four principles: a) principle of affectivity; b) principle of care and compassion; c) principle of cooperation; and d) principle of liability.

a) Principle of affectivity²⁶

We must consider that the essence of man is affection, feeling, emotion and love, because

²³ BITTAR, E. C. B. **Curso de ética jurídica: ética geral e profissional**. São Paulo: Saraiva, 2016, p. 30.

²⁴ BITTAR, E. C. B. **Curso de ética jurídica: ética geral e profissional**. São Paulo: Saraiva, 2016, p. 34.

²⁵ MININNI-MEDINA, N. Educação ambiental em centros urbanos: a problemática da incorporação de valores éticos. Paper presented at the **Congresso Habitat II**, Florianópolis, Santa Catarina, Brazil, 1998.

²⁶ MMA – Ministério do Meio Ambiente. **Caderno de debate agenda 21 e sustentabilidade**. Ética e Sustentabilidade. 2001. Disponível em: https://www.mma.gov.br/estruturas/agenda21/_arquivos/CadernodeDebates10.pdf

that is where all values are born. The first structure of the human being is not constituted by reason (logos), but by sensitivity (pathos). Bauman²⁷ affirms:

The call to love thy neighbor as thyself, says Sigmund Freud, is one of the fundamental precepts of civilized life (and, according to some, one of its fundamental ethical demands). But it is also the most contrary to the kind of reason that such civilization promotes: the reason of self-interest, of pursuit of happiness.

Today what is seen is an immediate society, “liquid modernity” in Zygmunt Bauman’s²⁸ words, in which the citizen is concerned with having and not being; where relations are quick and superficial; where there is no time for children and they grow up accompanied only by screens of computers, tablets and smartphones, that do not deal with the world of life, only with the world of ideas and emptiness. The modern world has encouraged the ethics of individualism, abstract reason, capitalist accumulation and competition, social homogenization²⁹, making man an empty being without feelings for the other.

Bauman³⁰, in his book ‘Globalization: the human consequences’, presents the great damage caused by globalization that has plagued human relations, causing serious damage, such as: distancing people; the liquidity of relationships; the oppression of the lower classes with the increase of the difference between these classes; the increase in the epidemic global hunger; depression; liquidity of the relations being that the people are collectors of ‘things’. Thus, it brought serious damages related to affectivity which drastically damages the dictates of the sustainability which, in order to have strength, needs a supportive individual, affectionate with the other, balanced and with minimum conditions of quality of life.

Nowadays the crisis that is experienced is that of sensitivity and affection, the human being is increasingly selfish and individualistic. According to May³¹, one of the main problems of modern man is emptiness, it is not knowing what he/she wants and often not having the slightest idea of what he/she feels. There is a great insensitivity related to the disgrace of humankind living in levels of poverty and misery, as well as indifference in relation to the degradation of ecosystems, pollution of air and soil, and extinction of species. The human being is insensitive to solidarity³²,

²⁷ BAUMAN, Z. **Does ethics have a change in a world of consumers?**. Cambridge: Harvard University Press, 2008, p. 31.

²⁸ BAUMAN, Z. **Liquid modernity**. Cambridge: Polity Press, 2001.

²⁹ BITTAR, E. C. B. **Curso de ética jurídica: ética geral e profissional**. São Paulo: Saraiva, 2016, p. 95.

³⁰ BAUMAN, Z. **Globalization: The Human Consequences**. Cambridge: Polity Press, 2005.

³¹ MAY, R. **Man’s search for himself**. New York, London: WW. Norton & Company, 2009, p. 4.

³² For further information, see: GARCIA, H. S.; GARCIA, D. S. S. A construção de um conceito de sustentabilidade solidária: contribuições teóricas para o alcance do socioambientalismo. **Revista de Direito Ambiental e Socioambientalismo**, v. 2, p. 147-

care, love and compassion, dimensions that are priceless, but have value and give meaning to life. To Bauman³³: “Loving our neighbors as we love ourselves would mean, then, *respecting each other’s uniqueness* - valuing each other for our differences, which enrich the world we jointly inhabit and make it a more fascinating and enjoyable place”.

If we do not raise the capacity to feel, to be indignant or to be sensitized to others, no ethics will be possible. To accept the precept of loving thy neighbor is the founding act of humanity. For that, a drastic change of life is necessary, with the rediscovery of what is really important.

b) Principle of care/compassion³⁴

Care is the essence of a human being. Without care one does not survive in the first hours of birth, does not flourish in love, does not fulfill his/her mission in the world, his/her intelligence does not blossom.

In the dimension of life that is developed, which arises from all adversities, from the multiple experiences which favors this integration from a hologramatic perspective³⁵ by the motto *we are all in one and one in all*, we begin to determine another ethos to visualize the *Dignitas Terrae*, which does not exhaust itself in judgments of economic, industrial, aesthetic, utilitarian values, among others, but stimulates another “way of being”, that is, a “way of being-of-care”.

This is the attitude manifested in the world by the Ethics of Care. Permanent and close contact with the natural and social world diminishes self-interest, the exclusively selfish posture before the Other. Through this *ethos*, other dynamic, creative, dialogical scenarios are unveiled in order to establish which project of common life becomes possible, lasting, insofar as the Other is recognized as an “own being”, far from ideology propagated by Instrumental Reason³⁶ in the

168, 2016.

³³ BAUMAN, Z. **Does ethics have a change in a world of consumers?**. Cambridge: Harvard University Press, 2008, p. 35.

³⁴ MMA – Ministério do Meio Ambiente. **Caderno de debate agenda 21 e sustentabilidade**. Ética e Sustentabilidade. 2001. Disponível em: https://www.mma.gov.br/estruturas/agenda21/_arquivos/CadernodeDebates10.pdf

³⁵ According to Morin (MORIN, E. **O método 6: ética**. Porto Alegre: Sulina, 2005, p. 2017): An hologram is an image that each dot contains almost all of the information about the represented object. The hologramatic principle means not only that the part is in the whole, but that the whole is inscribed, in a certain way, in the part. Thus, the cell contains all of the genetic information, which, actually, allows cloning. Society, as a whole, through culture, is present in the spirit of each individual.

³⁶ Horkheimer (HORKHEIMER, M. **Eclipse da razão**. São Paulo: Centauro, 2000, p. 61) recalls the effects produced by the expression ‘Instrumental Reason’: The reduction of reasoning to a mere instrument finally affects even its character as an instrument. The anti-philosophical spirit which is inseparable from the subjective concept of reason, and which in Europe culminated in the totalitarian persecution of intellectuals, whether their precursors or not, is symptomatic of the degradation of reason. The

relations between human and non-human “subject-object”. It is the Care Ethics³⁷ that develops the architecture of Life Ethics and Sustainability.

Boff³⁸ states: By carefulness we do not see nature and everything that exists in it as objects. The relation is not subject-object, but subject-subject. We experience beings as subjects, as values, as symbols that refer to a frontal reality. Nature is not mute. It speaks. It evokes. It emits messages of grandeur, beauty, perplexity and strength. The human being can listen and interpret these signals. He/she stands beside things, at their feet, and feels attached to them. He/she does not just exist. Co-exists with all others. The relationship is not one of dominance but of coexistence. It is not pure intervention, but mainly interaction and communion. It’s about taking care of things. To take care of things means to have intimacy with them, to feel them inside, to accept them, to respect them, to give them rest. Caring is getting in tune with things. To listen to the rhythm and tune into it. Caring is establishing communion. It is not the analytical, instrumental reason that is called to act. But the cordial reason, the *esprit de finesse* (the spirit of delicacy), the deep feeling. More than the *logos* (reason), it is the *pathos* (feeling), which occupies the centrality here.

This relational dimension of complicity signals to the human that, in each place, in every closeness, there is a fragile balance that must persist in order to expand and preserve the chain of life. For this reason, the twenty-first century must be viewed/considered/thought from the angle of the Logic and Ethics of Care to constitute and clarify the communicational and existential meaning between humans and non-humans in which it is silently manifested in the subterranean galleries of the present moment. The reflection and praxis of Care is a presupposition of coexistence in this imperfect garden, whose name is Sustainability.

Without the *ethos* of Care, it is not possible to recognize the Earth as its “own being” to recognize how the flux of *interspecies nets* maintains the balance - physical, chemical, biological, energetic, informational, psychological, ecological - necessary for the flowering of life, of living and

traditionalist and conservative critics of civilization make a fundamental mistake when attacking modern civilization without attacking at the same time the embittering which is just another aspect of the same process. The human intellect, which has biological and social origins, is not an absolute, isolated and independent entity. It was declared to be like this just as the result of the social division of labor, in order to justify the latter on the basis of the natural constitution of man.

³⁷ Boff (BOFF, L. *Ética da vida: a nova centralidade*. Rio de Janeiro: Record, 2009, p. 75-76) states: Life, as we have seen, is fragile and vulnerable. It is at the mercy of the game between chaos and cosmos. The proper attitude for life is care, respect, veneration and tenderness. It is these attitudes that open us to the sensitization of the importance of life. They imply the change of the current cultural paradigm, based on power-domination, and the introduction of a paradigm of co-operative coexistence, of synergy, of distress for all that exists and lives. Because of this shift, it is urgent to redefine the ends inspired in life and to adjust the means to these ends. Only in this way will the life threatened have a chance of safeguarding and promotion.

³⁸ BOFF, L. O cuidado essencial: princípio de um novo ethos. *Revista Inclusão Social*, v. 1, n. 1, p. 28-35, 2005, p. 31.

coexisting. This statement (and concern) can be summarized from this proposition: When the absence of Care in human-nonhuman relations is observed, the efforts made in the name of Sustainability³⁹ and Sustainable Development will be only empty promises.

Compassion that is very much linked to solidarity is the Eastern version of the term care. In the Buddhist sense is the ability to respect each other as another, not interfering with his/her life and destiny, but never leaving him/her in pain.

c) Principle of Cooperation⁴⁰

The idea is to allow each being, even the weakest, to be able to win with the cooperation of the other. It was the cooperation that allowed our ancestors to make the leap from animality to humanity.

Freitas⁴¹ affirms: Cooperation emerges, in a similar context, as a magnificent evolutionary trait favorable to the continuity of life as an ecosystem, increasingly rich, multifaceted and culturally plural. This sense of co-operation dwells within each person's inner self (though a faint spark in overly instinctive creatures), and it is incumbent upon those who have greater self-consciousness, without shrugging their shoulders, to protect social trust and integrity of character, to compensate for the unjust damages perpetrated by primitivism. All cruelty is forbidden, for never being an universalizable practice, as it is contrary to a life of quality, says Freitas⁴².

Today we cannot only be spontaneously cooperative and supportive, because this is the logic of evolution and life, but we must act consciously and with a project of life. Otherwise we will not save our lives, nor will we guarantee a future commitment for humanity.⁴³ This idea of cooperation, therefore, must be tied in all the moments and acts of our existence.

³⁹ Leff (LEFF, E. **Saber ambiental: sustentabilidade, racionalidade, complexidade, poder**. Petrópolis: Vozes, 2011, p. 404) affirms: If we understand the problem of unsustainability of life on the planet as a symptom of a crisis of civilization – of the fundamentals of the corporate project of modernity – it will be possible to understand that the construction of the future (sustainable) cannot be based on false certainty about the effectiveness of the market and technology - not even about ecology - to find the balance between economic growth and environmental preservation. The crossroads in which the new millennium opens its path is an invitation to philosophical reflection, theoretical production and critical judgment on the foundations of modernity, which allows the generation of conceptual and praxeological strategies that guide a process of social reconstruction. Environmental complexity and the processes of self-organization generate synergies that open the way to a sustainable society founded on a new rationality.

⁴⁰ MMA – Ministério do Meio Ambiente. **Caderno de debate agenda 21 e sustentabilidade**. Ética e Sustentabilidade. 2001. Disponível em: https://www.mma.gov.br/estruturas/agenda21/_arquivos/CadernodeDebates10.pdf

⁴¹ FREITAS, J. **Sustentabilidade**. Direito ao futuro. Belo Horizonte: Fórum, 2019, p. 68.

⁴² FREITAS, J. **Sustentabilidade**. Direito ao futuro. Belo Horizonte: Fórum, 2019, p. 68-69.

⁴³ MMA – Ministério do Meio Ambiente. **Caderno de debate agenda 21 e sustentabilidade**. Ética e Sustentabilidade. 2001. Disponível em: https://www.mma.gov.br/estruturas/agenda21/_arquivos/CadernodeDebates10.pdf

d) Principle of Responsibility⁴⁴

To be responsible is to realize the consequences of our actions, taking responsibility for the common home and shared future. To Bittar⁴⁵: Ethics corresponds to the social exercise of reciprocity, respect and responsibility. From this principle, it is highlighted that the essence of the protection of the environment is the responsibility of all humanity that must be united to establish common measures that are effective to environmental protection.

It is necessary to worry about the destruction of life due to excessive food chemistry, the use of transgenics, genetic manipulation, nuclear weapons, chemical and biological wars, among other serious environmental, economic and social problems that plague humanity.

Alenza García⁴⁶ states that: This principle also stems from intercommunity solidarity. Environmental problems are common to all mankind, but the possibilities for dealing with them are very different from one country to another. In addition, not all countries are equally accountable for contamination. Hence the recognition that States have common but differentiated responsibilities, as indicated in principle 7 of the Rio Declaration.

The categorical principle is: act so responsibly that the consequences of your action are not deleterious to life and your future. Or positively: act in such a way that the consequences of your actions are promoters of life, care, cooperation and love.⁴⁷

4. VIRTUES FOR SUSTAINABILITY

Finally, for the ethical dimension of sustainability we need to talk about the virtues that are related to this theme. Virtues would be behaviors and standards that translate principles into practice.

Bittar⁴⁸ affirms: Ethics should encourage the cultivation of virtues. Following Jugeal's old adage (8:20), according to which the one and true nobility is virtue (*Nobilitas sola est atque unica*

⁴⁴ MMA – Ministério do Meio Ambiente. **Caderno de debate agenda 21 e sustentabilidade**. Ética e Sustentabilidade. 2001. Disponível em: https://www.mma.gov.br/estruturas/agenda21/_arquivos/CadernodeDebates10.pdf

⁴⁵ BITTAR, E. C. B. **Curso de ética jurídica: ética geral e profissional**. São Paulo: Saraiva, 2016, p. 25.

⁴⁶ ALENZA GARCÍA, J. F. **Manual de derecho ambiental**. Navarra: Litografía IPAR, 2001, p. 43.

⁴⁷ MMA – Ministério do Meio Ambiente. **Caderno de debate agenda 21 e sustentabilidade**. Ética e Sustentabilidade. 2001. Disponível em: https://www.mma.gov.br/estruturas/agenda21/_arquivos/CadernodeDebates10.pdf

⁴⁸ BITTAR, E. C. B. **Curso de ética jurídica: ética geral e profissional**. São Paulo: Saraiva, 2016, p. 44.

virtus), it can be said that the formation of the person depends on the most varied stimuli, among which those who draw their behavior into the field of virtue. Therefore, this is a relevant social task, that of encouraging a social life guided by the valorization of the virtues.

For the strengthening of the virtues it is necessary a daily exercise, of an effort to lead the life within acceptable terms, for oneself and for the other, in the mid-term ethics, that is, that values the life distanced of excesses, as stated by Bittar⁴⁹.

According to Bittar⁵⁰, the great problem of modern life is the valorization of the present (but it leads us to permanent anxiety for the future), living (which occurs with intensity, not sobriety, and therefore leads to excesses of all kinds), “having/possessing” (which occupies the space of being, and therefore also permeates the world of direct and subliminal messages linked to immediacy and consumerism), pragmatism (which occupies the agenda of action and contorts the possibility of acting in relation to goals), and hedonism (making heroic vices/addictions, justifying any kind of action, and drawing all the social efforts into the spiral of the search for sensations, ideologizing life with the obligation of happiness). That is why it is necessary to search for the virtues as an orientation to life and to combat evil.

Bittar⁵¹ states that, to confront the question of evil, only the union of social forces that grapple around the power of virtues, because it is where there is mercy, there is no rudeness; where there is forgiveness, there is no revolt; where there is prudence, there is no temerity; where there is solidarity, there is no hunger; where there is tolerance, there is no persecution; where there is understanding there is no obscurity. That is, the group of virtues offers a reasonable range of forces for action, which must organize social life and become vectors of social behavior.

Thus, the importance of the virtues for ethical action is denoted. In the sequence, the virtues related to sustainability will be addressed. The virtue of **HOSPITALITY** is related to the right that every human being has, since we are all sons and daughters of the Earth. Today there is a criminal lack of hospitality. There are about 300 million who, due to wars, economic, ethical and religious reasons, are refugees⁵² or outside their homelands. According to Bauman⁵³:

⁴⁹ BITTAR, E. C. B. **Curso de ética jurídica: ética geral e profissional**. São Paulo: Saraiva, 2016, p. 44.

⁵⁰ BITTAR, E. C. B. **Curso de ética jurídica: ética geral e profissional**. São Paulo: Saraiva, 2016, p. 45.

⁵¹ BITTAR, E. C. B. **Curso de ética jurídica: ética geral e profissional**. São Paulo: Saraiva, 2016, p. 46.

⁵² There are distinctions between the terms environmental displacement and refugees. The former need to leave their countries due to environmental problems/disasters, while the latter are people who leave their countries because they are persecuted for

The human waste of the global frontier, refugees are the outsiders incarnate, the absolute outsiders, outsiders represented and greeted everywhere with rancor and spite. They are out of place everywhere except in places that are themselves out of place - the “nowhere places” that appear on no maps that ordinary tourists use on their travels.

All beings have the right to continue existing, as well as to be protected and to have their habitats guaranteed. The virtue of **COEXISTENCE** is founded on the knowledge that all beings form a cosmic and biotic community, but one of the great problems of globalized oriental culture is its inability to welcome the other as another. The social pact must be articulated as a natural pact. The coexistence with all beings of nature leads us to exclude violence and the merely selfish and utilitarian use of the goods of nature.⁵⁴

The virtue of **RESPECT TO ALL** is related to the tolerance of accepting the limitations and even the defects of others and living harmoniously with them, developing non-destructive ways of resolving eventual conflicts.⁵⁵

The virtue of **COMMENSALITY** is extremely important, especially considering the reality that 1/3 of humanity suffers from hunger and are undernourished. This virtue is linked to the idea that we should ‘eat and drink together’. We constitute a community of life, we depend on other beings for our own life, and at the same time, we are responsible for their lives, guaranteeing them the habitat where they find their food.

In summary, it is seen that for the ethical being concerned with the reach of sustainability we must have virtues such as hospitality, coexistence, respect for all and commensality.

FINAL CONSIDERATIONS

Due to the seriousness of environmental and social problems that have intensified since the 1970s, there has been a paradigm shift within the society where we move from the paradigm of freedom to the paradigm of sustainability. Sustainability, therefore, aims to bring a balance between environment, social, economic, technological and ethical. In this paper, the main focus

reasons of race, nationality, social group or political opinions. For more detailed information on the subject the following work is suggested: SOUZA, M. C. da S. A.; OLIVEIRA, M. R. de. **Migrações e refugiados: um olhar multidimensional e os dilemas da contemporaneidade**. Belo Horizonte: Editora Vorto, 2017.

⁵³ BAUMAN, Z. **Does ethics have a change in a world of consumers?**. Cambridge: Harvard University Press, 2008, p. 45.

⁵⁴ MMA – Ministério do Meio Ambiente. **Caderno de debate agenda 21 e sustentabilidade**. Ética e Sustentabilidade. 2001. Disponível em: https://www.mma.gov.br/estruturas/agenda21/_arquivos/CadernodeDebates10.pdf

⁵⁵ MMA – Ministério do Meio Ambiente. **Caderno de debate agenda 21 e sustentabilidade**. Ética e Sustentabilidade. 2001. Disponível em: https://www.mma.gov.br/estruturas/agenda21/_arquivos/CadernodeDebates10.pdf

was on the ethical dimension of sustainability. Ethical practice must represent the conjugation of permanent attitudes of life, in which both attitudes managed by reason and administered before the principles and ethical virtues are constructed, inwardly and outwardly.

In order to talk about sustainability, we need to stop for reflection, to pause for spirituality, to go beyond the daily rush, towards the enchantment of the simplest things in life. We have not been able to overcome individualism yet and we have not been able to internalize the desired and necessary intensity of the struggle for participatory democracy so that a mature and conscious discussion about the global problems faced can take place. It is necessary then a new civilization project, which seeks economic development, subordinated to the needs of social justice and environmental preservation and recovery.

Thus, I conclude this text with Gabriel Real Ferrer' words: Sustainability has a positive and highly proactive notion, which presupposes the introduction of the necessary changes so that the planetary society, constituted by humanity, is able to perpetuate indefinitely in time.

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CHALLENGES OF GLOBALIZATION AND THE ENVIRONMENTAL CRISIS: FOR A HUMANISTIC SUSTAINABILITY

Liton Lanes Pilau Sobrinho¹

INTRODUCTION

This paper aims to demonstrate the challenges of globalization in postmodernity, especially the current environmental crisis at a transnational level, reflecting on sustainability and its dimensions, pointing to a new perspective, which would be the proposal of a humanistic sustainability.

In the first part of this study, comments will be made about the challenges of globalization in the postmodern era, using authors who talk about the different facets of globalization, in order to have a broad understanding on the issue².

The second part is intended to analyze the current environmental crisis, which aims to instigate the reader to reflect on the need for urgent changes by people in relation to nature, so that the negative effects that cause the crisis can be resolved.

In the last part of this study, we intend to approach sustainability, a topic broadly discussed currently, its dimensions and to propose a humanistic perspective for sustainability, based on the model of the company of Brunello Cucinelli, an Italian entrepreneur who bets on humanist capitalism.

The methodology to be used includes the inductive method, being the techniques of the referent, category, operational concepts and bibliographic research applied.

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² CRUZ, Paulo Márcio; BODNAR, Zenildo; STAFFEN, Márcio Ricardo. Transnacionalización, sostenibilidad y el nuevo paradigma de derecho in siglo XXI. *Revista Opinión Jurídica*, 10, 159-174, jul – dec 2011.

1. CHALLENGES OF GLOBALIZATION

One of the great transformations that occurred at the end of the twentieth century was globalization, which brought significant changes to modern society, establishing new standards for the production, circulation of goods and products. Chacon³ points out that: Globalization from the late 20th century to the beginning of the 21st century inherits problems and solutions, applied or not to these problems, and adds others: human compatibility with the biosphere, conflicts and collaborations of central hegemonic transnational states, protagonists of History, and transnationalized peripheral states, wholly or partly anonymous in their ancillary cultures and civilizations, which are exploited episodically by internal and external domineering.

This differentiation is established by the processes of marginalization of production for the peripheral countries, causing a worsening of the global crisis, since, according to Santos⁴: We have been living a global crisis of structuration, the same ideological system that justifies the process of globalization as the only way accepts a vision of crisis and proposes a unique remedy in all places and circumstances, as if the crisis were the same for everyone, which shows that the crisis that causes concern is the financial one, having within, the real crisis cause, which involves the economic, political, social and moral sphere.

In this understanding, it can be seen that this process creates an idea of unity for the development process, because, as stated by Santos⁵: with globalization and through the empiricization of the universality that was possible through it, we are closer to building a Philosophy of related techniques and actions, which is also a form of knowledge, which, to Santos, is characterized as one of the stages of globalization.

Hessel and Morin⁶ warn that globalization does not necessarily show the face of goodness, but rather the face of perversity. The authors state that: We must be aware that globalization is at the same time the best and the worst that could have happened to humanity. In this sense, Santos⁷ talks about how the idea of Globalization is “sold”: In fact, if we wish to escape the belief that this world presented as such is true, and we do not wish to admit the permanence of its

³ CHACON, Vamireh. **Globalização e Estados Transnacionais**. Relações Internacionais no século XXI. São Paulo: Senac, 2002, p. 10.

⁴ SANTOS, Milton. **Por uma outra globalização: do pensamento único à conscientização universal**. Rio de Janeiro, São Paulo: Record, 2009, p. 33-36.

⁵ SANTOS, Milton. **Por uma outra globalização: do pensamento único à conscientização universal**. p. 33

⁶ HESSEL, Stéphane; MORIN, Edgar. **El camino de la esperanza: una llama a la movilización cívica**. Tradução de Rosa Alapont Calderaro. Barcelona: Ediciones Destino, 2012, p. 16.

⁷ SANTOS, Milton. **Por uma outra globalização: do pensamento único à conscientização universal**. p. 18.

misleading perception, we must consider the existence of at least three worlds in one. The first would be the world as they make us see it: globalization as a fable; the second would be the world as it is: globalization as perversity; and the third, the world as it can be: another globalization.

The idea established by Santos shares Hessel and Morin's thinking, that globalization has several faces. However, which one will be the best? And for whom? It can be noticed that it has to be good for everyone and not only for capital. In this way, we have Santos's positioning, who brings an initial idea of globalization as a fable. As stated by the author, seen as a fable, it holds up as truth a certain number of fantasies, the repetition of which, however, turns out to be an apparently solid basis for its interpretation (...). The ideological machine that supports the preponderant actions of today is made of pieces that feed each other and set in motion the essential elements to the continuity of the system. (...) few examples, collected from an endless list, allow us to ask whether, instead of the end of the ideology proclaimed by those who support the goodness of the present processes of globalization, we would not actually be faced with the presence of a massive ideologization, according to which the realization of the present world requires as an essential condition the exercise of fables⁸.

In this way, it is perceived that there is an idea of facilitation to the Market, since at a given moment people ascend to this new reality, but for how long? Rifkin⁹ states that:

El carácter físico de la economía se reduce. Si la era industrial se caracterizaba por la acumulación de capital y de propiedad física, en la nueva era lo estimable son las formas intangibles de poder que se presentan en paquetes de información y en activos intelectuales. El hecho es que se avanza en la desmaterialización de los productos físicos que durante largo tiempo fueron la medida de la riqueza en el mundo industrial.¹⁰

This demonstrates a change in the *modus operandi* of the capitalist system, which had the accumulation of capital and physical property as its purpose, and then it started to no longer have this dependence, but to be restrained to information and industrial property. The other side of globalization, that is, its perversity, is thus observed. Santos¹¹ affirms: In fact, for the vast majority of humanity, globalization is imposing itself as a factory of perversities. Increasing unemployment

⁸ SANTOS, Milton. **Por uma outra globalização**: do pensamento único à conscientização universal. p. 19-20.

⁹ RIFKIN, Jeremy. **La era del acceso**. La revolución de la nueva economía. Madrid: Paídos, 2002, p. 20.

¹⁰ Translation: The physical character of the economy is reduced. If the industrial age was characterized by the accumulation of capital and physical property, in the new era the intangible forms of power that are presented in packets of information and in intellectual assets are the estimable. The fact is that progress is made in the dematerialization of the physical products that, for a long time, were the measure of wealth in the industrial world (RIFKIN, Jeremy. **La era del acceso**. La revolución de la nueva economía. p. 20.

¹¹ SANTOS, Milton. **Por uma outra globalização**: do pensamento único à conscientização universal. p. 19-20

becomes chronic. Poverty increases and the middle classes lose quality of life. The average salary tends to be reduced. Hunger and homelessness are widespread on all continents. New diseases such as AIDS set in and old diseases, supposedly extirpated, make their triumphant return. Infant mortality remains, despite medical and informational advances. Quality education is increasingly inaccessible. Spiritual and moral evils are spread and deepened, such as selfishness, cynicism, corruption. The systemic perversity that is at the root of this negative evolution of humanity is related to the unbridled adherence to the competitive behaviors that currently characterize hegemonic actions. All these maladies are directly or indirectly imputable to the present process of globalization.

This process of globalization as perversity brings the true face of parasitic capitalism, which is effectively the way to take advantage at any cost. In the same way, Harvey¹² states:

Capital is not a thing but a process in which money is perpetually sent in search of more money. Capitalists - those who set this process in motion – take on many different personae. Finance capitalists look to make more money by lending to others in return for interests.

The author points out that, over time, the capitalists have sought to control labor by placing individual workers in competition with each other for the jobs on offer. They become tools through which capitalists manage the supply of labor in conjunction with the privileged sectors of the labor force that use racism and sexism to minimize competition¹³

Such a relationship between money/interest, labor/supply, tool/racism, can be established in a vision of codification, because they have a close relation of a binary code, being able to create a relation with the future of democracy, which to Luhmann¹⁴:

Aunque todo el mundo habla de democracia, faltan, sin embargo, concepciones lo suficientemente precisas sobre este código, debemos distinguir entre un valor positivo, <<gobierno>>, y un valor negativo, <<oposición>>. Aunque cada valor se refleja en el otro y existe una relación recíproca, la estructura es asimétrica – o, si quiere, simétrica y asimétrica a la vez. Su genialidad reside también en que evita el ejercicio conjunto de gobierno y oposición según el modelo de los cónsules romanos, y a pesar de todo es capaz de simultanear la estructura binaria. La oposición está también presente en todo lo que el gobierno hace, del mismo modo que la oposición se orienta siempre a partir del gobierno – ¿de quién si no? Precisamente porque no gobiernan ambos, porque no existe entonces ninguna imposición de un consenso, es instructivo el código¹⁵

¹² HARVEY, David. **The enigma of capital and the crises of capitalism**. São Paulo: Oxford: University Press, 2010, p. 40.

¹³ HARVEY, David. **The enigma of capital and the crises of capitalism**.

¹⁴ LUHMANN, Niklas. El futuro de la democracia. In: LUHMANN, Niklas. **Teoría política en el estado de bienestar**. Madrid: Alianza Editorial, 2002, p. 164.

¹⁵ Translation: Although everyone talks about democracy, there are, nevertheless, enough precise conceptions about this code, we must distinguish between a positive value, “government”, and a negative value, “opposition”. Although each value is reflected in

It is then verified, according to Luhmann¹⁶ communication as one of the forms used as a means within the process of globalization, in which a governing relationship serves to establish a consensus of what it truly ought to be. To Castel¹⁷:

No es para nada evidente que las formas más salvajes de instrumentalización del “capital humano” sean las más adaptadas a las exigencias del nuevo modo de producción. Si el trabajador está obligado a dar pruebas de flexibilidad, de polivalencia, de sentido de la responsabilidad, de espíritu de iniciativa y de capacidad de adaptación a los cambios, ¿puede comportarse de semejante modo sin un mínimo de seguridad y protecciones? ¿El trabajo está condenado a seguir siendo la principal “variable de ajuste” para maximizar los beneficios? Se empiezan a vislumbrar los primeros esbozos, incluso los medios de administración empresarial y patronales, de cierta toma de conciencia de los efectos contrarios a la productividad del burn out de los trabajadores, como también de los efectos destructivos en el seno de las culturas empresariales de reestructuraciones o de modos de administración exclusivamente regidos por lógicas financieras[...]. Por otro lado, tampoco es evidente que la relación de fuerzas tan globalmente desfavorable para los asalariados desde hace unos veinte años en un contexto dominado por el desempleo masivo siga siendo el mismo en el futuro, entre otras por razones demográficas.¹⁸

The process of exploitation established by globalization should bring other forms of reduction of social inequalities and not an increasing distance between the rich and the poor. So, in order to be able to establish a new vision of what this process should be (which should be the reverse), Santos¹⁹ proposes: Another globalization supposes a radical change of the present conditions, so that the centrality of all the actions is located in man. No doubt, this desired change will only occur at the end of the process, during which successive readjustments will be imposed. In the present circumstances, as we have already seen, centrality is occupied by money, in its most aggressive forms, pure money supported by ideological information, with which it is in symbiosis. Hence the brutal distortion of the meaning of life in all its dimensions, including work and leisure,

the other and there is a reciprocal relationship, the structure is asymmetric - or, if you like, symmetric and asymmetric at the same time. Its genius also resides in the fact that it avoids the joint exercise of government and opposition according to the model of the Roman consuls, and in spite of everything it is able to combine the binary structure. Opposition is also present in everything the government does, in the same way that the opposition always focuses on government - who else? Precisely because they do not both govern, because there is no imposition of a consensus, the code is instructive.

¹⁶ LUHMANN, Niklas. **El futuro de la democracia**. p. 164.

¹⁷ CASTEL, Robert. **La inseguridad social**: ¿qué es estar protegido? Buenos Aires: Manantial, 2004, p. 109-111.

¹⁸ Translation: It is not at all evident that the wildest forms of instrumentalization of “human capital” are the most adapted to the demands of a new mode of production. If the worker is obliged to give evidence of flexibility, versatility, a sense of responsibility, a spirit of initiative and ability to adapt to changes, can he/she behave in such a way without a minimum of security and protections? Is work condemned to remain the main “adjustment variable” to maximize profits? We begin to glimpse the first drafts, including the means of corporate and employer management, of a certain awareness of the effects of workers’ burnout against productivity, as well as of the destructive effects within the company’s restructuring business cultures or management modes exclusively governed by financial logic (...). On the other hand, it is not evident that the relationship of globally unfavorable forces for wage earners for about twenty years in a context dominated by mass unemployment will remain the same in the future, among others, for demographic reasons.

¹⁹ SANTOS, Milton. **Por uma outra globalização**: do pensamento único à conscientização universal. p. 147-148.

and reaching the intimate valuation of each person and the very constitution of the geographical space. With the prevalence of pure money as the first and last mover of actions, man turns out to be considered a residual element. In this way, the territory, the nation-state and social solidarity also become residual. The primacy of man assumes that he will be placed at the center of the worries of the world, as a philosophical data and as an inspiration to actions. In this way, the empire of compassion in interpersonal relationships and the encouragement of social solidarity, to be exercised between individuals, will be ensured. The new social landscape would result from abandoning and overcoming the current model and replacing it with another one, capable of guaranteeing the greatest number of essential needs to a dignified human life, relegating to a secondary position fabricated needs imposed by advertising and conspicuous consumption.

The relationship proposed by Santos aimed at a new condition of possibility, that is, another globalization, inclusive, that actually reduces social inequalities, creating forms of inclusion and non-exclusion.

Harvey²⁰ says: "At the base of the long supply chain that brings the means of production to the capitalist, there lurks a deeper problem of potential natural limits. Capitalism, like any other mode of production, relies upon the beneficence of nature", which currently goes through a process of agony, which is defrauded by the environmental crisis.

2. ENVIRONMENTAL CRISES

The environmental crisis that is plaguing mankind today is the result of disrespect of the human being in relation to the planet and its natural wealth. With postmodernity, cultural changes, imposed by the process of globalization and also by the market were established, which, according to Leff²¹

La crisis ambiental, como cosificación del mundo, tiene sus raíces en la naturaleza simbólica del ser humano; pero empieza a germinar con el proyecto positivista moderno que busca establecer la identidad entre el concepto y lo real. Mas la crisis ambiental no es sólo la de una falta de significación de las palabras, la pérdida de referentes y la disolución de los sentidos que denuncia el pensamiento de la posmodernidad: es la crisis del *efecto del conocimiento sobre el mundo*²².

²⁰ HARVEY, David. **The enigma of capital and the crises of capitalism**. p. 71.

²¹ LEFF, Enrique. **Racionalidad Ambiental**. La reapropiación social de la naturaleza. Mexico: Siglo XXI Editores, 2004, p. 09.

²² Translation: The environmental crisis, as a reification of the world, has its roots in the symbolic nature of the human being; but it begins to germinate with the modern positivist project that seeks to establish the identity between the concept and the real. But the environmental crisis is not only that of a lack of meaning of words, the loss of referents and the dissolution of the senses that denounces the postmodernity thinking: it is the crisis of the effect of knowledge on the world.

The aspects reported by the author are of extreme relevance, especially so that we can understand that we are not the only beings whose lives on Planet Earth are at risk. According to Capra²³:

We are faced with a whole series of global problems that are harming the biosphere and human life in alarming ways that may soon become irreversible. (...). They are systemic problems, which means that they are interconnected and interdependent. (p. 3). (...). Ultimately these problems must be seen as just different facets of one single crisis, which is largely a crisis of perception. It derives from the fact that most of us, and especially our large social institutions, subscribe to the concepts of an outdated world view, a perception of reality inadequate for dealing with our overpopulated, globally interconnected world. (...). This, in a nutshell, is the great challenge of our time: to create sustainable communities - that is to say, social and cultural environments in which we can satisfy our needs and aspirations without diminishing the chances of future generations.

The processes of degradation of the planet have reached a level of extreme concern for the very maintenance of human life, in urgent need of a paradigm change for the society that goes through a process of several crises. About such crises, Morin²⁴ explains:

- Ecological crisis: there is an increasing degradation of the biosphere that can lead to economic, social and political crises.
- Crisis of society: Westernization tries to end traditional societies. However, Western society itself is in crisis. Individualism destroys solidarity. There is a moral malaise at the center of material well-being.
- Demographic crisis: poor countries have high population density while rich countries see their population decline. In this scenario there is migration for better living conditions.
- Urban crisis: cities are swollen and polluted, subjecting people to extreme stress. Huge ghettos arise, both rich and poor. The walls advance and divide the cities.
- Crisis of the rural area: the rural area, in addition to suffering from the exodus, is influenced by monocultures and the use of pesticides, animal hormones, etc. They have limited food production, making nations dependent on food imports.
- Political crisis: there is a generalized inability to think about problems in a global way, to understand their complexity.
- Religious crisis: religions, which had once regressed, advance, divided by conservative and modern factions. They are incapable of promoting the discourse of universal fraternity.
- The development crisis: development is presented by globalization as a solution to the world's problems and involves social, political, economic and environmental issues.

From what we can observe, we are facing an epicenter of crises, but what is surely certain

²³ CAPRA, Fritjof. **The web of life**: a new scientific understanding of living systems. New York: Anchor Books, 1996, p. 04.

²⁴ MORIN, Edgar. **A Via**: para o futuro da humanidade. Rio de Janeiro: Bertrand Brasil, 2013, p. 26-27.

is that there is a need for change in defense of our own existence. On this, Chacon²⁵ says that: The defense of the Biosphere is at the heart of this matter for fairly obvious reasons; however, they were understood and attended too late. Planet Earth, consisting mostly of water and air, is the spacecraft on which humanity travels and its basis for travel in the cosmos. It must be objectively necessary to understand how human survival depends on the survival of other species and therefore on the common and necessary environment for all. The same is true of human rights, pleonastic expression and not obeyed even though necessary.

There is, therefore, the real need to establish a new perspective so that we can rebalance the harmonious and sustainable relations of coexistence on our Planet, in the face of the consequences established by the processes of globalization. Shiva²⁶ clarifies that:

Claramente, en esta nueva era en la que se defiende el medio ambiente en un contexto de globalización, se necesita una nueva solidaridad y cooperación entre los movimientos ecologistas del Sur y del Norte. Esa nueva solidaridad tendría en cuenta que el conflicto real en el tema de la pesca de arrastre del langostino no es entre las personas y las tortugas. La protección de las tortugas significaría la protección de las comunidades pesqueras tradicionales y su cultura de conservación mediante el refuerzo de las leyes medioambientales que protegen tanto al medio ambiente como a las personas. La campaña de los ecologistas estadounidenses para conseguir un veto a las exportaciones de langostino condujo, en última instancia, a la aceleración de la destrucción medioambiental. Dado que la desregulación en materia medioambiental forma parte esencial de la liberalización comercial, el «libre comercio» y la protección del medio ambiente no pueden coexistir. Si se quiere salvar a las tortugas, hay que poner fin al comercio destructivo y al empleo de tecnologías destructivas.²⁷

Another condition is possible to be established, however, as stated by Morin²⁸, development is not and cannot be infinite, it must be constituted by a series of growths, decrements and stabilizations. It is impossible for a finite world to grow infinitely". To Morin²⁹, the unleashing of unbridled planetary capitalism since the 1990s has amplified all the negative aspects of development". In this sense, it is inevitable to think of making changes in this process. As

²⁵ CHACON, Vamireh. **Globalização e Estados Transnacionais**. Relações Internacionais no século XXI. p. 11.

²⁶ SHIVA, Vandana. **Cosecha Robada**. El secuestro del suministro mundial de alimentos. Barcelona: Paidós, 2011.

²⁷ Translation: Clearly, in this new era in which the environment is defended in a context of globalization, a new solidarity and cooperation between the environmental movements of the South and the North is needed. This new solidarity would take into account that the real conflict in the subject of shrimp trawling is not between people and turtles. Protection of turtles would mean the protection of traditional fishing communities and their culture of conservation through the strengthening of environmental laws that protect both the environment and people. The campaign by US environmentalists to veto shrimp exports led, ultimately, to accelerating environmental destruction. Since environmental deregulation is an essential part of trade liberalization, 'free trade' and environmental protection cannot coexist. If we want to save the turtles, we must stop the destructive trade and the use of destructive technologies

²⁸ MORIN, Edgar. **A Via**: para o futuro da humanidade. p. 28.

²⁹ MORIN, Edgar. **A Via**: para o futuro da humanidade. p. 29.

Georgesco-Rougen³⁰ points out: The whole history of humanity proves, incontestably, that nature also plays an important role in the economic process and in the formation of economic value. In the author's point of view, it is time to accept this fact and to consider its consequences for the historical economy of humanity. Because some of these consequences take on exceptional importance for understanding the nature and evolution of the human economy.

For this reason, we must think in other ways for an effective harmonization and to determine a balance compensation to our subsistence, in order to achieve sustainability.

4. SUSTAINABILITY

The focus of the United Nations (UN)³¹ Conference in 2012 (Rio +20) was sustainable development, but it did not bring the expected evolution that Eco - 92 brought in the field of conventions. As a result of the economic crisis the focus shifted to the economic issue, which decided to innovate with the focus on the green economy, according to item 56 of the document "The future we want":

We affirm that there are different approaches, visions, models and tools available to each country, in accordance with its national circumstances and priorities, to achieve sustainable development in its three dimensions which is our overarching goal. In this regard, we consider **green economy** in the context of sustainable development and poverty eradication as one of the important tools available for achieving sustainable development and that it could provide options for policy making but should not be a rigid set of rules. We emphasize that it should contribute to eradicating poverty as well as sustained economic growth, enhancing social inclusion, improving human welfare and creating opportunities for employment and decent work for all, while maintaining the healthy functioning of the Earth's ecosystems.

On the one hand, this brings the green economy as innovation to achieve the sustainability dimensions, as a means to be reached for the development and concretization of the desired future. On the other hand, it should be noted that, as stated by Harvey³², the depletion and degradation of land and so-called natural resources do not make more sense in the long run than the destruction of collective labor powers, since both are at the root of the production of all kinds of nature. The green economy is an important instrument to solve the effects of environmental degradation, but there is no magic solution, but it is believed that environmental education can

³⁰ GEORGESCU-ROEGER, Nicholas. **O decrescimento**: entropia, ecologia, economia. São Paulo: Senac São Paulo, 2012, p. 56.

³¹ UNITED NATIONS. **The future we want.** 2012, p. 09. From https://www.un.org/disabilities/documents/rio20_outcome_document_complete.pdf. Retrieved on 10 April 2019.

³² HARVEY, David. The enigma of capital and the crises of capitalism.

establish a new connection to save the planet.

In relation to that, Boff's asserts: The central issue is not about saving the Earth. Earth saves itself and, if necessary, expelling us from its bosom. But how do we save ourselves and our civilization? This is a real issue that most of us shrug off, especially those dealing with macroeconomics. The low carbon economy, organic products, solar and wind energy, the reduction, as much as possible, of intervention in the rhythms of nature, the pursuit of the replacement of used goods, recycling, everything that comes under the name of green economy are the most sought after and widespread processes. It is recommended that this mode of production be imposed. Even so we should not delude ourselves and lose the critical sense. **It is talked about green economy to avoid the issue of sustainability which is in opposition to the current mode of production and consumption.** But deep down, these are measures within the same paradigm of nature domination. There is no green and non-green. All products contain, at various stages of their production, toxic elements, harmful to the health of the Earth and society. Today, using the Life Cycle Analysis method, we can view and monitor the complex interrelationships between the various stages of extraction, transportation, production, use and disposal of each product and its environmental impacts³³.

The critique established by Boff is reinforced by the words of Sousa Santos³⁴, who affirms that: the centrality and defense of the common goods of humanity as a response to the commodification, privatization and financialization of life is implicit in the concept of green economy. Sousa Santos³⁵ also brings a critique to this conception, as follows: the proposals they make - summarized in the concept of green economy - are scandalously ineffective and even counterproductive: to convince markets (always free, without any restrictions) on profit opportunities to invest in the environment, calculating environmental costs (externalities) and attributing market value to nature. In the fantasy world in which these documents move, the "market failures" are due only to the lack of information and as soon as they are overcome there will be no shortage of green investments and innovations. That is to say, there is no other way of relating between humans and nature than the market and the pursuit of individual profit. In short,

³³ BOFF, Leonardo. **A ilusão de uma economia verde**. 2011. From <https://leonardoboff.wordpress.com/2011/10/16/a-ilusao-de-uma-economia-verde/>. Retrieved on 10 April 2019.

³⁴ SOUSA SANTOS, Boaventura de. **Rio + 20 e a Cúpula dos Povos**. 2012, p. 3. From <http://www.boaventuradesousasantos.pt/media/Boaventura%20Rio+20%20e%20a%20Cupula%20dos%20Povos%20PT11%20de%20Fev2012.pdf>. Retrieved on 10 April 2019.

³⁵ SOUSA SANTOS, Boaventura de. **Rio + 20 e a Cúpula dos Povos**. p. 3.

a neoliberal orgy that, from the North, now seems to spread to emerging countries.

There is an urgent need for structural change, since nature should not be transformed into a product. Has the Market created environmental awareness, or it is just the creation of a new market niche? The advances created by technological innovations provide a new condition of possibility, which is to produce respecting the environment, where it becomes possible through the Third Industrial Revolution. Regarding this theme, Rifkin³⁶ mentions this will have such a significant impact in the 21st century and:

exactamente igual que en las dos revoluciones industriales previas, cambiará de manera fundamental todos los aspectos de nuestra forma de trabajar y de vivir (...). Los pilares de la TRI son concretamente cinco: 1) la transición hacia la energía renovable; 2) la transformación del parque de edificios de cada continente en microcentrales eléctricas que recojan y reaprovechen *in situ* las energías renovables; 3) el despliegue de la tecnología del hidrógeno y de otros sistemas de almacenaje energético en todos los edificios, y a lo largo y ancho de la red de infraestructuras, para acumular energías como las renovables, que son de flujo intermitente; 4) el uso de la tecnología de Internet para transformar la red eléctrica de cada continente en una «interred» de energía compartida que funcione exactamente igual que Internet (millones de edificios podrán generar localmente *-in situ-* pequeñas cantidades de energía y podrán vender los excedentes que reingresen en la red, compartiendo esa electricidad con sus vecinos continentales), y 5) la transición de la actual flota de transportes hacia vehículos de motor eléctrico con alimentación de red y/o con pilas de combustible, capaces de comprar y vender electricidad dentro de una red eléctrica interactiva continental de carácter inteligente³⁷

The paradigm change of the Rio + 20 document proposes a new look for sustainable development, which is the inclusion of the green economy, which will only be possible to implement through the mechanisms contained in the process of the Third Industrial Revolution proposed by Rifkin³⁸. To Schwab³⁹ this process is established in a fourth possibility, that of the Fourth Industrial Revolution. The author points out: The fourth industrial revolution will be as powerful, shocking, and historically important as the previous three. However, I have two major

³⁶ RIFKIN, Jeremy. **La Tercera Revolución Industrial**. Cómo el poder lateral está transformando la energía, la economía y el mundo. Barcelona: Paidós, 2012, p. 60.

³⁷ (...) just as in the two previous industrial revolutions, fundamentally change all aspects of our way of working and living (...). The pillars of the TRI are five: 1) the transition to renewable energy; 2) the transformation of the building sites of each continent into electric power plants that collect and reuse the renewable energies on-site; 3) the deployment of hydrogen technology and other energy storage systems in all buildings, and throughout the network of infrastructures, to accumulate energies such as renewables, which are intermittent; 4) the use of Internet technology to transform the electricity network of each continent into a shared energy inter-network that works exactly like the Internet (millions of buildings will be able to locally generate small amounts of energy locally and will be able to sell the surpluses that re-enter the network, sharing that electricity with their continental neighbors); and 5) the transition of the current transport fleet to electric motor vehicles with network power and/or fuel cells, capable of buying and selling electricity within a continental intelligent interactive electric network. (p. 60)

³⁸ RIFKIN, Jeremy. **La Tercera Revolución Industrial**. Cómo el poder lateral está transformando la energía, la economía y el mundo.

³⁹ SCHWAB, Klaus. **A quarta revolução Industrial**. Tradução de Daniel Moreira Miranda. São Paulo: Edipro. 2016, p. 17.

concerns about the factors that may limit the effective and cohesive achievement of the fourth industrial revolution. First, I believe that the required levels of leadership and understanding about the ongoing changes in all sectors are low when contrasted with the need, in response to the Fourth Industrial Revolution, to rethink our economic, social, and political systems. And second, the world lacks a coherent, positive, and common narrative describing the opportunities and challenges of the Fourth Industrial Revolution, an essential narrative if we are to empower a diverse group of individuals and communities and avoid a popular reaction to the ongoing fundamental changes.

The impacts that are to come as a result of the processes of technological transformation now underway establish a structural change with immeasurable consequences in the social, economic, environmental and also technological scope. Therefore, according to Schwab⁴⁰: The fourth industrial revolution will generate great benefits and, equally, great challenges. A particular concern is exacerbated inequality. The challenges posed by the increase of inequality are difficult to quantify, as the vast majority of us are consumers and producers. In this way, innovation and rupture will affect our living and well-being patterns both positively and negatively. The challenges created by the fourth industrial revolution seem to be concentrated mainly on the supply side - in the world of work and production. Over the last few years, the overwhelming majority of the more developed countries, as well as some fast-growing economies, such as China, have experienced a significant decline in their labor force as a percentage of GDP. Half of this decline is due to the reduction in the relative price of capital goods, the latter being caused by the progress of innovations (which obliges companies to substitute labor for capital).

The major problem will be to tackle these challenges of the fourth industrial revolution, in the sense that they are not progressing more and more towards increasing inequalities. In this sense, we could talk about a fifth paradigm for sustainable development, which is the advent of a Humanist Sustainability perspective, which Brunello Cucinelli, in his honorary doctorate thesis at the University of Perugia, deals with “Dignity as a form of the spirit”. On this, Pieretti⁴¹ points out:

Imprenditore di grande successo, ha ottenuto i più prestigiosi riconoscimenti sia in Italia che all'estero. In virtù della comunione spirituale con i grandi del passato, ha restituito sagacemente il Borgo di Solomeo al suo antico splendore, realizzando un'impresa ispirata ai grandi valori morali e

⁴⁰ SCHWAB, Klaus. **A quarta revolução Industrial**. p. 21.

⁴¹ PIERETTI, Antonio. **Laurea Honoris Causa a Cucinelli**. 2014, p. 5. From <http://www.triartis.it/laurea-honoris-causa-a-cucinelli/>. Retrieved on April 10, 2019.

civili che hanno segnato la storia dell'umanità. L'uomo, infatti, costituisce il centro focale e il termine di riferimento della sua attività. Quello a cui Cucinelli guarda, però, non è l'homo faber, proteso esclusivamente a raggiungere il profitto, ma l'homo sapiens impegnato a realizzare la propria identità. Recuperato nel volume totale delle sue potenzialità, quest'ultimo è valorizzato nella sua intelligenza e nella sua capacità creativa, oltre che nella disponibilità con cui si apre agli altri e concorre alla realizzazione del bene comune. È questa la visione filosofica cui si ispira l'azione produttiva di Cucinelli. La sua azienda pertanto, poiché è concepita in funzione di un umanesimo integrale, è riuscita a stabilire un giusto rapporto tra l'economia e l'etica, tra l'utile e il rispetto della dignità del lavoratore. Al tempo stesso, siccome fa della bellezza uno strumento di elevazione dello spirito e di riscatto dei rapporti umani dalla mercificazione, ha reintegrato l'uomo nella natura, facendone il suo custode privilegiato. Coniugando infine il gusto estetico con la valorizzazione dell'ambiente, ha dimostrato come il capitalismo, quando è opportunamente guidato, può assumere un volto umano e costituire un veicolo per favorire il rispetto reciproco e la pacifica convivenza⁴².

This is a differentiated model of the relations of an Italian businessman who is concerned with the dignity of being human, implementing a model different from that established in a process of globalization. Thus, in this proposal, he speaks of the dignity of the spirit in a society so individualistic and lacking in values. To Cucinelli⁴³:

Il sogno della mia vita, tuttavia, era quello di rendere l'attività lavorativa più umana, di dare dignità morale ed economica al lavoro, perché, credetemi, il lavoro spesso è piuttosto duro e ripetitivo. Ero però anche convinto che esso eleva la dignità dell'uomo. E di questo obiettivo ho fatto il vero scopo della mia vita. Così, pur aspirando a ottenere profitti, perché credo nel capitalismo (ogni impresa deve produrre profitti, perché è la ragione della sua esistenza), al tempo stesso volevo che tali profitti non arrecassero mai danni all'umanità, o il meno possibile. Mi ripromettevo, per metodo e per finalità, che i profitti fossero realizzati nel rispetto della dignità e del valore della persona umana, e perciò che fossero orientati a uno scopo morale. Aristotele considera l'etica come la parte superiore della filosofia e proprio in tal senso volevo agire. Non sapevo se vi sarei riuscito, ma mi impegnavo ad operare in questa direzione con tutte le mie forze. Questo è lo spirito, questo è l'intento del mio lavoro⁴⁴

⁴² Translation: A highly successful entrepreneur, he received the most prestigious awards both in Italy and abroad. By virtue of the spiritual communion with the greats of the past, he shrewdly restored the Borgo di Solomeo to his ancient splendor, creating an enterprise inspired by the great moral and civil values that have marked the history of humanity. In fact, man is the focal point and the reference term for his activity. What Cucinelli looks at, however, is not the homo faber, striving exclusively to achieve profit, but homo sapiens committed to realizing his/her own identity. Recovered in the total volume of his/her potential, the latter is valued by his/her intelligence and creative capacity, as well as by the availability with which he/she opens up to others and contributes to the realization of the common good. This is the philosophical vision that inspires the productive action of Cucinelli. His company therefore, since it is conceived as a function of an integral humanism, has succeeded in establishing the right relationship between the economy and ethics, between profit and respect for the dignity of the worker. At the same time, as he makes beauty an instrument of elevation of the spirit and redemption of human relations from commodification, he has reintegrated man into nature, making him/her its privileged guardian. Finally, combining the aesthetic taste with the enhancement of the environment, he demonstrated how capitalism, when properly guided, can assume a human face and constitute a vehicle to foster mutual respect and peaceful coexistence.

⁴³ CUCINELLI, Brunello. **La Dignità come forma dello Spirito**. Laurea magistrale honoris causa in Filosofia ed Etica delle relazioni. Università Degli Studi Di Perugia, 2010, p. 9-10.

⁴⁴ Translation: The dream of my life, however, was to make work more human, to give moral and economic dignity to the job, because, believe me, work is often quite hard and repetitive. But I was also convinced that it elevates the dignity of man. And I made the real purpose of my life out of this goal. Thus, while aspiring to gain profits, because I believe in capitalism (every company must produce profits, because it is the reason for its existence), at the same time I wanted these profits to never harm

It is possible to establish another way of reconciling capitalism as a form of accumulation of capital, with the use of profit for the implementation of respect for the dignity of the human person as a process of respect for morality. For this to happen, Cucinelli⁴⁵ points out four processes of using profit:

Per mettere in pratica quanto mi ero ripromesso, decisi di ripartire i profitti secondo quattro criteri, ai quali tuttora mi attengo. La prima parte è destinata all'impresa, a quell'impresa di cui io mi sento custode e non proprietario. Sì, ne sono il maggior azionista e il responsabile, ma unicamente nel senso di garantirgli solidità e stabilità. Ho sempre immaginato che, se ci si sente custodi e non proprietari, allora tutto assume un significato diverso, tutto diventa quasi eterno. La seconda è riservata alla mia famiglia, che vive in un piccolo paese e, pertanto, non ha necessità particolari. La terza, quella più importante, va ai ragazzi che mi aiutano nell'impresa, perché possano lavorare in un modo migliore e vivere in maniera conforme alle loro attese. La quarta, che ha altrettanta rilevanza delle prime tre, è la parte destinata ad "abbellire il mondo", un concetto che può riguardare qualsiasi tipo di iniziativa: aiutare qualcuno in difficoltà, ma anche restaurare una chiesa, costruire un ospedale, un asilo, un teatro, una biblioteca... E qui devo dire che mi ha ispirato la grandezza di mente di uno dei miei maestri, l'imperatore Adriano, quando dice: «Mi sento responsabile delle bellezze del mondo»⁴⁶

The main change established by Cucinelli is to give a new meaning to profit, which is established, firstly, for the enterprise, which is not considered owner but rather a guardian. Secondly, part of it to his family; thirdly, to divide between his workers and lastly, to embellish the world, such as assisting in the restoration of a library or helping a hospital.

A new way of thinking on a globalized and individualistic society may be possible through humanization, by the interest in the realization of a dignified condition for the human being. Questa è la filosofia di fondo dell'impresa. Volevo dar vita a un prodotto di grande artigianalità, di grande qualità e, spero, anche di autentica creatività⁴⁷. Cucinelli⁴⁸ says that:

humanity, or as little as possible. I promised myself, by method and by purpose, that profits should be made with respect for the dignity and value of the human person, and therefore that they should be oriented towards a moral purpose. Aristotle considers ethics to be the upper part of philosophy and precisely in this sense I wanted to act. I didn't know if I would have succeeded, but I committed myself to work in this direction with all my strength. This is the spirit, this is the intent of my work.

⁴⁵ CUCINELLI, Brunello. **La Dignità come forma dello Spirito**. Laurea magistrale honoris causa in Filosofia ed Etica delle relazioni. p. 10

⁴⁶ Translation: In order to put into practice what I had promised myself, I decided to share the profits according to four criteria, to which I still stick to. The first part is destined for the enterprise, for that enterprise of which I am the custodian and not the owner. Yes, I am the major shareholder and the person responsible, but only in the sense of guaranteeing it solidity and stability. I have always imagined that if one feels like a custodian and not an owner, then everything takes on a different meaning, everything becomes almost eternal. The second is reserved for my family, who lives in a small town and therefore has no special needs. The third, the most important one, goes to those who help me in the enterprise, so that they can work in a better way and live in accordance with their expectations. The fourth, which is just as important as the first three, is the part destined to "embellish the world", a concept that can relate to any kind of initiative: helping someone in need, but also restoring a church, building a hospital, a kindergarten, a theater, a library ... And here I must say that the greatness of the mind of one of my masters, the emperor Hadrian, inspired me when he says: "I feel responsible for the beauties of the world".

⁴⁷ Translation: This is the company's core philosophy. I wanted to create a product of great craftsmanship, of great quality and, I

Ho l'impressione che stia arrivando il secolo d'oro; si intravede l'aurora di un mondo migliore. A tutti auguro di poter condividere il desiderio del mio maestro Erasmo da Rotterdam: «O mio Signore, fammi vivere ancora una ventina di anni perché sta arrivando il secolo d'oro». Dobbiamo tornare a credere nei grandi valori: la Famiglia, la Religione e la Politica. Questi valori hanno guidato i nostri genitori, i nostri nonni e noi. Essi possono illuminare anche i nostri figli, purché siano disposti ad accoglierli e ad ispirarvi le loro scelte quotidiane. Miei stimati amici, credo di essere pieno di debiti di gratitudine e pertanto vi ringrazio dal profondo del cuore. Vorrei che tutti ci ricordassimo che l'anima è sempre la fonte dei nostri grandi pensieri⁴⁹.

As Cucinelli says, another dawn is about to come, the golden age, where a better world is possible. However, in order to realize this idea, it is necessary to change culture within a society marked by individualism, by the advances of the globalized market and the growth of inequalities. In this sense, it is observed that it is possible to construct a better reality, provided that there is the possibility of establishing the construction of a humanistic, human-based sustainability. And that human beings can live in harmony with the environment, for a concretization of a new social reality. According to Morin⁵⁰: Universalist humanism decomposes to the benefit of national and religious identities without having yet become a planetary humanism, which respects the indissoluble bond between human unity and diversity.

FINAL CONSIDERATIONS

One of the great challenges of postmodern society with the advent of globalization is precisely to establish new paths in the understanding of producing a fair sense for overcoming the inequalities faced by this process, which should focus not on creating an unattainable dream and even less the face of the perversity that has been plaguing society, but rather in the search for another globalization, inclusive and non-exclusive.

The environmental crisis is a reality present in new lives, this process exacerbated by the concupiscence of the markets in usurping the natural resources, has brought consequences more and more present in our everyday life, where natural resources are being contaminated by the

hope, also of authentic creativity.

⁴⁸ CUCINELLI, Brunello. **La Dignità come forma dello Spirito**. Laurea magistrale honoris causa in Filosofia ed Etica delle relazioni. p. 13.

⁴⁹ Translation: I have the impression that the golden century is coming; we can glimpse the dawn of a better world. To everyone I wish I could share the desire of my teacher Erasmus of Rotterdam: "Oh my Lord, let me live another twenty years because the golden century is coming". We must go back to believing in the great values: the Family, Religion and Politics. These values have guided our parents, our grandparents and us. They can also enlighten our children, provided they are willing to welcome them and to inspire their daily choices. My esteemed friends, I believe I am full of gratitude debts and therefore I thank you from the bottom of my heart. I wish we all remembered that the soul is always the source of our great thought.

⁵⁰ MORIN, Edgar. **A Via**: para o futuro da humanidade. p. 27.

voracity of the market in a rampant fight for profit. If we do not set a bitter limit, we may not have more time to try to save the planet Earth.

It is urgent that we establish a limitation in the face of the crisis announced, therefore one of the alternatives proposed comes through the establishment of a new condition of possibility so that we have the harmony between the pillars of sustainability reestablished.

Thus, it is particularly important to establish a humanistic sustainability, where economic sustainability is limited by environmental sustainability, social sustainability, technological sustainability and by another subsistence option that would only be possible through the implementation of sustainability with focus on the dignity of the human person.

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INVISIBLE POLLUTANTS: ENVIRONMENTAL, ECONOMIC AND SOCIAL IMPACTS AS A THREAT TO WATER QUALITY¹

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INTRODUCTION

The negative environmental, social and economic deterioration of water quality is reflected, among other aspects, in the loss of biodiversity, an increase in waterborne diseases, an increase in the cost of water treatment intended for domestic supply and industrial use, loss of productivity in livestock rearing and agriculture, a reduction in fish stocks, and a reduction in tourist, cultural and landscape values.

Brazilian society faces major challenges in the management of water quality, given that this is a cross-sector theme that requires a joint effort between the areas of water resources, the environment, sanitation, health, industry and agriculture. It is essential to promote reflection on the theme, through studies that will contribute to effective planning, based on measurable indicators, enabling efficient recovery and maintenance of the quality of Brazilian surface waters.

In view of this scenario, the **subject** of this study is a discussion of the environmental, social and economic impacts of invisible pollutants as a threat to water quality and sustainability.

The **objective** of this analysis is to discuss the environmental, social and economic impacts

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of invisible pollutants as a threat to water quality and sustainability. For this purpose, the work was divided into sections; first, it analyzes the importance of water quality for achieving sustainability. Next, it analyzes the analysis of the Brazilian legal system in relation to the water resources, and finally, it discusses the challenges of maintaining the water quality, faced with the negative environmental, social and economic impacts of invisible pollutants. This study is **justified** by the need to mitigate the degradation of water quality as a threat to achieving sustainability, and to review the indices for monitoring water, since conventional monitoring no longer meets the environmental needs. Moreover, there is a lack of research on the extent that the problem of water pollution can reach, bearing in mind that water pollution can even have trans-border implications, creating problems not only for the polluting country, but for neighboring countries too. Therefore, this is an issue that requires cross-border discussion⁴.

In terms of **methodology**, inductive logic was used, through a literature search, for use in the development of the research, including the Cartesian method for the data collection and in the final report, and the inductive method with the techniques of referent, category, operational concepts, bibliographic research, and annotation.

1. WATER: ESSENTIAL FOR ACHIEVING SUSTAINABILITY.

To achieve an ecologically balanced environment, proper management of the water resources is essential, since access to water is a fundamental right and an essential resource for a healthy quality of life. Among the natural resources, the importance of water is highlighted in the works of José Afonso da Silva⁵.

Water is the most abundant simple substance of the biosphere. It exists in liquid form (salty and freshwater), solid (freshwater) and steam (freshwater), oceans and seas, polar icecaps, glaciers, lakes, rivers, groundwater, and in the atmosphere, comprising approximately 1,500 million cubic kilometers. Around 97% of water is salty, consisting of oceans and seas; 2.25% is located at the polar icecaps and in glaciers, in solid form (ice) and the remaining 0.72% is in rivers, lakes, etc.; and there is a tiny amount in the atmosphere (0.03%). (...)

Water is a vital for human, animal and plant life. It is part of essential ecological processes, such as photosynthesis, chemosynthesis and respiration. It acts as a habitat and ecological niche for numerous animal organisms and plant species. Its mobility, power of solubility, density variation,

⁴ DUARTE, Gerusa M. **Águas transfonteiriças: qualidade e questões ambientais/econômicas com interesse ao desenvolvimento sul americano**. REVISTA DO INSTITUTO GEOLÓGICO USP: São Paulo. 31 (1/2), 53-65, 2010. Available at: <<http://ppegeo.igc.usp.br/pdf/rig/v31n1-2/v31n1-2a04.pdf>> Accessed in Feb. 2018.

⁵ SILVA, José Afonso da Silva. **Direito ambiental Constitucional**. São Paulo: Malheiros, 2011. p.126.

characteristic as thermo regulator, and especially its surface tension, are attributes that account for its extraordinary ecological function. (free translation)

Water is a natural resource of indispensable usefulness to society as a whole. However, it is very limited, considering its use for human consumption. Clean fresh water that is suitable and of adequate quantity is of vital importance for the survival of all living organisms, as well as for the proper functioning of ecosystems, communities and economies⁶. However, the quality of water resources worldwide is under increasing threat, as human populations are growing and industrial and agricultural activities are expanding, in a scenario in which climate changes can cause major changes in the hydrological cycle. Low quality water endangers human health and ecosystems, reduces the availability of drinking water and resources for other purposes, limits economic productivity, and reduces the opportunities for development.

According to the Agência Nacional de Águas – ANA⁷ [National Water Agency], In terms of water resources, the average contribution of the Amazon River basin, in the Brazilian territory, is around 133,000 m³/s (73% of the country's total). Meanwhile, the contribution of water flow from foreign territories to the hydrographic region is approximately 76,000 m³/s.

Region	Water Resources (%)
North	68.50
Central West	15.70
South	6.80
Southeast	10.80
Northeast	18.30

Source: Universidade da Água: www.uniagua.or.br

Barros⁸ believes that because Brazil holds this significant portion of all the world's fresh water, "Brazilians have the false idea that water is an unlimited mineral resource, and that therefore, it will always be available whenever it is needed".

Low quality water endangers human health and ecosystems, reduces the availability of drinking water and resources for other purposes, limits economic productivity, and reduces the opportunities for development. There is an urgent need for the global community (public and

⁶ BRASIL. **Agência Nacional de Águas (Brasil)**. Cuidando das águas: soluções para melhorar a qualidade dos recursos hídricos / Agência Nacional de Águas, Programa das Nações Unidas para o Meio Ambiente. 2. ed. -- Brasília: ANA, 2013. ISBN: 978-85-8210-018-9. p.18.

⁷ BRASIL. **Agência Nacional de Águas (Brasil)**. Cuidando das águas: soluções para melhorar a qualidade dos recursos hídricos / Agência Nacional de Águas, Programa das Nações Unidas para o Meio Ambiente. 2013. p.18.

⁸ BARROS, Airton Bodstein de; BARROS, Angela Maria Abreu de. **A difícil aplicabilidade da política de águas no Brasil**. in Inter Science Place – Revista Científica Internacional. Ano 2 – N.º 07, Maio/Junho, 2009. p.02.

private sectors) to unite and take up the challenge to protect and enhance the water quality of rivers, lakes, aquifers and taps. For this, greater commitment to is needed to preventing water pollution in the future, by treating contaminated waters and restoring the quality and health of rivers, lakes, aquifers, wetlands and estuaries. This will ensure that these waters meet a broader spectrum of needs of human beings and ecosystems, by adhering to the precepts of sustainability.

1.1 Sustainability⁹: a challenge for the future

The current paradigm of humanity is sustainability. This is the desire to articulate a new society capable of perpetuating itself over time, with decent conditions. Sustainability comprises not only the relationship between economic and environmental factors, but also human equilibrium, faced with other issues¹⁰.

Until the beginning of the 1970s, the prevailing world view was that the environment is an be an inexhaustible source of resources, and that any actions to exploit the nature would be unlimited. However, phenomena such as droughts, acid rain and thermal inversion have alerted society, bringing this environmental world view into question¹¹⁻¹².

In 2000, to analyze the major global problems, the UN established **8 Millennium**

⁹ Part of this research on Sustainability was developed in the work Teoria Jurídica e Transnacionalidade. SOUZA, Maria Cláudia S. Antunes; SOUZA, Greyce Kelly Antunes. **SUSTENTABILIDADE E SOCIEDADE DE CONSUMO: AVANÇOS E RETROCESSOS**. In: SOUZA, Maria Cláudia S. Antunes; ARMADA, Charles Alexandre Souza. TEORIA JURÍDICA E TRANSNACIONALIDADE. Vol. I. Itajaí: UNIVALI. 2014. p. 170-187.

¹⁰ FERRER, Gabriel Real. **Calidad de vida, medio ambiente, sostenibilidad y ciudadanía. Construimos juntos el futuro?** Revista NEJ - Eletrônica, Vol. 17 - n. 3 - p. 319 / set-dez 2012 321. Available at: www.univali.br/periodicos. Acess on February. 2018.

¹¹ SENADO FEDERAL. Da Conferência das Nações Unidas para o Meio Ambiente Humano, em Estocolmo, à Rio-92: agenda ambiental para os países e elaboração de documentos por Comissão Mundial sobre Meio Ambiente e Desenvolvimento. **Revista em discussão**. Available at: <http://www.senado.gov.br/noticias/Jornal/emdiscussao/rio20/a-rio20/conferencia-das-nacoes-unidas-para-o-meio-ambiente-humano-estocolmo-rio-92-agenda-ambiental-paises-elaboracao-documentos-comissao-mundial-sobre-meio-ambiente-e-desenvolvimento.aspx>. Accessed on: February 13, 2018.

¹² In 1972, as a consequence, the United Nations Conference on the Human Environment was held in Stockholm, and produced the Declaration on the Human Environment, establishing principles for international environmental issues, including human rights, management of natural resources, and prevention of pollution, giving rise to international environmental law, raising the world political culture with respect to ecology, and serving as the first invitation for the elaboration of new economic paradigm and civilization for those countries. The Stockholm meeting led to a time of observation and global alert about environmental degradation. The Declaration of the UN Conference on the Environment described it thus: "protecting and and improving the environment for current and future generations became a key goal for humanity". Thus, the Stockholm Conference created the World Commission on Environment and Development, inaugurating the environmental agenda, and enabling the start of the relationship between the environment and development, giving the first references to Sustainable Development, which at the time was known by the term "Ecodevelopment". These were the first steps towards green thinking. In 1983, the Brundtland Report, written by the head of the World Commission on Environment and Development, gave the following concept of Sustainable Development as development that: "meets the needs of the present without compromising the ability of future generations to meet their own needs". The report adds that: "a world in which poverty and inequality are endemic will always be prone to ecological crises, among others"¹², "sustainable development requires that societies meet human needs both by increasing productive potential and by ensuring equal opportunities for all". Report of the World Commission on Environment and Development. **The Brundtland report** "Our Common Future. Available at: <http://www.un.org/documents/ga/res/42/ares42-187.htm>. Accessed on: February 15, 2018.

Development Goals, - MDG, which in Brazil, are called *8 Jeitos de Mudar o Mundo* [8 Ways to Change the World] – and which must be met by all countries by 2015. They are: **goal 1**, to eradicate extreme poverty and hunger; **goal 2**, to achieve universal primary education; **goal 3**, to promote gender equality and empower women; **goal 4**, to reduce infant mortality; **goal 5**, to improve maternal health; **goal 6**, to combat HIV/AIDS, malaria and other diseases; **goal 7**, to ensure environmental sustainability; **goal 8**, to establish a global partnership for development¹³.

In relation to the Millennium Development Goals, Gabriel Real¹⁴ explains that not only the seventh, but all the goals are fully relevant to the ideal of sustainability, as together, they enable social harmony:

Sustainability is more related to the Millennium Development Goals, which govern the action of humanity. The objective is to ensure the environmental conditions that make it possible for human life on the planet. In contrast, the other two aspects of sustainability, social, which has to do with inclusion, how to avoid marginalization, and incorporate new models of governance, and the economic aspects, which are related to the growth and distribution of wealth. Sustainability says that is not enough to guarantee survival, but the requirements of the human condition to ensure a dignified life¹⁵. (Free translation)

According to Leonardo Boff¹⁶ it is not only a matter of introducing corrective measures to the system that created the current ecological crisis, but of educating for its transformation. This means overcoming the reductionist and mechanistic view that is still prevalent, and assuming a culture of complexity.

Gradually, humanity is becoming aware that it requires new values and behaviors to administer the natural laws harmoniously. Society needs a new destiny; one that is less violent, more noble, in which man distances himself from the tortuous paths, and for this, an attitude and behavioral change are needed; enabling the inter-relationships between everybody, and the ecodependence of all human beings, to become clear. For this, it is necessary to deal with

¹³ About the theme suggests to search in **the Millennium Goals**. Available at: <http://www.objetivosdomilenio.org.br/>. Access on February 2018.

¹⁴ FERRER, Gabriel Real. **El derecho ambiental y el derecho de la sostenibilidad**. In: PNUMA. Programa regional de capacitacion en derecho y políticas ambientales. 2008. Available at: <<http://www.pnuma.org/deramb/documentos>>. Access on February. 2018.

¹⁵ “La sostenibilidad se encuentra más bien relacionada con los Objetivos del Milenio, que son la guía de acción de la humanidad. El objetivo de lo ambiental es asegurar las condiciones que hacen posible la vida humana en el planeta. En cambio, los otros dos aspectos de la sostenibilidad, los sociales que tienen que ver con la inclusión, con evitar la marginalidad, con incorporar nuevos modelos del gobernanza, etcétera, y los aspectos económicos, que tienen que ver con el crecimiento y la distribución de la riqueza. Tienen que ver con dignificar la vida. La sostenibilidad nos dice que no basta con asegurar la subsistencia, sino que la condición humana exige asegurar unas las condiciones dignas de vida”. [Author’s translation]. FERRER, Gabriel Real. **El derecho ambiental y el derecho de la sostenibilidad**. In: PNUMA. **Programa regional de capacitacion en derecho y políticas ambientales**. 2008. Available at: <<http://www.pnuma.org/deramb/documentos>>. Accessed on: February 15, 2018.

¹⁶ BOFF, Leonardo. **Sustentabilidade: o que é, o que não é**. Petrópolis, RJ: Vozes, 2012. p.153.

environmental issues in a global and integrated way.

Freitas¹⁷ asserts that sustainability:

(...) it is the constitutional principle that determines, with direct and immediate effectiveness, the responsibility of the State and society for achieving solidarity of development, both material and immaterial, socially inclusive, durable and equitable, a clean, innovative, ethical and efficient environment, in order to ensure, preferably in preventive and cautious mode, at present and in the future, the right to well-being. (free translation)

Thus, worse than the human relationship with the environment is man's relationship with himself, since reaching a collective consensus on the absolute need for environmental preservation, sustainable development, and finally, sustainability, are not able to articulate a management that is able to make the measures toward these goals effective.

It is essential for humanity to be aware of the need of new values and behaviors in order to administer the natural laws in a harmonious way. Otherwise, the world's water resources will soon collapse, since the population growth, increased water consumption, and decrease in sources of drinking water on the planet will all contribute to this sad scenario. It is therefore necessary to contribute to the dissemination of knowledge, respect for the environment, the zeal for the planet's finite resources, all of which are among the objectives of sustainability.

1.2 Resources in Brazil: legal provision

The management of water in Brazil has been dealt with differently in different periods throughout history. From 1500 to 1940, water was considered an agricultural input; later, from 1950 to 1960, interest arose in its use in the industrial sector; from 1964 to 1985, the environmental movement was "deemed counterrevolutionary or subversive"; after this phase, due to international pressure, a ministry for environmental causes was created, and it was only after 1995 that water management become the responsibility of the Ministry of the Environment¹⁸.

The legal protection of water has advanced, presenting, briefly, the following trajectory, in accordance with Almeida¹⁹:

¹⁷ FREITAS, Juarez. **Sustentabilidade: direito ao futuro**. 2. ed. Belo Horizonte: Fórum, 2012. p.41.

¹⁸ BARROS, Ailton Bodstein de; BARROS, Angela Maria Abreu de. **A difícil aplicabilidade da política de águas no Brasil**. 2009. p.04/06.

¹⁹ ALMEIDA, Caroline Corrêa de. **Evolução histórica da proteção jurídica das águas no Brasil**. (2002, p. 2): Available at: <<http://jus.com.br/artigos/3421>>. Access on February. 2018.

The protection of the waters, as occurred with the environment, **started** indirectly with the publication of economic and health regulations, as well as treatment linked to the right to property and neighborhood (Brazilian Civil Code); it was raised to the category of a legally protected asset, and deserving of its own legislation (Código das Águas – Water Code). In a **second phase**, the reception of the environmental issue by the legal system was based on the utilitarianism of the assets; the fragmentation of the object protected, and the legislative apparatus. Finally, the need was recognized to protect the waters within the global environmental structure, based on an integrated management of the water resources with the environment, with a view to sustainable development and the maintenance of an ecologically balanced environment, as recognized by the CRFB. The turning point in the protection of water resources was the promulgation of the 9,433/97 – Lei das Águas (Water Act) (free translation, bold the author's)

It is recorded that even at the beginning of the last century, it can be affirmed that the legal professionals viewed the problem of fresh water as something limited to neighborhood disputes or its use for electrical energy. Even under the regulation of the Water Code of 1934, the focus given to the theme was always more from a perspective of private law rather than of public law. It is reiterated that the change in treatment only came with the Constitution of the Federative Republic of Brazil (1988), with the implementation of this new order becoming consecrated with the promulgation of Law 9,433/97, which instituted the National Policy on Water Hydric Resources²⁰ and created the National System for the Management of Water Resources²¹.

Finally, Law 9,984 of July 17, 2000 was published, which instituted the National Water Agency, the federal entity responsible for implementing the National Policy on Water Resources, and for coordinating the National Management System of these resources²².

It is important to emphasize that some changes were defined at administrative level, through CONAMA resolutions 20/86 and 06/87; the first deals with the classification of fresh water, brackish water and salt water of the national territory, defining the quality standards for each of these classes, according to the main uses designated for them; the second regulates environmental licensing of concession-holders for the exploration, generation and distribution of

²⁰ Created as a consequence of Law 9,443/97, known as the Lei das Águas [Water Act], the National Water Agency (ANA) has institutional and operational characteristics that differ slightly from those of other regulatory agencies. The law gave the Federal Executive Authorities the task of implementing the National System for the Management of Water Resources (Singreh) and the National Policy on Water Resources (PNRH). In addition, it created an authority responsible for issuing rights to use the water resources in rivers within the national territory, i.e. those that cross more than state, or those that border with other countries. To this end, Law 9,984/2000 created the ANA, which since then, has adopted actions directly or indirectly related to regulatory activities. The PNRH established five management instruments: plans for the water resources; the classification of water bodies, according to their prevalent uses; the granting of rights to use the water resources; charging for the use of water resources, and the Information System on Water Resources (Snirh). [BRASIL. **O Balanço das Águas é uma revista anual que resume as principais atividades da Agência Nacional de Águas** - V. 1 n. 1 – Financial year 2011].

²¹ FREITAS, Vladimir Passos de. **Águas – aspectos jurídicos e ambientais**. Curitiba: Juruá, 2008. p.19.

²² BRASIL. Agência Nacional de Águas (Brasil). **Cuidando das águas: soluções para melhorar a qualidade dos recursos hídricos** / Agência Nacional de Águas, Programa das Nações Unidas para o Meio Ambiente. 2013. p.18.

energy, and finally, no. 06/90, which regulates the production, importation, marketing and use of chemical dispersants used to control oil spills.

Although Brazil has a good legal framework to regulate its water resources, there is still inefficiency in complying with the current legislation for management and monitoring, considering that the instruments used as indicators of water quality do not contemplate the presence of various substances that are harmful to the environment.

2. THE CHALLENGES OF MAINTAINING WATER QUALITY IN LIGHT OF THE NEGATIVE ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACTS OF INVISIBLE POLLUTANTS.

A broad spectrum of human and natural processes affect the biological, chemical and physical characteristics of water, impacting their quality. Various human activities, such as agriculture, industry, mining, human waste disposal, population growth, urbanization and climate change, have an impact on water quality. Agriculture can cause contamination by nutrients and pesticides and increasing the salinity of the water. Contamination caused by excess nutrients has become one of the most widespread problems worldwide in terms of water quality, and it is estimated that the application of agrochemicals is already at more than two million tons per year. Each year, industrial activities throw between three hundred and four hundred million tons of heavy metals, solvents, toxic sludge and other effluents and solid wastes into the world's water systems²³.

Human activities, as well as natural processes, can change the physical, chemical and biological characteristics of the water, with specific implications for human health and the ecosystem. Water quality is affected by changes in levels of nutrients, sediment, temperature, pH, heavy metals, non-metallic toxins, persistent organic and agrotoxic components, and biological factors, among many others²⁴.

Each year, more people die due to the consequences of unsafe water than through from all forms of violence, including wars, with children under five years of age being the most impacted. Unfit or inadequate water, and the lack of treatment and adequate provision of domestic sewage

²³ BRASIL. Agência Nacional de Águas (Brasil). **Cuidando das águas**: soluções para melhorar a qualidade dos recursos hídricos / Agência Nacional de Águas, Programa das Nações Unidas para o Meio Ambiente. 2013. p.22.

²⁴ Carr, G.M. and J.P. Neary. (2008). **Water Quality for Ecosystem and Human Health**, 2nd Edition. United Nations Environment Programme Global Environment Monitoring System. Retrieved 14 July 2009, from http://www.gemswater.org/publications/pdfs/water_quality_human_health.pdf.

and hygiene, are the causes of approximately 3.1 per cent of all deaths - more than 1.7 million per year - and 3.7 per cent of years of lost life due to health problems considered as having the highest impact worldwide²⁵.

It is known that a wide range of other organic and inorganic contaminants also have direct and indirect impacts on human health. Metals such as mercury, copper and zinc occur naturally in the environment and at low concentrations, are essential for the proper functioning of the ecosystem and human health. However, prolonged exposure to high levels of these metals can have serious consequences for human, as they tend to bioaccumulate in the bodily tissues²⁶.

In 1962, in the work *Primavera Silenciosa*, Carson²⁷ was already warning about the use of chemical pesticides and pollution to the environment. The author states that: "Synthetic pesticides enter and remain in the bodies of fish, birds, reptiles and wild and domestic animals in universal form. They have been found in nearly all the major river systems and even in underground water courses flowing unseen through the Earth.

For the most part, this pollution is invisible, revealing its presence when hundreds or thousands of fish die, but more commonly, it is never detected. The chemicals used to ensure water purity do not have routine tests for these organic pollutants, nor any method to remove them, as was observed by Carson²⁸.

The current treatment system is still not prepared to detect and eliminate many of these harmful elements to the quality of water, and it is necessary to develop, invest and employ more specific treatment and complex techniques, otherwise, the environment will continue to suffer serious and irreversible damage.

Through the development of more sensitive methods, chemical substances, previously unknown, have begun to be detected, identified and defined in terms of their potential risks to the environment. This is the case of the so-called "invisible" contaminants, i.e. compounds used for decades, but which have only recently been assessed and monitored²⁹.

²⁵ BRASIL. Agência Nacional de Águas (Brasil). **Cuidando das águas**: soluções para melhorar a qualidade dos recursos hídricos / Agência Nacional de Águas, Programa das Nações Unidas para o Meio Ambiente. 2013. p.18.

²⁶ BRASIL. Agência Nacional de Águas (Brasil). **Cuidando das águas**: soluções para melhorar a qualidade dos recursos hídricos / Agência Nacional de Águas, Programa das Nações Unidas para o Meio Ambiente. 2013. p.43.

²⁷ CARSON, Rachel. **Primavera Silenciosa**. Trad. por Claudia San't Anna Martins. São Paulo: Gaia. 2010. p.29.

²⁸ CARSON, Rachel. **Primavera Silenciosa**. p.49.

²⁹ PEDROSO, R.C.R. **Desenvolvimento de Métodos de Análise por CLAE-UV para os antimicrobianos tetraciclina, sulfametoxazol e trimetoprima utilizando materiais à base de sílica e poliméricos como sistemas de pré-concentração**. Dissertação de Mestrado.

The term "invisible or emerging pollutant" can be used to define a special group of substances with peculiar characteristics due to its increasing level of use by society and their real potential for contamination, because they do not need to persist in the environment to cause negative effects³⁰. Invisible pollutants are any chemical compound present in a variety of commercial products such as medicinal products for veterinary use, food packaging, hygiene products, and pesticides released directly into water bodies or the sewerage network.

Invisible pollutants are of different classes of compounds, with large-scale applications, such as drugs (antibiotics, anti-inflammatories, analgesics and lipid regulators); beauty products (suntan lotions, antiseptics, insect repellents and fragrances); industrial chemicals (plasticizers, wood preservatives, cleaning products, anticorrosives, and gasoline additives); hormones and steroids; and pesticides³¹. In most cases, these compounds are not degraded by conventional methods of treatment (biological processes); thus, even after passing through treatment plants, they remain in free form in the environment, and can reach human drinking water. Potential risks to human health and the environment include dysfunctions in the endocrine and reproductive systems of humans and animals, miscarriages, metabolic disorders, and malignant cancers, as well as the induction of more resistant bacteria³². Due to the exposure of some aquatic species to these substances, morphological changes and extinction of certain species have been recorded³³.

These chemicals are increasingly present in the world's water systems, and when they reach the environment, they cause damage to the ecosystem and human health. Their propagation in seas, rivers and reservoirs is a result of the growth of cities and new industrial processes³⁴. However, it is time to take a global stance, faced with the challenge of protecting and improving the quality of the planet's water reserves, preventing pollution; treating polluted water,

Instituto de Química, Universidade Federal do Rio Grande do Sul. Porto Alegre, 2007. p.34.

³⁰ REIS FILHO, R. W.; LUVIZOTTO-SANTOS, R. ; VIEIRA, E. M. **Poluentes Emergentes como Desreguladores Endócrinos**. Journal Of The Brazilian Society Of Ecotoxicology, v. 2, 2007. p.283-288.

³¹ ABREU, Fernando Girardi de; BRANDÃO, João Luiz Boccia. **Impactos e desafios futuros no monitoramento dos contaminantes emergentes**. XX Simpósio Brasileiro de Recursos Hídricos. Available at: https://www.abrh.org.br/sgcv3/UserFiles/Sumarios/a8514ef31d822864a33bf9d119d91095_9148e05313c2aa67326457f676c03fbf.pdf. Acess on February. 2018.

³² REIS FILHO, R. W.; LUVIZOTTO-SANTOS, R. ; VIEIRA, E. M. **Poluentes Emergentes como Desreguladores Endócrinos**. 2007. p.283-288.

³³ ARIAS, David Gutierrez. **Contaminantes emergentes, seus efeitos no meio ambiente e desafios para novos mecanismos de purificação de água**. Available at: http://www.ib.unicamp.br/dep_biologia_animal/sites/www.ib.unicamp.br/dep_biologia_animal/files/CONTAMINANTES%20EMERGENTES%20PURIFICA%C3%87%C3%83O%20%C3%81GUA.PDF. Acess on February. 2018.

³⁴ ARIAS, David Gutierrez. **Contaminantes emergentes, seus efeitos no meio ambiente e desafios para novos mecanismos de purificação de água**. Acess on February. 2018.

and even eliminating invisible pollutants and restoring ecosystems, mitigating the environmental impacts caused by the action of man.

FINAL CONSIDERATIONS

The management of water quality is one of the major challenges facing society, and requires a joint effort between the areas of water resources, environment, sanitation, health, industry and agriculture. It is essential to establish an effective planning, based on measurable indicators that will enable efficient recovery and the maintenance of the quality of surface waters.

Waters designated as potable and used by the population, are contaminated by a type of pollutant that is invisible to the naked eye, difficult to detect, has serious consequences, and is not regulated in Brazil. This constitutes a major concern, as it is present in domestic sewage, which unlike industrial effluents, does not have a high concentration of a particular compound, but lower concentrations of different compounds, making it more complex to understand and treat.

The instruments and tools used do not match the current reality for the proper management of water resources, bearing in mind the gaps and failures since their elaboration and implementation, through to the joint functioning of powers at the different levels.

Low quality water endangers human health and ecosystems, reduces the availability of drinking water and resources for other purposes, limits economic productivity, and reduces the opportunities for development.

While there are treatment technologies that produce water that only just meets the current regulatory standards, these do not ensure the proper removal of many invisible contaminants, including antibiotics and hormones; the supply system of purified water is at risk, causing serious damage to the environment. The problem of invisible pollutants is far from resolved, and the environmental consequences are unpredictable. There have been studies on the potential carcinogenic effects and endocrine deregulation directly affecting living beings.

These contaminants are not included in routine monitoring programs the Environmental and health bodies; neither are they inserted in the norms or legislation for environmental control. This situation is critical because, we do not yet know all the impacts on the Environment, especially in the long term.

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CLIMATE URGENCY AND THE EMERGENCY OF PARADIPLMACY: A BRIEF ESSAY ON ENVIRONMENTAL GOVERNANCE AND SUSTAINABILITY IN WARM TIMES

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INTRODUCTION

In addition to the Covid-19 pandemic which now afflicts everyone and has claimed more than 1 million lives, it has become apparent, for some years now, in different parts of the world that the heat has been exceeding all limits historically recorded.

The climate change caused by global warming threatens several species of living beings, including the human species in an intergenerational perspective and is already causing damage in several parts of the world.

As if this were not enough, fires devastate important areas of vegetation cover in Brazil, especially in the North and Midwest regions of the country, spreading smoke across several States of the federation depending on the winds and further increasing the feeling of dryness and heat.

Recently, in the South of the country, the concern was also with the imminent invasion of hungry grasshoppers clouds from Argentina depending on the arrival or not of cold fronts (cold and rain) coming from the South Pole.

Hot and strange times to claim the prompt and firm response of all nations which no longer seem to find in the national States the same capacity for reaction neither the political will on the part of many heads of State.

Times that open space to other levels of power and seem to reinforce the importance of paradiplomacy, specially in environment issues.

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But, after all, what place should be taken by this paradiplomacy that emerges with ever greater strength and what type of governance can it bring about in the face of climate urgency, as well as in view of so many other environmental problems and challenges in scenario that already has sustainability as new value and paradigm? Who, in short, is legitimate to claim and act under the canopy of this instrument in these gaps of power that arise in the urgency of the hours?

Bringing some answers to these questions is one of our purposes in this essay. The other is to open up the field for new and more in-depth debates and research around the themes covered in it.

To this end, this chapter is divided into three parts. The first part exposes the climate issue urgency. The second one discusses the emergence of paradiplomacy on the path to environmental governance. The third and final part seeks to demonstrate why it is sustainability that will serve as a beacon and a new paradigm for this journey.

The method used in the research phase and in the preparation of the work was inductive; the research technique was that of bibliographic review, carried out with searches in books, articles and news related to the covered topics.

1. CLIMATIC URGENCY

2019 was the second hottest year in history, according to data published by NASA³ and by Copernicus Climate Change Service and Copernicus Atmospheric Monitoring Service, both meteorological services linked to the European Union.⁴ In fact, the last decade has been the hottest in history, as pointed out by NASA, the United States Oceanic and Atmospheric Administration and the UK Meteorological Office⁵.

At the end of October 2020, the world would also know that - in addition to the fires in Brazil, from Pantanal to the Amazon Forest⁶ -, for the first time since records began, the main

³ 2019 was the second hottest year on record, says NASA. **Isto É**, Jan 16 2020. Available on: <<https://istoe.com.br/2019-foi-o-segundo-ano-mais-quente-ja-registrado/>>. Access on: Jan 20 2020.

⁴ GARCIA, Rafael. 2019 was the second hottest year in history, say European scientists. **O Globo**, Jan 08 2020. Available on: <https://oglobo.globo.com/sociedade/ano-de-2019-foi-segundo-mais-quente-da-historia-dizem-cientistas-europeus-24176732>. Access on: Jan 20 2020.

⁵ LAST decade was the hottest on record. **Terra**, Jan15 2020. Available on: <https://www.terra.com.br/noticias/ultima-decada-foi-a-mais-quente-ja-registrada,3073aa2c0893165c748132ea26cbcf5a2tr9n2x3.html>. Access on: Jan 20 2020.

⁶ BRAZIL in Flames: from Pantanal to Amazon, destruction does not respect borders. **Greenpeace Brasil**. Blog, Sept. 16 2020. Available on: <https://www.greenpeace.org/brasil/blog/brasil-em-chamas-negando-as-aparencias-e-disfarcando-as-evidencias/>.

Arctic sea ice nursery in Siberia had not yet started to freeze in late October. A delay in the annual freeze in the Laptev Sea caused by the prolonged heat in northern Russia and by the mixing with the Atlantic waters. That's because the ocean temperature in the area recently rose to more than 5° C above average⁷.

Climate change is not only an area of scientific study but also a subject of public and political debate. After all, an inadequate tackling of the issue may affect natural systems, energy production, transportation, industry, government policies and even population planning, distributive equity and individual freedoms and responsibilities⁸.

It turns out that, unlike some other more localized environmental problems, climate change really calls into question the human existence and other species on Earth⁹.

Parallel to this, life has become precipitously urban in the past two centuries. In 1800, only 3% of the world population lived in cities while the projection is that in 2050 city dwellers will be 75% of the world population. Since 2007 there are more people in the cities than in the countryside¹⁰. And increasingly, the global effects of environmental degradation and climatic fluctuations are immediately and directly felt and experienced in cities.

The high tide that invaded Venice in the first half of November 2019 soon accounted for millions of Euros in losses¹¹.

At the end of 2019, about eleven thousand scientists endorsed research that confirms that the world is facing climate urgency. The study which was released by BBC News and is based on forty years of collected data states that governments are failing to deal with this crisis and expressly mentions "incalculable human suffering"¹².

Access on: Sept. 17 2020. [our translation of headlines]

⁷ WATTS, Jonathan. Alarm as Arctic sea ice not yet freezing at latest date on record: delayed freeze in Laptev Sea could have knock-on effects across polar region, scientists say. **The Guardian**. Thu 22 Oct. 2020. Available on: <https://www.theguardian.com/world/2020/oct/22/alarm-as-arctic-sea-ice-not-yet-freezing-at-latest-date-on-record>. Access on: Oct. 22 2020.

⁸ MASTRANDREA, Michael D.; SCHNEIDER, Stephen H. **Preparing for Climate Change**. Cambridge: MIT Press, 2010. p. 4

⁹ HILL, Pamela. **Environmental protection: what everyone needs to know**. New York: Oxford University Press, 2017. p. 128.

¹⁰ JACOBSEN, Gilson. **Risk society, poverty and urban development: beyond sustainable cities**. In: SOUZA, Maria Cláudia Silva Antunes de; JACOBSEN, Gilson (Org.). *Law, Urban Development and Environment*. Itajaí: Univali, 2016. p. 43-62. Electronic Resource. p. 54. Available on: <http://siaibib01.univali.br/pdf/Direito,%20desenvolvimento%20urbano%20e%20meio%20ambiente.pdf>. Access on Oct. 13 2019.

¹¹ Historic flood leaves Venice partially submerged; see videos and photos. **Gazeta do Povo**. Curitiba. Available on: <https://www.gazetadopovo.com.br/mundo/enchente-historica-veneza/>. Access: on Nov. 14 2019. [our translation of headlines]

¹² McGRATH, Matt. Climate change: 'Clear and unequivocal' emergency, say scientists. **BBC News**. Londres. Science & Environment. Available on: <https://www.bbc.com/news/science-environment-50302392>. Access on: Nov. 06 2019. Our translation (in the original: "untold human suffering").

Researchers who previously used the terms *ecological crisis* and *climate crisis* now prefer to refer to *ecological emergency* and *climate emergency*, to designate the worrying concerns arising from their studies¹³. They use *emergency*, therefore, as a synonym for a serious, dangerous situation, critical moment; but for the limited purposes of this essay, we prefer to call it *urgency* when we are referring to the climate, reserving the expression *emergency* for the act or effect of emerging as paradiplomacy emerges as an alternative or hope in the field of transnational governance as will soon be seen

In fact, it is precisely because the issue of climate urgency touches directly on the human and ecological systems¹⁴ that this reality demands a multilevel spatial confrontation from the local to the global.

Something very similar, with due thematic proportions, as seen in the months of March and April 2020 when the virus that caused Covid-19 had already spread throughout the world with tens of thousands of fatal victims mainly in the northern Italy, in Spain and in the North American State of New York: governors and mayors took on a major role with daily press conferences always more awaited than those announced by the presidents or prime ministers of each country.

In Brazil, the situation was no different from the point of view of the protagonism assumed by states and municipalities in relation to social isolation and the prohibition of commercial and people circulation, mainly in the largest cities in the country, contrary to what the President Jair Bolsonaro personally announced on national television. The federative issue did not take long to reach the Supreme Federal Court which on April 15, 2020 a few days after the preliminary decision of the Rapporteur in favor of the federated entities, formed a majority in the same sense of that monocratic decision through its first virtual Plenary in history, broadcast live on YouTube. The majority of the Brazilian Supreme Court decided, in summary, that governors and mayors can decree social isolation in the eagerness to face the pandemic¹⁵.

And it is precisely this emergence of the paradiplomacy in our day that the next sub-chapter will deal with. After all, the extreme events that the human species itself has given rise to -

¹³ Take, for example, Rei, Cunha and Setzer, who already use the expression “emergency” instead of “crisis” or “problem” to designate this sense of urgency since 2013. REI, Fernando; CUNHA, Kamyla Borges da; SETZER, Joana. Environmental paradiplomacy: Brazilian participation in the international climate change regime. **Revista de Direito Ambiental**, São Paulo, v. 71, p.265-286, jul.-set. 2013.

¹⁴ MASTRANDREA, Michael D.; SCHNEIDER, Stephen H. **Preparing for Climate Change**. Cambridge: MIT Presse, 2010. p. 4 [our translation of headlines]

¹⁵ YOUTUBE. Available on: <https://www.youtube.com/watch?v=ioFBEmG5o3s>. Access on: April 15 2020.

and of which it is now beginning to fall victim - also make new forms of governance¹⁶.

2. THE EMERGENCE OF PARADIPLOMACY FOR ENVIRONMENTAL GOVERNANCE

National States alone do not seem to be able to cope with the complex environmental challenges that afflict the planet; indeed, they seem to no longer be able to cope with even the most elementary assignments that have always been customary for them.

The Human Rights Courts themselves (Inter-American, European and African)¹⁷ have considered environmental degradation as an offensive and violating human rights conduct given that only in an ecologically balanced and healthy environment the human rights can be developed.

It is not by chance that multilateral organizations, such as the UN, evoke the need for global action in favor of protecting the environment through strategies such as those contained in the Millennium Goals and the Sustainable Development Goals, arising from the 2030 Agenda.

In several parts of the world, subnational governments, especially within cities, as well as states, in the case of federations (remembering that in Brazil the federation is not only a union of states but also of municipalities, in addition to the federal district - article 1 of CRFB / 1988), they have resorted to the so-called paradiplomacy as a governance tool for the promotion of sustainable development.

It remains to be seen whether states and municipalities have legitimacy, in terms of transnational governance, to raise the banner of sustainable development and to speak out against the unrestrained environmental deterioration at any level; or whether they should be restricted to regional and local plans in this confrontation.

Now, the effects of environmental degradation, as has long been known, have the potential to cross geopolitical boundaries. An environmental damage produced in a given location can trigger consequences in an absolutely different geographical area. Therefore it is global phenomenon, par excellence, that also requires global action or reaction, emphasizing that the proper use of the *global* term involves a wide variety of agents or players and at different levels or

¹⁶ LYNCH, Amanda H.; VELAND, Siri. **Urgency in the anthropocene**. Cambridge/MA: MIT Press, 2018. p. 125.

¹⁷ CAVEDON-CAPEDEVILLE, Fernanda. Ecological jurisprudence in the Human Rights Courts: contributions to the greening of human rights. In: LEITE, José Rubens Morato (Coord.). **A Ecologização do Direito Ambiental Vigente: rupturas necessárias**. Rio de Janeiro: Lumen Juris, 2018. p. 185-221 [our translation of headlines].

scales¹⁸, including necessarily, of course, the local level.

As the confrontation of ecological issues demands a multiplicity of actors or agents at different levels or scales, from local to global, an adequate model of articulation and cooperation is necessary¹⁹. Therefore, a global governance is required, in which a world formed by Nation-States governs itself without a central government.²⁰

When this network of cooperative articulation aims solely or has the exclusive competence to act on issues related to the protection of nature, a specific aspect of global governance is evidenced, called environmental governance, an expression used to encompass the many institutions and authority structures engaged with the environmental issue²¹.

If, traditionally, the processes of global governance were limited to national governments and multilateral organizations, at the same time new actors and agents, at multiple levels, have emerged and have also led this cooperative articulation process in the face, mainly, of transnational demands. This new global governance is multifaceted, as it must be able to see the phenomena under the sociological, political aspects and even territorial divisions and hierarchies²².

Thus, as a result of the globalization dynamics, the necessary proactive role of subnational governments emerges with no room for passivity.²³

The proactive interaction of subnational governments in the processes of global governance, especially in relation to environmental governance, can find in paradiplomacy a vigorous instrument, corresponding to the “practice of diplomacy by non-central level governments”²⁴ that is, international activities of subnational governments or non-state players²⁵.

However, for this eagerness to take place, subnational governments need to be seen and

¹⁸ VEIGA, José Eli da. **To understand Sustainable Development**. São Paulo: Editora 34, 2015. p. 36.

¹⁹ VEIGA, José Eli da. **To understand Sustainable Development**. São Paulo: Editora 34, 2015. p. 35.

²⁰ VEIGA, José Eli da. **World Disgovernment of Sustainability**. São Paulo: Editora 34, 2013. p. 13 [our translation of headlines].

²¹ BOSSELMANN, Klaus. **Sustainability Principles: transforming Law and Governance**. Tradução de Phillip Gil França. São Paulo: Revista dos Tribunais, 2015. Título original: The Principle of Sustainability: transforming Law and Governance. p. 219.

²² VEIGA, José Eli da. **To understand Sustainable Development**. São Paulo: Editora 34, 2015. p. 36.

²³ MENDES, José Fernando Gomes. **The Future of Cities** Rio de Janeiro: Interciência, 2014. p. 03.

²⁴ GOMES FILHO, Francisco. **The subnational paradiplomacy in Brazil: a policy analysis of international action of border state governments in Amazon**. Thesis (Doctorate) - Course on International Relations, Institute of International Relations, University of Brasília. Brasília: 2011. p. 48. Available on http://repositorio.unb.br/bitstream/10482/9379/1/2011_FranciscoGomesFilho.pdf. Access on: Jan. 20 2020 Our translation (in the original: “practice of diplomacy by non-central level governments”).

²⁵ ZERAOU, Zidane. Para entender la paradiplomacia. **Desafíos**, Bogotá, v. 28, n. 1, p. 15-34, jan. 2016. p. 21. Available on: <https://revistas.urosario.edu.co/xml/3596/359643444001/>. Access on: Jan. 20 2020 [our translation of headlines].

recognized as stakeholders on the international operating stage, where different players make decisions²⁶ and in this scenario, the perception is sharpened that the environmental paradiplomacy will play an increasingly important role towards sustainable development²⁷.

For this reason, the scope of global environmental governance must also involve member states and municipalities, since that aim will not be possible without the participation of subnational governments in favor of the implementation of public policies²⁸.

Bridging all of this, the idea of sustainability emerges, more and more vigorously, as it will be examined below in the third and final sub-chapter of this essay.

3. SUSTAINABILITY IN THE BACKGROUND: NEW VALUE AND PARADIGM

The right of and to sustainability must be synonymous with hope in relation to a better global future society because, as explained by Ferrer²⁹, it is founded in favor of the human species as a whole and with the ambition to solve global problems considering that the new transnational demands, such as the climate urgency, impact everyone, regardless of where they are or where they were born. Even because, Cruz, Dantas and Oliviero remember, “We all live on this planet, that is, there is no place for us to escape or hide. The entropic bill that the human species has generated affects the entire planet and threatens with the possibility of our extinction”³⁰.

The paradox is that, as Freitas warns, it seems that humanity is in danger, not exactly the planet, which will certainly remain orbiting the Sun for millions of years³¹. For this very reason, sustainability becomes a true species right, in the expression coined by Ferrer, Glasenapp and

²⁶ SETZER, Joana; REI, Fernando; CUNHA, Kamyla Borges. Rio + 20 and the institutional framework for sustainable development: the role of subnational governments in global environmental governance. *Revista de Direito Internacional*, Brasília, v. 9, n. 3, p. 129-140, 8 jun. 2012. p. 137. Available on: <http://dx.doi.org/10.5102/rdi.v9i3.1817>. Access on: Jan. 20 2020.

²⁷ SETZER, Joana; REI, Fernando; CUNHA, Kamyla Borges. Rio + 20 and the institutional framework for sustainable development: the role of subnational governments in global environmental governance. *Revista de Direito Internacional*, Brasília, v. 9, n. 3, p. 129-140, 8 Jun. 2012. p. 130. Available on: <http://dx.doi.org/10.5102/rdi.v9i3.1817>. Access on: Jan. 20 2020.

²⁸ SETZER, Joana; REI, Fernando; CUNHA, Kamyla Borges. Rio + 20 and the institutional framework for sustainable development: the role of subnational governments in global environmental governance. *Revista de Direito Internacional*, Brasília, v. 9, n. 3, p. 129-140, 8 jun. 2012. p. 137. Available on: <http://dx.doi.org/10.5102/rdi.v9i3.1817>. Access on: Jan. 14 2020.

²⁹ FERRER, Gabriel Real. Calidad de vida, medio ambiente, sostenibilidad y ciudadanía: ¿Construimos juntos el futuro? *Novos Estudos Jurídicos*, Itajaí, v. 17, n. 3, p. 310-326, dez. 2012. p. 320. Available on: <https://siaiap32.univali.br/seer/index.php/nej/article/view/4202>. Access on: Oct. 10 2019 [our translation of headlines].

³⁰ CRUZ, Paulo Márcio; DANTAS, Marcelo Buzaglo; OLIVIERO, Maurizio. Law, Transnationality and Empathic Sustainability. In: ROSA, Alexandre Moraes da et al (Org.). *Beyond the National State* [electronic resource]: dialoguing with Paulo Márcio Cruz thought. Florianópolis: Emais, 2018, p. 7-26. p. 24. Our translation (in the original: “We all live on this planet, that is, there is nowhere to escape or hide. The entropic bill that the human species has generated affects the entire planet and threatens with the possibility of our extinction”).

³¹ FREITAS, Juarez. Sustainability: right to the future. 4. ed. Belo Horizonte: Fórum, 2019. p. 25.

Cruz³². According to these authors, we are faced with a paradigmatic legal principle which imposes a duty of solidarity in relation to future generations and which establishes guidelines and obligations for individuals and public power. It is thus situated in the sphere of human rights³³.

It can even be maintained that the current paradigm³⁴ of humanity is sustainability, as Ferrer³⁵ concludes, because it is through it that a new society will be able to perpetuate itself in time and in conditions worthy of life.

For Veiga³⁶, sustainability is a new value; while Freitas maintains that it is a true fundamental principle in the Brazilian normative system, as extracted from the thesis defended by him³⁷.

The collective behavior of unsustainable consumption, in turn, typical of the so-called consumer society³⁸, in the expression coined by Baumann³⁹, pressures and exacerbates the risks to the maintenance of natural ecosystems that make human life on the planet possible⁴⁰.

Furthermore, there is a threefold dimension⁴¹ in relation to sustainability, insofar as an imaginary tripod is based on it: an environmental pillar, a social pillar⁴² and an economic pillar⁴³.

³² FERRER, Gabriel Real; GLASENAPP, Maikon Cristiano; CRUZ, Paulo Márcio. Sustainability: a new paradigm for Law. **Novos Estudos Jurídicos**, Itajaí, v. 19, n. 4, p. 1433-1464, dez. 2014. p. 1459. Available on: <https://siaiap32.univali.br/seer/index.php/nej/article/view/6712>. Access on: Oct. 10 2019.

³³ FERRER, Gabriel Real; DANTAS, Marcelo Buzaglo; BONISSONI, Natammy Luana de Aguiar. The internationalization process of environmental protection and human rights. **Novos Estudos Jurídicos**, Itajaí, v. 19, n. 4, p. 1340-1363, dez. 2014. p. 1359-1360. Available on: <https://siaiap32.univali.br/seer/index.php/nej/article/view/6708>. Access on: Oct. 10 2019.

³⁴ FERRER, Gabriel Real; GLASENAPP, Maikon Cristiano; CRUZ, Paulo Márcio. Sustainability: a new paradigm for Law.. **Novos Estudos Jurídicos**, Itajaí, v. 19, n. 4, p. 1433-1464, dez. 2014. p. 1440. Available on <https://siaiap32.univali.br/seer/index.php/nej/article/view/6712>. Access on: Oct. 10 2019.

³⁵ FERRER, Gabriel Real. Calidad de vida, medio ambiente, sostenibilidad y ciudadanía: ¿Construimos juntos el futuro? **Novos Estudos Jurídicos**, Itajaí, v. 17, n. 3, p. 310-326, dez. 2012. p. 319. Available on <https://siaiap32.univali.br/seer/index.php/nej/article/view/4202>. Access on: Oct. 10 2019.

³⁶ VEIGA, José Eli da. **Sustainability**: the legitimation of a new value. 2. ed. São Paulo: Editora Senac São Paulo, 2011. p. 13;153 [our translation of headlines].

³⁷ FREITAS, Juarez. Sustainability: a new hermeneutic prism. **Novos Estudos Jurídicos**, Itajaí, v. 23, n. 3, p. 940-963, dez. 2018. p. 941. Available on: <https://siaiap32.univali.br/seer/index.php/nej/article/view/13749>. Access on: Oct. 10 2019.

³⁸ SOARES, Josemar Sidinei; SOUZA, Maria Cláudia da Silva Antunes de. Consumer society and consumerism: existential implications in the dimension of sustainability. **Direito & Desenvolvimento**, João Pessoa, v. 9, n. 2, p.304-318, ago-dez 2018. p. 305.

³⁹ BAUMANN, Zygmunt. **Consumption Life**: transformation of people into merchandise. Tradução de Carlos Alberto Medeiros. São Paulo: Zahar. 2008.

⁴⁰ FERRER, Gabriel Real. Calidad de vida, medio ambiente, sostenibilidad y ciudadanía: ¿Construimos juntos el futuro? **Novos Estudos Jurídicos**, Itajaí, v. 17, n. 3, p. 310-326, dez. 2012. p. 312. Available on: <https://siaiap32.univali.br/seer/index.php/nej/article/view/4202>. Access on: Oct. 10 2019.

⁴¹ FERRER, Gabriel Real. Calidad de vida, medio ambiente, sostenibilidad y ciudadanía: ¿Construimos juntos el futuro? **Novos Estudos Jurídicos**, Itajaí, v. 17, n. 3, p. 310-326, dez. 2012. p. 320. Available on: <https://siaiap32.univali.br/seer/index.php/nej/article/view/4202>. Access on: Oct. 10 2019.

⁴² FERRER, Gabriel Real. Calidad de vida, medio ambiente, sostenibilidad y ciudadanía: ¿Construimos juntos el futuro? **Novos Estudos Jurídicos**, Itajaí, v. 17, n. 3, p. 310-326, dez. 2012. p. 322. Available on: <https://siaiap32.univali.br/seer/index.php/nej/article/view/4202>. Access on: Oct. 10 2019.

Thus, the achievement of sustainability goes beyond the preservation and conservation of natural assets and resources and the search for the maintenance or regeneration, as much as possible, of essential ecosystem services. Hence, establishing sustainability as a horizon means prioritizing the promotion of life quality in all its breadth⁴⁴, because it must always be taken into account that the human being also “is a creature of this world, which has the right to live and be happy and, in addition, has a special dignity”⁴⁵. For this reason, one cannot fail to consider the effects of environmental degradation and the current model of development in relation to people's lives, from the perspective of integral⁴⁶ and comprehensive ecology.

There is, however, no way to be confused or to pretend to use sustainability and sustainable development as synonymous expressions. Sustainability, in the metaphor used by Souza and Armada⁴⁷, is a project to be achieved globally, while sustainable development may prove to be the way to make it possible. This (sustainable development) would be the way to achieve that (sustainability).

Sustainability, then, is about the future; and that's exactly what makes it such a difficult goal to achieve⁴⁸. In fact, “although much has already been done to protect the environment, much more is needed in the light of where we are today - [...]”⁴⁹.

And the emergence of new players with a leading role in international society stems directly from the sum of two main factors, associated with each other: globalization and the

⁴³ FERRER, Gabriel Real. Calidad de vida, medio ambiente, sostenibilidad y ciudadanía: ¿Construimos juntos el futuro? **Novos Estudos Jurídicos**, Itajaí, v. 17, n. 3, p. 310-326, dez. 2012. p. 321. Available on: <https://siaiap32.univali.br/seer/index.php/nej/article/view/4202>. Access on: Oct. 10 2019.

⁴⁴ VIEIRA, Ricardo Stanziola; TAVARES, Elisa Goulart. Sustainability law: reflections on the ecological crisis marked by the easing of environmental standards and the realization of social and environmental human rights. **Revista Eletrônica Direito e Política**: Itajaí, v.14, n.1, jan.-abr. 2019. p. 256. Available on: <https://siaiap32.univali.br/seer/index.php/rdp/article/view/14235/8028>. Access on: Oct.10 2019 [Our translation of headlines].

⁴⁵ FRANCISCO, Papa. **Carta encíclica Laudato Si' sobre o cuidado da casa comum**. Roma, 24 mai. 2015. Available on: http://w2.vatican.va/content/francesco/pt/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html. Access on: Oct. 14, 2019.

⁴⁶ FRANCISCO, Papa. **Carta encíclica Laudato Si' sobre o cuidado da casa comum**. Roma, 24 mai. 2015. Available on: http://w2.vatican.va/content/francesco/pt/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html. Access on Oct. 14, 2019.

⁴⁷ SOUZA, Maria Cláudia da Silva Antunes de; ARMADA, Charles Alexandre Souza. Sustainable Development and Sustainability: epistemological evolution in the necessary differentiation between concepts. In: SOUZA, Maria Cláudia da Silva Antunes de; ARMADA, Charles Alexandre Souza (Org.). **Sustainability: a multidimensional and contemporary look**. Itajaí: Univali, 2018. p. 25-42. Electronic resource. P. 38 Available on <https://www.univali.br/vida-no-campus/editora-univali/e-books/Documents/ecjs/E-book%202018%20SUSTENTABILIDADE%20UM%20OLHAR%20MULTIDIMENSIONAL%20E%20CONTEMPOR%C3%82NEO.pdf>. Access on: Oct. 26, 2020.

⁴⁸ HILL, Pamela. **Environmental protection: what everyone needs to know**. New York: Oxford University Press, 2017. p. 10.

⁴⁹ HILL, Pamela. **Environmental protection: what everyone needs to know**. New York: Oxford University Press, 2017. p. 201. Our translation (in the original “Although much has been done to protect the environment, much more is needed in light of where we are today - [...]”).

urgency resulting from global environmental problems, such as climate change, as pointed out by Setzer, Rei and Cunha⁵⁰. And that is why the environmental paradiplomacy has and will play an increasingly important role for sustainable development⁵¹.

Overcoming such global challenges requires exactly strategic alliances between public and private players, as actions in favor of a joint solution tend to be preferable to individual actions⁵².

If the climate is really a common good, of all and for all⁵³, nothing more natural than everyone should have the ethical and legal co-responsibility to undertake effective and decisive actions aiming at its adequacy.

Of course, the role of central governments is essential, but it has been shown to be insufficient in view of the magnitude of that good and the global interest at stake, whose protection requires the action of state entities, subnational governments and non-governmental bodies.

And it is the indivisibility of demands of this magnitude that generates a kind of duality (global-local)⁵⁴ and it raises a call for co-responsibility and the need for action at all levels of social organization.

FINAL CONSIDERATIONS

In view of the climatic urgency, as seen, and other serious and distressing environmental

⁵⁰ SETZER, Joana; REI, Fernando; CUNHA, Kamyla Borges. Rio + 20 and the institutional framework for sustainable development: the role of subnational governments in global environmental governance. **Revista de Direito Internacional**, Brasília, v. 9, n. 3, p. 129-140, 8 jun. 2012. p. 133. Available on: <http://dx.doi.org/10.5102/rdi.v9i3.1817>. Access on: Oct. 08, 2019 [Our translation of headlines].

⁵¹ SETZER, Joana; REI, Fernando; CUNHA, Kamyla Borges. Rio + 20 and the institutional framework for sustainable development: the role of subnational governments in global environmental governance. **de Direito Internacional**, Brasília, v. 9, n. 3, p. 129-140, 8 jun. 2012. p. 130. Available on: <http://dx.doi.org/10.5102/rdi.v9i3.1817>. Access on: Oct. 08 2019.

⁵² ODDONE, Nahuel; VÁZQUEZ, Horacio Rodríguez; ORO, Martín J. Quiroga Barrera. Paradiplomacia local y transfronteriza como un instrumento de gobernanza ambiental em el Mercosur y la Unión Europea: una descripción comparada. **Civitas**, Porto Alegre, v. 18, n. 2, p.332-350, 7 ago. 2018. p. 346. Disponível em: <http://dx.doi.org/10.15448/1984-7289.2018.2.29690>. Access on: Oct. 09 2019.

⁵³ FRANCISCO, Papa. **Carta encíclica Laudato Si' sobre o cuidado da casa comum**. Roma, 24 mai. 2015. Available on: http://w2.vatican.va/content/francesco/pt/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html. Access on: Oct. 14 2019.

⁵⁴ SETZER, Joana; REI, Fernando; CUNHA, Kamyla Borges. Rio + 20 and the institutional framework for sustainable development: the role of subnational governments in global environmental governance. **Revista de Direito Internacional**, Brasília, v. 9, n. 3, p. 129-140, 8 jun. 2012. Centro de Ensino Unificado de Brasília. p. 131. Available on: <http://dx.doi.org/10.5102/rdi.v9i3.1817>. Access on: Oct. 08, 2019 [Our translation of headlines].

issues (the pandemic generated by Covid-19 can be seen in this way), the paradiplomacy breaks out, in different parts of the world, as a governance tool to promote sustainable development.

In addition to multilateral organizations, such as the UN, subnational governments, such as states and municipalities, also assume the role and begin to claim legitimacy to act in the gaps of power that arise from the insufficient performance of national or central States in favor of the environment.

Hence the growing clamor for environmental governance, with a multiplicity of players and at various levels from local to global which always requires articulation and cooperation.

Sustainability, a new value and paradigm, is a lighthouse or major objective of this path which admits neither omission nor passivity since it connects everyone - and each one - through the ethical-legal commitment of intergenerational solidarity.

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MULTILEVEL ENVIRONMENTAL TRANSNATIONAL GOVERNANCE

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INTRODUCTION

A planetary spatial vocation of environmental law is permitted in cases that cause damage and disasters that go beyond the geographic dimensions of the nation state. There is a legitimate interest of all mankind in adopting preventive and harm-mitigation measures and strategies that are cross-border. Therefore, the protection of the environment, in its multiple dimensions, over decades and legal documents is now understood as a common good, which is why it poses new challenges to the postulates of sovereignty, territoriality and state authority.

The recent burning in the Amazon also serves as a striking example of the transnational mobilization of countries, institutions and people in favor of this common humanitarian axiological agenda. After all, the defense and protection of the Amazonian natural resources matter and concern the entire planet as an intergenerational common good.

From this background, the problem that emerges in this article is the analysis of the adequacy and sufficiency of the current model of classic governance in the mold of a nation state, endowed with pretended sovereignty, as some political and military leaders still boast. In a general sense, globalization promotes a radical change in the powers in operation at the most diverse levels, including ideological, institutional and normative power, with the respective social interactions that always find new arrangements.

To meet the objectives of this paper, multilevel transnational governance is understood not only to decentralize state actions and their relationship with civil society actors, but also to

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transnational relations, that is, beyond the nation state. The focus is on the highest possible empowerment, at all scales, so that the synergistic and multiplied performance of various actors can produce more consistent results.

The approach begins with the analysis of Amazonian burning and the challenges of transnational environmental governance; discusses the state crisis and state sovereignty as concepts that require redefinition and, finally, defends the need for a multilevel environmental transnational governance, as a joint strategy for promoting sustainability in a global perspective and for defending and protecting the Amazonian natural resources.

Regarding the methodology, the deductive method was used for the development of this research, operationalized by the operational concept's techniques and the bibliographic research.

1. AMAZON BURNING AND THE CHALLENGES OF GOOD ENVIRONMENTAL GOVERNANCE

One of the main threats to the Amazon region, directly related to deforestation, is the severe burns that occur continuously in the area, with serious damage to the rich local ecosystem.

In this year 2019, the severity of the burns has been even higher than in recent years. According to information from the American Space Agency (NASA), 2019 reached the worst burn rate since 2010. Considering a text posted in its Twitter account, "there is a noticeable increase in outbreaks of large, intense and persistent fires along the main highways in central Amazonia of Brazil". This conclusion is also confirmed by data from INPE (National Institute for Space Research), which also uses data from active fires recorded by NASA Modis sensors to monitor burns³.

The empirical study about the tropical forests of South America complements this understanding and demonstrates the need to address the lack of regional cooperation on climate adaptation in the Amazon region⁴. This study provides a view of how a regional strategy could result in the provision of water security as a common public good. It follows, however, that this strategy has not yet materialized.

Due to the inertia of the South American countries on the subject of the preservation of

³ G1. Nasa diz que 2019 é o pior ano de queimadas na Amazônia brasileira desde 2010. **GLOBO**, 2019. Retrieved from <https://g1.globo.com/natureza/noticia/2019/08/23/nasa-diz-que-2019-e-o-pior-ano-de-queimadas-na-amazonia-brasileira-desde-2010.ghtml>

⁴ TIGRE, Maria Antonia. Building a regional adaptation strategy for Amazon countries. **International Environmental Agreements: Politics, Law and Economics**. 2019. Retrieved from <https://doi.org/10.1007/s10784-019-09443-w>

their Amazonian biome, in June of this year of 2019 an agreement was signed between the Mercosur countries with the European Union, to encourage sustainable practices, especially with regard to respect for the preservation of the Amazon. For the Europe, the free trade agreement would result in the abolition of high customs duties on its manufactured products that are exported to the countries of South America. On the other hand, agricultural products from the Mercosur countries would have easier access to the European market.

In this sense, it is important to highlight that, according to research conducted by INPE⁵, the number of outbreaks of fire detected in 2019 peaked 48% over the previous year. Figures show an increase from 100,804 in 2018 to 149,177 this year.

Immediately thereafter, Harstad⁶ believes that today's accelerating deforestation in the Amazon is the most urgent problem on the planet, not only because we must conserve it in order to limit global warming to 2 degrees Celsius, but because this rainforest is the most biodiverse place in the world and, still home to several indigenous peoples.

Burning thus puts in question the health of the Amazon ecosystem. This is because if the forest shrinks to a critical threshold, it becomes too small to generate its own subsistence.

Precisely because of the large repercussions of burning on the international scene, under the trade agreement signed between Mercosur and the European Union, the chapter on sustainable development provides that countries cannot weaken their levels of environmental protection to stimulate trade and attract investments.

In this bias is that the free trade agreement not only aims profit, but mainly the sustainable development of the Mercosur countries, especially regarding the Amazon Rainforest. This agreement prescribes the need to include in these texts the premise that economic development should not occur at the expense of the environment.

It is so important that the Mercosur countries value the preservation of the Amazon and its sustainable development, that several components of the European Union, in view of the events narrated, expressly express that they do not wish to sign a trade deal with countries that do not respect their biome.

⁵ INSTITUTO NACIONAL DE PESQUISAS ESPACIAIS, INPE. **Programa Queimadas**: tabela anual comparativa de países - últimos anos no intervalo de 01/Jan até 09/Out. 2019. Retrieved from <http://queimadas.dgi.inpe.br/queimadas/portal-static/situacao-atual/>

⁶ HARSTAD, Bard. Trade deals could combat Brazil's Amazon deforestation, **Financial Times**. 2019. Retrieved from <https://www.ft.com/content/5f123000-bf5e-11e9-9381-78bab8a70848>

Austria, Netherlands and France these are some of the countries that have already expressed their disagreement with the way the current Brazilian government has been dealing with fires and their consequences. This is because the environmental issue is central to the conclusion of the agreement.

About the environment, it is the political choices and decisions of the present that will define the future. Brazilian environmental policy also influences the decision-making of investors and financiers, especially members of the European Union regarding the EU-Mercosur agreement, depends on their importance for the conservation of South American forests for a sustainable future.

Harstad⁷ Professor of Economics at the University of Oslo, points out:

It is insufficient for the EU to require a chain of certified products. This is because non-certified goods would simply be consumed on the domestic market or exported to buyers who care less about these environmental issues. Instead, trading partners must establish a guarantee as soon as possible, providing that the trade agreement with Mercosur countries - including Brazil - will not be ratified or continued unless conservation policies are reintroduced, laws are satisfied or indigenous rights are respected, according with the development of transparent and reliable monitoring.

Therefore, there are ways for Brazilian exporters to become allies - not enemies - in the fight against deforestation. However, it is known that Brazilian agribusiness, widely and unrestrictedly supported by the figure of its President Jair Bolsonaro, profits, precisely, by signaling the “development” of the Amazon.

Therefore, Brazil resists continuing to develop its conservation payment agreements with Germany and Norway, for example. This is because when these deals fail, other potential donors are discouraged from investing in Amazonian environmental conservation.

Still, regarding the Amazon, the President, at the UN General Assembly⁸ said that it is a “fallacy” to affirm that the Amazon is the lung of the world and a heritage of humanity: “They questioned what is most sacred to us: our sovereignty!”

In this sense, Jair Bolsonaro ratified his understanding that any initiative supporting the preservation of the Amazon rainforest must be treated in full respect of Brazilian sovereignty.

⁷ HARSTAD, Bard. Trade deals could combat Brazil's Amazon deforestation, **Financial Times**. 2019. Retrieved from <https://www.ft.com/content/5f123000-bf5e-11e9-9381-78bab8a70848>

⁸ UNITED NATIONS, UN. Organização das Nações Unidas. **Agenda 2030, Objetivo 16**. 2019. Retrieved from <https://nacoesunidas.org/pos2015/ods16/>

2. NATION-STATE CRISIS AND THE CLASSICAL CONCEPTION OF SOVEREIGNTY

The deconstruction and requalification of institutes and categories, forged for other historical moments and different demands, practically integrate the theoretical common sense of jurists and internationalists.

However, what is intended in this study is not only to denounce its theoretical and practical insufficiency, but, above all, to identify and resignify remaining and indispensable forms of local action, especially regarding the protagonism of the states.

From this perspective, the relevance of the local and immediate action of the instituted public powers is not disputed, including the application of administrative and criminal sanctions with the management of the classical institutionality.

Hall and Biersteker⁹ point out that public intervention is not sufficient to realize with the cogent force in the state authority, especially with regard to international environmental matters: "Being public, however, does not imply that a state or public institution should be engaged in or exercising authority, even though they may participate in its recognition - of authority - at times".

From the perspective of environmental protection, the territory is one of the elements considered by the classical conception as originating and inseparable from the nation state, which undoubtedly generates more incompatibilities.

According to Appadurai¹⁰ "territory can be seen as a crucial problem in the contemporary crisis of the nation-state or, more precisely, in the crisis of the relationship between state and nation". It also emphasizes the same author that territory - once a commonsense justification for nation-state legitimacy - has become the focal point of the sovereignty crisis in a transnational world.

The diffusion of power relations, together with the complete reconfiguration of the most diverse bonds that take place on new scales, also requires the rethinking of the idea and the very function of sovereignty today.

⁹ HALL, Rodney Bruce & BIERSTEKER, Thomas J.. **The Emergence of Private Authority in Global Governance**. Cambridge University Press, 2009, p. 35.

¹⁰ APPADURAI, Arjun. Soberania sem Territorialidade: notas para uma geografia Pós Nacional. In: **Novos Estudos CEBRAP**, 1997, p. 49.

The entangled relations between local companies, multinationals, public and private institutions, as well as multilateral organizations, generate a diffusion of bonds that can no longer be trapped within the regulatory framework of states. The market also plays strong in this arena and does not always allow it to be domesticated by traditional command and control mechanisms of the established institutionality.

On the other hand, there remains an essential and indispensable reserve for the nation-state, since only the nation-state can act as an articulator of solidarity on all levels through the imposition of duties and the recognition of multidimensional rights.

In a similar vein, the position of Koh¹¹ is advanced, considering that the process of transnationalization of law is embodied in the complementarity of action of the actors responsible for activating the process (transnational norm entrepreneurs) with governmental norm sponsors, developed in conjunction with transnational/global normative standards.

Thus, the law, as an instrument of protection and guarantee, must face diverse problems, such as conflicts of uniformity and national differences, competition from global-national-local norms, the attribution of competences, the regulation of capital and the north. global governance, the promotion of human rights, environmental preservation and planetary sustainability criteria, the fight against criminal networks, in short, a new and effective way of limiting an extremely fluid power, as is the current global order¹²

Such essential reserve protagonism is also salutary due to the greater fluidity between the actions of the state and the market, resulting from contemporary capitalism. About this term, prescribe Costa and Godoy¹³:

The globalization process provides changes in the world of consumption through strategies that reorganize the ways of accessing an increasing diversity of products through the extension of credit and the materialization of urban equipment articulated through networks formed around centers of interest that unite specific forces market share. These socio-economic and cultural metamorphoses that go beyond their functional and objective appearance, contribute to the identification of a new period that we call *contemporary capitalism*.

In this perspective, new multilevel transnational governance models must operate in two

¹¹ KOH, Harold Hongju. **Why Transnational Law Matters**. Faculty Scholarship Series, 1793. 2006. Retrieved from http://digitalcommons.law.yale.edu/fss_papers/1793

¹² STAFFEN, Márcio Ricardo. **Interfaces do direito global**. 2. Ed. Rio de Janeiro: Lumen Juris, 2018, p. 48.

¹³ COSTA, Pedro Henrique & DE GODOY, Paulo Roberto Teixeira. **O capitalismo contemporâneo e as mudanças no mundo do consumo**. 2019. Retrieved from <http://www.ub.edu/geocrit/-xcol/330.htm>

directions: one that overcomes the classic and outdated National state model by creating new spaces for governance; and the other that aggregates, promotes and coordinates the local action of states with global effects based on widely agreed axiological guidelines, such as the environment. Of course, these governance strategies can also occur in the context of private relations, provided that the minimum axiological guidelines that reflect true humanitarian achievements are respected.

This is also Real Ferrer's¹⁴ proposal, when it teaches that it is not a matter of establishing a planetary republic, but rather the search for institutional mechanisms that ensure the effective materialization of solidarity, at the same pitch of inspiration for new transnational rights, as is the case with environmental law.

Biermann¹⁵ analyzes international governance in its general context. Its proposal is that a "horizontal" norm of environmental adaptability needs to be institutionalized in the fields of global governance in order to achieve an effective outcome.

Still at this juncture, Biermann¹⁶ points out:

Until now, the scientific community has not sufficiently reflected on one of the main trends in global environmental governance that is becoming increasingly relevant to global climate policy: the transnationalization of environmental governance.

Dingwerth and Pattberg¹⁷ understand global governance as the presentation of a set of governance efforts in a multilevel system, marked by the intrinsic linkage of local and global political systems.

3. TOWARDS MULTILEVEL ENVIRONMENTAL TRANSNATIONAL GOVERNANCE

Traditional governance structures, designed and operationalized for previous time's demands, are in a state of constant obsolescence. This diagnosis calls for theorization and implementation of new governance strategies.

¹⁴ REAL FERRER, Gabriel. La construcción del Derecho Ambiental. **Revista Aranzadi de Derecho Ambiental**. Pamplona: España, n. 1, 2002, p. 73-93

¹⁵ BIERMANN, Frank. **Earth System Governance: World Politics in the Anthropocene**. 2014. Retrieved from <https://www.jstor.org/stable/j.ctt1287hkh>

¹⁶ BIERMANN, Frank. **Earth System Governance: World Politics in the Anthropocene**, 2014, p. 90. Retrieved from <https://www.jstor.org/stable/j.ctt1287hkh>

¹⁷ DINGWERTH, Klaus & PATTBERG, Philipp. Global governance as a perspective on world politics. **Global Governance**, 12, 2006, p. 185. Retrieved from https://www.jstor.org/stable/27800609?seq=1#page_scan_tab_contents

In this sense, governance could be defined as a set of instruments used for the development, research and production of resources, both for political influence and for normative production. As a rule, such production derives from the triangular dynamics among rulers - governed - public. According to statements made by Kooiman, Bavinck, Chuenpagdee, Mahon & Pullin¹⁸, governance is regarded as a term of order in the social sciences and, similarly, in the political sciences. Thus, the term acquires different meanings depending on who uses it. These differences basically concern the role that the state plays in the normative as well as the analytical sense. Governance is seen not only in horizontal networks, but also in all kinds of vertical arrangements of government between public and private entities.

In the same sense, Bulkeley, Andonova, Betsill, Compagnon, Hale, Hoffmann, Newell, Paterson, Roger & VanDeveer¹⁹, expose that transnational governance is a form of global governance that concerns joint efforts “between state and non-state actors as they interact across state borders”.

Today's demands, mainly due to their magnitude and complexity, require different answers and different forms of treatment. They also test political models of social organization, such as the nation state, and stimulate the development of new governance strategies.

After all, as pointed out by Cruz & Bodnar²⁰, it is on the edge of the confines of the nation-state that many transnational issues (such as the environment) emerge challenging, particularly regarding good governance strategies.

Notably the processes of globalization increasingly created a world territory, a new supranational and transnational order that allows the circulation of people, ideologies, capital, goods, goods and services, which demonstrates the reduction (crisis) of the state and institutes instruments of global governance²¹. In this regard, the growing relevance of non-state and transnational approaches to climate change mitigation is emphasized, at a time when the intergovernmental negotiation process needs to overcome a substantial impasse and the

¹⁸ KOOIMAN, J., BAVINCK, M., CHUENPAGDEE, R., MAHON, R. & PULLIN, R. Interactive governance and governability: an introduction. **Journal of Transdisciplinary Environmental Studies**, 7(1), 2008, p. 1-11.

¹⁹ BULKELEY, H., ANDONOVA, L.B., BETSILL, M.M., COMPAGNON, D., HALE, T., HOFFMANN, M.J., NEWELL, P., PATERSON, M., ROGER, C. & VANDEVEER. **Transnational climate change governance**. New York: Cambridge University Press, 2014, p. 203. Retrieved from <https://doi.org/10.1017/CBO9781107706033>

²⁰ CRUZ, Paulo Márcio & BODNAR, Zenildo. Cosmopolitismo e governança transnacional-ambiental: uma agenda para o desenvolvimento sustentável. **Revista Direito Ambiental e sociedade**, 6 (1), 2016.

²¹ STAFFEN, Márcio Ricardo. Hegemonia e direito transnacional?. **Novos Estudos Jurídicos**, Itajaí, v. 20, n. 3, 2015, p. 1166.

international arena becomes increasingly fragmented²²

Research on transnational adaptation can anticipate future developments and make contributions on the subject from the perspective of good governance practices. In addition, an important focus to be analyzed from the multilevel perspective of transnational governance is the necessary partnership that must be established with non-state actors and with strong involvement in planetary axiological dimensions such as environmental protection and defense.

Along with the idea of state sovereignty, the strength that the new actors and their behavioral patterns exert, including the protection of the environment, should be highlighted. National sovereignty in political, social, economic and legal matters is increasingly constrained by political, economic and governance interdependencies between states, international organizations and transnational actors, including standards at the global level. This has become particularly salient since the political, economic and social episodes of the last thirty years. The decline of national autonomy, sometimes seen as the “end of the state” has given rise to political, institutional and legal pressures on normative production within each state, with exogenous and endogenous flows working simultaneously.

Banda and Gupta²³, Van der Leeuw & de Moel²⁴ systematically identify a multilevel governance model of transnational adaptation, with the aim of optimizing efforts and avoiding overlapping legalism with respect to the effectiveness of cross-border governance itself.

To understand this approach, Dzebo and Stripple²⁵ propose a concept for transnational adaptation as:

The adaptation that occurs beyond the borders of states involves, to a certain extent, non-state actors. It is a heterogeneous perspective of transnational governance, as it concerns cases of adaptation with other structures - and consequent problems - and observes other scales beyond national borders.

Once the relevance of multilevel governance is highlighted, Chan and Amling²⁶, just like

²² PATTBERG, Philipp & STRIPPLE, Johannes. **Beyond the public and private divide**: remapping transnational climate governance in the 21st century, 2008, p. 90. Retrieved from <https://link.springer.com/content/pdf/10.1007%2Fs10784-008-9085-3.pdf>

²³ BANDA, Maria L. **Global adaptation law**: Optimizing legal design for multi-level public goods after the Paris Agreement. *Vanderbilt Journal of Transnational Law*, 51(4), 2018, p. 988. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3134172

²⁴ GUPTA, Joyeeta, VAN DER LEEUW, Kim & DE MOEL, Hans. Climate change: A ‘glocal’ problem requiring ‘glocal’ action. *Environmental Sciences*, 4 (3), 2007, p. 137.

²⁵ DZEBO, Adis & STRIPPLE, Johannes. Transnational adaptation governance: An emerging fourth era of adaptation. *Global Environmental Change*, 35, 2015, p. 423.

²⁶ CHAN, Sander & AMLING, Wanja. Does orchestration in the Global Climate Action Agenda effectively prioritize and mobilize

Dzebo²⁷ and Papin²⁸, share the perception that transnationalization may be the next iteration of climate governance adaptation development.

Thus, the noticeable becomes the need for a diversified and multilevel governance approach. According Bülow²⁹ and Zajak³⁰ in recent times, there is a significant call for a more longitudinal perspective in the field of transnational activism.

The issue of governance is also featured among the goals of the UN 2030 agenda. In this sense, objective 16 deserves to be emphasized, as it categorically prescribes the mission of “promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels”³¹.

From this general objective, specific goals were set, and among them, the development of responsible, transparent and effective institutions, as well as ensuring that decisions are made in an inclusive, participatory, responsive and representative manner, are highlighted. Finally, one of the objectives that stands out directly for Brazil is to expand and strengthen the participation of developing countries in global governance institutions.

At the same time, the phenomenon of legal globalization, the progressive implementation of governance practices and the use of various indicators, rankings, indexes and observatories have produced a combination of limited national political autonomy and increasingly executive decision-making on specialized regimes in the world. transnational level. For this reason, the debate on the burning of the Amazon, the attitude of the Brazilian government and the means of mitigation and prohibition of environmentally reprehensible acts, took place mostly by the joining of transnational actors, exerting institutional articulation from the outside, pragmatically, fluid and fragmented, but always with the aim of multilevel environmental protection.

Given this scenario there are explanations for the interference of non-governmental

transnational climate adaptation action? **International Environmental Agreements: Politics, Law and Economics**. 2019. Retrieved from <https://doi.org/10.1007/s10784-019-09444-9>

²⁷ DZEBO, Adis. Effective governance of transnational adaptation initiatives. **International Environmental Agreements: Politics, Law and Economics**. 2019. Retrieved from <https://doi.org/10.1007/s10784-019-09445-8>

²⁸ PAPIN, Marielle. Transnational municipal networks: Harbingers of innovation for global adaptation governance? **International Environmental Agreements: Politics, Law and Economics**. 2019. Retrieved from <https://doi.org/10.1007/s10784-019-09446-7>

²⁹ BÜLOW, Marisa von. **Building transnational networks: Civil society and the politics of trade in the Americas**. Cambridge, UK: Cambridge University Press. 2010.

³⁰ ZAJAK, Sabrina. **Pathways of transnational activism: A conceptual framework**. Retrieved from https://www.mpifg.de/pu/mpifg_dp/dp14-5.pdf. 2014.

³¹ UNITED NATIONS, UN. Organização das Nações Unidas. **Agenda 2030, Objetivo 16**. 2019. Retrieved from <https://nacoesunidas.org/pos2015/ods16/>

organizations (Greenpeace, vg), bureaucratic organs of sovereign states without any relation of international law (NASA, for example), supranational institutions (European Union, Mercosur, UNASUR), companies (Cargill, Bunge, Kipling), churches (Amazon Synod, Roman Catholic Church) and investment funds (ESG - Enviromental, Social and Governance Fund).

Finally, the protection of the environment, under the bias of legal as well as the common good, completely challenges any act of justifying degrading conditions by the building of national sovereignty. Therefore, for pragmatic and/or teleological reasons, the circulation of transnational actors through governance devices fills a relevant legal, political, technical and institutional gap. Advocating in the opposite direction it will create new legal utopias or it will invigorate the maxim: “who will take care of caregivers?” When the meaning of responsibilities is only vertically measured.

FINAL CONSIDERATIONS

The recurrence of events of economic, political, environmental, sanitary, humanitarian, energy crises, as well as the rise of risks arising from the terrorist threat and corruption, has accelerated the formation of polycentric clusters for the management and regulation of these new manifestations. On the other hand, the accelerated development of new technologies, goods and services, led to the regulation of these from different state-owned flows.

In this sense, at a time when the substantial rise of indicators and other means of governance filled the spaces and relocated traditional models at the international level, mainly due to their specialized and comparative nature, the case of forest fires in the Amazon became part of the agenda. international contracts, in public demonstrations with government officials and, mainly, foreign politicians.

The acts of globalization of the legal system provide instruments for the establishment of channels for opening and interpenetrating the normative precepts established by multiple agents of public and/or private nature, who, in addition to their contribution to the production of the norm, exercise powers of control and correction, together with or instead of state bureaucratic functions.

Thus, the recent and still ongoing case of burning in the Amazon area serves as an impetus for measuring and assessing the need for a multilevel environmental transnational governance as

an instrument of defense of the common good of paramount importance. In addition, the notion of sovereignty cannot serve as a shield for such desideratum, since, in essence, it would enable a seditious discourse denying the dignity of the human person, human rights, and specifically the sound and appropriate intergenerational environmental quality.

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ENVIRONMENTAL JUSTICE AS A COMMON HUMANITARIAN PROBLEM AND GLOBAL ENVIRONMENTAL GOVERNANCE

Heloise Siqueira Garcia¹

Denise Schmitt Siqueira Garcia²

INTRODUCTION

This article has the potential to bring the debate about two themes of great importance: Governance and Environmental Justice. Governance within this context must be seen as a process of interaction between social and institutional actors to achieve effective social/environmental management. This effective social/environmental management, therefore, will make it possible to achieve Environmental Justice, which is the other central theme of this research.

In this way, the overall objective is to analyze the importance of Global Environmental Governance, considered in the public, business and civil society sphere, for the regulation and guarantee of Environmental Justice, considering this as an idea of justice in the distribution of the environment between people. And as specific objectives to understand Global Governance from the emergence of its theoretical construction and the conceptual differentiation with the government and the governability; and to study Environmental Justice historically and conceptually, but mainly with a view to understanding it from the perspectives of Global Environmental Governance.

It should be clarified that the research problem for this article can be summarized in the following question: What is Global Governance and what is its importance for the achievement of

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Environmental Justice?

To aims this objectives, the article was divided in three parts: Notions of Global Governance; distinction of nomenclatures: government and Governance; Environmental Justice and Global Environmental Governance.

Regarding the adopted methodology, it is pointed out that the authors' choice was based on the inductive method, with the techniques of referent, category, operational concepts, bibliographical research and file.³

1. GLOBAL GOVERNANCE NOTIONS

The first manifestations of environmental governance were stimulated by the depletion of natural resources, such as the shortage of wood for the construction of housing, fortifications, furniture, instruments and fuel, whose exploitation had become intense since the medieval era.⁴

Thus, at global level, there were several cases of environmental damage that drew the attention of the international community to the need for further reflection on the need to protect the environment.

These occurrences are related in an exemplary way:

1. 10.6.1976. Seveso, Itália. Acidente industrial provocado por empresa Suíça. Tanques de armazenagem romperam, liberando TCDD (2,3,7,8 – tetraclorodibenzo – p – dioxina). Esse desastre levou a União Européia a publicar a Diretiva de Seveso, que estabeleceu regulamentos rígidos, tendo sido atualizada em 1999 e complementada em 2005;
2. 1978. Acidente com o satélite artificial soviético de telecomunicações Cosmos 924, que caiu em território canadense, despejando material radioativo;
3. 16.3.1978. O superpetroleiro Amoco Cádiz, vindo do golfo Pérsico a Roterdã, com 227.000 toneladas de óleo cru, partiu-se ao meio na costa bretã, França, em uma tempestade, criando uma maré que destruiu praias e vida marinha, com enormes prejuízos à pesca e ao turismo;
4. 1984. Acidente na cidade de Bhopal, na Índia, envolvendo uma fábrica de pesticidas, cuja atividade negligente causou um vazamento de gás tóxico que envenenou toda a população, matando mais de 2.000 pessoas e deixando 2000.000 cegas ou feridas;
5. 1986. Acidente nuclear de Chernobyl, na Ucrânia, URSS, cuja explosão liberou uma nuvem de material radioativo que foi levada pelo vento aos países vizinhos;

³ Conforme estabelecido na obra: PASOLD, Cesar Luiz. **Metodologia da pesquisa jurídica: teoria e prática**. 13. ed. Florianópolis: Conceito Editorial, 2015. p. 58.

⁴ BARBIERI, José Carlos. **Gestão ambiental empresarial**. Conceitos, modelos e instrumentos. Ed. São Paulo, Saraiva, 2011, p. 20.

6. 1986. Incêndio ocorrido na empresa química Sandoz, na Suíça. O rio Reno foi gravemente contaminado por produtos químicos agrícolas, solventes e mercúrio, matando a fauna aquática e ameaçando o abastecimento de água potável na Alemanha e da Holanda;
7. entre 1984 e 1987, 60 milhões de pessoas, na maioria crianças, morreram de doenças intestinais decorrentes de desnutrição e da ingestão de água imprópria para o consumo.
8. entre 1984 e 1987, a crise africana ligada ao meio ambiente e ao desenvolvimento, desencadeada pela seca, pôs em risco de vida de 35 milhões de pessoas, matando cerca de um milhão.⁵

There is no doubt about the need for a global and effective Governance. There has been this consensus since the beginning of the 21st century, when in meetings, documents and declarations of organizations such as the UN, G8 and G20, the expression Global Governance as being essential in the processes of economic and social development, integration and solving common problems.⁶

As said by Barbieri⁷, environmental problems require global responses in the way that initiatives to address them have led to the emergence of several multilateral agreements, as well as intergovernmental bodies to manage them, and mechanisms for international action.

Diversos congressos científicos internacionais antecederam as iniciativas de gestão ambiental de caráter global. A ideia de realizar um encontro internacional sobre proteção da natureza segue paralelamente à criação de parques nacionais nos Estados Unidos, iniciada pelo Parque de Yellowstone, em 1872. O primeiro acordo internacional foi assinado em Paris, em 1883, e seu objetivo era proteger as focas do mar de Behring. Esta cidade também foi sede da Convenção para Proteção dos Pássaros Úteis à Agricultura realizada em 1895 e do Congresso Internacional para proteção da paisagem. O I Congresso Internacional para proteção da natureza, realizado em Paris, em 1923, é considerado o início de um novo período na história da gestão ambiental global, quer por ter apresentado uma abordagem bastante completa sobre os problemas ambientais, quer pela luta para criar uma instituição internacional permanente para proteção da natureza. Porém, os problemas ambientais seriam apresentados na sua forma moderna somente no final da década de 1960 na ONU. Por forma moderna entende-se um tratamento global e integrado e não fragmentado como ocorrera até então.⁸

For the effectiveness of this protection of the environment, the implementation of an international infrastructure for global environmental management was started. It is important to create this infrastructure to increase observatories to monitor and evaluate the state of the environment; multilateral development banks (World Bank, Inter-American Development Bank,

⁵ GRANZIERA, Maria Luiza. **Direito ambiental**. Rio de Janeiro: Editora Atlas, 2009, p. 37-39.

⁶ GONÇALVES, Alcindo; COSTA, José Augusto Fontoura. **Governança Global e Regimes Internacionais**. São Paulo: Almedina, 2011, p. 15.

⁷ BARBIERI, José Carlos. **Gestão ambiental empresarial**. Conceitos, modelos e instrumentos. Ed. São Paulo, Saraiva, 2011, p. 27.

⁸ BARBIERI, José Carlos. **Gestão ambiental empresarial**. Conceitos, modelos e instrumentos. Ed. São Paulo, Saraiva, 2011, p. 28.

etc.) and the creation of the United Nations Environment Program (UNEP), which would centralize a large part of the UN's environmental issues.⁹

Os recursos globais comuns, como a atmosfera e os oceanos fora das águas territoriais, inicialmente constituem recursos de livre acesso global, disponíveis para todos. Porém, quando as nações estabelecem acordos para limitar seu uso e evitar abusos, elas estão efetivamente transformando recursos globais de livre acesso em recursos globais de propriedade comum. É isso que procuram fazer os acordos intergovernamentais sobre meio ambiente, como os comentados anteriormente. Como os globais comuns são bens de todas as nações, nenhuma se sentirá na obrigação de cuidar deles sozinha.¹⁰

Thus, the term "governance" arises from reflections mainly conducted by the World Bank. The idea is that government capacity would not be evaluated solely by the results of government policies, but also by the way in which the government exercises its power.¹¹

Governance emerges as a way of solving common problems, so it is verified that it

[...] emergiu dos entendimentos restritos no Congresso de Viena que, em 1845, redesenhou o mapa da Europa depois da derrota da França Napoleônica, seguidos de outros eventos marcantes: fixação dos princípios do direito marítimo, em 1856, em Paris; partilha imperial na África e outras disposições colonialistas, em 1884, em Berlim; imposição de reparações à Alemanha e criação de Estados na Europa, 1910, em Versalhes; e a criação da ONU, na conferência de São Francisco, em 1945.¹²

In academic circles, Governance began to assume its own independent character in the 1980s, when the World Bank and the International Monetary Fund (IMF) began to use the term "good governance" as a guiding principle for the work and actions of states member.

A expressão "Governança global" começou a se legitimar entre cientistas e tomadores de decisões a partir do final da década de 1980, basicamente para designar atividades geradoras de instituições (regras do jogo) que garantem que um mundo formado por Estado-nação se governe sem que disponha de governo central.¹³

For these organisms, "good governance" should have eight characteristics: 1) participation; 2) rule of law; 3) transparency; 4) responsiveness; 5) consensus orientation; 6) equity and inclusion; 7) effectiveness and efficiency; and 8) accountability.¹⁴ These criteria are listed in the

⁹ BARBIERI, José Carlos. **Gestão ambiental empresarial**. Conceitos, modelos e instrumentos. Ed. São Paulo, Saraiva, 2011, p. 29.

¹⁰ BARBIERI, José Carlos. **Gestão ambiental empresarial**. Conceitos, modelos e instrumentos. Ed. São Paulo, Saraiva, 2011, p. 59.

¹¹ GONÇALVES, Alcindo. O conceito de Governança. In: Congresso Nacional do CONPEDI, XIV, Fortaleza, 2005. **Anais do...**, Florianópolis: Fundação Boiteux, 2006, p. 197-213.

¹² GONÇALVES, Alcindo; COSTA, José Augusto Fontoura. **Governança Global e Regimes Internacionais**. São Paulo: Almedina, 2011, p. 16.

¹³ VEIGA, José Eli. **A desgovernança mundial da sustentabilidade**. São Paulo: Editora 34, 2013, p. 13.

¹⁴ GONÇALVES, Alcindo; COSTA, José Augusto Fontoura. **Governança Global e Regimes Internacionais**. São Paulo: Almedina, 2011, p. 31.

UNDP Governance for Sustainable Human Development report of 1997, which added the item "strategic vision".

In 2002, the UNDP Economic Development Report also developed the concept of democratic governance:

[...] defendia que as liberdades civis e políticas, bem como a participação, têm valor fundamental como fim ao desenvolvimento em si mesmo. Assim, na essência, Governança democrática significa, além das instituições eficientes e ambiente previsível ao desenvolvimento econômico e político para o crescimento econômico e efetivo funcionamento dos serviços públicos, liberdades fundamentais, respeito aos direitos humanos, remoção da discriminação de raça, gênero e grupo étnico, necessidades das futuras gerações quanto a políticas de desenvolvimento.¹⁵

The current phase of Global Environmental Governance is characterized by the implementation and deepening of multilateral agreements, which implies putting their provisions and recommendations into practice by national states, local governments, companies and other actors.

Therefore, some examples of global environmental governance are highlighted:

- a) Convenção sobre mudanças climáticas devido o aquecimento global e a destruição da camada de ozônio;
- b) Convenção da Biodiversidade, a qual foi aprovada na CNUMAD em 1992 e em janeiro de 2011 já contava com a adesão de 193 países, dentre eles o Brasil, tendo como finalidade a conservação da diversidade biológica, o uso sustentável dos seus componentes e a justa e equitativa distribuição dos benefícios obtidos da utilização dos recursos genéticos, incluindo o acesso apropriado a esses recursos e a apropriada transferência de tecnologia;
- c) A Convenção sobre o Comércio Internacional das Espécies da Fauna e Flora Selvagens em Perigo de Extinção (CITES), criada em 1973, tendo como objetivo controlar e limitar o comércio das espécies ameaçadas de extinção listadas em três anexos.¹⁶

Within the view that the Environment cannot be treated across borders, there is a need for discussions and regulations of Governments that are global, such as those that were previously endorsed.

2. DISTINCTION OF NOMENCLATURES: GOVERNANCE AND GOVERNMENT

In order to understand in its completeness the true meaning of the word Governance, it is

¹⁵ GONÇALVES, Alcindo; COSTA, José Augusto Fontoura. **Governança Global e Regimes Internacionais**. São Paulo: Almedina, 2011, p. 31.

¹⁶ BARBIERI, José Carlos. **Gestão ambiental empresarial**. Conceitos, modelos e instrumentos. Ed. São Paulo, Saraiva, 2011, p. 31-50.

necessary to bring some distinctions of terms that are very close, such as the distinction of government, Governance and governability.

Government refers to activities supported by a formal authority and by the police power that ensures the implementation of the policies instituted. It would be the group of people who exercise political power and who determine the political orientation of a given society. It is necessary, however, to add that the government power is normally associated with the notion of State, since it is usually institutionalized.¹⁷

Governability refers to the state dimension of the exercise of power. It concerns the systemic and institutional conditions under which power is exercised, such as the characteristics of the political system, the form of government, the relations between the Powers, the system of intermediation of interests.¹⁸ It is found that it is directly linked to the state and represents a set of attributes essential to the exercise of government, without which no power will be exercised.

Governance is not restricted to the managerial and administrative aspects of the State. It exists through articulation and cooperation between social and political actors and institutional arrangements that coordinate and regulate transactions within and across the borders of the economic system.¹⁹ It can then be exercised by political parties, non-governmental organizations, informal social networks, associations, i.e. Governance encompasses society as a whole. In this sense, they propose that, “at a transnational level, non-state actors, especially NGOs, take center stage in the global public space, leading to new social demands and new instances of systemic regulation”²⁰.

Governance is not government, since it requires a formal authority with police power, it is a broader phenomenon than government, which encompasses non-governmental institutions as well as non-governmental institutions.

[...] governo implica em atividades apoiadas por uma autoridade formal e poderes coercitivos; já na Governança, os objetivos são atingidos não necessariamente através de uma autoridade formal que os impõem a seus membros, mas através de metas comuns e compartilhadas por todos que fazem

¹⁷ GONÇALVES, Alcindo; COSTA, José Augusto Fontoura. **Governança Global e Regimes Internacionais**. São Paulo: Almedina, 2011, p. 42.

¹⁸ GONÇALVES, Alcindo. O conceito de Governança. In: Congresso Nacional do CONPEDI, XIV, Fortaleza, 2005. **Anais do...**, Florianópolis: Fundação Boiteux, 2006, p. 197-213.

¹⁹ GONÇALVES, Alcindo. O conceito de Governança. In: Congresso Nacional do CONPEDI, XIV, Fortaleza, 2005. **Anais do...**, Florianópolis: Fundação Boiteux, 2006, p. 197-213.

²⁰ LORENZETTI, Julia Vaz; CARRION, Rosinha Machado. Governança ambiental global: atores e cenários. **Cadernos EBAPE BR**, v. 10, n. 03, opinião 2. Rio de Janeiro, set. 2012, p. 723.

parte do sistema. A Governança é, portanto, mais abrangente do que o governo e por isso seus objetivos e as formas de atingi-los acabam por ser mais duradouros.²¹

Alcindo Gonçalves²² conceptualizes Governance as the “[...] meio e processo capaz de produzir resultados eficazes, sem necessariamente a utilização expressa da coerção. Mas a Governança não exclui a dimensão estatal: ao contrário, acaba por envolvê-la”.

The report prepared by the Commission on Global Governance defined Governance as “a totalidade das diversas maneiras pelas quais os indivíduos e as instituições, públicas e privadas, administram seus problemas comuns. É um processo contínuo pelo qual é possível acomodar interesses conflitantes ou diferentes e realizar ações cooperativas”.²³

Thus, governance must be seen as a democratic system of laws and social institutions and its progress depends on regulation, established by some mechanism of democratic consensus, translated into normative instruments capable of ensuring harmony, peace and progress.

Governance ceases to be an attribute of any government to be, in an ever deeper way, an instrument of increasing the cohesion of national, regional and global entities and organizations.

The State continues to be of vital importance, as the “imperativos da constituição de um sistema de Governança mundial não devem se sobrepor às prerrogativas do Estado, destacando ainda os riscos que isso implica para consolidação do processo democrático, em particular, para os países periféricos”.²⁴

El concepto de gobernanza en un contexto de globalización se ha ido desarrollando en la últimas tres décadas y ha cobrado relevancia desde 1190 convirtiéndose en un concepto clave en el debate político. Está relacionado con el ámbito de la toma de decisiones y con el arte de manejar las sociedades y organizaciones, influido en gran medida con el ascenso de la nueva gestión pública y el cambio de paradigma en la administración pública.²⁵

It should be noted that Governance is not a legal concept and is more related to Political

²¹ ARAÚJO, Izabela Viana. A Governança global e a atuação das redes internacionais de cidades. In: Encontro Nacional ABRI, 3, PUC Minas, 2011. **Anais...** Disponível em http://www.proceedings.scielo.br/scielo.php?pid=MSC0000000122011000200031&script=sci_arttext. Consultado em 03 de agosto de 2016.

²² GONÇALVES, Alcindo. O conceito de Governança. In: Congresso Nacional do CONPEDI, XIV, Fortaleza, 2005. **Anais do...**, Florianópolis: Fundação Boiteux, 2006, p. 197-213.

²³ COMISSÃO SOBRE GOVERNANÇA GLOBAL. **Nossa comunidade global**. O relatório da comissão sobre Governança Global. Rio de Janeiro: Editora FGV, 1996, p. 02.

²⁴ LORENZETTI, Julia Vaz; CARRION, Rosinha Machado. Governança ambiental global: atores e cenários. **Cadernos EBAPE BR**, v. 10, n. 03, opinião 2. Rio de Janeiro, set. 2012, p. 723.

²⁵ MONTIEL, Luis Enrique Concepción. Gobernanza y democracia em América Latina en un contexto de globalización. In: MONTIEL Luis Concepción; HERNÁNDEZ, Patricia Moctezuma (org). **Gobernanza global y democracia**. Mexicali, Baja California: Universidad Autónoma de Baja California, 2010, p. 302.

Science and International Relations. However, since Law is an applied social science, it is important to understand and verify the applicability of the concept to its practical theory.²⁶

No direito interno a Governança surge como a busca de alternativas fora do plano estrito do Estado, mas é evidente que no nível doméstico a importância e relevância dos temas e ações estatais é muito mais presente. Enquanto isso, o Direito Internacional tem muito mais pontos em comum com a Governança. Como já mencionado acima, o processo de globalização tem levado à redefinição do conceito de soberania, com a emergência crescente de ONG's e empresas multi e transnacionais, significando a crescente passagem para o plano da Governança global.²⁷

New problems of cross-border dimensions will reinforce the trend towards Governance, such as environmental pollution, international migration and even the globalization of markets and the internationalization of corporations. All this movement resulted in the limitation of the competence, mandate and authority of the national States.²⁸ It is believed that in the future there will be more and more Governance and less and less government.

3. THE ENVIRONMENTAL JUSTICE AND THE GLOBAL ENVIRONMENTAL GOVERNANCE

For the classic environmental doctrine has been increasingly worked concepts such as Environmental Justice from the observation of disparity in environmental relations between people from different regions or disparate economic capacities. The idea of Environmental Justice would then arise as the idea of justice in the distribution of the environment among people.

As Carvalho²⁹ teaches, Environmental Justice, by the aforementioned author synonymous with social justice, “[...] baseia-se na noção de que a dimensão dos recursos naturais e a desestabilização dos ecossistemas podem atingir de modo desigual e injusto, determinadas pessoas ou grupos de indivíduos.” For these fundamentals, its reason for existence is to constitute a new expectation that integrates social and environmental struggles and movements beyond the conflicts of ecological distribution of natural resources.

Acsehrad³⁰ points out that the problematic of the discussion about Environmental Justice is

²⁶ GONÇALVES, Alcindo. O conceito de Governança. In: Congresso Nacional do CONPEDI, XIV, Fortaleza, 2005. **Anais do...**, Florianópolis: Fundação Boiteux, 2006, p. 197-213.

²⁷ GONÇALVES, Alcindo. O conceito de Governança. In: Congresso Nacional do CONPEDI, XIV, Fortaleza, 2005. **Anais do...**, Florianópolis: Fundação Boiteux, 2006, p. 197-213.

²⁸ GONÇALVES, Alcindo; COSTA, José Augusto Fontoura. **Governança Global e Regimes Internacionais**. São Paulo: Almedina, 2011, p. 35.

²⁹ CARVALHO, Sônia Aparecida de. Justiça Social e Ambiental: um instrumento de consolidação à sustentabilidade. **Revista Eletrônica Direito e Política**. Itajaí, v. 9, n. 2, p. 755-779, 2º quadrimestre de 2014, p. 776.

³⁰ ACSELRAD, Henri. Justiça Ambiental e Construção Social do Risco. In: Encontro da Associação Brasileira de Estudos Populacionais,

based primarily on the argument that neither the defenders of ecological modernization, nor the Risk Society theorists succeeded in incorporating social diversity in the construction of risk, nor the presence of a political logic that would guide the unequal distribution of environmental damages, and the movements for Environmental Justice emerged in this context.

Carvalho³¹ still reiterates that the logic is the articulation between environmental degradation and social injustice, yet the ecological and “[...] a sociedade de risco não vinculam a diversidade social na construção do risco e a política para orientar a distribuição desigual dos danos ambientais.”

According to Acselrad³², the Environmental Justice movement would have its beginning in the United States in the 1980s, starting with a creative articulation between social, territorial, environmental and civil rights struggles.

As said at the beginning of this article, discussions on Governance also emerged in academic circles from the attitudes of the World Bank and the International Monetary Fund (IMF), which establish requirements for the achievement of "good governance". Within these criteria of "good governance" is the need for "equity and inclusion", precisely what Environmental Justice seeks.

At the end of the 1960s there was a redefinition of the set of attacks against inadequate sanitation, chemical contamination of housing and workplaces, and improper disposal of hazardous and toxic waste, triggering the notion of geographical equity.³³

In the 1970s, “[...] sindicatos preocupados com saúde ocupacional, grupos ambientalistas e organizações de minorias étnicas articularam-se para elaborar em suas pautas respectivas o que entendiam por ‘questões ambientais urbanas’.”³⁴ Several studies have already pointed to a

XIII, 2002. Outro Preto – MG. **Anais...** Disponível em: <http://www.abep.nepo.unicamp.br/docs/anais/pdf/2002/GT_MA_ST5_Acselrad_texto.pdf>. Acesso em: 26 de jul. de 2016, p. 4.

³¹ CARVALHO, Sônia Aparecida de. Justiça Social e Ambiental: um instrumento de consolidação à sustentabilidade. **Revista Eletrônica Direito e Política**. Itajaí, v. 9, n. 2, p. 755-779, 2º quadrimestre de 2014, p. 760.

³² ACSELRAD, Henri. Justiça Ambiental e Construção Social do Risco. In: Encontro da Associação Brasileira de Estudos Populacionais, XIII, 2002. Outro Preto – MG. **Anais...** Disponível em: <http://www.abep.nepo.unicamp.br/docs/anais/pdf/2002/GT_MA_ST5_Acselrad_texto.pdf>. Acesso em: 26 de jul. de 2016, p. 760.

³³ ACSELRAD, Henri. Justiça Ambiental e Construção Social do Risco. In: Encontro da Associação Brasileira de Estudos Populacionais, XIII, 2002. Outro Preto – MG. **Anais...** Disponível em: <http://www.abep.nepo.unicamp.br/docs/anais/pdf/2002/GT_MA_ST5_Acselrad_texto.pdf>. Acesso em: 26 de jul. de 2016, p. 760.

³⁴ ACSELRAD, Henri. Justiça Ambiental e Construção Social do Risco. In: Encontro da Associação Brasileira de Estudos Populacionais,

spatially unequal distribution of pollution by race of populations most exposed to it.

The movement was affirmed from the concrete experience of the fight developed in Afton, county of Warren, North Carolina, in 1982. "A partir de lutas de base contra iniquidades ambientais a nível local, similares à de Afton, o movimento elevou a 'Justiça Ambiental' à condição de questão central na luta pelos direitos civis."³⁵ Almost simultaneously the movement induced the incorporation of environmental inequality into the agenda of the traditional environmental movement.

From 1987 onwards, several organizations began to discuss the links between race, poverty and pollution more intensely, and researchers began to study the links between environmental problems and social inequality, and even tried to elaborate the instruments of an "Equity Environmental Assessment" that incorporated social variables in traditional impact assessment studies.³⁶

But the real changes came in 1990, when the implications of the studies began to show results at the state level, when the US Environmental Protection Agency set up a working group to study environmental risk in communities of low income.³⁷

Then, in 1991, the "17 Principles of Environmental Justice" were approved at the First National Summit of Environmental Leaders of Colored People.

[...] estabelecendo uma agenda nacional para redesenhar a política ambiental dos EUA de modo a incorporar a pauta das 'minorias', comunidades ameríndias, latinas, afroamericanas e asiáticoamericanas, tentando mudar o eixo de gravidade da atividade ambientalista nos EUA.³⁸

XIII,	2002.	Outro	Preto	–	MG.	Anais...	Disponível	em:
< http://www.abep.nepo.unicamp.br/docs/anais/pdf/2002/GT_MA_ST5_Acelrad_texto.pdf >. Acesso em: 26 de jul. de 2016, p. 06.								
³⁵	ACSELRAD, Henri. Justiça Ambiental e Construção Social do Risco. In: Encontro da Associação Brasileira de Estudos Populacionais, XIII, 2002. Outro Preto – MG. Anais... Disponível em: < http://www.abep.nepo.unicamp.br/docs/anais/pdf/2002/GT_MA_ST5_Acelrad_texto.pdf >. Acesso em: 26 de jul. de 2016, p. 06.							
³⁶	ACSELRAD, Henri. Justiça Ambiental e Construção Social do Risco. In: Encontro da Associação Brasileira de Estudos Populacionais, XIII, 2002. Outro Preto – MG. Anais... Disponível em: < http://www.abep.nepo.unicamp.br/docs/anais/pdf/2002/GT_MA_ST5_Acelrad_texto.pdf >. Acesso em: 26 de jul. de 2016, p. 08.							
³⁷	ACSELRAD, Henri. Justiça Ambiental e Construção Social do Risco. In: Encontro da Associação Brasileira de Estudos Populacionais, XIII, 2002. Outro Preto – MG. Anais... Disponível em: < http://www.abep.nepo.unicamp.br/docs/anais/pdf/2002/GT_MA_ST5_Acelrad_texto.pdf >. Acesso em: 26 de jul. de 2016, p. 08.							
³⁸	ACSELRAD, Henri. Justiça Ambiental e Construção Social do Risco. In: Encontro da Associação Brasileira de Estudos Populacionais, XIII, 2002. Outro Preto – MG. Anais... Disponível em: < http://www.abep.nepo.unicamp.br/docs/anais/pdf/2002/GT_MA_ST5_Acelrad_texto.pdf >. Acesso em: 26 de jul. de 2016, p. 08.							

It was from this moment that the Environmental Justice movement consolidated itself as a multicultural and multiracial network, initially in a national north American context, and later at an international level.

In addition, the theme was also the focus of an international event held in Niterói, Rio de Janeiro in 2001, the International Colloquium on Environmental Justice, Labor and Citizenship, an event that was consolidated in the Declaration of Principles of the Brazilian Environmental Justice Network, defining it from a set of principles and practices:

- a - asseguram que nenhum grupo social, seja ele étnico, racial ou de classe, suporte uma parcela desproporcional das conseqüências ambientais negativas de operações econômicas, de decisões políticas e de programas federais, estaduais, locais, assim como da ausência ou omissão de tais políticas;
- b - asseguram acesso justo e equitativo, direto e indireto, aos recursos ambientais do país;
- c - asseguram amplo acesso às informações relevantes sobre o uso dos recursos ambientais e a destinação de rejeitos e localização de fontes de riscos ambientais, bem como processos democráticos e participativos na definição de políticas, planos, programas e projetos que lhes dizem respeito;
- d - favorecem a constituição de sujeitos coletivos de direitos, movimentos sociais e organizações populares para serem protagonistas na construção de modelos alternativos de desenvolvimento, que assegurem a democratização do acesso aos recursos ambientais e a sustentabilidade do seu uso.³⁹

It was also at that time, in 2002, that UNDP presented the concept of "Democratic Governance" in the report on economic development, which emphasizes that in addition to efficient institutions and a predictable environment for economic and political development for economic growth, it is necessary for the effective functioning of public services, fundamental freedoms, respect for human rights, removal of discrimination on grounds of race, gender and ethical group, precisely the objective that we want to achieve with Environmental Justice.

It is interesting to note that this idea of Environmental Justice, or social justice, although almost a neologism, given that its appearance occurred in the mid-1990s, as reported above, can be said to have roots in far deeper senses. The Roman Cicero, in his work "On the Duties"⁴⁰, already sensed, in providing a writing of compassion for his son, that honesty, in the character of human duty, has four elements: 1) wisdom and prevention, which belong to the discovery of truth

³⁹ BRASIL. Ministério do Meio Ambiente. **Manifesto de Lançamento da Rede Brasileira de Justiça Ambiental**. Disponível em: <<http://www.mma.gov.br/destaques/item/8077>>. Acesso em: 26 de jul. de 2016.

⁴⁰ CÍCERO. **Dos deveres**. São Paulo: Martin Claret, 2002, p. 35-37.

(the most natural of man); 2) acquisition and conservation of everything that is essential to life; 3) harmony of human society; 4) the greatness of the soul that stands out most by neglecting the goods and honors that are desired for themselves and for others.

Especialmente quanto ao terceiro elemento, Cícero⁴¹ aponta que sua solidificação ocorre através da união entre homens, dividindo-se em duas partes: 1) justiça, que é a primeira qualidade do bom homem e implica não fazer mal a ninguém, a menos que se queira rebater uma ofensa, assim como empregar em comum os bens da comunhão e tratar como seus apenas aqueles que pertencem a nós; 2) caridade, também chamada de bondade ou generosidade. Ou seja, justiça aliada com solidariedade, que naquela época era compreendida apenas como caridade.

De todo este contexto que emerge, então, a noção de Justiça Ambiental, Carvalho⁴² aponta que ela surge “[...] a partir do momento em que a dimensão dos recursos naturais e a desestabilização dos ecossistemas podem afetar, de modo desigual e injusto, determinados grupos sociais, em certas áreas geográficas.”

Segundo Vieira⁴³, seu conceito apresenta-se como uma nova concepção na abordagem da questão ambiental, visando a combinação de fatores ambientais e técnicos. O conhecimento, as práticas populares e as construções culturais sobre o ambiente são reconhecidas como fatores determinantes no tratamento legal de conflitos que afetam bens sociais e ambientais. Trata-se de uma verdadeira fonte de renovação do Direito Ambiental para a Lei da Sustentabilidade.

Nesta perspectiva, a Justiça Ambiental pode ser concebida a partir da “[...] distribuição equitativa de riscos, custos e benefícios ambientais, independentemente de fatores não justificáveis racionalmente, tais como etnia, renda, posição social e poder; o igual acesso aos recursos ambientais e aos processos decisórios de caráter ambiental, traduzindo-se em sua democratização.”⁴⁴

⁴¹ CÍCERO. **Dos deveres**. São Paulo: Martin Claret, 2002, p. 37.

⁴² CARVALHO, Sônia Aparecida de. Justiça Social e Ambiental: um instrumento de consolidação à sustentabilidade. **Revista Eletrônica Direito e Política**. Itajaí, v. 9, n. 2, p. 755-779, 2º quadrimestre de 2014, p. 763.

⁴³ VIEIRA, Ricardo Stanziola. Justiça Ambiental e a Violação dos Direitos Humanos Socioambientais: desafios da sustentabilidade na era do desenvolvimentismo. In: CRUZ, Paulo Márcio; OLIVIERO, Maurizio; BRANDÃO, Paulo de Tarso. **O Direito Contemporâneo e diálogos científicos UNIVALI e Perugia** - Edição Comemorativa 10 anos do Convênio de Dupla Titulação entre a UNIVALI e a UNIPG. Perugia: UNIPG, 2016, p. 256.

⁴⁴ VIEIRA, Ricardo Stanziola. Justiça Ambiental e a Violação dos Direitos Humanos Socioambientais: desafios da sustentabilidade na era do desenvolvimentismo. In: CRUZ, Paulo Márcio; OLIVIERO, Maurizio; BRANDÃO, Paulo de Tarso. **O Direito Contemporâneo e diálogos científicos UNIVALI e Perugia** - Edição Comemorativa 10 anos do Convênio de Dupla Titulação entre a UNIVALI e a UNIPG. Perugia: UNIPG, 2016, p. 257.

Leff⁴⁵ defines it as “[...] um conjunto de direitos que problematiza todo o sistema jurídico, tanto sua racionalidade formal como seus princípios axiológicos e seus instrumentos normativos”.

Moreover, in the words of Selene Herculano⁴⁶, Environmental Justice can be understood as

[...] o conjunto de princípios que asseguram que nenhum grupo de pessoas, sejam grupos étnicos, raciais ou de classe, suporte uma parcela desproporcional das consequências ambientais negativas de operações econômicas, de políticas e programas federais, estaduais e locais, bem como resultantes da ausência ou omissão de tais políticas.

Complementarily in its dichotomy, Environmental Injustice could be understood as “[...] o mecanismo pelo qual sociedades desiguais destinam a maior carga dos danos ambientais do desenvolvimento a grupos sociais de trabalhadores, populações de baixa renda, grupos raciais discriminados, populações marginalizadas e mais vulneráveis.” The Environmental Injustices “[...] são as implicações das opressões de classe, raça e gênero.”⁴⁷

For these considerations, it is observed that the development of the study of Environmental Justice, with the consequent strengthening of access to justice and of Environmental Governance, can help to overcome the omissions and inefficiencies of the Public Power with respect to the control of degrading activities, as well as implementing and implementing environmental public policy and action programs.⁴⁸

Just as a didactic title, it should be pointed out that in contrast to this idea of Environmental Justice, Bosselmann⁴⁹ presents the idea of Ecological Justice, understood as “[...] justiça da distribuição do ambiente entre as pessoas e a justiça das relações entre os seres humanos e o resto do mundo natural.”⁵⁰ Affirming that the idea of Environmental Justice would not present the real and necessary consideration of the world, so that the dictates presented by it are based on the liberal conceptions of justice and the anthropocentric discourse of ethics, which will not prove sufficient in the course of history, and should focus on ecological conceptions of

⁴⁵ LEFF, Enrique. **Saber ambiental: sustentabilidade, racionalidade, complexidade, poder**. Tradução de Lúcia Mathilde Endlich Orth. 8. ed. Petrópolis: Vozes, 2011, p. 365.

⁴⁶ HERCULANO, Selene. O clamor por Justiça Ambiental e contra o racismo ambiental. **InterfacEHS, Revista de Gestão Integrada em Saúde do Trabalho e Meio Ambiente**, São Paulo, v. 3, n. 1, artigo 2, jan/abril de 2008, p. 02.

⁴⁷ CARVALHO, Sônia Aparecida de. Justiça Social e Ambiental: um instrumento de consolidação à sustentabilidade. **Revista Eletrônica Direito e Política**. Itajaí, v. 9, n. 2, p. 755-779, 2º quadrimestre de 2014, p. 761.

⁴⁸ VIEIRA, Ricardo Stanziola. Justiça Ambiental e a Violação dos Direitos Humanos Socioambientais: desafios da sustentabilidade na era do desenvolvimentismo. In: CRUZ, Paulo Márcio; OLIVIERO, Maurizio; BRANDÃO, Paulo de Tarso. **O Direito Contemporâneo e diálogos científicos UNIVALI e Perugia** - Edição Comemorativa 10 anos do Convênio de Dupla Titulação entre a UNIVALI e a UNIPG. Perugia: UNIPG, 2016

⁴⁹ BOSSELMANN, Klaus. **O princípio da sustentabilidade: transformando direito e Governança**, 2015.

⁵⁰ BOSSELMANN, Klaus. **O princípio da sustentabilidade: transformando direito e Governança**, 2015, p. 108.

justice and the ecocentric discourse of ethics.

A preocupação da ética ecológica é levar o mundo não humano para a comunidade da justiça para que não seja necessário confiar inteiramente em maiorias democráticas para a proteção ambiental. Ao fazer isso, todos têm o cuidado de observar que o reconhecimento do valor moral do mundo natural não indica equivalência moral com a humanidade.⁵¹

Two general principles of ecological justice would be postulated: 1. Ecological justice means that every natural person has the right to enjoy the fullness of his or her own way of life; and 2. All forms of life are mutually dependent and dependent on non-living forms.⁵²

Briefly, the idea of Ecological Justice would include not only humans but also "nonhumans" in the justice community. It would be speaking in intragenerational, intergenerational and also between species (interspecies justice). However, new models of governance would be necessary, since the current system would be incapable of doing ecological justice in a doctrinally proposed way.

The truth is that regardless of the consideration of justice as environmental or ecological, or even social, it is an inseparable factor of both sustainability and solidarity. It is the result of the best equation of Solidarity Sustainability or Sustainable Solidarity, also being the central objective of Environmental Governance.

This is because the central objective of effective environmental governance is based on equity and inclusiveness, guaranteeing fundamental freedoms, respect for human rights, removal of race, gender and ethnic group discrimination and the need of future generations for development policies, precisely what is sought in Environmental Justice.

The reality that is demonstrated and that was built from the theoretical contribution of this work is that the real scope of Environmental Justice depends on a Governance that is effective with the articulation and cooperation between the social actors, politicians and institutional arrangements that coordinate transactions within and across the boundaries of the economic system.

As Environmental Justice has sought to make clear in this essay, it depends on Governance-forming criteria, its scope also concerns the recognition of humanity as a single group, dependent on correlation, subject to the common problems that need to be managed.

⁵¹ BOSSELMANN, Klaus. **O princípio da sustentabilidade**: transformando direito e Governança, 2015, p. 114.

⁵² BOSSELMANN, Klaus. **O princípio da sustentabilidade**: transformando direito e Governança, 2015, p. 144.

Among the common humanitarian problems, the bad distribution of environmental factors - positive and negative - is the root of several other problems, deserving special attention, and this is the approach that seeks to give through Environmental Justice. However, the management of such problems should follow Governance considerations and determinations, as worked out in the first two items of this article, including strength, also to the non-governmental organizations (NGOs), which are the main promoters of these Environmental Justice discourses and increasingly play a central role in the global public space.

FINAL CONSIDERATIONS

There have been several cases of global environmental damage that have drawn the attention of the international community to the need for further reflection on the need to protect the environment. In this bias of thought, discussions began on the need for a Governance that is Global and effective, and essential in the processes of economic and social development, integration and solving common problems.

In this sense, it must be said that the Environment can't be treated between borders, and there is a need for discussions and regulations of Governments that are global as a way of solving common problems based on the recognition of humanity as a single group, dependent of correlation.

Increasingly, concepts such as Environmental Justice have been worked out by observing the disparity in environmental relations between people from different regions or disparate economic capacities, thus appearing as the idea of justice in the distribution of the environment among people. Its reason for existing is to constitute a new expectation that integrates social and environmental struggles and movements beyond the conflicts of ecological distribution of natural resources.

The Environmental Justice movement would have its beginning in the United States in the 1980s, based on a creative articulation between social, territorial, environmental and civil rights struggles. One of the main reasons for its emergence is the strength of the social organizations movements, mainly led by non-governmental organizations (NGO's), which continue to be the main promoters of these Environmental Justice discourses, and are increasingly playing a central role in the world public space.

In the course of the history of such movement, it was only after the 1990s that Environmental Justice consolidated itself as a multicultural and multiracial network, initially in a national context in the United States, and later at an international level, focused on combating a large common problem: the bad distribution of environmental factors - positive and negative -, which also generates several other common problems, as mentioned, focus of Global Environmental Governance, which should take care of its management.

That is, the reality obtained from this theoretical construction is that the Environmental Justice is precisely the central objective of an effective Environmental Governance, based on the equity and inclusion of all, in the guarantee of fundamental freedoms, with respect to the Human rights, removal of race, gender and ethnic group discrimination and the need of future generations for development policies.

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LAND REGULARIZATION AS AN INSTRUMENT FOR URBAN SUSTAINABILITY AND FOR THE REALIZATION OF THE RIGHT TO THE CITY

Zenildo Bodnar¹

INTRODUCTION

The structural dichotomies between the formal environment of the urban space and the standards of unsustainability demand reflections on urban sustainability parameters and instruments, especially for the recognition of the necessary rupture of economic singularities in the historical process of urban polarization.

Initially, this study undertakes the analysis of urban social stratification as a cultural factor linked to the prerogatives of capitalist society formatting in the construction of urban social daily life. Subsequently, the urban sustainability is evaluated, with the scope of observing the set of rights linked to the parameters sustained by the configuration of the sustainable city as a fundamental right.

A need for the insertion of sustainable urban policy in cities is observed, with the purpose of promoting a new narrative of awareness of rights to the socio-political environment of urbanity. Finally, land regularization is analyzed as an instrumental alternative for the mitigation of the dichotomy between formal environment and marginalized space, with the insertion of sustainable measures for the formation of new urbanity parameters.

Thus, the research problem presents the reflection of the urban polarization scenario in view of the possibility of internalizing a sustainable policy for the cities. To perform the analysis described, the Inductive Method will be used in the Investigation Phase, which, in the words of Pasold², means “to research and identify the parts of a phenomenon and collect them to have a general perception or conclusion”. In the data processing phase, the Cartesian Method is used,

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² PASOLD, César. **Metodologia da pesquisa jurídica: teoria e prática**. 14 ed. São Paulo: Conceito, 2018.

and the results report expressed in this paper are composed on the inductive logical basis.

In the various phases of the research, the referrer techniques³, the category⁴, the operational concept⁵ and the bibliographic research⁶ were triggered, with the purpose of substantiating a general conclusion about the studied theme.

1. THE CULTURE OF URBAN SPACE POLARIZATION

The intensification of urban space polarization is a historical process that marks the development of economically stratified cities. It configures the division of society into structural poles, arising from the dichotomy between formal environment and marginalized scenario, and generates social perception of normality and is now accepted as ordinary, in accordance with the conformism of socioeconomic inequalities.

Minc⁷ points out that “the big city is a living organism, very sick. It is the expression of economic, ecological and spatial imbalances that make the country a shapeless being: a stunted body with macrocephaly (a huge head)”. This perspective even raises the parameters of interdisciplinarity of the problem, diagnosed in the organization of urban space.

The spread of inequality, therefore, exposes the cultural symptomatic contextualization of urbanity, arising from the process of socioeconomic stratification. As a cause, there is also the migratory movement from the countryside to the city without the necessary political, economic and social structure, in order to shape the constitution of social classes in the organization of urban space⁸.

Oliven⁹ points out that the aspect of capital accumulation produces asymmetric and essentially unequal disparity in order to shape the heterogeneity of social classes. In the same

³ “the previous explanation of the reason(s), the objective(s) and the desired product, delimiting the thematic and approach scope for intellectual activity, especially for research.” PASOLD, César. **Metodologia da pesquisa jurídica: teoria e prática**. 14 ed. São Paulo: Conceito, 2018. p. 62.

⁴ “strategic word or expression for the elaboration and/or expression of an idea”. PASOLD, César. **Metodologia da pesquisa jurídica: teoria e prática**. 14 ed. São Paulo: Conceito, 2018. p. 31.

⁵ “a definition for a word or phrase, with the desire that such a definition is accepted for the purposes of the ideas we expose”. PASOLD, César. **Metodologia da pesquisa jurídica: teoria e prática**. 14 ed. São Paulo: Conceito, 2018. p. 43.

⁶ “Research technique in books, jurisprudential repertoires and legal collections”. PASOLD, César. **Metodologia da pesquisa jurídica: teoria e prática**. 14 ed. São Paulo: Conceito, 2018. p. 217.

⁷ MINC, Carlos. **Ecologia e Cidadania**. São Paulo: Moderna, 1997. p. 42.

⁸ ALVES, Júlia Falivene. **Metrópoles: cidadania e qualidade de vida**. São Paulo: Moderna, 1992. p. 45.

⁹ OLIVEN, Ruben George. **Urbanização e mudança social no Brasil**. Petrópolis: Vozes, 1984. p. 74.

sense, Vila Nova argues that “in society, individuals participate unequally in the distribution of socially valued goods, according to their position in a hierarchy conventionally established as legitimate”. The author adds that “wealth or property, prestige or honor and power are the main socially valued assets in society”.¹⁰

It is observed that, “the troubled historical course of urban development makes most Brazilians deprived of the coexistence of fair, democratic, inclusive and human cities, especially in the face of the valorization of capitalist actions”¹¹. It is noticed that socio-spatial segregation is a commonly cultural factor, in order to historically legitimize inequality as a premise to guide the organization of society, depending on the hierarchically distributed degree, through standards of economic power.

However, it is pointed out that “the term industrialization indicates something more than just economic change: it is the constitution of the capitalist social order, with the emergence of its characteristic social classes - the industrial bourgeoisie and the working class”.¹²

Hence, the disregard of the structural concerns of capitalist society distances itself from the perception of the individual in his/her egalitarian sense and promotes a process of commodification of the social being, as an object of profit to be considered¹³. These distinctions of social classes and social identity in the urban space are products of this unequal and unfair distribution of the standards of wealth produced¹⁴ in the process of selectivity of the economic formality of the industrial urban space.

There is, in consequence, a patrimonialist bias intrinsic to the social reality, so that the colonial influences endure in the social reality, fomenting the inequality in the construction of urban paradigms that deviate from the dogmatic of dignity, notably related to the evasion of guarantees inherent to the habitation and housing rights¹⁵. In this segment, the comparison of the abandonment of the peasant activities to the insertion in the urban society has two structural aspects, contained in the capitalist industrial development and the search of the peasant

¹⁰ VILA NOVA, Sebastião. **Desigualdade, classe e sociedade**: uma introdução aos princípios e problemas de estratificação social. São Paulo: Atlas, 1982. p. 17.

¹¹ CENCI, Daniel Rubens; SEFFRIN, Geciana. Mercantilização do espaço urbano e suas implicações na concepção de cidades justas, democráticas, inclusivas e humanas. **Revista de Direito da Cidade**. 11(1), 418-442, 2019. p. 421.

¹² VITA, Álvaro de. **Sociologia da sociedade brasileira**. São Paulo: Ática, 1999. p. 133-134.

¹³ VITA, Álvaro de. **Sociologia da sociedade brasileira**. São Paulo: Ática, 1999. p.17.

¹⁴ ALVES, Júlia Falivene. **Metrópoles**: cidadania e qualidade de vida. São Paulo: Moderna, 1992. p. 45.

¹⁵ SILVA, Ivone. Cultura patrimonialista e política urbana: o desafio do direito à cidade e à moradia. **Revista de Direito Urbanístico, Cidade e Alteridade**. 4(2), 53-67, 2018. p. 54.

population to the new labor structures, far from the unfavorable rural conditions.¹⁶

Oliven¹⁷ notes that “it is important to stress that this informal sector is created by the very process of industrial capitalist development that also creates the formal sector and that the former is not marginal to the latter but that both are part of the same dynamic of capital accumulation”. These informal sectors are arranged in the pluralities of social daily life, derived from the urban process and its deficient structural aspects linked to labor, the political and economic indisposition in the social aspect.

Regarding informality, Castro¹⁸ affirms that “there is an emblematic marriage between the informality of labor activities and slumming in Brazil”. That is, despite the search for improvement in the quality of life with new occupational meanings, the large population demand was not met by cities due to migrant flow, in a way that informality in social systematizations became daily interconnected.¹⁹

The nexus of coexistence between the city and informality derives from the historical context of the lack of socioeconomic structure of the urbanization process, which although recognized and tolerated by the public power, made the precariousness of the environment a definitive reality²⁰. In this sense, urban polarization is synonymous with the usurpation of social dynamics by economic progress, so as to segregate the individual who does not rely on socially configured standards, circumscribing a dual process of social migrations. Initially from the countryside to the city and later in the formatting of the division of urban space into informal niches.

Souza²¹ points out that “segregation derives from inequalities and at the same time feeds back inequalities (positive feedback) by conditioning the perpetuation of prejudice and the existence of intolerance and conflict”. The dichotomy of urban space is something that coexists in the configuration of society, being idealized in the formatting of essentially capitalist societies, which appear to the slumming of cities in their daily process of social habitat modeling.

¹⁶ ALVES, Júlia Falivene. **Metrópoles: cidadania e qualidade de vida**. São Paulo: Moderna, 1992. p. 11.

¹⁷ OLIVEN, Ruben George. **Urbanização e mudança social no Brasil**. Petrópolis: Vozes, 1984. p. 108.

¹⁸ CASTRO, José Nilo de. **Direito municipal positivo**. Belo Horizonte: Del Rey, 2010. p. 452.

¹⁹ KOWARICK, Lúcio. **A espoliação urbana**. Rio de Janeiro: Paz e Terra, 1979. p. 84.

²⁰ CASTRO, José Nilo de. **Direito municipal positivo**. Belo Horizonte: Del Rey, 2010. p. 452.

²¹ SOUZA, Marcelo Lopes de. **ABC do desenvolvimento urbano**. Rio de Janeiro: Bertrand Brasil, 2011. p. 84.

Cenci and Seffrin²² point out that there is an unbalanced relationship between the search for capital in relation to social guarantees, shaping a system of deprivation of enjoyment of guarantees of a fair and democratic urban parameter of sociality, through a historical pragmatism based on the troubled growth of cities.

Kowarick²³ brings the chaotic scenario by stating that “the slumdogs - the overpolished layer of the working class - are particularly subject to the uses and abuses of a system, whose growth has been performed through the exclusion of those who build the wealth that is not their own”. Thus, the context of slumming denounces anti-urbanization, representing the failure of capitalist standards, and thus denies the individual the enjoyment of the right to decent housing, the fundamental right to maintain life in society.²⁴

The evasion of basic rights to the slums can be observed through the founding characteristics of the environment evaded by urban policy, consisting of “precarious clusters of houses, crammed into small spaces, without environmental urban structure and characterized by the proliferation of low-income people”.²⁵

Nalini²⁶ warns that “the informality of sub-housing compromises the dignity of people. They have no way to enjoy their right to the city and, therefore, they are not effectively citizens”. It is possible to see that social habitat correlates with the interdisciplinary nexus of rights in the area of urban space, through an axiological load of guarantee that fit within the place where society lives.

These striking observations introduce the problematic of the social scenario, notably by the need to recognize adversities in the protection of the construction of tangible paradigms to the sphere of sustainable urban development. In this sense, Boff²⁷ warns that “what, in fact, is in crisis today is not only the model of development, but mainly the model of society that reigns in the world”.

Thus, understanding the various aspects of the urban social scenario is essential even as a condition and historical learning for the setting of new horizons towards sustainability and the

²² CENCI, Daniel Rubens; SEFFRIN, Geciana. Mercantilização do espaço urbano e suas implicações na concepção de cidades justas, democráticas, inclusivas e humanas. **Revista de Direito da Cidade**. 11(1), 418-442, 2019. p. 421.

²³ KOWARICK, Lúcio. **A espoliação urbana**. Rio de Janeiro: Paz e Terra, 1979. p. 97.

²⁴ BERNARDI, J. Prefácio. In: NIGRO, Carlos Domingos. **(IN) sustentabilidade urbana**. Curitiba: Intersaberes, 2007.

²⁵ SILVA, Paulo Lourenço da. **Morando Legal: direito de todos**. Belo Horizonte: Mandamentos, 2001. p. 25.

²⁶ NALINI, José Renato. Perspectivas da regularização fundiária. In: NALINI, José Renato; LEVI, Wilson (Coords.), **Regularização fundiária** (pp. 3-10). Rio de Janeiro: Forense, 2014. p. 06.

²⁷ BOFF, Leonardo. **Ecologia, mundialização e espiritualidade**. Rio de Janeiro: Record, 2008. p. 40.

fundamental right to a sustainable city.

2. RIGHT TO A SUSTAINABLE CITY

Structuring sustainable parameters for the city in the conjecture of the informal urban context is a qualified challenge. The vertiginous growth of cities denounced the absence of economic and social support to embrace the migratory movement from the countryside to the city, in a way that aiming at the mutability of historically structured standards demands new meanings about the rights arising from, and related to, the city.

For a proper understanding of the sustainable city, also as a fundamental right, a brief analysis of the concept of sustainable development formulated in the Brundtland Report²⁸ is helpful. According to which sustainable development “is the one that meets the needs of the present without compromising the ability of future generations to meet their own needs”. In Bosselmann’s view²⁹ “sustainable development is perceived as an act of balancing economic, social and environmental objectives with choices being a necessary result”.

It is also worth mentioning Costa Neto’s considerations³⁰ about the paradigms of intergenerational equity, “according to which future generations must be assured of an environment in conditions no worse than those in which the present generation has received it”. Canuto³¹ adds that the expression *sustainable cities* has its foundation in the concept of sustainable development, in order to enter the ecological limits, through the sense of solidarity.

The importance of the solidarity aspect in the shaping of the social space should also be noted, considering that “solidarity expresses the fundamental need for the coexistence of the human being in a social body, shaping the web of intersubjective and social relations that is drawn in the space of the state community”.³²

²⁸ Comissão Mundial sobre o Meio Ambiente e Desenvolvimento. **Nosso Futuro Comum** (Relatório de Brundtland). Rio de Janeiro: Fundação Getúlio Vargas, 1991. p. 46.

²⁹ BOSSELMANN, Klaus. **O princípio da sustentabilidade**: transformando direito e governança. São Paulo: Revista dos Tribunais, 2015. p. 130.

³⁰ COSTA NETO, Nicolau Dino de Castro e. **Proteção Jurídica do Meio Ambiente**. Belo Horizonte: Del Rey, 2003. p. 17.

³¹ CANUTO, Elza Maria Alves. **O direito à moradia urbana como um dos pressupostos para a efetivação da dignidade da pessoa humana** (Doctoral dissertation). Universidade Federal de Uberlândia, Uberlândia, Minas Gerais, Brazil, 2018. p. 110.

³² FENSTERSEIFER, Tiago. **Direitos fundamentais e proteção do ambiente**: a dimensão ecológica da dignidade humana no marco jurídico-constitucional do Estado Socioambiental do direito. Porto Alegre: Livraria do Advogado, 2008. p. 114.

Capra³³ points out that “part of our identity depends on the ties we try to establish in the community and much of our learning depends on the communities in which we belong”. Thus, the sense of community is the result of the perspective of an integrative system, based on the idea of the interconnection of the social fabric, which does not subsist without the solidarity aspect of the urban living system.

It is also added that “the principle of solidarity does not operate isolated from the normative system, but acts together with other principles and values present in the legal order, deserving special mention for social justice”.³⁴

In this light, the changing of the conjecture of normative, administrative and social thinking towards solidary paradigms shows the introduction of sustainable parameters capable of relating informality and the evasion of rights of some at the heart of general concern. The constitution of this new aspect reinforces the need for the systematization of social justice for those whose financial need combined with informality configures the structural reality.

According to Souza³⁵, between structural poverty and residential segregation there is the structural nexus with environmental degradation, through social tragedies such as flood collapses and pollution. These observations contribute to the identification of sustainable parameters for the remodeling of urban space, far from the utopia of building a perfect urban environment and close to the scope of instrumentalizing sustainable standards tangible to urban development, without neglecting the commitment to future generations.

According to Oliveira³⁶, the urban sustainability standards support the social functions of the city, in order to understand the integrality of the environmental composition subsidies, especially in the cultural, social, economic and environmental aspects. The causal link between sustainability and quality of life has an interdependent junction, inherent in the expansion of social support parameters and combined with new models of social life. Thus, it will be possible to pave a safer path that, even in informality, associates and realizes fundamental rights of the sustainable city: housing, property, natural and urban environment, among others.

³³ CAPRA, Fritjof. Alfabetização ecológica: o desafio para a educação do século 21. In: TRIGUEIRO, André (Ed.). **Meio ambiente no século 21** (2nd ed.). Rio de Janeiro: Sextante, 2003. p. 81.

³⁴ FENSTERSEIFER, Tiago. **Direitos fundamentais e proteção do ambiente: a dimensão ecológica da dignidade humana no marco jurídico-constitucional do Estado Socioambiental do direito**. Porto Alegre: Livraria do Advogado, 2008. p. 114.

³⁵ SOUZA, Marcelo Lopes de. **ABC do desenvolvimento urbano**. Rio de Janeiro: Bertrand Brasil, 2011. p. 84.

³⁶ OLIVEIRA, Cleide de. **Estatuto da cidade e sustentabilidade na perspectiva dos empreendimentos imobiliários** (Master's thesis). Pontifícia Universidade Católica do Paraná, Curitiba, Brazil, 2009. p. 43.

It is important to observe the prerogatives for the construction of sustainable cities, as they emanate the configuration of “[...] fairer, more humane and democratic [cities], with decent living conditions, for the exercise of civil and political, economic, social, cultural and environmental rights”³⁷. In this sense, Oliveira³⁸ notes that the reach of sustainable cities has as its corollary principle the dignity of the human person, which includes “the right to urban land, housing, environmental sanitation, urban infrastructure, transport, public services, work and leisure”.

It is important to note that cities transcend an urban space and have basic social functions in urbanity. According to Costa³⁹:

As cidades possuem funções. No espaço que ela comporta se encontra a habitação, o trabalho, a circulação e o lazer de um grupo de pessoas. Assim, a política urbana deve ser dirigida a promover e melhorar o desempenho destas funções em prol da qualidade de vida destas pessoas. Portanto, sendo a habitação uma das funções da cidade, implicações urbanísticas são extremamente pertinentes ao estudo do tema moradia, especialmente quando se afirma que a moradia que se pretende promover é a moradia adequada, que pressupõe a existência de habitação segura, tanto no aspecto físico quanto no aspecto legal relacionado à posse, e dotada de infraestrutura mínima que propicie uma vida saudável e socialmente satisfatória a quem nela reside.⁴⁰

Thus, the axiological load that guides the construction of sustainable cities makes up a compilation of basic rights related to everyday social experience. Within this fundamental rights plexus, the social right to housing, property and its social function stand out as aspects historically stratified in the shaping of urban polarization. In Nalini’s words⁴¹, “the roof is essential to guarantee most of all other rights pertinent to the thinking person”. However, more than a marginalized roof, the sustainable city requires a decent, safe housing that can fit into the parameters of urbanity rights.

The enjoyment of rights emanating from the right to housing “also includes protection against external threats, a healthy environment, adequate infrastructure for housing, leisure and

³⁷ CANUTO, Elza Maria Alves. **O direito à moradia urbana como um dos pressupostos para a efetivação da dignidade da pessoa humana** (Doctoral dissertation). Universidade Federal de Uberlândia, Uberlândia, Minas Gerais, Brazil, 2018. p. 111.

³⁸ OLIVEIRA, Cleide de. **Estatuto da cidade e sustentabilidade na perspectiva dos empreendimentos imobiliários** (Master’s thesis). Pontifícia Universidade Católica do Paraná, Curitiba, Brazil, 2009. p. 26.

³⁹ COSTA, Maria Amélia da. **O direito à moradia urbana e a necessidade da análise das normas do estatuto da cidade à luz do princípio da dignidade da pessoa humana** (Master’s thesis). Universidade Estácio de Sá, Rio de Janeiro, Brazil, 2007. p. 90.

⁴⁰ Translation: Cities have functions. Within its space, there is the housing, work, circulation and leisure of a group of people. Thus, urban policy should be directed at promoting and improving the performance of these functions for the quality of life of these people. Therefore, as housing is one of the functions of the city, urbanistic implications are extremely pertinent to the study of housing, especially when it is stated that the housing intended to be promoted is adequate housing, which presupposes the existence of safe housing, both physically and legally, related to possession, and endowed with minimal infrastructure that provides a healthy and socially satisfactory life to all its residents.

⁴¹ NALINI, José Renato. **Direitos que a cidade esqueceu**. São Paulo: Revista dos Tribunais, 2011. p. 38.

public services, in short, a place where one can live in peace and in the fullness of the enjoyment of the human rights”⁴². In this sense, the promotion of sustainable cities considers the basic parameters of the promotion of the social function to urbanity, in order to contribute to a more sustainable urban social political development. The purpose of this policy will be to mitigate the scenario of systematic evasion of rights.

3. FOR A PUBLIC POLICY FOR CITIES

Promoting a new political meaning to the urban space is important to understand the various dimensions of sustainability of life in society, also as an essential parameter for maintaining the quality of life and reducing the economic polarization of urban development. In this sense, it is observed that “facing environmental problems and opting for sustainable development necessarily requires correcting the alarming picture of social inequality”.⁴³

Castro⁴⁴ notes that “we are looking for a new revolution, which is the ecological revolution, the green revolution, the revolution in the way we think, decide and act. For an urban revolution in people”. Thus, the multiplied force of collective intelligence must be directed to the constitution of a sustainable policy, capable of changing the historically oxygenated meanings in the paradigms of life in society to the constitution of community thinking, under the socio-environmental support.

Boff⁴⁵ points out that “policy is related to the power and management of the common good”. The preposition demonstrates that promoting a sustainable policy requires the desirous of equity, without neglecting the real situation configured in urban space.

It is important to note some considerations about sustainable policy, as “in current ecopolicies, it is not a question of redefining development from the base issue of ecological consciousness, but always of designing and implementing ecologically sustainable development that is appropriate to the regional ecosystem”⁴⁶. That is, a consistent social policy requires the contextualization of the perception of subsidies that are able to enter the essentials of social

⁴² BENACCHIO, Marcelo; CASSETTARI, Denis. Regularização fundiária urbana como efetivação do direito humano à moradia adequada. In: NALINI, José Renato; LEVY, Wilson (Coords.). **Regularização fundiária** (pp. 49-72). Rio de Janeiro: Forense, 2014. p. 56.

⁴³ SARLET, Ingo Wolfgang; FENSTERSEIFER, Tiago. **Direito constitucional ambiental: constituição, direitos fundamentais e proteção do ambiente**. São Paulo: Revista dos Tribunais, 2017. p. 121.

⁴⁴ CASTRO, José Nilo de. **Direito municipal positivo**. Belo Horizonte: Del Rey, 2010. p. 455.

⁴⁵ BOFF, Leonardo. **Ecologia, mundialização e espiritualidade**. Rio de Janeiro: Record, 2008. p. 37.

⁴⁶ BOFF, Leonardo. **Ecologia, mundialização e espiritualidade**. Rio de Janeiro: Record, 2008. p. 38-39.

aspirations with interlinked standards of rights, in order to neutralize part of the historical process of economic stratification in protecting access to urban rights.

Capra⁴⁷ points out that “each individual is necessarily inserted in a social system, in a community”. In this sense, establishing a sustainable policy for cities depends on the social and environmental awareness that society will have with its peers, regardless of economic divisions and close to the community sense of urbanity.

Melo⁴⁸ observes that the politics of the right presupposes the exercise of acting in the commitment of reaching a right of better benefit, based on the aesthetics of coexistence between respect for the singularities of the individual with their peers combined with the harmonization of the social context with nature. In this segment, the core of the configuration of right is the ability to develop together with the society in order to conform to the changing nature of social configurations and to the new yearnings that come from time, because “the right, being a socio-cultural phenomenology, does not cease to evolve, adapting to new human realities and needs.”⁴⁹

The political aspect of right denotes important considerations for the discussion, notably because of the dependence of the cultural internalization of sustainability on social daily life as opposed to the historically configured process of social stratification. Thus, Castro⁵⁰ affirms that “public space and private space in urban territorial contextualization demonstrate that cities are the greatest interventions of man in the physical environment”. That is, the city is a product of social policy, so as to enter into the sociocultural standards of constituting the historical development of society.

It should also be recognized that “a direct socioeconomic and political violence against peoples, nations and classes exists”⁵¹. This aspect is consolidated in the structural scope of the division of urban space, which stratifies and reflects a complex symptomatic relationship of poverty, exclusion and marginalization of rights.

It is important to understand that “poverty and social exclusion are undoubtedly

⁴⁷ CAPRA, Fritjof. Alfabetização ecológica: o desafio para a educação do século 21. In: TRIGUEIRO, André (Ed.). **Meio ambiente no século 21** (2nd ed.). Rio de Janeiro: Sextante, 2003. p. 31.

⁴⁸ MELO, Osvaldo Ferreira de. **Fundamentos da Política Jurídica**. Porto Alegre: Sergio Antonio Fabris Editor, Universidade Federal de Santa Catarina, 1994. p. 63.

⁴⁹ MELO, Osvaldo Ferreira de. **Temas Atuais de Política do Direito**. Porto Alegre: Sergio Antonio Fabris Editor/CMCJUNIVALI, 1998. p. 81.

⁵⁰ CASTRO, José Nilo de. **Direito municipal positivo**. Belo Horizonte: Del Rey, 2010. p. 454.

⁵¹ BOFF, Leonardo. **Ecologia, mundialização e espiritualidade**. Rio de Janeiro: Record, 2008. p. 43.

imbalances that compromise the existence of a healthy urban ecosystem”⁵². That is, promoting the reversal of informality is the necessary strategy to change standards of evasion of fundamental rights of life in society, because understanding the structural malice is the fundamental factor for the progressive and more effective implementation of the right to the city.

This necessary shift in focus must internalize the inherent assumptions of the slums, understanding that “a slum represents and justifies the unsustainability and vulnerability of an urban environmental system due to the disorderly growth that invades it, causing systemic disruptions and, ultimately, unbalancing it and degenerating it”⁵³. The author also notes urban informality as a metaphor “a slum, similar to the tumor when viewed from a systemic approach, symbolizes the fragility of a city that does not provide necessary care to its members and the worst symbolizes the failure of exchanges in the public space”.

From this diagnosis, it is observed that undertaking a sustainable policy for urbanity requires the rupture of the basic core of social stratification, starting with the dissipation of the polarization between the legal security of the formal city and the marginal growth of urban informality, which demand instrumentalization of measures capable of reversing the dichotomous system installed in urban daily life.

In this regard, it is important to highlight, for example, that Law no. 13,465/2017 and its structural repercussions in the process of land regularization of cities, in order to promote the process of approximation between informality and the rights of urbanity, being a search instrument for sustainability to the informal environment.

Thus, the implementation of efficient urban policy in the sustainable order requires the establishment of an intrinsic governance relationship between State and Society. In this relationship of partnership and cooperation, it is important to highlight the importance of social awareness, in order to promote understanding of the symptoms of the fragmented city and its effects on legal, social and environmental inequality in the protection of the segmented and polarized urban space.

⁵² SARKIS, Alfredo. O desafio ecológico das cidades. In: TRIGUEIRO, André. **Meio ambiente no século 21**: 21 especialistas falam da questão ambiental nas suas áreas de conhecimento (2nd ed). Rio de Janeiro: Sextante, 2003. p. 221.

⁵³ NIGRO, Carlos Domingos. **(IN) sustentabilidade urbana**. Curitiba: IBPEX, 2009. p. 87 e 99.

4. LAND REGULARIZATION FOR SUSTAINABLE CITIES

Understanding a sustainable policy for cities requires, above all, the observance of the singularities of the marginalized environment. This sensitivity to capture the real, integrated historical ills synthesized in the complex urban space, contributes to the systematization and planning of more effective actions. Segregated cities hinder the main characteristic of their function, related to the socialization of space, in order to compel the experience of a portion of the population outside the urbanistic norms.

It is from this perspective that one must understand the essence and reason of land regularization, always closely linked to an underlying social reality. From this perspective, it is observed that “the legal conception of property linked to the principle of its social function stems from the adequacy of right to the social changes resulting from the industrial revolution, representing an intrinsic relationship with the social order and the liberal order”.⁵⁴

Thus, it is necessary to understand land regularization as a basis for the fulfillment of the social function, in an intrinsic relationship with the fulfillment of the social function of property. Thus, Sirkis⁵⁵ argues that “it is necessary to regularize the informal city from an urban and land standpoint and implement this true socioeconomic revolution that represents the process of regularization and titling”.

Regarding that, Nalini notes that “land regularization is a legitimate aspiration of residents who have been compelled to occupy or buy land in this situation”⁵⁶. In other words, promoting a policy of urban space regularization is an indispensable factor for the reversal of social polarization arising from the dichotomy based on informality and formality.

In that respect, it is important to state the recognition of the legitimation of ownership as an exclusive measure of land regularization. The instrument requires the recognition by the public power of ownership of the private property, so that the nature of ownership is automatically converted, after the period of five years of its registration.⁵⁷

⁵⁴ BEZERRA, Regina Iara Ayub. Conjuntos habitacionais segundo a Lei 13.465, de 11 de julho de 2017. In: PEDROSO, Alberto Gentil de Almeida (Coord.). **Regularização fundiária: Lei 13.465/2017**. São Paulo: Thomson Reuters, 2018. p. 116.

⁵⁵ SIRKIS, Alfredo. O desafio ecológico das cidades. In: TRIGUEIRO, André. **Meio ambiente no século 21: 21 especialistas falam da questão ambiental nas suas áreas de conhecimento** (2nd ed). Rio de Janeiro: Sextante, 2003. p. 221.

⁵⁶ NALINI, José Renato. **Direitos que a cidade esqueceu**. São Paulo: Revista dos Tribunais, 2011. p. 164.

⁵⁷ PEDROSO, Alberto Gentil de Almeida. Impressões práticas sobre o sistema de regularização fundiária urbana idealizado pela Lei

The legitimation of ownership, although important in determining the further extension of the right to property, presents structural problems due to the prediction of the independence of registration practice and automatic conversion, notably due to the lack of formality necessary to guarantee the essentially realized property rights through registration security, so that the real estate registrar's mandate is a corollary factor in ensuring the realization of ownership of the real right⁵⁸. However, more than a norm, land regularization requires changes in political and social parameters, with the scope to include public policies capable of breaking the polarized environment and transforming it into the city as a whole, and although the norm still has structural deficiencies, as the legitimizing aspect of ownership.

The conceptual scope of the land regularization category is evidenced by the normative text. According to Law no. 13,465/2017, article 9, land regularization is included in the “legal, urban, environmental and social measures aimed at the incorporation of informal urban centers into the urban territorial planning and the ownership of their occupants”.

In addition, the first paragraph of the aforementioned article provides an essential guideline for the Public Power in the protection of the organization of urban space, stating that “they shall formulate and develop in the urban space the policies of their competences in accordance with the principles of economic, social and environmental sustainability as well as territorial planning, seeking efficient land use, combining its use in a functional way”.

It is important to note, the intention of sustainability as an intrinsic element of land regularization, demonstrating that regularization transcends the title of ownership in the civilist guidelines and promotes the sustainable mutability of the environment to be regularized, with special responsibility of the public power and society in a cooperative governance relationship for the protection of the cities.

These historical transformations and legislative advances are based on the comparison of social and administrative democracy in such a way that territorial equity becomes the concern of the municipality along with social democratic leadership, capable of modulating the relationship

13.465/2017 (Arts. 9º a 54). In: PEDROSO, Alberto Gentil de Almeida (Coord.), **Regularização fundiária**: Lei 13.465/2017. São Paulo: Thomson Reuters Brasil, 2018. p. 31.

⁵⁸ PEDROSO, Alberto Gentil de Almeida. Impressões práticas sobre o sistema de regularização fundiária urbana idealizado pela Lei 13.465/2017 (Arts. 9º a 54). In: PEDROSO, Alberto Gentil de Almeida (Coord.), **Regularização fundiária**: Lei 13.465/2017. São Paulo: Thomson Reuters Brasil, 2018. p. 31.

between society and the local political sphere.⁵⁹

In Sirkis's words, "achieving the goal of a sustainable city is not a utopian goal, it depends on a series of perfectly achievable actions, while some are difficult due to sources of cultural, political and economic injunctions"⁶⁰. Thus, to promote a policy with sustainable standards is to systematize culture, politics and economics from an integrative perspective, in order to break polarized standards and to add a posture capable of promoting an essentially democratic environment, far from the illusion of economic equity and near to equal rights.

In this segment, Ferrajoli highlights that "just as equality in rights generates the sense of equality based on respect for the other as equal, inequality in rights generates the image of the other as unequal, that is, anthropologically inferior because legally inferior".⁶¹

Thus, to implement land regularization in the informal space is to recognize the problem of social and legal inequality underlying urbanity, especially when it is analyzed through the systematic prism of stratification of the rights of urbanized life. In this sense, Castro⁶² points out that "there must be equality between the citizens, as recipients of service and equality, and also as occupants of the territorial space, within the limits of equality and inequality of each one". That is, understanding urban equity, concerns the insertion of equal rights standards, regardless of their location in the urban space or the commodification of the environment to which is inserted, because this right is linked to the simple fact of being inserted in urbanity. The right should refrain from being selective, especially when faced with an essentially communal guarantee such as the space of the city. Therefore, promoting an urban policy capable of reshaping polarized standards and bringing society closer to the centrality of its rights is the guiding principle for initiating changes in unsustainable parameters.

Thus, "the state of apathy, inertia and conformity will be overcome, revitalizing the urban facilities and simultaneously reforming the exteriority of the city and the interiority of the daily plot of the citizens, who are actors, not urban refugees".⁶³

To undertake measures in order to realize the idea of sustainable cities is to see urban

⁵⁹ CASTRO, José Nilo de. **Direito municipal positivo**. Belo Horizonte: Del Rey, 2010. p. 455.

⁶⁰ SIRKIS, Alfredo. O desafio ecológico das cidades. In: TRIGUEIRO, André. **Meio ambiente no século 21: 21 especialistas falam da questão ambiental nas suas áreas de conhecimento** (2nd ed). Rio de Janeiro: Sextante, 2003. p. 228.

⁶¹ FERRAJOLI, Luigi. **Por uma teoria dos Direitos e dos Bens Fundamentais**. Porto Alegre: Livraria do Advogado, 2011. p. 35.

⁶² CASTRO, José Nilo de. **Direito municipal positivo**. Belo Horizonte: Del Rey, 2010. p. 456.

⁶³ CASTRO, José Nilo de. **Direito municipal positivo**. Belo Horizonte: Del Rey, 2010. p. 456.

informalities as a bridge of rights. Links that call for partnership and cooperation strategies between State and Society. The striking and dramatic urban polarization must be the driving force to stimulate collective action for the search for more effectiveness of the fundamental right to a sustainable city and not a reason for more apathy.

FINAL CONSIDERATIONS

The strong diagnosis of polarization and segregation that characterizes the urban space was the starting point in the reflections undertaken in this study. The exclusionary social and spatial standards, historically shaped and accentuated by the omission of public authorities, profoundly impact the fundamental right to a sustainable city and all rights deriving from it.

Understanding sustainable parameters in the protection of urban space is a corollary principle for the realization of sustainable cities. Sustainable development has a special connection with the analysis of urbanity, notably by the centrality of social life in urban spaces and the necessary awareness of the shaping of an ecopolicy for society. Guidelines for the shaping of sustainable cities should promote equal access for the community to more inclusive standards of urbanity.

The mitigation of socio-spatial unsustainability, with parameters of social and environmental justice, should be sought from the breakdown of structural polarizations in the urban space as a fundamental factor for the introduction of sustainable urban development, but also as a way to recognize the land legitimacy of those who, for a long time, lived on the margins of their rights.

Thus, it is a fundamental basis for the constitution of sustainable cities to understand that urban informality is part of the city and that urban space must be essentially democratic, regardless of the economic capacity of the housing context. We must seek to overcome the idea of a commodity city, because as long as financial values continue to dictate access to the right to cities, urbanity will continue to be essentially polarized in a complex of symptomatic evasion of rights.

Considering all of the above, it is concluded that political governance strategies must be established with involving articulation for the set of fundamental rights that support and enable the right to a sustainable city: housing, property and its social function. The land regularization

instrument, for its breadth and potentiality can be a strategic management and governance tool for achieving urban sustainability.

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STAKEHOLDERS AS ACTORS IN ECOLOGICAL CONCEPTION IN LAW

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INTRODUCTION

Over time, concurrently, sociologists, philosophers and lawyers debated the world views and the relationship of the human being to other beings on the planet, as well as the experience in Society³. The initial respect for Nature⁴, in a contemplative way, was transformed into its domination, with the beginning of scientific revolutions. Theorists sought to justify the transition processes, in order to defend or disagree on the unlawful use of common resources.

The industrialization process and the end of Modernity, mainly due to its environmental effects, culminated in what Ulrich Beck calls the Risk Society. This is because “situations and social conflicts of a society that “distributes wealth” start to converge in the continuity of the modernization processes with a society” that distributes risks”⁵.

In this context, the idea of externalizing the damage caused by congestion in the use of Nature, seen at the time as infinite, generated new discussions and, also, an innovative approach to the contemplation of the cosmic order, known as holistic: systemic thinking.

Therefore, this article herein aims to analyze, under a systemic approach, the possibility of

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³ “[...] Group of people organized by a system of structured social relations that connects them and allows cultural sharing”. (ZANON JUNIOR, Orlando Luiz. **Curso de Filosofia Jurídica**. Florianópolis: Empório do Direito, 2016. p. 82).

⁴ ADLER, Mortimer J. **Aristóteles para todos**: uma introdução simples a um pensamento complexo. Translation of Pedro Sette-Câmara. São Paulo: É Realizações, 2010. p. 35. Original Title: Aristotle for Everybody: difficult thought made easy.

⁵ BECK, Ulrich. **Sociedade de risco**: rumo a uma outra modernidade. Translation of Sebastião Nascimento. 1 ed. São Paulo: Editora 34, 2010. p. 25. Original Title: Risk society: towards a new modernity.

the participation of “Stakeholders”, as previous agents of degradation, to the construction of an ecological thought, performing, for this, an epistemological cut in the construction and application of the Law.

The relevance of the research has value and historical foundations. It recalls events that causes consequences that are often irreversible. At the international level, the Great World Wars, for example, represented disasters of all sizes: population reduction, nuclear attacks, use of chemical substances, among others. In Brazil, the drama of Mariana has recently demonstrated an urgent discussion on efficient mechanisms for the realization of fundamental premises for the protection of Nature, using alternative means to the existing ones.

In this problem, therefore, the research problem arises: is the participation of “Stakeholders” relevant to the construction of Law, in order to influence it and be, at the same time, influenced?

As for the methodology used in the investigation phase, the Inductive Method was used. The Referent, Category⁶, Operational⁷, Concept and Bibliographic⁸ Research Techniques were used.

1. THE HISTORICAL CONSTRUCTION OF SYSTEMIC ECOLOGICAL THINKING

The Ancient and Medieval conception, approximately between 700 BC and 1500, of the universe is directed towards the contemplation of the cosmic order⁹. It is the “holistic view of the world as a kosmos, of the Earth as a generous gift from God to humanity as a whole, and abundance of wealth collectively accessible to everyone.”¹⁰. Aristotelian perception (384-322 BC), for example, did not limit the universe to physical characteristics, but envisioned it in an organic, alive and spiritual way. For Aristotle, the human would not be against Nature¹¹, but with Nature.

⁶ “[...] prior explanation of the reason(s), purpose(s) and the desired product, delimiting the thematic scope and approach to intellectual activity, especially for research”. (PASOLD, Cesar Luiz. **Metodologia da pesquisa jurídica**: teoria e prática. 11 ed. Florianópolis: Conceito Editorial; Millennium Editora, 2008. p. 54).

⁷ “[...] strategic word or expression to the preparation and/or expression of an idea.”. (PASOLD, Cesar Luiz. **Metodologia da pesquisa jurídica**: teoria e prática. p. 25).

⁸ “[...] a definition for a word or phrase, with the desire that such a definition be accepted for the purposes of the ideas we expose [...]”. (PASOLD, Cesar Luiz. **Metodologia da pesquisa jurídica**: teoria e prática. p. 37).

⁹ About the subject: FERRY, Luc. **Aprender a viver**: sabedoria para os novos tempos. Translator of Véra Lucia dos Reis. Rio de Janeiro: Objetiva, 2012. Original Title: Apprendre à vivre: Traité de philosophie à l’usage des jeunes générations.

¹⁰ FRITJOF, Capra; MATTEI, Ugo. **A revolução ecojurídica**: o direito sistêmico em sintonia com a natureza e a comunidade. Translation of Jeferson Luiz Camargo. São Paulo: Cultrix. 2018. p.81. Original Title: The ecology of law.

¹¹ “[...] to everything that exists, we call it nature ”(RIBEIRO, Job Antonio Garcia; CAVASSAN, Osmar. The environmental,

In contrast, in Modernity¹², approximately between 1500-1750, population growth coupled with the need for subsistence of Society and, beyond it, the desire to satisfy purely material interests triggered, with the evolution of Science¹³, the beginning of the use of Nature as commodity – and, therefore, the dissociation between beings: human and Nature.

This transition – from the “cosmos” to the world view as a machine, object of domination and exploitation of the human being, conveyed by the theory called “mechanistic”, in the 16th and 17th centuries - obtained essential justification in the thoughts of the time, especially, of Galileo Galilei¹⁴.

The change in ideals, however, did not influence only the exact sciences, such as astrology, mathematics and physics. Philosophers have often become experienced regarding Law and Policy, exerting further theoretical justification to the movement.

In this bias, the passage from medieval to modern thoughts corresponded to the overcoming of the Holistic Natural Law to the Anthropocentric. According to Capra and Mattei¹⁵, holism is considered “the conception of reality in which religion, natural philosophy, politics and law are understood as a continuous whole, [which] characterized the thinking of the 14th century” and gave way to rationalism or anthropocentrism.

With the Scientific Revolution, in the Anthropocene era¹⁶, whose prestige is due to “writers

environment and nature concepts in the context of environmental mainstreaming: defining meanings. **GÓNDOLA – Enseñanza y Aprendizaje de las Ciencias**. vol. 8, n.2, julio-diciembre del 2013, p. 61-73, p. 65).

¹² The Renaissance – a cultural renaissance of extraordinary creativity in Europe – started in the 14th century in Florence. It spread throughout Europe, lasting until the 17th century, and today it is considered the bridge between the medieval and the modern period. Marked by a renewed interest in the whole of classical Greek and Latin culture – not only the philosophical and mathematical texts assimilated by medieval scholasticism –, it was a movement that considered humans, and not God, as its center. The new humanism ended up reflecting first on art and then on the political and social structure of Italian society: republics like Florence and Venice soon abandoned medieval feudalism in favor of plutocracies in which commerce flourished alongside new scientific discoveries” (BUCKINGHAM, Will et al. **O livro da filosofia**. Translation of Douglas Kim. 2 ed. São Paulo: Globo Livros, 2016. p. 100).

¹³ “[...] cognitive, explanatory and predictive activity of reality, carried out based on a rational methodology (methods and techniques), for the purpose of systematizing, disseminating, controlling, reviewing and providing security to the production of knowledge, within the framework of a given disciplinary base (paradigm)” (ZANON JUNIOR, Orlando Luiz. **Curso de Filosofia Jurídica**. p. 8).

¹⁴ The “Scientific Revolution started with Nicolau Copernicus (1473-1543), who abolished the geocentric conception, which placed the Earth at the center of the Universe – a conception accepted as dogma for more than a millennium. Johannes Kepler, (1571-1630) has joined him regarding the harmony of the spheres and managed, with an extraordinary work with the astronomical tables, to formulate his famous empirical laws of the planetary movements. [...] However, the real change in scientific opinion was stated by Galileo Galilei (1564-1642), who, with the help of the newly invented telescope, managed to discredit the ancient cosmology beyond any doubt.” (FRITJOF, Capra; MATTEI, Ugo. **A revolução ecojurídica: o direito sistêmico em sintonia com a natureza e a comunidade**. p. 74).

¹⁵ FRITJOF, Capra; MATTEI, Ugo. **A revolução ecojurídica: o direito sistêmico em sintonia com a natureza e a comunidade**. p. 104.

¹⁶ “The Anthropocene is characterized by the capacity for destruction of human beings, accelerating the natural disappearance of species” (BOFF, Leonardo. **Sustentabilidade: o que é – o que não é**. 4 ed. Rio de Janeiro: Vozes, 2015. p. 21).

such as Nicolau Maquiavel (1469-1527), Jean Bodin (1483-1546) and Thomas Hobbes, and reinforced by Martinho Lutero (1483-1546)”¹⁷, there is the idea that, “in matters of sovereignty, force makes the law. Furthermore, the wealth of sovereign nations could be judged by the size of the market that they were able to create to control”¹⁸.

The consequences of the Law’s adherence to mechanistic ideas, as well as the arrival of the 20th century, as a framework for the expansion and narrowing of interstate relations¹⁹, which was called Globalization²⁰, and the period doctrinally set out as the Industrial Revolution brought to light the need for harmonic, interdependent and responsible coexistence between human beings and the environment.

It can be said that the changes triggered by political, social and economic transitions, until the 20th century, were decisive for a new vision of Nature. This is because, with the advent of Globalization, the impacts of problems, previously, from a regional or national point of view, began to transcend the imaginary geographic lines attributed to countries in the globe. The pertinent problems “to atmospheric pollution, which mainly gained more accentuated contours after the Second World War, like the acid rain [...] and the greenhouse effect [...] of global proportions”²¹.

It should also be noted that, in times prior to the aforementioned historical landmarks, the problem of natural resources and their scarcity was not even considered as a possibility. “It would be unlikely, for example, to conceive of the (*sic*) scarcity idea in the middle age period or even during the first steps of the industrial revolution”²². At that time, there was the concept that “man's interventions in the environment were still superficial and insignificant in face of the

¹⁷ FRITJOF, Capra; MATTEI, Ugo. **A revolução ecojurídica**: o direito sistêmico em sintonia com a natureza e a comunidade.p. 122.

¹⁸ FRITJOF, Capra; MATTEI, Ugo. **A revolução ecojurídica**: o direito sistêmico em sintonia com a natureza e a comunidade.p. 122.

¹⁹ “The 20th century, as a century of globalization consolidation, would not have started in 1914, with the outbreak of the so-called World War I, nor in 1901, considering the purely chronological-mathematical aspect; the process of economic globalization – a mark of the 20th century – started for Arrighi, in the 17th century, in the structuring of the system of Italian city-states [...]. From then on, the capitalist system developed in search of its universalization (or globalization), which would have achieved a few hundred years later, when the Soviet socialist-state model was overcome” (FERNANDES, Edison Carlos. **Paz tributária entre as nações**: Teoria da aproximação tributária na formação dos blocos econômicos. 2005. 183 f. Thesis (Doctorate) - Law Course, Pontifícia Universidade Católica de São Paulo, São Paulo, 2005, p. 38-39).

²⁰ “[...] indeterminate, undisciplined and self-propelled character of world affairs; the absence of a center, a control panel, a steering committee, an administrative office” (BAUMAN, Zygmunt. **Globalização**: as consequências humanas. Translation of Alexandre Werneck. Rio de Janeiro: Jorge Zahar, 1999, p. 06. Original Title: Globalization: the human consequences).

²¹ TRENNEPOHL, Terence. **Direito ambiental**. 5 ed. São Paulo: Saraiva, 2010, p. 31.

²² AYDOS, Elena de Lemos Pinto. **Tributação ambiental no Brasil**: fundamentos e perspectivas. 2010. Dissertation (Master in Law). Universidade Federal de Santa Catarina, Florianópolis, SC, p. 50.

magnitude and permanence of nature”²³.

The perception of the imbricated relationship between Society and Nature, due to the awareness acquired in this time lapse, was, therefore, a consequence of the discovery of the Risk Society. In it, self-threats are “systematically produced and accepted by man, since they conform to the standards of industrial society. In addition to the belief in the sustainability of such a model”²⁴ because, in fact, any event, so far, led me to think otherwise”²⁵.

Nature, observed only under the aspect of the common resources generated and, not, as being integral and essential to the subsistence of the Web of Life²⁶, brings rational incentive to its use in maximum potential and recalls the research of Garret Hargin²⁷, especially, regarding the “Tragedy of the Commons”. As a system of beings distributed in the universe, the maximum use of Nature brings a potential exhaustion of the resources inherent to it or, at least, its certain congestion, as already observed today. Consequently, those who have free access to it, internalize the benefits of its use and, disproportionately, externalize the negative aspects to the Society.

This is because the risk, despite reaching the Society as a whole, is “unevenly distributed, as well as the possibility of destruction caused by it. The poorest strata of society are usually the most affected, due to the location of their home, difficulties in circumventing these risk situations”²⁸, as well as the insufficiency of state support after the occurrence.

This current context²⁹ adding to the “romantic conception of nature “as a great harmonic totality” [...]” brought a new guise to holistic thinking and, as it evolved, systemic ideas came

²³ AYDOS, Elena de Lemos Pinto. **Tributação ambiental no Brasil**, p. 50.

²⁴ SARAIVA, Pery Neto. **A prova na jurisdição ambiental**. Porto Alegre: Livraria do Advogado, 2010, p. 19.

²⁵ SARAIVA, Pery Neto. **A prova na jurisdição ambiental**, p. 19.

²⁶ “Understanding the nature of life from a systemic point of view means identifying a set of general criteria through which we can make a clear distinction between living and non-living systems. Throughout the history of biology, many criteria have been suggested, but all of them turned out to be flawed in one way or another. However, recent formulations of self-organizing models and the mathematics of complexity indicate that it is now possible to identify these criteria. The key idea of my synthesis is to express these criteria in terms of the three conceptual dimensions: pattern, structure and process” (CAPRA, Fritjof. **A teia da vida: uma nova compreensão científica dos sistemas vivos**. Translation of Newton Roberval Eicheberg. São Paulo: Cultrix, 2006. p. 135.

²⁷ HARDIN, Garret. **The tragedy of the commons**. Science. Vol. 162. Dez. 1968.

²⁸ PEDRINI, Tainá Fernanda. **Drama de Mariana: memórias entre a lama**. Available in: < <http://conversandocomoprofessor.com.br/2018/01/29/drama-de-mariana-memorias-entre-a-lama/>>. Accessed on December 12, 2018.

²⁹ “One of the main insights of romantic biology was the fact that living forms of nature express fundamental organic types, often called “archetypes”, which are subject to gradual variations [...]. This new way of thinking went far beyond the image of the Newtonian world machine, and would come to dominate all future scientific thinking. [...] Darwin’s monumental *On the Origin of Species* (1859) and the theory of evolution forced scientists to abandon the Cartesian conception of the world as a machine that had emerged fully constructed from the hands of its creator. On the contrary, it was necessary to describe the universe as an incipient system, in continuous mutation, in which complex structures developed from simpler forms **A revolução ecojurídica: o direito sistêmico em sintonia com a natureza e a comunidade**.p. 137-138, highlights in the original version of the text).

about. “The ideas of the living Earth, formulated by Leonardo da Vinci in the 15th century and by romantic scientists in the 17th, contain some key elements of our contemporary Gaia’s theory”³⁰. “Gaia’s theory looks at life in a systemic manner, bringing together geology, microbiology, atmospheric chemistry and other disciplines whose professionals are not used to communicating with each other”³¹.

In the field of law, the verification of the interdependence of beings leads to a new guise on the concept of community, to the treatment given to relationships of all kinds, as well as to beings as members of a single system. With regard to the epistemological cut of the research, this contextualization obtained as basis the evolution of the Systemic Theories, to the present research, specifically, the notion of “autopoiesis” of the Law and interdisciplinarity.

2 SUSTAINABILITY: AN ECOSOPHICAL UNDERSTANDING

One of the greatest challenges of the 21st century, after 40 years of attempts to make Sustainability issues effective, remains the understanding of the importance of this imperative that makes our century the marked difference around different human activities. This understanding of Sustainability requires a greater sensitivity around not only environmental issues, but also what is conventionally called the triple bottom line of Sustainability, that is, the social and economic environment.

However, and for the purposes of this research, it becomes interesting to emphasize the importance of Sustainability as a vector for change in entrepreneurial activity so that the production of capital does not make people stop being more human beings and live unique perspectives of survival. In fact, social sustainability and environmental sustainability, for example, form new patterns of thinking about civilizational development based on the characteristics of beings and their environments.

For this reason, systemic theory provides elements necessary to identify which are the common elements that favor this interconnection between different fields of knowledge. Any

³⁰ The romantic conception of nature “as a great harmonic totality” [...] led some scientists of that period to expand their search for totality across the planet and to see the Earth as an integrated whole, a living being. In doing so, they resumed the (sic) ancient tradition that had begun with the Greek conception of the world as a kosmos and flourished during the Middle Ages and the Renaissance, until the medieval perspective was replaced by the Cartesian image of the world as a machine. A concepção da Terra como um ser vivo, [...] havia renascido (FRITJOF, Capra; MATTEI, Ugo. **A revolução ecojurídica**: o direito sistêmico em sintonia com a natureza e a comunidade. p. 136-137, highlights in the original version of the text).

³¹ CAPRA, Fritjof. **A teia da vida**: uma nova compreensão científica dos sistemas vivos. p. 83.

initial reading on the topic of Sustainability highlights the need for a rationality that cannot be thought of exclusively in isolation from the angle of the environmental, social or economic sphere. Thinking about Sustainability means finding elements of communication³² that allow the transit between different structures of knowledge and sensitive experience. This is not the simplest task that can be demanded from the interaction between environmental and social sustainability. In fact, this assumption is the most elementary that drives all other analyzes that must be carried out from the perspective of this new rational requirement. Perhaps, the word emergency will shed light on the clarification of this phenomenon and serve to foster an Ecosophy of the Sensitive³³.

The idea of emergence³⁴ seems to agree with the theoretical foundation of systemic law. When thinking about the issue of what emerges, which becomes visible to human eyes, one realizes the connection between different ways of thinking, acting, living together. The emergence of a systemic right and based on an ecosystemic understanding³⁵ considers it as pertinent each of the connections that are made, that is, in Phil Anderson's precise and lean formula: "More is different"³⁶. It is in this context that the world of life must be understood as the "spirit of time".

In this case, the "newness of the new"³⁷ does not contradict a strictly economic vision,

³² "The general theory of autopoietic systems requires that you indicate exactly the operation performed by the system's autopoiesis, thus delimiting the system in relation to the rest. In the case of social systems, this happens through communication. [...] Systems Theory and the theory of communication constitute a very compact context: the first one specifies that a system must be reproduced through a type of operation (and only one!); and the second deals precisely with the characteristics of this type of operation. Communication has all the necessary properties to constitute the principle of social autopoiesis [...], because it presupposes the concurrence of a large number of systems of consciousness, although, precisely for this reason, as a unit, it cannot be imputed to any isolated conscience". LUHMANN, Niklas. **Introdução à teoria dos sistemas**. Tradução de Ana Cristina Arantes Nasse. Petrópolis, (RJ): Vozes, 2009, p. 293.

³³ "The ecosophy of the sensitive, [...], returns all its importance to affection, it will be from then on an alternative to what was the modern "normopathy". This, be it religious, moral or political obedience (its logic is identical: "must-be"), is dedicated to evacuating all risk: "zero risk" ideology, to over-guarantee, cleaning up everyday life until it is unable to withstand the intrusion of antibodies or various adversities, however, constitutive of the mundane data. Now, it is well known that the fear of abuse, of excesses, in fact, of disorder, [...] leads to the most stultifying immobility ". MAFFESOLI, Michel. *Homo eroticus: comunhões emocionais*. Translation of Abner Chiquieri. Rio de Janeiro: Forense, 2014, p. 246.

³⁴ "The emergency originates through new relationships (interactions) of the previously disconnected components. For this reason, not taking into account the importance of such connections is one of the basic flaws of reductionism". VEIGA, José Eli da. **A emergência socioambiental**. 2. ed. rev. São Paulo: Editora Senac, 2010, p. 113.

³⁵ The proposition of Ecosophy in Guattari is this ethical-political articulation between three ecological records: the environmental, that of human relations and that of human subjectivity. According to the mentioned author, only in this interaction - conflicting, tragic - between the inner "I" (subjectivity) and the outside world" [...] - be it social, animal, vegetable, cosmic - which is thus engaged in a kind of general movement of implosion and regressive infantilization. Alterity tends to lose all roughness". GUATTARI, Félix. **As três ecologias**. Translation of Maria Cristina F. Bittencourt. Campinas, (SP): Papirus, 1990, p. 8.

³⁶ "The main fallacy in this kind of thinking is that the reductionist hypothesis does not by any means imply a 'constructionist' one: the ability to reduce everything to simple fundamental laws does not imply the ability to start from those law and reconstruct the universe. In fact, the more the elementary particle physicists tell us about the nature of the fundamental laws, the less relevance they seem to have to the very real problems of the rest of science, much less to those of society". ANDERSON, Phil. *More is different*. **Science**, New Series, v. 177, n. 4047. (Aug. 4, 1972), pp. 393. Available in: <http://links.jstor.org/sici?sici=0036-8075%2819720804%293%3A177%3A4047%3C393%3AMID%3E2.0.CO%3B2-N>. Access in: Feb.19, 2019.

³⁷ ZIZEK, Slavoj. **Primeiro como tragédia, depois como farsa**. Translation of Maria Beatriz de Medina. São Paulo: Boitempo, 2011,

especially from the perspective of environmental or social sustainability, as is the case with Ecological Modernization³⁸. This expression denotes the search for Sustainable Development³⁹ whose paradigm is the search for logical improvement based on the exploration of nature and the different environments that compose it.

Any more rigorous reading on the theme of Sustainability knows that its matrix is ecology and the development of lives cannot be under the yoke and submission of environments of beings to the judgments of the needs of human beings. For this reason, each connection established by a systemic right in different subsystems of knowledge, of sensitive experience in daily life, of discovering other beings in environments favors the necessary clarification on the importance of sustainability, in its ecological matrix, to be understood as a paradigm. 21st century national civilization.

Based on this scenario, the study of constitutional law already presents these assumptions duly registered in the Constitution of Ecuador and the Bolivian Constitution. In the first one, we have a framework that breaks anthropocentrism in the interpretation of legal subjects. In the second one, the principle of harmony is identified by reading article 8⁴⁰. All of these elements suggest that the responses of the law cannot be centered on a logical reductionism, like that predicted by Kelsen, because the global phenomena are interdependent and complex.

Understanding the social, environmental and economic phenomena about their characteristics is the first step in order to understand, in a systemic way, the law of the 21st century. Sustainability, in its faith, Opportunism and demands placed that are appropriate

p. 145.

³⁸ “[...] The opposition is not primarily between ME and DS, but in the notion of sustainability that underlies each of such notions. Not that the differentiation between these concepts is reduced to this point, however, it is an important starting point”. LENZI, Cristiano Luis. **Sociologia Ambiental: Risco e sustentabilidade na modernidade**. Bauru, (SP):EDUSC, 2006, p. 122.

³⁹ “[...] the term Sustainable Development, for example, is harmless without the solidarity of the two words. It is not just a qualitative one in which it will indicate greater profitability for companies and industries because they immediately decided to modify all their attitudes and structures to innovate and bring other rules to the game. On the contrary, in the dimension of an economy based on unlimited capital growth, Sustainability is just a name linked to certain activities whose purpose is the same: more capital for the few to the detriment of all others”. AQUINO, Sérgio Ricardo Fernandes de. **(Contra o) eclipse da esperança: escritos sobre a(s) assimetria(s) entre direito e sustentabilidade**. [electronic resource]. Itajaí, (SC): Editora da UNIVALI, 2017, p. 161.

⁴⁰ “Sustainability, based on the Harmony Principle, translates that constitutional turn intensified by social movements and their demands coming from silent and marginalized voices by traditional constitutional discourse. Unlike other countries in the West, the Constitution of Bolivia makes the matrix of significance of Sustainability effective and alive as a factor that changes human and non-human realities. The exercise of Sovereignty is understood by the presence of the “Other” by its immanent value, on the one hand, and the breadth of democratic spaces for decision-making and deliberation of the popular will”. AQUINO, Sérgio Ricardo Fernandes de; DAL MAGRO, Diogo; SIGNOR, Giulia. PRINCÍPIO DA HARMONIA: PROCESSO CONSTITUINTE DA BOLÍVIA E A EFETIVIDADE DA SUSTENTABILIDADE. In: CAOVIALLA, Maria Aparecida Lucca; RENK, Arlene (Organizadoras). **Pluralismo Jurídico, Constitucionalismo Latino-Americano, Buen Vivir e os Direitos da Natureza**: III Congresso Internacional. [electronic resource]. São Leopoldo, (RS): Karywa, 2018, p. 74.

according to the logic of this complexity in its different degrees of communication. Among the possible scenarios that can be cited by means of an eco-friendly understanding of Sustainability, stakeholders are a manifestation of communication, a language and rationality proper to these characteristics of Sustainability in its triple meaning.

3. THE ROLE OF STAKEHOLDERS TO ECOLOGY IN LAW

It was previously observed that human beings' inexorable dependence on Nature demonstrated, with historical experiences, "the reason why a large part of society's greatest challenges today, in one way or another, is related to ecological problems."⁴¹

Humanity, in this research dissociated from Nature, merely for the sake of better understanding, is in fact an integral part of it and cannot be a "mere spectator of environmental degradation. Responsibility must ensure and protect individuals under threat of extinction, due to an environmental collapse that occurs gradually to the detriment of Nature"⁴².

Seeking alternatives, therefore, that encourage and mitigate human practices that deviate from sustainable objectives and harm the present and the future of the community is essential. Law, in this context, as an object of cultural construction and, in its normative sense, must also understand the systemic character of this dynamic, as Sustainability, in its legal meaning⁴³, is based on this understanding.

Stakeholders can be great targets or means to achieve these goals. Conceptualized as "public of interests or strategic public"⁴⁴, they can be divided for specific purposes, in social groups. It is the consensus of human beings, of the environment in which they are inserted, that models of organization are extracted⁴⁵. Through it, at the same time, the Law is influenced and exerts control.

⁴¹ MONTERO, Carlos Eduardo. **Tributação ambiental**: reflexões sobre a introdução da variável ambiental no sistema brasileiro. São Paulo: Saraiva, 2014. p. 3.

⁴² ARIZIO, Silvia Helena. **Manifesto para uma justiça ecológica**: sua importância acerca do direito das águas. Erechim: Deviant, 2017. p. 21.

⁴³ The following Operational Concept for the Sustainability Category is used in the legal dimension: It is the **interaction** between the different levels of **articulation, organization, language and structure of the normative sources** to ensure the ways of life development and its dignity.

⁴⁴ ROCHA, Thelma; GOLDSCHMIDT, Andrea (Coords). **Gestão dos Stakeholders**: como gerenciar o relacionamento e a comunicação entre a empresas e seus públicos de interesse. São Paulo: Saraiva, 2010. p. 1.

⁴⁵ LUHMANN, Niklas. **La sociedad de la sociedad**. México: Herder, 2007.

According to Sérgio Ricardo Fernandes de Aquino⁴⁶, Sustainability does not corroborate with a Law that ignores “the intense flow of this Heraclitan river called the world. [...] Law, and its sources, is not restricted to state legislative or judicial activities, but changes as social actors expand through globalization flows, that is, it moves from one duallevel system to another [...] *multilevel*”.

In this perception, the Society “has been calling for a change in behavior in daily life, through education and campaigns aimed at preserving the environment”⁴⁷. The market, as an interested group, has made progress in projects related to Sustainability⁴⁸, because, upon realizing this change “seeks to attract consumers by offering sustainable products and services. This new stance indicates that the dominance of the human being over Nature, in a predatory condition and unlimited exploration, must be overcome, as a condition of Justice”⁴⁹.

In this context, “one of the great merits of Luhmann’s theory lies in overcoming the mere observation of actors and moving on to the study of communications that take place between social actors. Occasion when the law starts to appear as a means capable of enabling the stabilization of relations”⁵⁰.

FINAL CONSIDERATIONS

The arguments presented in evidence that the positive right has become insufficient to bring answers that are specific to each phenomenon according to its characteristics, as well as the complexity Sitting in the 21st century. The understanding and cause of sustainability and the Stakeholder Movement summarize the concern of systemic law in clarifying how the law becomes capable of fulfilling its objectives of social organization, allying regional and global interests.

It appears that this is not the simplest task, but it is the demand of our century as a form of integration between man and nature as a living community that needs to be respected and

⁴⁶ AQUINO, Sérgio Ricardo Fernandes de. **(Contra o) eclipse da esperança**: escritos sobre a(s) assimetria(s) entre Direito e Sustentabilidade. Itajaí: Univali, 2017. p. 181.

⁴⁷ ARIZIO, Sílvia Helena. **Manifesto para uma justiça ecológica**: sua importância acerca do direito das águas. p. 25.

⁴⁸ About the subject: ALMEIDA, Fernando. Experiências empresariais em sustentabilidade: avanços, dificuldades e motivações de gestores e empresas. Rio de Janeiro: Elsevier, 2009.

⁴⁹ ARIZIO, Sílvia Helena. **Manifesto para uma justiça ecológica**: sua importância acerca do direito das águas. p. 25.

⁵⁰ PORTUGAL, Daniela. A autopoiese no Direito e o funcionalismo sistêmico de Günther Jakobs na aplicação da Lei Penal. **Cadernos do Programa de Pós-Graduação em Direito**, Universidade Federal do Rio Grande do Sul. vol. VIII. n. 2. Ano 2013. p. 7. Available in: < <https://seer.ufrgs.br/ppgdir/article/view/43130/28204>>. Accessed on December 13, 2018.

protected. For this reason, sustainability insists on an Ecosophy of the Sensitive, that is, the interaction between the economic and social dental dimension signals, in a systemic logic, which are the common elements between different fields of knowledge that allows to seek and implement means of protection and conservation, adaptation and prosperity for human development. This condition, however, only occurs as long as it is known to respect the physical, chemical and biological limits of the different beings in their environments.

This is the logic that systemic law operates in order to allow attitudes to foster the recognition of Nature as a “being of its own” and of how each person is one of the members of this living community. For this reason, the research assumption provisionally described in the Introduction to this text remained confirmed by the theoretical foundation presented because the participation of “Stakeholders”, in the dimension of systemic law, becomes a two-way behavior, of influencing and being influenced, than the multiple options – in Phil Anderson’s statement: “More is different” – signals the need for an attitude towards Sustainability based on this variety of possibilities in order to have prosperity, adaptation and maintenance of our world.

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WORLD HEALTH ORGANIZATION GUIDELINES, COVID-19 PANDEMIC, AND TRANSNATIONAL LAW

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INTRODUCTION

The novel coronavirus disease (COVID-19) has rapidly spread worldwide. It gained a pandemic status, and is currently affecting, without distinction, the most (and the least) important world powers. We are facing a global public health crisis with unprecedented economic effects. Actually, we fear something that, in fact, cannot be seen.

Faced with a context of uncertainties, the goal of the present study was to discuss the importance of transnational law in view of the occurrence of transnational phenomena—such as the current COVID-19 pandemic—analyzing the transnational law to be applied by states, based on the guidelines provided by the World Health Organization (WHO) for managing COVID-19.

Initially, we address the categories ‘endemic’, ‘epidemic’, and ‘pandemic’ to determine the connection between the prefixes ‘pan’ and ‘trans’, and the relationship with transnational law. Subsequently, we present a brief outline on the emergence of the WHO and its performance in the elaboration of a transnational legal framework to be taken into consideration by each member state when implementing WHO guidelines. The methodology used was based on the inductive method, using the reference, category and operational concepts techniques, and bibliographic research.

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1. A REFLECTION ON THE CATEGORIES

Since infectious diseases began to have endemic, epidemic, or pandemic characteristics, the bases for combating them started to have fundamentally transnational characteristics from the second half of Modernity. Especially from the beginning of the 20th century, at a time when many cases of infectious diseases began to be registered in the control systems of official health agencies, these facts started to gain visibility through the media, which began to report on the existence of endemics, epidemics, and the consequent risk of pandemics.³ In the case of the present study, it was important to establish the concepts of each of these categories.

These diseases, in some cases, are endemic, i.e., when a certain number of cases occurs historically in a specific region. When this endemic level is overcome, that is, when there is an increase in the historical case curve, it is correct to affirm that there is an outbreak or epidemic. However, the distinction between epidemic and endemic⁴ cannot be made based only on the greater or lesser incidence of a certain disease on a population. What defines the endemic character of a disease is the fact that it is the same for a population, country, or region.⁵

A pandemic outbreak of a disease, incorporated into the medical glossary from the 18th century⁶ onwards, being an epidemic of worldwide proportions, is characterized by the emergence of cases in several countries from different continents. The term 'pandemic', originating from the neutral prefix '*pan*', which indicates the idea of everything, entirely, and '*demos*' (people) was used for the first time by Plato, in his book *Laws* - XI.⁷

This way, it is possible to link the prefix '*pan*' to the prefix '*trans*', suggesting the existence of a certain issue, occurrence, or phenomenon between and beyond countries. They are different; however, if we consider that pandemic, as in the case of the present study, indicates the

³ FOLHA DE SÃO PAULO. **O apocalipse moderno são as viroses; e o pior está por vir.** Accessed: <https://www1.folha.uol.com.br/empreendedorsocial/2020/03/o-apocalipse-moderno-sao-as-viroses-e-o-pior-esta-por-vir.shtml>. Retrieved: 20nd March 2020.

⁴ Rezzende, quoting Bailly (Dictionnaire grec-français, 16. cd. Paris. Lib. Hachette, 1950), states that "The very etymology of the word endemic denotes this attribute. Endemos, in classical Greek, means 'native to a country, indigenous', 'referring to a country', 'found among the inhabitants of the same country'". REZENDE, Joffre Marcondes de. Epidemia, endemia, pandemia. Epidemiologia. **Revista de Patologia Tropical**. Vol 27 (1), pp. 153-155. Jan-Jun 1998. Available: <https://webcache.googleusercontent.com/search?q=cache:lobNEZYsQcMJ:https://www.revistas.ufg.br/iptsp/article/download/17199/10371/+&cd=2&hl=pt-BR&ct=clnk&gl=br>. Retrieved: 22nd March 2020. p. 153.

⁵ REZENDE, Joffre Marcondes de. Epidemia, endemia, pandemia. Epidemiologia. **Revista de Patologia Tropical**, p. 153.

⁶ REZENDE, Joffre Marcondes de. Epidemia, endemia, pandemia. Epidemiologia. **Revista de Patologia Tropical**, p. 154.

⁷ Plato. **As Leis**. Translation by Edson Bini. Bauru: Edipro, 1999.

occurrence of cases in numerous places (i.e., deterritorialization), it becomes a transnational phenomenon. Consequently, it should prompt a transnational action, i.e., the two prefixes are complementary, especially when it comes to 'cause' (pan) and 'effect/reaction' (trans).

2. THE WORLD HEALTH ORGANIZATION AND ITS TRANSNATIONAL CHARACTER

Since the 19th century, numerous attempts have been made in order to create institutionalized mechanisms for providing technical cooperation, especially among the European powers at that time. Throughout the 20th century, specifically in the periods after the great wars and the Cold War, the world witnessed the flourishing of several reorganized or formally created international organizations or bodies. The subjects of their constitutive treaties began to outline the deliberation of common global agendas, involving topics on security, world peace, economy, work, free trade, environment, and health, among many others.

The engagement of efforts in favor of common interests, enhanced by major world episodes, such as the great wars and the end of the Cold War, has demonstrated and demonstrates the central core of the creation and functioning/maintenance of international organizations.

Specifically, regarding health, several attempts have been made since the 19th century to organize an international institution for addressing world health problems.⁸ It is true that there are disagreements with respect to the reasons for the emergence of forums and international cooperation bodies for achieving consensus concerning health and strategic actions for the control and prevention of diseases. However, there is also consensus on the fundamental factor that justifies the creation of this organism, i.e., the growing flow of goods and individuals—which results from the industrialization and the expansion of markets in urban centers—and its

⁸ The outline of these organizations began in Europe in 1851, twenty years after the outbreak of cholera, when Paris hosted the first International Health Conference, with the aim of reaching an agreement between twelve states on the minimum requirements for maritime quarantine, in order to "provide important services to trade and navigation". WHO - World Health Organization. **Les dix premières années de L'Organisation Mondiale de la Santé**. Geneva: WHO, 1958, p. 06. In 1892, this consensus was adopted, but restricted to cholera only. In Latin America, due to the impact of the cholera and yellow fever epidemics, a health convention was held in Montevideo in 1873, with the presence of Brazilian, Argentine and Uruguayan health authorities, determining common measures to prevent Asian cholera and yellow fever, plague, and typhus. Other efforts have been made to reach consensus on the prevention and classification of diseases, as well as on the organization of international health institutions. Among the main ones, the WHO cites the International Sanitary Bureau in 1902, based in Washington (USA) and currently known as the Pan American Health Organization (PAHO); the Office International d'Hygiène Publique (OIHP), in Paris (1907); and The Health Organization of the League of Nations, based in Geneva, Switzerland (1919). LIMA, Nísia T. O Brasil e a Organização Pan-Americana da Saúde: uma história em três dimensões. In: FINKELMAN, Jacobo (org.). **Caminhos da Saúde Pública no Brasil**. Rio de Janeiro: Ed. Fiocruz, 2002, p. 23-116.

relationship with the increase in diseases.⁹

Thus, the World Health Organization (WHO) was created in 1946, governed by the Constitution of the World Health Organization, in force since April 7th 1948.¹⁰ Its preamble asserts that “The Member States of this Constitution declare, in accordance with the Charter of the United Nations, that the following principles are fundamental for the happiness, harmonious relations, and security of all peoples [...]”.¹¹

Currently, composed of 194 states, as a member of the United Nations (UN) system, it is one of the most decentralized organizations in the family,¹² entrusting its six regional offices (Africa, the Americas, Southeast Asia, Europe, the Eastern Mediterranean, and the Western Pacific) the formulation of guidelines for the respective regions, as well as the execution of the decisions of the headquarters, located in Geneva (Switzerland).¹³

In addition to its vast geographical scope, the WHO occupies a unique position in global health, thanks to its visionary official charter—called the Constitution, which is unusual in the UN system—ensuring a social approach to health, and affirming it as a human right.¹⁴ The Human Rights discourse was the tool used by the WHO to face the usual restrictions of diplomacy of the states,¹⁵ although much remains to be done in this regard.

In this context, the UN, through its organizations such as the International Labor Organization (ILO), the World Trade Organization (WTO), and the WHO, for example, is essentially of transnational character. It provides regulations and guidelines that are internalized by the member states, which, since decades, began to create a framework of legal rules of transnational nature.

⁹ LIMA, Nísia T. **Brazil and the Pan American Health Organization: a history in three dimensions.**

¹⁰ On April 7, 1948, the WHO Constitution came into force with the ratification of the participation of 26 of the 61 member countries. During the First World Health Assembly, held in Geneva, delegations from 59 governments became members of the WHO. Then, April 7th became World Health Day, celebrated every year.

¹¹ WHO - World Health Organization. **Constitution of the World Health Organization (WHO).** New York, 1946. Available: <http://www.direitoshumanos.usp.br/index.php/OMS-Organiza%C3%A7%C3%A3o-Mundial-da-Sa%C3%BAde/constituicao-da-world-health-organization-omswho.html>. Retrieved: 18th March 2020.

¹² GODLEE, F. **The World Health Organisation: WHO in crisis.** BMJ – British Medical Journal, 1994, n. 309, p. 1424-1429.

¹³ WHO - World Health Organization. Countries. Available: <https://www.who.int/countries/en/>. Retrieved: 18th March 2020.

¹⁴ LEGGE, David. Future of WHO hangs in the balance. **BMJ - British Medical Journal**, 2012, n. 345. Available: <https://www.bmj.com/content/345/bmj.e6877.full>. Retrieved: 18th March 2020.

¹⁵ BIEHL, J.; PETRYNA, A. Critical global health. In: BIEHL, J.; PETRYNA, A. (orgs.). **When people come first - critical studies in global health.** Princeton: Princeton University Press, 2013. p. 03.

3. TRANSNATIONAL LAW AND THE WORLD HEALTH ORGANIZATION

As we have already mentioned numerous times,¹⁶ addressing transnational law means referring to the classic work of American diplomat, scholar and jurist Philip C. Jessup, dating from 1956. Just over a decade after the end of World War II, and experiencing a unique historical moment of improvement and intensification of relations between states, this author was emphatic in affirming that the states are not the only group that interests us, and that the term 'international' is misleading, since it suggests that we concern ourselves only with the relationships between a nation (or state) and other nations (or states).¹⁷ Other authors, such as Vagts, Steiner and Koh,¹⁸ also followed Jessup's trend, evolving the analysis of the topic gradually, as the world society itself started to face transnational demands, occurrences, and legal issues.

With the development of globalization, transnationality, as a phenomenon, started to be observed in a hyaline way. It was highlighted as manifestations of transnationality,¹⁹ or transnationality as a reflective phenomenon of globalization.²⁰ New manifestations of globalization, different forms of belonging to socio-cultural and political arrangements,²¹ deterritorialization,²² difficulty in relating the phenomenon to a given territory,²³ reconfiguration of cultural identities, and new social and economic agents, among other factors, demonstrate that the edge has already crossed national borders.

At this point, it is worth recalling the five points of convergence that demonstrate some of the main characteristic features of transnational relationships that compose transnationality,

¹⁶ PIFFER, Carla.; CRUZ, Paulo. M. A transnacionalidade, as migrações transnacionais e os direitos dos trabalhadores migrantes. **JURIDICAS**, v. 16, p. 11-28, 2019. PIFFER, Carla; CRUZ, Paulo. M. . O direito transnacional como disciplina em cursos jurídicos. **UNIO EU Law Journal**, v. II, p. 37-58, 2018. PIFFER, Carla; CRUZ, Paulo. M. O direito transnacional e a consolidação de um pluralismo jurídico transnacional. In: Heloíse Siqueira Garcia e Paulo Marcio Cruz. (orgs.). **Interfaces entre direito e transnacionalidade**. 1ed.Itajaí: AICTS, 2020, v. 1, p. 29-42. PIFFER, Carla; CRUZ, Paulo M. Manifestações do Direito Transnacional e da Transnacionalidade. In: PIFFER, Carla; CRUZ, Paulo Márcio; BALDAN, Guilherme Ribeiro. (Org.). **Transnacionalidade e sustentabilidade: dificuldades e possibilidades em um mundo em transformação**. 1ed.Porto Velho: EMERON, 2018, v. 1, p. 8-27.

¹⁷ JESSUP, Philip. **Direito transnacional**. São Paulo, Brasil: Fundo de Cultura, 1965.

¹⁸ STEINER, Henry J.; VAGTS, Detlev F. **Transnational Legal Problems: Materials and Text**. 2. ed. New York: The Foundation Press, 1976. VAGTS, Detlev F. **Transnational business problems**. New York: The Foundation Press, 1986. KOH, Harold H. **Transnational Legal Process**. Faculty Scholarship Series. Paper 2096. New Haven: Yale Law School, 1996. Available: http://digitalcommons.law.yale.edu/fss_papers/2096. Retrieved: 13th October 2019.

¹⁹ PIFFER, Carla; CRUZ, Paulo M. Manifestações do Direito Transnacional e da Transnacionalidade. In: PIFFER, Carla; CRUZ, Paulo Márcio; BALDAN, Guilherme Ribeiro. (Org.). **Transnacionalidade e sustentabilidade: dificuldades e possibilidades em um mundo em transformação**.

²⁰ PIFFER, Carla; CRUZ, Paulo. M. . O direito transnacional como disciplina em cursos jurídicos, p. 38.

²¹ RIBEIRO, Gustavo Lins. **A condição da transnacionalidade**. Brasília: Universidade de Brasília, 1997, p. 03.

²² STELZER, Joana. O fenômeno da transnacionalização da dimensão jurídica. In: Cruz, P. M.; STELZER, Joana (orgs.). **Direito e Transnacionalidade**. Curitiba, Juruá, 2009, p. 25.

²³ PIFFER, Carla. **Transnacionalidade e Imigração: a possibilidade de efetivação dos Direitos Humanos dos Transmigrantes diante de Decisões de Regresso na Itália e na União Europeia**. (Doctoral dissertation). Universidade do Vale do Itajaí, Brasil, 2014.

namely: horizontal relationships; constant and influential relationships; disruption of the state unit; network of legalities; and weakening of control and social protection systems.

As a result, the more the phenomenon is consolidated, the more evident is the need to accept the existence of transnational law. This mechanism has a unique feature, i.e., the untying of the production of autonomous political norms in a fragmented world society, as pointed out by Teubner.²⁴ Instead of the hierarchy and unity of Law in the constitutional state, attention is drawn to the heterarchical plurality of legal orders,²⁵ among them those produced by international organizations.

Still, according to Teubner, supra and transnational orders (public and private) bring elements of complexity to the legal systems. This way, already pacified assumptions of modernity should necessarily be reread. The evaluation of Law in globalization proposes the existence of a diversity of 'global civil constitutions', in specific sectoral spheres, often outside the policy exercised by the states, therefore treated in a wrong way by the classic division between public international law and private international law.²⁶

In this way, transnational law does not emanate from a single 'will-forming' center, but is produced by a multiplicity of simultaneous decisions, which, according to Teubner, should be called 'polycentric law'.²⁷ Therefore, it is no longer possible to understand such concepts in their classic versions if they are still operational concepts to describe this institutional experience.²⁸

Consequently, new power and competition relations have been observed, and new factors of incompatibility between the social agents and the state units started to be put to the test on a daily basis, making Law adapt to the new events,²⁹ because Law is a social fact or phenomenon; it does not exist without society, and cannot be conceived outside of it.³⁰

²⁴ TEUBNER, Gunther. A Bukowina Global sobre a Emergência de um Pluralismo Jurídico Transnacional. **Impulso**, Piracicaba, v. 14, n. 33, p. 9-32, jan./abr. 2003.

²⁵ TEUBNER, Gunther. The Corporate Codes of Multinationals: Company Constitutions Beyond Corporate Governance and Co-determination. In: NICKEL, Rainer (Ed.). **Conflict of laws and laws of conflict in Europe and beyond: patterns of supranational and transnational juridification**. Oxford: Hart, 2009; TEUBNER, Gunther. **El derecho como sistema autopoietico de la sociedad global**. Lima, Peru: ARA Editores, 2005.

²⁶ TEUBNER, Gunther. Fragmented Foundations: Societal Constitutionalism Beyond the Nation State. In: DOBNER, Petra. LOUGHLIN, Martin (orgs.). **The Twilight of Constitutionalism?** Oxford: Oxford University Press, 2010. p. 331-332.

²⁷ TEUBNER, Gunther. Fragmented Foundations: Societal Constitutionalism Beyond the Nation State.

²⁸ MORAIS, Jose Luis Bolzan de. **As crises do Estado e da Constituição e a transformação espaço-temporal dos direitos humanos**. 2. ed. rev. ampl. Porto Alegre: Livraria do Advogado, 2011, p. 12.

²⁹ PIFFER, Carla; CRUZ, Paulo. M. O direito transnacional e a consolidação de um pluralismo jurídico transnacional, p. 35.

³⁰ REALE, Miguel Reale. **Lições Preliminares de Direito**. 27 ed. São Paulo: Saraiva, 2002.

This pluralism of legal orders involves state and non-state agents beyond the limits of the states that are not fully able to conduct official international legal acts, given that legal reflexes of transnational relations are not limited to economic issues. Litigation involving human rights—and consequently health-related issues—environmental issues, transnational governance acts, transnational social organizations, labor relations, family relations, public or private contracts, and many other legal and non-legal areas compose the current transnational legal pluralism.³¹

Specifically, with regard to the role of the WHO as a transnational agent, an ongoing debate involves two factors, namely: (1) whether this international body should be predominantly a normative agency, setting standards, developing protocols, and providing information that can be used by governments and agencies when implementing their programs; or (2) the extent to which it should be involved in implementing its own programs.³²

The answer to this question should be given taking into account the phenomenon of transnationality and the plurality of agents inserted in unique socio-political and legal contexts. It is worth mentioning that, in both cases, the WHO plays the role of transnational agent and contributes to the production of health-related transnational law.

The characteristics of transnational agent relating to this organization are evidenced by standardizing health actions and policies worldwide, offering guideline and protocol manuals, advising member countries on the execution of health policies and programs, implementing actions, intervening in the fight against diseases and inequalities that affect the health status of populations, preparing global health reports, and defining their implementation by the health systems of the member states. The production of transnational law in this area becomes evident at the moment when the member states produce their internal regulations based on guidelines issued by the WHO.

The goal of the present study is in line with one of the binding documents produced within the scope of the WHO, known as International Health Regulations (IHR).³³ This document was prepared by all member states and established rules to be applied by countries in order to stop

³¹ PIFFER, Carla; CRUZ, Paulo. M. O direito transnacional e a consolidação de um pluralismo jurídico transnacional, p. 40.

³² MCCARTHY, Michael. 2002. What's going on at the World Health Organization? *The Lancet*, v. 360, n. 9.340. Available: <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2802%2911243-8>. Retrieved: 20th March 2020.

³³ The International Health Regulations (IHR) is a binding international legal instrument for 196 countries worldwide, which includes all Member States of the World Health Organization (WHO). Its goal is to help the international community prevent and respond to serious public health risks that have the potential to cross borders and threaten people around the world.

the spread of epidemics. In 2005,³⁴ this regulation was extended by including new diseases to the list of the 1995 IHR.

As a demonstration of the transnational aspect of the topic, the IHR included new concepts and categories that re-dimensioned international disease control, establishing an approach that covers all possible risks, regardless of their source or origin. It established the terminology “public health emergency of international concern” (PHEIC), and made member states responsible for notifying the WHO about “all events in their territories that might constitute a PHEIC”.³⁵ In addition, it is worth noting that the issues addressed in the IHR have been constantly discussed in order to adapt them to the current world reality.³⁶

As a way of internalizing the referred document, Brazil started to adapt the existing national structures and resources to meet the requirements of basic issues—in accordance with the IHR—such as those related to surveillance activities, reports, notifications, verification, response, and collaboration in the activities involved in each topic included in the regulation. This fact was demonstrated by the Ministry of Health 2016 National Focal Point Operation Plan for the 2016 IHR.³⁷ Likewise, similar action was expected from the others member states

The importance of the performance of a transnational agent and the elaboration of a transnational legal framework on health today is justified given the occurrence of a PHEIC. The projection of articulated actions involving the member states promoted by the WHO demonstrates the need for engagement of the entire planet in the face of the occurrence of the coronavirus pandemic, an issue that will be addressed next.

4. THE CORONAVIRUS DISEASE 2019 (COVID-19) PANDEMIC AND THE TRANSNATIONALITY PHENOMENON

³⁴ The IHR came into effect on June 15th 2007. At that time, all Mercosur countries had already ratified these regulations.

³⁵ FIDLER, David P. From International Sanitary Conventions to Global Health Security: The New International Health Regulations. *Chinese Journal of International Law*, Oxford, v. 4, n. 2, p. 325-392, 2005, p. 362.

³⁶ On May 18, 2017, the World Health Assembly, presented Document A70/16, with the Global Implementation Plan of the IHR, which comprises six areas of action, the first of which, “Accelerating State Parties’ implementation of the International Health Regulations (2005), includes the elaboration of a “five-year global strategic plan to improve public health preparedness and response”, to be submitted to the World Health Assembly in May 2018 (A70/16). PAGOTTO, Barbara Frossard. **Regulamento Sanitário Internacional (RSI 2005) na agenda de cooperação em saúde do Mercosul e a emergência do vírus zika**. Available: https://portalarquivos2.saude.gov.br/images/pdf/2018/outubro/22/12_Barbara_Pagotto.pdf. Retrieved: 20th March 2020.

³⁷ BRAZILIAN MINISTRY OF HEALTH. **Plano de Operação do Ponto Focal Nacional para o Regulamento Sanitário Internacional**, 2016. Available: http://bvsms.saude.gov.br/bvs/publicacoes/plano_operacao_ponto_focal_nacional_regulamento_sanitario_internacional.pdf. Retrieved: 20th March 2020.

The 15th edition of the Global Risk Report presented at the World Economic Forum, in Davos, Switzerland, which took place in January 2020, indicated that health systems were under new pressures around the world in the face of vulnerabilities resulting from changing social, environmental, demographic, and technological practices and habits. Indeed, this is more than an accurate finding.

With the recent declaration of the COVID-19 pandemic by the WHO, two months after the referred report, the issues addressed in it were fully confirmed. According to the statement by the WHO Director-General, Tedros Adhanom:

We are all affected by the growing COVID-19 pandemic. It is an unprecedented health challenge and we know that people and organizations everywhere want to help. The World Health Organization (WHO) is leading and coordinating the global effort, supporting countries to prevent, detect, and respond to the pandemic.³⁸

If we go back to the characteristics of the transnationality phenomenon, we will realize that a pandemic—like the one occurring today—can be described as an infectious disease that spreads among populations located in extensive geographic regions, for example, a continent, or even the planet Earth, in a transnational manner.

As with many phenomena of transnational scope (migration, environment-related issues, crime, economics, etc.), the current COVID-19 pandemic knows no borders, does not respect sovereign states, or world economic powers, and does not differentiate between races or social classes; it simply crosses the territorial boundaries established after the Westphalia Treaty. In addition, it pierces, frightens, and causes the most feared damage, the materialization of the risk of risks,³⁹ i.e., the loss of thousands and thousands of lives.

For more than a decade, studies on transnationality and transnational law have been conducted in the *Stricto Sensu* Graduate Program in Legal Science of the University of Vale do Itajaí (UNIVALI), Itajaí, State of Santa Catarina, Brazil. These studies have called attention to the fact that the intense changes occurring in the current risk society also require new political and

³⁸ WHO - World Health Organization. La OMS, la Fundación pro Naciones Unidas y sus asociados ponen en marcha el Fondo de Respuesta Solidaria a la COVID-19, primera iniciativa en su género. Available: <https://www.who.int/es/news-room/detail/13-03-2020-who-un-foundation-and-partners-launch-first-of-its-kind-covid-19-solidarity-response-fund>. Retrieved: 20th March 2020.

³⁹ It is appropriate to recall Beck's words about knowledge in the Risk Society and the importance of health: "Certainly, 'health' is also a very high cultural value, but it is (more than that) precisely the presupposition of life. The universalization of health creates threats that are always present and, sometimes, affect the economic and political system. So, here, cultural and social premises are not the only jeopardized factors, which with one can live, just like the way of modernity shows, despite all the tears that have already been shed". BECK, Ulrich. **La sociedad del riesgo**: hacia una nueva modernidad. Barcelona: Paidós, 1998, p. 92.

legal sciences strategies.⁴⁰

Furthermore, in 2007, Miglino⁴¹ stated that the ecological problem would probably lead to the creation of transnational power centers, going beyond the ideology and legal structure of international relations. However, many scholars disagreed. Today, the question is: Who will disagree with the need of transnational power centers targeted at maintaining life? It is difficult to find a more consistent argument than this one.

However, as a response to the current COVID-19 pandemic, states began to close in on themselves, restricting their territorially—in a non-uniform and unplanned manner—without taking into consideration any possibility of global cooperation in favor of the most essential common interest, i.e., the maintenance of life. The principle of solidarity in the face of common axiological guidelines, materialized by cooperation, and invoked so many times in the international arena, has always seemed inadequate, not to say unnecessary. It is worth mentioning that the same effect might be related to transnational law.

In a recent study on the current pandemic, Ferrajoli pointed out to the “[...] dramatic confirmation of the need and urgency of achieving a planetary constitutionalism [...]”. This author also mentions the need for effective and homogeneous measures to be adopted targeted at preventing the variety of procedures performed—in many cases completely inadequate—from favoring infection and multiplying the damage for everybody.⁴²

In the case of Europe, the whole legal apparatus involving European law and the divergent measures adopted by the countries of the European Union (and by its former member, the United Kingdom) go against any basic cooperation, world interdependence, global community, or the fact that global problems are transnational challenges and demand global responses.

The sense of transnational law, “applied by institutions with bodies and organizations for governance, regulation, intervention [...]”,⁴³ and the joint action of the transnational bodies and organizations become feasible and indispensable in the face of the current facts. From the

⁴⁰ CRUZ, Paulo Márcio; OLIVIERO, Maurizio. Reflexões sobre o direito transnacional. *Revista Novos Estudos Jurídicos*, Vol. 17 - n. 1 - p. 18-28 / jan-abr 2012, p. 25.

⁴¹ MIGLINO, Arnaldo. Una comunidade mondiale per a tutela dell’ ambiente. *Revista Archivio Giuridico*, v. CCXXVII – Fascicolo IV – 2007, editada por Filippo Serafini, e publicada pela Mucchi Editore, em Roma, Itália.

⁴² FERRAJOLI, Luigi. *Il virus mette la globalizzazione con i piedi per terra*. Available: <https://ilmanifesto.it/il-virus-mette-la-globalizzazione-con-i-piedi-per-terra/>. Retrieved: 22nd March 2020.

⁴³ CRUZ, Paulo Márcio; OLIVIERO, Maurizio. *Reflexões sobre o direito transnacional*, p 22.

establishment of ‘transnational public spaces’,⁴⁴ the existing transnational health law, within the scope of the WHO, becomes the instrument for guiding transnational powers, with the intensification of the processes of abdicating the sovereign powers of states.

Currently, more than before, there is a call for recognition and respect for a world society affected, without distinction, by challenges arising from transnational phenomena—to which the current COVID-19 pandemic is now added. At this moment, we cannot forget Beck's teachings regarding the dependence relations between national states—as territorial states with their power founded on the link with a given space—and world society, given that it relativizes and interferes in the performance of those states, “[. ..] because an immense variety of connected places cross their territorial borders, establishing new social circles, communication networks, market relations, and forms of coexistence. [...]”⁴⁵

Transnational law, applied by states based on the WHO guidelines against COVID-19, together with the establishment of urgent planetary action guided by transnational networks of cooperation and solidarity, offers effectiveness and efficiency to new global transnational governance strategies targeted at controlling and combating the current COVID-19 pandemic.

Therefore, this global society affected by transnational problems requires the consolidation of transnational law, initially produced by the WHO guidelines, and oriented by cooperation in solidarity actions. The world market and large transnational companies know that they are able to produce and distribute medical equipment and health materials. Countries that may be less affected, or better prepared to deal with the current pandemic, could send health professionals to those most in need. The global economy, guided by its important agents, could create adequate economic policies, thus contributing to mitigate the economic damage caused, and avoiding numerous social problems. This way, it would be possible to establish the transnational public spaces that society needs.

FINAL CONSIDERATIONS

The goal of the present study, conducted in the midst of the COVID-19 pandemic, was to emphasize the importance of transnational law in the face of a transnational phenomenon of this nature, with proportions that cannot yet be estimated, and with all due respect to international

⁴⁴ CRUZ, Paulo Márcio; OLIVIERO, Maurizio. **Reflexões sobre o direito transnacional**, p. 22.

⁴⁵ BECK, Ulrich. **O que é globalização? Equívocos do globalismo**. Respostas à globalização. São Paulo, Paz e Terra, 1999, p. 18.

law, as we already know that this is a step forward. This perspective means no longer Law between states, but Law created from transactional issues by the states.

Using the classification of 'pandemic' instead of 'endemic' opens the possibility and, above all, denotes the need of coordinated and joint application of the WHO guidelines by its member states, under the form of transnational law to be internalized individually against COVID-19.

It is worth noting that the WHO, issuing protocols, recommendations, and standards in the face of a pandemic, allows the states, under the same basis of guidance, to edit their own internal rules and materialize the transnational law that will guide and link public health actions.

It is evident that this transnational law, created from the scope of a transnational agent, should also be permeated by transnational networks of cooperation and solidarity. This fact will make it possible to provide the due degree of efficiency to global strategies, recognizing the fact that we are dealing with nothing more and nothing less than the preservation of life on a planetary scale.

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ENVIRONMENTAL PUBLIC CIVIL ACTION AND THE JURISPRUDENCE OF THE SUPERIOR COURTS¹⁻²

Marcelo Buzaglo Dantas³

INTRODUCTION

And it has been 35 years since the law that regulated this formidable instrument of protection of meta-individual interests was enacted (including diffuse, collective and homogeneous individuals, *ex vi* of the provisions of article 81, sole paragraph, of Law no. 8.078/90 - Consumer Protection Code)⁴.

At that time, the rule was bold and innovative, having established forecasts and created institutes that would only be incorporated much later into the procedural system as a whole - such as, for example, provisional urgent relief and specific protection of the benefits of doing and not to do (Law No. 7.347/85, arts. 11 and 12).

Improved by the aforementioned Law no. 8.078/90, which modified it and established a subsidiarity relationship with it (art. 21) and having received the inevitable incidence of the Civil Procedure Codes (from 1973 and 2015) (art. 19), the law of public civil action followed its course and, in this context, the jurisprudence played a very relevant role in the interpretation and application of the instrument.

The objective of the present work is, therefore, precisely to analyze the main and most

¹Article originally published in Portuguese in MILARÉ, Édís (Coord.). **Public civil law suit after 35 years**. São Paulo: Thomson Reuters Brasil, 2020, p. 955-970.

²This article was written entirely during the quarantine due to the worldwide coronavirus outbreak. This explains why the author, physically distant from his library, did not use any doctrinal reference in the text, except for his own works, which are accessible for consultation. The negative side of this circumstance is not being able to count on the indispensable foundation of the doctrine to support the text. However, there is a positive side, which is to leave the article entirely authentic and revealing the author's exclusive opinions, which is entirely responsible for them.

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⁴Contrary to what one might think, public civil action was not created by Law no. 7.347/85. Four years earlier, with the enactment of the National Environmental Policy Law (Law No. 6.938/81), it provided, for the first time in the legal system, the possibility of filing a "civil liability action ... for damage to the environment"(art. 14, §1º), genesis of what would become public civil action, although limited, at the time, to environmental protection and legitimacy restricted to the Public Ministry.

recent conclusions reached by the Brazilian Superior Courts (in particular, the Superior Court of Justice) regarding the controversial procedural aspects of Law no. 7.347/85.

In effect, after so long in force, the rule was adapted to reality, with jurisprudence, in this context, playing an important role in the interpretation of legal provisions and, in some cases, making them effective.

However, not all the conclusions reached are capable of completely removing the doubts and controversies arising from life situations, which the Law is called to regulate. We will try, as far as possible, to point out some hypotheses in which the judge, or even the summary, can give a direction, leaving the interpreter to follow the most appropriate course to the solution of the controversy that is posed to him.

As the theme of environmental public civil action has gained great importance and repercussions in jurisprudence in recent decades, the issues faced by the Courts are the most varied. Therefore, it was necessary to make a “cut” and choose some themes, which are presented below. Our criteria for making this difficult choice were as follows: a) timeliness; b) relevance; c) controversy in the application, although the themes are apparently pacified (*verbi gratia* in the case of summarized matters); d) we have not dealt with the subject in any of the three previous works that we had the honor of writing also in celebration of the anniversaries in force of Law no. 3.747/85⁵.

1. CUMULATION OF PRETENSIONS OF OBLIGATION TO DO / NOT DO AND PAY⁶

Art. 3 of Law n. 7.347/85, establishes that "the civil action may have as its object the condemnation in cash or the fulfillment of the obligation to do or not to do".

As stated, the device on screen represented the institution, in our procedural legal system, of the specific protection of the obligations to do and not to do, expressly provided for in art. 11 of the same law and subsequently improved by art. 84 of the CDC. And that only came to integrate

⁵Early protection and specific protection in environmental public civil law suit. News on public environmental civil action. Reflections of the new CPC in public environmental civil action. So it is that equally current and relevant matters were left out, as is the case of the anticipation of expert fees, the burden of succumbing in the event of unfoundedness, early protection and specific protection in the regimes of the previous and current CPC, etc. The only exception was the treatment of normative conflicts that occurred within the scope of environmental public civil action, a theme that we faced in the last text (Reflections of the new CPC in environmental public civil action) and which we now revisit, this time from an entirely different perspective, whatever, that of the solution criteria in view of the maximum “in dubio pro natura”.

⁶On the subject, v. DANTAS, Marcelo Buzaglo. **Public civil action and the environment**. 1st ed. 2nd tir. São Paulo: Saraiva, 2010.

the individual procedural system with the reform of the CPC of 1973, before the insertion of art. 461-A by Law no. 8.952/94 (that is, almost ten years after the advent of LACP). Today the theme is regulated in arts. 497, *caput*, 499 and 500, of the CPC of 2015 and, the measures destined to the performance, in arts. 536 et seq., Of the same diploma.

In any case, the question that we propose to examine in this topic is not exactly the scope of the institute (which proved to be indispensable for the judicial protection of the interests of the community, as well as of individual rights), but the possibility of cumulation of claim (s) of this nature (to do or not to do), mandatory or executive, with another of a condemnatory nature (to pay a sum), in a public civil action aimed at protecting the environment.

The issue has always been controversial and, although today it is pacified, as we will see, it is still likely to generate some controversy in practice.

Now, examining the literalness of the provision, it is possible to see that the legislator's intention was to provide for both possibilities. But, although we are talking about a rule issued 35 years ago, it does not seem to us that it was intended to prevent cumulation - not least because, even the CPC in force at the time did not do it, but, on the contrary, expressly allowed it in its art. 292 (*caput*), provided that observed compatibility between applications, the jurisdiction of the same judgment and rites identity, and even if it were via various procedures claims derivable (Paragraph 1, I to III), the addition would be permitted if the ordinary is adopted (§2^o).

Therefore, what seems to us is that, in saying that the public civil action could contemplate requests for an obligation to do / not to do or to pay, the law actually intended only to list the hypotheses, but never to exclude them from being brought to court jointly.

In any case, for a long time, the STJ case law held that the conjunction “or”, contained in the legal mandate, would mean alternation and not cumulation.⁷

Until, in October 2005, the Court changed its position, to make clear the possibility of cumulation of mandatory / executive and condemnatory claims. At the time, it remained settled that, in the interpretation of the legal provision on screen, “the conjunction 'or' should be considered in the sense of addition (allowing, with the cumulation of requests, the integral protection of the environment) and not that of an alternative excluding (which would make public

⁷In this sense: AgREsp. n. 180.620-SP, Rel. Min. Francisco Falcão, in DJU of 03/26/2001. REsp. n. 205.153-GO, Rel. Min. Francisco Falcão, in DJU of 03/26/2001. REsp. n. 247.162-SP, Rel. Min. Garcia Vieira, in DJU de 05/08/2000. REsp. n. 94.298-RS, Rel. Min. Garcia Vieira, in DJU of 06/21/99.

civil action an inadequate instrument for its purposes) ”⁸ . And more:

Requiring, for each type of benefit, an autonomous public civil action, in addition to violating the principles of instrumentality and procedural economics, would give rise to the possibility of contradictory sentences for similar demands, between the same parties, with the same cause of asking and with common purpose (environmental protection measures), the only variant of which would be mediated requests, consisting of services of a different nature. The prohibition against cumulating requests of this nature does not exist in the common procedure, and there would be no point in denying public civil action, created especially as an alternative to better enable the protection of diffuse rights, which is permitted, by ordinary means, for the protection of all and any other right.

In other words, quite simply: if it is possible for the plaintiff to cumulate an action aimed at fulfilling a performance resulting from contractual default with the condemnation in cash for the losses and damages suffered, for example, it would not be admitted, obviously, the prohibition that similar claims could be deduced in terms of protecting the environment.

Indeed, from this precedent, the understanding was consolidated in the Court, with the publication of several other points in the same direction. More recently, even, the matter was summarized by the First Section, verbis: “As for environmental damage, the defendant's condemnation of the obligation to do or not to do combined with that of indemnity is admitted”⁹ .

What happens, according to the reading of the precedents on the subject, leads us to believe, is that, until the advent of the above-mentioned paradigm, the matter was faced only in order to prevent the accumulation of the claims arising from the same fact and the same cause of ask. In other words, it was understood (rightly, by the way) that, in the face of the same conduct of degradation of the environment, OR the claim was made to repair the damage, OR, if this is impossible, compensation in cash for the losses to the community. Never both measures simultaneously, under penalty of characterizing bis in idem¹⁰ .

This understanding, repeat, for absolutely correct, must be adopted even today, even after the advent of Precedent 629. In fact, the possible formulation of cumulative requests, obviously does not imply mandatory cumulation, especially when it proves to be unavoidable.

⁸REsp. n. 605.323 / MG, Report for Min. Teori Albino Zavascki, terminated by Min. Garcia Vieira, in DJU de 10/17/05.

⁹Precedent 629, in DJe of 12/17/18.

¹⁰This conclusion is reinforced when reading Min. Francisco Falcão, in the aforementioned leading case, which represented the Court's change of orientation regarding the material: “I still understand that the legislation in question prohibited imposing double sanctions on the administration for the same fact, which would show an authentic bis in idem. [...] I understand that the diction of the law is directed to the portion of the environmental damage that cannot be recovered by the causer, thus, in this part, a financial penalty based on the LACP will fit. As seen, this forecast must be checked on a case-by-case basis, according to the facts and circumstances related to the damage”.

What has come to be understood - also with undeniable correctness - is that, if the reparative or prohibitive measure of an action is not related to the claim for damages, it is appropriate to cumulate the claims in the same claim.

Suppose, for example, that a particular industry has been dumping solid waste and chemicals for several years into a water supply that serves a particular community. The action aims to stop the harmful activity and, cumulatively, to repair the environmental damage caused in the past. Once this is done, it is found that restoration in natura is impossible, given that the environmental damage is irreparable, leaving only the community, in particular, to be compensated for the damage it suffered. In the hypothesis, it is legal that the sentence imposes the provision of not doing (abstaining from the activity) together with the condemnation to pay the amount corresponding to the losses caused to the community.

What cannot happen, it is reiterated, is the imposition of a *facere* or *non facere* and the condemnation in money arising from the same fact and the same cause *petendi*, under penalty of unforeseeable duplicity of measures for the same illegitimate conduct, which does not it is admitted.

Now, if, on the other hand, the measures sought in the public environmental civil action refer to situations that are not confused, the cumulation will be appropriate.

Interesting STJ ruling synthesizes the controversy, leaving it settled:

If the damaged environmental asset is immediately and completely restored *to the status quo ante* (*reductio ad pristinum statum*, that is, restoration to the original condition), there is no ordinary talk of compensation. However, the technical possibility, in the future (= prospective jurisdictional provision), of *in natura* restoration is not always sufficient to fully reverse or recompose, in the field of civil liability, the various dimensions of the environmental damage caused; so, do not exhaust the duties associated with the polluter pays and reparations *in integrum* principles¹¹.

However, we must insist once again: if the claims made in the demand are not clearly delimited and separated from each other, demonstrating what is sought in terms of the provision

¹¹ REsp. n. 1.198.727-RS, Rel. Min. Herman Benjamin, in DJe of 9/5/2013. Later on, however, in the same menu, the edge goes too far, in our opinion, because without correspondence in material law (exception made to the hypothesis of collective moral damage), by establishing: " This transitory, remaining or reflexive degradation of the environment includes: a) the ecological damage that temporally mediates the moment of harmful action or omission and the full restoration or restoration of the biota, that is, the passive hiatus of deterioration, total or partial, in the enjoyment of the common good of the people (= interim or intermediate damage), something that is common in the hypothesis, eg., in which the judicial command is strictly satisfied with the exclusive natural regeneration and losing sight of the illegally suppressed flora, b) the environmental ruin that persists or persists, despite all restoration efforts (= residual damage or permanent), and c) collective moral damage. The economic benefit of the agent with the degrading activity or enterprise, the illicit ecological added value that it has received (eg, timber or ore removed irregularly from the degraded area or benefit from its spurious use, must also be reimbursed to the public patrimony and the community. for agrosilvopastoral, tourist, commercial purposes)".

of doing / not doing and the reasons for the condemnatory claim, cumulation will be inadmissible, because it is contrary to the dictates of legality and to the precepts that the STJ's own summary intended to regulate.

2. PASSIVE LEGITIMACY OF THE BUYER OF A DEGRADED PROPERTY ¹²

As is known, Law no. 7.347/85 does not deal with passive legitimacy *ad causam* for public civil actions, so that the basis for justifying the presence of anyone on the passive pole of the procedural relationship must be sought in material law.

So, the *caput* of art. 225 of CF / 88, when establishing the imposition, to the Public Power and the collectivity, to preserve the environment, establishes the possibility that both one and the other may be defendants of environmental public civil action. The same is true of its Paragraph 3, which provides the triple responsibility (civil, criminal and administrative) of the natural or legal persons by activities harmful to the environment and, in the interests, the obligation to repair the damage caused.

More explicitly (and quite broadly), Law no. 6.938/81 - National Environmental Policy Law (LPNMA) defines, in its art. 3, IV, the polluter is a "physical or legal entity, public or private, responsible, directly or indirectly, by activity causing environmental degradation." The same legal diploma, in the first part of art. 14, Paragraph 1, imposed, also, the objective liability polluter to compensate or repair damage to the environment, which was followed by art. 225, Paragraph 3, above.

Thus, although the law on public civil action does not explicitly provide, it is perfectly possible to apprehend, by the provisions of constitutional and infraconstitutional legislation in force, the fundamentals that justify the appointment of an individual or legal entity to respond to the demand.

It happens that, under the classic system of civil liability, there would be a need, in order to configure the reparatory duty, the presence of the three fundamental elements, namely: conduct, causal link and damage.

Law and jurisprudence, it is true, are increasingly mitigating the need for the presence of each of these three figures, especially when it comes to public environmental civil actions.

¹²We also deal with the issue in our **Public Civil Action and the Environment**. 1^a ed. 2^a tir. São Paulo: Saraiva, 2010.

This is the case, for example, in relation to the causal link, of the STJ, which, in a profoundly comprehensive way, equated the cause of the damage to the environment with those who, in some way, have acted or failed to act to avoid it. Even those who “did not care” about the conduct, deserve, according to the interpretation of the *aresto*, to appear as defendants and be jointly condemned to repair the damage¹³.

Regarding the third requirement (damage), the procedural legislation itself mitigated the need for its existence to configure the agent's liability. It is what can be concluded from the provisions of art. 497, Paragraph 1, of the NCPC, which set up in our procedural law, the figure of inhibitory action, that, in proceedings concerning the provision of do 's and don'ts in which the judge may grant a "specific protection intended to inhibit practice, the reiteration or continuation of an offense or its removal ", in which“ the demonstration of the occurrence of damage or the existence of intent or guilt is irrelevant ”. However, proof of intent or guilt has long been unnecessary in public environmental civil actions, due to constitutional and legal mandates. The novelty lies in the exemption of “damage” or risk of damage to meet the demand.

We finally arrived at the first element of civil liability, the conduct, to address the topic referred to in this topic, namely, the legitimacy of someone who acquired a property or an establishment (an industry, for example), whose area has been the object of environmental degradation in the past, caused by the former owner.

In this case, the new holder, strictly speaking, would not have practiced any conduct that would lead to the harmful result, which could, *a priori*, exclude him from the possibility of being nominated to appear in the passive pole of the demand. This was the understanding that prevailed for some time in the jurisprudence of the STJ from 1999-2000 - although there has always been controversy and the cases, often, were decided by a majority of votes¹⁴.

The understanding evolved and, in the years that followed, it came to understand, in a peaceful way, that environmental obligations have a *propheroent* nature, that is, they accompany

¹³“For the purpose of determining the causal link in environmental damage, those who do it, those who do not do it when they should do it, those who let it do, who do not care what they do, who finance it do it, and who benefit when others do” (REsp. n. 650.728 / SC, Rel. Min. Hermann Benjamin, in DJe of 02/12/09).

¹⁴Against legitimacy in such cases: “It is not possible to impose the obligation to repair environmental damage, through the restoration of tree cover, the individual who acquired the land already deforested. [...] Although it is independent of guilt, the polluter's liability for environmental damage requires the demonstration of the causal link between the conduct and the damage” (REsp n. 218.120 / PR, Rel. Min. Garcia Vieira, in DJU of 10/11/1999). For legitimacy: “The new purchaser of the property is a legitimate passive party to respond for environmental damage action, since he assumes ownership of the rural property with the imposition of limitations dictated by Federal Law. It is appropriate to analyze, in the course of the dispute, the limits of your responsibility” (REsp n. 222.349 / PR, Rel. Min. José Delgado, in DJU of 3/23/2000).

the thing, and it is lawful to demand reparation from both the current owner as the previous one. Especially because, by failing to repair, the buyer would be perpetuating the injury and / or failing to practice legally required conduct. The reiteration of the judges ended up leading the First Section of the STJ to edit Precedent no. 623, in this sense¹⁵.

While applicable to any hypothesis of environmental liabilities (the acquisition of a property in which there was soil contamination, for example), the fact is that the hypotheses covered by the understanding summarized on screen are, in most cases, summarized in two occasional situations: permanent preservation areas - APPs and legal reserves, institutes foreseen in both the previous Forest Code (Law n. 4.717/65) and the current one (Law n. 12.651/12).

Very briefly, the area of permanent preservation, according to the diction of the law currently in force, is that "protected, covered or not by native vegetation, with the environmental function of preserving water resources, the landscape, geological stability and biodiversity, gene to facilitate the flow of fauna and flora, soil protection and to ensure the well-being of the human population" (Law no. 12.651/12, art. 3, III). The list of APPs is found in art. 4, may be mentioned, for example, the protective groups of the watercourses (item I), the surroundings of the natural lakes and ponds (II), the gripper dunes marshes and swamps of stabilizer (VI), etc. ., and others may be created when declared of social interest by an act of the chief Executive (art. 6).

The legal reserve constitutes a portion of the rural property, in a percentage that varies according to the biome, "with the function of ensuring the sustainable economic use of the natural resources of the rural property, assisting the conservation and rehabilitation of ecological processes and promote biodiversity conservation, as well as shelter and wildlife protection and native flora" (art. 3, II, of the same Law n. 12.651/12).

In this way, applying to the institutes in question the understanding endorsed by the jurisprudence of the STJ, whose content was contemplated by Precedent no. 623, of the Court, it can be affirmed, without any fear, that the obligation to repair the damages caused in APPs, as well as the obligation to constitute the legal reserve, are transmitted to the buyers of real estate or things, which may appear on the pole liability for public civil action aimed at achieving such purposes.

It should be noted that the 2012 Forest Code legislator himself, most likely influenced by

¹⁵"Environmental obligations are of a propherent nature, and it is permissible to charge them from the current owner or possessor and / or from previous ones, at the choice of the creditor" (in DJe of 12/17/2018).

the jurisprudential guidance, had already expressly foreseen this possibility, with regard to the two institutes, including, more than once¹⁶.

This is the case, in relation to APPs, of the provisions of art. 7, Paragraph 1 of the new law, according to which the vegetation (and, in our experience, not the area, as some argue) on the APP "should be maintained by the owner of the area, owner or occupant under any title, natural or legal person, of public or private law". And although neither were needed, explains the norm in Paragraph 2 of the same device: "The obligation provided for in § 1 is of a real nature and is transmitted to the successor in the case of transfer of domain or possession of the rural property".

With regard to the legal reserve, art. 17 establishes that "The Legal Reserve must be preserved with native vegetation cover by the owner of the rural property, owner or occupier in any capacity, whether natural or legal, under public or private law". And, art. 18, *caput*, of Law no. 12.651/12 establishes that it must be registered in the CAR, "being prohibited the alteration of its destination, in the cases of transmission, in any capacity". Still, in the case of property titled as possession, says § 3, of the same article, it implies the subrogation of the obligations assumed in the commitment term referred to in § 2", that is, the one signed between the owner and the competent environmental agency. Although not as explicit as the standard on APP, the set of these provisions leads to the belief that the new owner or possessor remains obliged to maintain the legal reserve, if it already exists, or to institute it, if it has not already been.

In addition to these specific rules, in the general provisions the legislator, in a comprehensive manner and so as to leave no doubt about the option he adopted, already established that "the obligations provided for in this Law are real in nature and are transmitted to the successor, of any nature, case of transfer of domain or possession of the rural property" (art. 2, § 2).

Therefore, prevailed in the jurisprudence and later in the law itself, the thesis that the obligation to preserve / recover the permanent preservation vegetation¹⁷ and to maintain / establish the legal reserve¹⁸, is inherent to the condition of owner or possessor, who cannot avoid

¹⁶ Cfe. DANTAS, Marcelo Buzaglo. ANDREOLI, Cleverson Vítório. **Código Florestal anotado**. Rio de Janeiro: Lumen Juris, 2017.

¹⁷ "As case-law of the Superior Court of Justice, the duties associated with the permanent preservation areas have an obligation to nature *propter rem*, ie adhere to the title field or office, can be attributed to both the owner and the owner, regardless of who has been the cause of environmental degradation (AgInt in AREsp. 1.031.389/SP, Rel. Min. NAPOLEÃO NUNES MAIA FILHO, DJe 27.3.2018; REsp. 1.622.512/RJ, Rel. Min. HERMAN BENJAMIN, DJe 11.10.2016)" (AgInt at AREsp 819176 / SP, Rel. Min. Napoleão Nunes Maia Filho, in DJe de 10/01/18).

¹⁸ "According to the Supreme Court's case law, the obligation to mark, annotate and restore legal reserve area constitutes an

it, even though he was not the direct cause of damage to the environment.

However, it does not seem to us that the simple observation that there was a harmful and harmful conduct in the past, automatically leads to the defendant's conviction. It should be noted that we are dealing with the subject from the perspective of passive legitimacy *ad caus* - although, of course, it can also be examined from the perspective of civil liability, which is not our focus in this work. Thus, we understand that, although legitimate to appear in the case, the defendant may fully exercise the right of defense, which may eventually be upheld by the judge. Without going too far (which would require a deeper debate, unabated at this headquarters), consider the hypothesis of an indemnity claim for moral damage due to conduct practiced by the former owner of an area. Would the acquirer's duty to repair include the possibility that he would also be responsible for this? Or would the obligation be restricted to the *natural* restoration of the property? - which is what, in the final analysis, the jurisprudential understanding reached has sought to safeguard.

As can be seen, although provided by law and pacified in jurisprudence, the matter is not immune to controversies that may arise in the infinity of life situations that the Law must regulate and that can be brought to the Judiciary in the context of a public civil action environmental.

3. INVERSION OF THE BURDEN OF PROOF

The burden of proof in public environmental civil actions has always been a subject of controversy. Possibly, the reason for this stems from the difficulty inherent in the cost of proof by the legitimate assets (subject, by the way, which has nothing to do with the inversion, as the STJ well understood)¹⁹), which ended up generating the need to search for a solution that would escape the rigor of the classic procedural rule (before, art. 333 of the previous CPC and, today, art. 371 of the current).

Under these rules, the burden of proof rests with the plaintiff as regards the facts

obligation *propter rem*, which automatically transfers to the purchaser or the possessor of the rural property. This legal duty does not depend on the existence of forests or other forms of native vegetation in the land, fulfilling, if necessary, the adoption of the essential measures for their restoration or recovery, in order to readjust the percentage limits provided for in the law of regency" (REsp. n. 1276.114 / MG, Rel. Min. Og Fernandes, in DJe de 10/11/16).

¹⁹ "There is not, even in the case of public civil action, any normative provision that imposes on the defendant the obligation to advance the necessary resources to cover the production of evidence required by the plaintiff. The inversion of the burden of proof (= procedural burden of demonstrating the existence of a fact) cannot be confused with the reversal of the financial burden of advancing the expenses resulting from the performance of procedural acts" (REsp. N. 846.529-MS, Rel. Min. Teori Zavascki, in DJU of 05/07/07).

constituting his right and the defendant in relation to the impeding, modifying or extinct facts of the plaintiff's right.

Well then. A constant provision in art. 6, section VIII, of Law no. 8.078/90 (CDC), regarding basic consumer rights, started to allow the inversion of the burden of proof in their favor in specific situations, namely, the likelihood of the allegation and hyposufficiency, at the judge's discretion.

Although the norm did not intend to regulate the *onus probandi* in any kind of collective action, much less those that deal with the environment, whose defense is difficult to operate at the individual level, it is a fact that it started to defend the incidence of that norm broad and unrestricted manner. It was understood that, because it is a procedural provision, it would be covered by the scope of the subsidiarity command contained in art. 21 of Law no. 7.347/85 - which refers to the provisions of the CDC for public civil action. So it was, at first, to advocate the full possibility of reversing the burden of proof in public environmental civil actions.

Subsequently, the case law, on another basis, reinforced this understanding, starting to state that, "in environmental proceeding, the shift of the burden of proof is required, and the entrepreneur, in the specific case herein, is liable for the potential danger it causes to the environment, with respect to the precautionary principle."²⁰.

With the maximum bias, the argument is absolutely unsusceptible to produce the desired effect. Precaution, as is known, concerns scientific uncertainty. Now, if there is uncertainty, it is not the inversion of the burden of proof that will allow to arrive at the necessary conviction for the judgment of the dispute. The impression he gives when he comes across this argument is that the defendant was prejudiced against the defendant, who, considered *a priori* as the cause of the damage, should bear all the burden of proof. And more: the required test is diabolical, because, if there is scientific uncertainty, how to prove that the conduct is not harmful (negative test, in addition)?

Anyway, after an unsuccessful attempt to transfer to the defendant also the financial burden of the lawsuit (which, in the last analysis, seems to be the real problem behind the defense of the inversion in the public environmental civil actions), the theme consolidated itself, coming to be included in Summary n. 618 of the STJ, as follows: "The inversion of the burden of proof applies

²⁰ REsp. n. 1.237.893/SP, Rel. Min. Eliana Calmon, in DJe of 10/01/13.

to environmental degradation actions"²¹ .

It happens that, even before that, the New Code of Civil Procedure came into force, which, while maintaining the previous rules in relation to the *onus probandi* (art. 373, *caput*, I and II), innovated significantly by predicting the possibility of inversion in exceptional and individual cases in Paragraph 1 of the same device, namely:

In cases provided for by law or in view of the peculiarities of the case related to the impossibility or the excessive difficulty of fulfilling the charge under the *caput* or to the greater ease of obtaining proof of the contrary fact, the judge may assign the burden of proof in a different way, provided it does so by reasoned decision, in which case it must give the party the opportunity to discharge the burden that has been assigned to it.

Now, in view of this novel provision, fully applicable to public civil actions of any nature, before the subsidiarity command inherent in art. 19 of Law no. 7,347 / 85, it is clear that a new guideline must be adopted - which is not even close to the incidence of a principle inapplicable to the species²². Indeed, it is unequivocal to adopt the inversion of the burden of proof, in the form of the law, that is, faithfully following the parameters established by the procedural law.

This does not at all want to sustain the inapplicability of Precedent n. 618 of the STJ. In reverse, it is in effect and must be observed. However, the interpretation to be made, at least as it seems to us, is that the parameters for adopting the inversion, when applicable, must be those provided for in the legal provision above transcribed.

At least two conclusions can be drawn from this, namely: a) the inversion of the burden of proof in public civil actions is neither mandatory nor automatic (note that the Precedent speaks of “application” of the institute to those, not of duty, imposition or mandatory); b) where applicable, at the discretion of the judge, who is the recipient of the test, he must observe the hypothesis subsumes the command contained in the provisions of § 1 of art. 371, of the CPC, that is, if the conditions imposed there are present, that is, the impossibility or the “ excessive difficulty of fulfilling the task under the *caput* or the easiness of obtaining proof of the contrary fact” .

On the latter (requirements authorizing investment), moreover, it is important to make an important reservation, especially with regard to the best conditions for producing the evidence.

²¹In DJe of 10/30/18.

The STF, in a famous judgment, seems to have given an adequate direction to the use of the precautionary principle, by establishing that it must follow the maximum of proportionality in its application (RE n. 627.189 / SP, Rel. Min. Dias Toffoli , in DJe of 04/04/18). In addition to the vote of the Rapporteur, special mention should be made of Ministers Luís Roberto Barroso and Luiz Fux. A comment on the whole of the edge can be found in our On other undue uses of the precautionary principle, see what we said in our *Direito Ambiental de Conflitos*. 2^a ed. Rio de Janeiro: Lumen Juris, 2017).

According to what happens in the day-to-day of the forum, it should be noted that, as a rule, the investment does not apply to public environmental civil actions. Explains yourself.

The reality shows that the overwhelming majority of these demands, in Brazil, are brought to court by the Federal and State Prosecutors. As is known, the institution has an investigative instrument that none of the other legitimates and, still less, any defendant, has, namely, the civil investigation. This is an administrative procedure, of an inquisitive nature, in which the representative of the *Parquet* may request due diligence from public and private bodies, including technical inspections, forensics, hearing of witnesses²³, etc., in order to better equip the public civil action that it will promote, if it is not the possibility of filing. Now, it is to be asked, who among the litigants, as a rule, has better conditions to produce the evidence in court with all this prior apparatus made available? Evidently, it is not the defendant, against whom one still seeks to impose the burden of proof that his conduct was not harmful.

It cannot be forgotten, yet, that § 2 of the same art. 371, of the Novo CPC, expressly states that "the decision provided for in § 1 of this article cannot generate a situation in which the discharge of the burden by the party is impossible or excessively difficult", which must also be considered by the decision that appreciates the application for Reversal of the burden of proof.

Finally, it should be reiterated that the inversion of the burden of proof has nothing to do with the inversion of the financial costs of the process, so that, even if the *probandi burden* is reversed, this evidently does not mean that the defendant is responsible for the anticipation of expert fees, for example²⁴. These, in environmental public civil action, are the responsibility of the State or the Federal Union, as the case may be, as already decided by the First Section of the STJ, in the context of a repetitive appeal²⁵.

²³ "The Public Prosecution Service may initiate, under its presidency, a civil inquiry, or request, from any public or private body, certificates, information, examinations or expert reports, within the period indicated, which may not be less than 10 (ten) working days. (Law No. 7.347/85, art. 9, § 1).

²⁴ "The issue of the burden of proof concerns the judgment of the case when the alleged facts have not yet been proved. However, regardless of who has the burden of proving this or that fact, it is up to each party to provide for the expenses of the acts that it performs or requires in the process, anticipating payment (CPC, art. 19), and it is up to the author to advance the expenses related to acts whose performance the judge determines of ex officio or at the request of the Public Ministry (CPC, art. 19, § 2º) ' (REsp 538.807 / RS, 1st Panel, Rel. Min. Teori Albino Zavascki, DJ of 7.11.2006) ' " (REsp 797079/SP, Rel. Min. Denise Arruda, in DJe 4/24/08).

²⁵ Repetitive theme n. 510: "It is not possible to demand from the Public Ministry the advance of expert fees in public civil actions. It turns out that the aforementioned exemption granted to the Public Prosecutor in relation to the advance of the expert fees cannot compel the expert to exercise his office free of charge, nor to transfer to the defendant the burden of financing actions against him. Accordingly, Precedent no. 232 of this Superior Court ('The Public Treasury, when part of the process, is subject to the requirement of prior deposit of the expert's fees'), to determine that the Public Treasury to which the Parquet is linked bears such expenses" (REsp. No. 1,253,844 / SC, Rel. Min. Mauro Campbell, in DJe of 10/17/13).

In view of the above, the conclusion reached is that, although the reversal of the burden of proof can, in fact, be applied to public environmental civil actions, as provided in Precedent no. 618, the judge, to address the issue, the incidence away for absolutely unacceptable of the precautionary principle - which, moreover, would face obstacle in the Paragraph 2 of Art. 371 of the CPC - should check the presence, in case the requirements of Paragraph 1. In other words: the summary is applied, with the possibility of reversing the burden of proof and, in this case, it is done according to the law (the CPC).

4. WEIGHTING, WEIGHTING AND PROPORTIONALITY X “*IN DUBIO PRO NATURA*”.

As we have long held, the ecologically balanced environment, a fundamental right as recognized by the STF²⁶, is a highly conflicting right and, in the practice of the forum, tends to clash with other rights of identical hierarchy (dignity of the human person, property and its social function, economic development, housing, cultural heritage, etc.).

Starting from the premise that there are no absolute fundamental rights, whenever there is a conflict of this nature, the first option is the attempt to harmonize them (practical agreement) and, if this is not possible, we start by weighing, through from which, by applying the maxim of proportionality, one right will be removed and the other, prestigious, all of this through appropriate argumentation. As the question is examined from the perspective of the specific case and taking into account the respective peculiarities, there is nothing to prevent that, when examining another conflict between the same fundamental rights, the interpreter (either the judge or the administrator) can decide in favor of the one who was passed over on the other occasion. The solution technique, therefore, is case by case (case *by case*).

The thesis was expressly accepted by the CPC 2015, whose art. 489, § 2, as follows: “In the event of a collision between norms, the judge must justify the object and the general criteria of the weighting carried out, stating the reasons that authorize the interference in the removed rule and the factual premises that justify the conclusion”.

It should be noted that the legal provision - of unequivocal impact on the system of public environmental civil actions, when referring to the “collision of standards”, intended to cover, within its scope, both conflicts between fundamental rights and antinomies between rules.

²⁶ ADIN n. 3.510/DF, Rapporteur Min. Celso de Mello, in DJe de 02/06/15.

Thus, if there is a collision between the right to a balanced environment and another fundamental right (s) or conflict between environmental rules, the latter cannot be resolved through the classic solution criteria (second degree antinomies), the weighting (weighting) referred to in the device transcribed above must be applied, upon proper and adequate grounds.

This is what has been applied in countless situations in the practice of Brazilian Environmental Law, especially by the STF, which, like the US Supreme Court, has decided a number of controversial issues in this area.²⁷ . A detailed analysis of the cases shows that, at times, the Court decides for the realization of the right to a balanced environment, at times for another right of the same magnitude.

In this context, the question posed in the topic arises, that is, whether, in a case of collision between the ecologically balanced environment and another fundamental right, it would be permissible to apply the maxim "*in dubio pro natura*" or "*in dubio pro environment*"²⁸ , whose translation is self-explanatory: if there is doubt or equivalence, it is decided in favor of the environment.

Although respectable decisions will be handed down in this sense, does not seem to be it proper, in the light of Constitutional Interpretation, the theory of fundamental rights and, *last but not least*, the law itself (Art. 489, Paragraph 2, of the New CPC).

The explanation for this stems from the exposition made above and is consistent with the Brazilian constitutional system, which does not rank the fundamental rights provided for therein. In fact, if they are all on the same horizontal plane, one being not superior to the other, it is inadmissible, in our opinion, to maintain that, when in doubt, a certain right should be privileged (however relevant it may be), that , if so, it assumes a leading role and a superiority over all others who collide with it. This is not, except for better judgment, the spirit of the constitutional text. Much less the procedural law that regulates the practical application of constitutional rules. Nor of

²⁷See, among others, the decisions made in ADPF no. 101, Rel. Min. Carmen Lúcia (ban on the import of used tires), ADIN n. 3.540, Rel. Min. Celso de Mello (constitutionality of the Forest Code rule of 65 that allowed the suppression of permanent preservation vegetation without the need for legislative authorization), RE n. 153.531-8, Rel. Min. Marco Aurélio (prohibition of the practice of farra do boi in SC), RE n. 627.189 / SP, Rel. Min. Dias Toffoli, (permission to use electromagnetic fields) and, more recently, ADC n. 42 and ADINs ns. 4.901, 4.902, 4.903 and 4.937 (constitutionality of the new Forest Code and no impact of the principle of prohibition of ecological setback).

²⁸"Legislation that protects vulnerable subjects and diffuse and collective interests must be interpreted in the way that is most favorable to them and can best enable, in terms of effectiveness, the jurisdictional provision and ratio essendi of the norm. Legal-environmental hermeneutics is governed by the principle in dubio pro natura" (REsp 1198727 / MG, Rel. Min. Herman Benjamin, in DJe of 5/9/2013).

the theory of fundamental rights, which aims to provide a solution, on a case-by-case basis, to situations of conflict (if *case-by-case*, obviously, one cannot start from the premise that, *in doubt*, one will prevail, which is equivalent to bring down the whole systematic proposal).

It could be objected that the right to an ecologically balanced environment is part of the collective rights and, as such, it deserves to be privileged over other individual rights, for example. As we have already had the opportunity to emphasize, this maxim does not apply to the hypothesis of collision of fundamental rights²⁹. Otherwise, to keep a shallow example, it would be that the right to privacy (individual) could never prevail when confronted with the right to publicity and / or information (diffuse).

In addition, most of the collision cases of environmental law refer to other equally diffuse rights, such as economic and social development, cultural heritage, among others.

The Supreme Federal Court, called to face the issue in recent times, seems to have adopted the line described here, thus following, in a very coherent way, the understanding that it has always applied to cases of collision of fundamental rights, including those involving the right to ecologically balanced environment. We refer to the judgment of the constitutionality control actions proposed in the light of the 2012 Forest Code (Law No. 12.651), in which, regarding the subject, the Court, in a clear and definitive manner, decided:

Among the foundations used, the need to accommodate, in the formulation of public policy, other equally legitimate interests, such as the effects on the labor market and the impossibility of handling machinery in the face of rugged cultivable areas, was highlighted. **Thus, the thesis that the most environmentally friendly standard should always prevail (*in dubio pro natura*) has been removed**, recognizing the possibility that the regulator may distribute scarce resources in order to satisfy other legitimate interests, even if do not promote environmental interests as high as possible³⁰.

In other words, what the STF decided, in particular, was that the right to an ecologically balanced environment does not automatically override other fundamental rights, being lawful for the legislator, in formulating public policy, to privilege those interests that, its characteristic, better fit with the society's wishes at the historic moment of the edition of the norm³¹.

²⁹ Direito Ambiental de Conflitos. 2a ed. Rio de Janeiro: Lumen Juris, 2017.

³⁰ ADC 42 / DF, ADINs ns. 4.901, 4.902, 4.903 e 4.937, all of DF, Rel. Min. Luiz Fux, in DJe of 08/13/19; our emphasis. It is true that Ministers Ricardo Lewandowsky and Celso de Mello even invoked the principle in their respective votes. But the conclusion of the learned majority, in order to keep almost all of the contested devices sound - which, in the view of the authors of the ADINs, would represent ecological setbacks and, therefore, would be contrary to the balanced environment - hints at what was on the menu and the vote of the Rapporteur, that is, the removal of brocardo in *dubio pro natura* in cases of collision of fundamental rights.

³¹ As can be inferred from a good part of the votes of the Ministers who participated in this historic trial, other fundamental rights

"In dubio pro natura" presupposes, in our opinion, a hierarchy of fundamental rights, unavoidable for the resolution of conflicts, which rely on an appropriate technique (consideration) and expressly accepted by the constitutional and procedural system in force.

5. PROHIBITION TO APPLY THE FAIT ACCOMPLI THEORY.

It has become common sense, in public environmental civil actions in Brazil, to affirm that "there is no acquired right to pollute", nor to degrade the balanced environment. And it is absolutely correct that way if you understand³².

However, as we have already argued, the maxim, while contemplating an appearance of density, represents little more than the obvious³³. In fact, there is no acquired right to pollute, just as there is no acquired right to steal ... or to kill. Finally, there is no acquired right to practice any illegality, since this notion is not in line with the right. In other words, the phrase is profoundly rhetorical, but little (or nothing relevant, at least) means concrete - contrary to what makes you think.

On the other hand, from this notion (the impossibility of invoking acquired rights to maintain the practice of a conduct that results in pollution or degradation), it has been led to another and there is a serious danger. It came to be maintained that there would be no acquired right in environmental matters, which, of course, is a notion that affronts, in a clear and direct way, the Constitution of the Republic. Indeed, how can anyone, in their right mind, defend the exclusion of the incidence, *a priori*, of a stony clause, to a branch of Legal Science?!

Whatever it may be, the fact is that this thesis, which represents a distortion and, again, an affront to the Magna Carta, is already indisputably being supported by some.

It may even be said, in support of what is now maintained, that the jurisprudence has systematically invoked this stone clause (acquired right) and those related to it (perfect legal act

were privileged, including some of a diffuse nature. On the subject, v. DANTAS, Marcelo Buzaglo. **Proibição do retrocesso e colisão de direitos fundamentais: o acórdão do STF sobre a constitucionalidade do Código Florestal Brasileiro** In: _____. NIEBHUR, Pedro Menezes. Environmental leading cases analyzed by the doctrine.

³² "2. There is no acquired right to pollute or degrade the environment. Time is incapable of curing environmental illegals of a permanent nature, as **part of the tutored subjects, future generations**, lacks a voice and representatives who speak or fail to speak on their behalf. 3. Decades of illicit use of rural property do not provide safe conduct to the owner or squatter for the continuation of prohibited acts or make legal practices prohibited by the legislator, especially in the area of unavailable rights, which everyone benefits, including future generations, as is the case. protection of the environment" (REsp 948921 / SP, vRel. Min. Herman Benjamin, in DJe of 11/11/09).

³³ Direito Ambiental de Conflitos. 2a ed. Rio de Janeiro: Lumen Juris, 2017.

and res judicata) as a way of enforcing a previous environmental standard, revoked and replaced by another, considered constitutional by the STF. This is Law no. 4.771/65 (former Forest Code), which, although expressly revoked by the new Law no. 12.651/12, continues, according to the understanding of part of the jurisprudence, to produce effects, precisely because of the incidence of constitutional guarantees on screen³⁴.

Therefore, there is nothing to justify applying the acquired right, the perfect legal act and the res judicata in environmental matters in a certain sense, when to make the previous rules prevail (because they are more restrictive) and exclude the incidence of the same guarantees when these privilege the right that is in opposition to the balanced environment.

Understanding the opposite would also represent, here, as we pointed out in the previous topic, tangent to the constitutional system, the theory of fundamental rights and the normal procedural rules in force (CPC, art. 489, §2º) in order to a priori, opt for the prevalence of a fundamental right over other (s), ranking them in an absolutely undue manner.

Anyway and having as background not the broad understanding, but the one that establishes that there is no acquired right to pollute or degrade - with the content of which, repeat, we are in full agreement, the STJ edited the Summary n. 613, of the following content: "The application of the theory of fait accompli in an issue of Environmental Law is not allowed"³⁵.

Examining the precedents gave rise to the edition of the entry, it is clear that, in fact, the foundation is in the absence of an acquired right to pollute, as can be inferred from the menu of one of them, see:

Nor does the allegation of application of the theory of fait accomplishment, because the residents have already occupied the area, with the State's tolerance for years, since in the case of irregular construction in the Environmental Protection Area-APA, the situation does not consolidate in time. This is because, the acceptance of the theory would be equivalent to perpetuating the supposed

³⁴“The new Forest Code cannot be retroactive to achieve the perfect legal, environmental rights acquired and res judicata, either to reduce such and without the necessary environmental compensation the protection level of fragile ecosystems and endangered species, the point of transgressing the untouchable and insurmountable constitutional limit of the State's 'task' to guarantee the preservation and restoration of essential ecological processes (art. 225, § 1, I) (AgRg in REsp 1.434.797 / PR, Rel. Minister Humberto Martins, in DJe 06/07/2016). This understanding, moreover, will possibly be reviewed by the STJ now that, as mentioned in the previous topic, the constitutionality control actions proposed in the face of the new Code, recognized as constitutional in the overwhelming majority of its provisions, were dismissed, and the incidence of called “principle of prohibition of ecological regression”. In this sense, a preliminary injunction was granted by the STF to enforce the content of the provisions of Law no. 12.651 [art. 62], whose application had been refused by the Court of origin (Complaint no. 3.8764 / SP, Rel. Min. Dias Toffoli, in DJe of 3/20/2020).

³⁵In DJe of 5/14/2018.

right to pollute, to degrade, going against the postulate of a balanced environment, a common use of the people essential to the healthy quality of life.³⁶

Therefore, what is perceived is that the summary, contrary to what many might think, did not innovate to the point of completely excluding the incidence of the clauses of the acquired right, the perfect legal act and the res judicata in the context of public civil action nor could it, under penalty of affront to the constitutional system. It limited itself to, reproducing an understanding endorsed by the jurisprudence, enshrining the fact that these guarantees should not be applied in favor of illegality - as, again, it could not be different.

Therefore, contrary to what one might think, Precedent no. 613 of the STJ does not represent any kind of revolution in Brazilian Environmental Law - and, even less, in the system of environmental public civil actions. It merely endorses the understanding that whoever practices illegality cannot claim an acquired right (or any other guarantee) in their favor.

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³⁶AgRg in RMS 28220 / DF, Rel. Min. Napoleão Nunes Maia Filho, in DJe of 04/26/17. Another of the edges that appear to have given rise to the edition of the summary is that of n. REsp 948921 / SP, Rel. Min. Herman Benjamin, whose excerpt, in the same sense, was transcribed in footnote n. 20, supra.