
THE SOCIO-ENVIRONMENTAL DIMENSION OF THE LEGAL STATE¹

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ABSTRACT

The world society has experienced profound and significant changes that have led to radical questions and multiple redefinitions. A paradigmatic crisis is being faced. Due to these phenomena, the present article proposes to address the growing relevance of the socio-environmental theme from the fundamental rights perspective in shaping the legal and constitutional project designed nowadays, as inserted in the CRFB/88. Through bibliographic research, it is shown, by induction, that the complexity of environmental problems as well as the new claims of societies for the conjugation of first, second and third dimensions of rights, particularly because of the emphasis given to the protection of the environment, has motivated the recognition of the ecological balanced environment as a human and a fundamental right. The emergence of this consciousness, conjugated with the respect of the principle of human dignity, has developed a new pattern of behavior, which is guided by socio-environmental ethics and responsibility. This context, therefore, requires a deep change in the current standard of the State that is compatible with this concern, qualifying it as the Social-Environmental Legal State.

Key-words: Socio-environmental crisis; Environment; Principle of human dignity; Legal State.

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*A DIMENSÃO SOCIOAMBIENTAL
DO ESTADO DE DIREITO*

RESUMO

A sociedade mundial tem vivenciado profundas e significativas mudanças que tem ensejado questionamentos radicais e múltiplas redefinições. Está-se diante de uma crise paradigmática. À vista desses fenômenos, o presente artigo se propõe a abordar a progressiva relevância da temática socioambiental a partir das lentes da teoria dos direitos fundamentais na formação do projeto jurídico-constitucional hodierno, insculpido da CRFB/88. Com base na pesquisa bibliográfica, demonstra-se, por indução, que a complexidade dos problemas ambientais enfrentados e as novas reivindicações das sociedades na conjugação dos direitos de primeira, segunda e terceira dimensões, particularmente pela ênfase conferida à proteção do macrobem ambiental, consagraram o direito a um meio ambiente equilibrado como direito humano e fundamental. A emergência dessa consciência, conjugada com o respeito à dignidade da pessoa humana, enseja-se a preocupação com um comportamento ético e socioambientalmente responsável. Nessa perspectiva, conclui-se que a situação passa a exigir uma profunda mudança no standard atual de Estado que seja condizente com essa preocupação, qualificando-o de Estado Socioambiental de Direito.

Palavras-chave: *Crise socioambiental; Meio ambiente; Princípio da dignidade da pessoa humana; Estado de Direito.*

INTRODUCTION

This paper scope is to approach the progressive relevance of the socio-environmental thematic from the lenses of the fundamental rights theory in the formation of the current legal-constitutional Project, inscribed by the CRFB/88.

Thus, to understand the incorporation of the socio-environmental dimensions in the Legal State, one sees that it is necessary to detect the continual interest for the socio-environmental issues, so as to analyze them from the increase of the environmental concern, with the movement for the constitutionalization of the ecological processes guarantees, and the consequent *greening (esverdeamento)*² of the right in its dimensions, emphasizing the needs imposed to the environmental law by the modern society, as well as of the re-discussion about the dignity of the human being in the socio-environmental context.

Human dignity, understood as primacy, or the foundations that link the realization of the state tasks, acquires a different meaning when contextualized into a plural and axiologically complex society, whose order is permanently open to safeguard, in its protective sphere the nature itself. Therefore, it is necessary to aggregate new tasks to the Legal State, in view of the demands for an intergenerational solidarity far removed from the classic legal rationality.

Thus, one sees that the socio-environmental crisis brings a new dimension of fundamental rights - named the third dimension – which imposes to the Legal State de challenge to insert among its priority tasks, the environment protection. It gets rid of a purely anthropocentric vision towards an enlarged anthropocentrism, which justifies a new state standard, whose foundations develop on constitutional, democratic, social and environmental prescriptions.

Then, with reference to a bibliographic review, as the example of Sarlet, Morato Leite, Canotilho, Wolkmer, Lima, Sánchez Rubio, Kloepfer, Benjamin, and others, it stands out that the environmental crisis calls for a reformulation of the State support pillars, by means of a policy turned to the use of sustainable resources, considering the future generations.

As a result, it has been proven, finally, that the socio-environmental dimension is fully contextualized in the CRFB/88, showing the proximity of

² Expression created by Vasco Pereira da Silva in his work “*Verde cor de direito: lições de Direito do ambiente*” dealing with the greening of the Teoria da Constituição e do Direito Constitucional, as well as of the legal order as a whole.

its objectives and the contents of the fundamental rights to the ecologically balanced environment and of the State duties concerning the environmental protection. This proximity is essential in the pursuit of an environmental condition able to favor the harmony among the ecosystems, and then assure the full satisfaction of the dignity beyond the human beings, this new model being qualified, by some authors, as Sarlet (SARLET, 2010), as the Legal Socio-environmental State.

1 OF SOCIO-ENVIRONMENTALISM

The Conference of the United Nations on the Environment and Development, in Rio de Janeiro, year 1992, named Eco-92 is considered by Santilli (2005, p. 43) as the historical milestone of the national and international environmentalism. In this occasion, according to the author, several relevant documents were signed for the development of the socioenvironmentalism conception, foreseeing the implementation of political, social and environmental formulations all around the world. This conference brought great political visibility both for the environmentalist movements and for many themes in the national and global agendas.

Due to Eco-92, the Brazilian Forum of Non-governmental Organizations and Social Movements for the Environment and Development (*Fórum Brasileiro de Organizações Não Governamentais and Movimentos Sociais para o Meio Ambiente e o Desenvolvimento*) was created, playing an essential role in promoting the Brazilian society participation regarding the articulations between social and environmental movements

Santilli (2005, p. 34), talking about the socio-environmental movement, as well as its historical and conceptual evolution, summarized:

the socio-environmentalism [...] developed with bases on the conception that, in a poor country and with so many social differences, a new paradigm of development should promote not only the strictly environmental sustainability – that is, the species, ecosystems and ecological procedures sustainability - as well as the social sustainability,- that is, it should also contribute to the reduction of poverty and social inequalities and promote values such as social justice and equity. Besides that, the new paradigm of development advocated by the socio-environmentalism should promote and value the cultural diversity and the consolidation of the democratic process in the country, with wide social participation in the environmental management.

Still in the course of the process, it is necessary to highlight the emergence of the Brazilian socio-environmentalism, from the second half of the 1980's, as a result of the articulations between social and environmentalist movements also carried out by the Instituto Socioambiental (ISA)³ in the defense of the goods and rights, social, collective and diffuse related to the environment, to the cultural assets, to human and nations rights, through the integrative proposals of goods and socio-environmental rights, tangible and intangible

To Marés (2002, p. 38) the socio-environmental goods:

Are all those that acquire essentiality for the maintenance of all the species lives (biodiversity) and all the human cultures (sociodiversity). Thus, environmental goods can be natural or cultural; or rather the reasons for preservation should be predominantly natural or cultural if its purpose is the bio or the sociodiversity, or both, in a necessary interaction between the human being and the environment where it lives.

This implies that when one approaches the socio-environmental issue, one seeks to analyze it, in a multidimensional way, with bases in the observation of the human being belonging to the environment as a whole, in an inseparable relationship of interdependence and transversality.

According to Veiga (2007, p. 105), the emergence of the neologism socio-environmental, in spite of being easily incorporated by the Brazilian society, evokes a much more intricate meaning of what appears to be, as the way the social changes are perceived can never be dissociated from the changes occurred in the relationship man / nature and vice-versa.

The Pope Francisco, corroborating this understanding (2015, p. 114), in his recent *Encíclica Laudato Si*, announces that:

When we talk of 'environment', we also refer to a particular relationship: the relationship between the nature and the society which lives in there. This prevents us from considering nature as something separated from us or as mere frame of our life. We are included in it, we are part of it and we understand it. The reasons why a place is contaminated require the analyzes of the society functioning, its economy,

³ The Instituto Socioambiental (ISA) is a Brazilian civil society organization, with no profit, founded in 1994, to propose solutions, in an integrate way, to social and environmental issues with central focus on the defense of social, collective and diffuse goods and rights related to the environment, the cultural assets, to human's and people's rights.

its behavior, its ways of understanding the reality. Given the changes magnitude, it is not possible anymore to find a specific and independent answer for each issue. It is fundamental to seek integral solutions which consider the natural systems interactions with each other and with the social systems. There are no two separated crisis: one environmental and one social crisis; but only one complex socio-environmental crisis. The guidelines for the solution require an integrate approach to fight poverty, restore dignity to the excluded ones and, simultaneously, take care of the nature.

Therefore, it is not a matter of two distinct problems, the solutions of which can be sought and adduced separately. The socio-environmental vision demands, therefore, an approach genuinely harmonic, synchronic and balanced to achieve feasible outcomes able to benefit everyone, both the man and the nature.

2 THE FUNDAMENTALITY OF THE RIGHTS IN THEIR DIMENSIONS AND THE STATE CONFORMATION

The last two centuries were marked by profound changes in every level of the existence. The science advances changed definitely the humanity *modus vivendi*. This course was conventionally called ‘evolution’, as it increased both the expectations and the quality of life with the achieved progress, whether in technology, medicine, aesthetics, culture and the rights.

However, the opposite of this ‘evolution’ is translated into an ecological and social degradation never seen before (LEITE; AYALA, 2003, p. 57). Thus, the fight for the right ⁴ has always been the major goal of all societies. From the natural law to the positive law, they are the outcomes of historical events that led the man to changing its aspirations as well as to the need for the recognition of the new basic needs.

The State concept, consequently, has been re-structured to meet the wishes of their citizens, so that each era reproduces a given legal practice linked to the human needs and social relation (WOLKMER, 2012, p. 15).

For Bobbio (1992, p. 36), the actual emergence of some rights comes from the fights and movements carried between the men whose causes should be sought in the social reality at the time, from which

⁴ When using the term “right”, no philosophical issues are being aroused, but with deontological nature, what means that it deals of a normative system recognized and applicable in a given historical moment.

originated all the range of rights contemporarily named 'fundamental'.

Thus, in order to fulfill the function of defense of the society in the form of the normative limitation to the state power, a set of values and rights enshrined in the fundamental rights⁵, which become positive and began to outline the fundamental parameters of the entire legal internal. Thus, according to Sarlet (2012, p. 36):

The history of the fundamental rights is also a history that results on the emergence of the modern constitutional State, whose essence and *raison d'être* are just on the recognition and protection of the dignity of the human being and that of the fundamental rights of the man. In this context we must give reason to those who ponder that the history of the fundamental rights is, in a way (and, in part, we may add), also the history of the power limitation.

Due to the richness and extension of these rights, it was originated the fundamental rights classification into generations. But with the emergence of new generations did not resulting in the extinction of the former ones, it became more as a progressive, cumulative, qualitative and complementary process (BREGA FILHO, 2003), many authors adopting the term 'dimension', as they consider not to have had a succession of these rights, but rather the co-existence of all of them, open and changeable.

It is therefore worth to emphasize that, according to Lunõ (2005, p. 109), the positivation of the fundamental rights results from the Constant dialectical process between evolution in the philosophic sphere, with the gradual affirmation in the ideological grounds and its gradual recognition in the range of the positive law, which resulted in the fundamental rights constitutionalization.

The fundamental rights evolution in the institutional order was manifested in three⁶ successive dimensions: rights of freedom, or equality and of fraternity, as in an omen of the French Revolution.

5 To understand the origins, the nature and the evolutive map of the Fundamental Rights over time, see, in the rich literature about the theme: ALEXY, 2008; COMPARATO, 2001; BOBBIO, 1992; BONAVIDES, 2011; LUNÕ, 2005; CANÇADO TRINDADE, 1997, and others.

6 There are authors that defend an existing fourth and even a fifth dimension of the fundamental rights, classifying them as "new" fundamental rights, as, respectively and not exclusively: BONAVIDES, 2011; OLIVEIRA JUNIOR, 2000; SÁNCHEZ RUBIO, 2009.

2.1 First Dimension Rights

The first dimension rights, according to Wolkmer (2012, p. 22), have appeared throughout the XVIII and XIX centuries as manifestation of the secularized jusnaturalism ideology, of the illuminist rationalism, the corporate contractualism, the individualistic liberalism and the competitive capitalism.

On this occasion a separation between the State and the Society is identified, in which the later requests from that one just an abstention, that is, a negative obligation aiming at the noninterference on the individuals' freedom. Then, at this historical moment, the State was taken as "violator of the fundamental rights", which was the liberal rights defensive feature.

Thus, in the list of these rights assume special relevance the rights to life, to freedom and property, as well as the civil and political rights, which entitle the individuals in possession of their "rights of resistance or opposition against the Public Power" (BONAVIDES, 2011, p. 517), identifying a clear separation between the State and the Society.

The fundamental rights first dimension is the one that marked the recognition of its formal and material constitutional status (SARLET, 2012, p. 37) as they emerge in the context which ensures the theses of the Democratic State of Law, of the separation of the powers and the principle of the people's sovereignty⁷.

2.2 Second Dimension Rights

In the next stage, when the highly patrimonialist dimension of the liberal ideal, under the impact of the industrialization, reproduced in the social area an alarming frame of social injustice and inequality, there was the realization that the formal consecration of the rights to freedom and equality did not guarantee their effective enjoyment (SARLET, 2012, p. 47). From then on, several manifestations against the system in force of the concentration of wealth broke out in the search for equality in the collective sphere.

It is therefore a matter for the second dimension rights, which have as a model the Welfare State, where a positive action is required from these that, according to Bobbio (1992), are rights to freedom "through" or "by means of" the State, in which a set of rights are recognized to the

⁷ In these terms consult also: BONAVIDES, 2011, p. 516-518; SARLET, 2012, p. 48-49.

individuals to guarantee material conditions of existence compatible with the human condition and to participate actively in the social life, in order to compensate the serious deficiencies generated by the liberal hypertrophy (BONAVIDES, 1996, p. 187-191).

Then these rights are characterized rather by the social provision from the State, including health, social assistance, housing, jobs, leisure and education, transcending the “abstract formal freedom” when they become “concrete material freedom” (SARLET, 2012, p. 47). However, as highlighted by Sarlet (2012, p. 48), the second dimension rights are not restricted to the rights of provisional character, but also the so called “social freedom” as the workers’ fundamental rights have already been recognized as the right to strike and the freedom of association, in response to the demands of the working class.

However, both State models, liberal and social, according to Portanova (2004, p. 631), albeit with distinct premises, shared the same dogmatic with values of the science development and of the domain of nature, as well as of the belief in the inexhaustibility of the natural resources, maintaining a continual process of environmental degradation. From this view, Sen (2000, p. 9) points out:

There are new problems co-existing with the old ones – the persistence of poverty and of the not satisfied essential needs, collective hunger [...] and increasingly serious to our environment and the sustainability of our economic and social life

Therefore, this capital rationality that values the maximization of the exploitation of the production factors, ignoring the social and ecological externalities (LEFF, 1994, p. 292-293) end by leading to the questioning of the need for reformations in the State that could promulgate a paradigm different from the traditional economical rationality.

2.3 Third Dimension Rights

This generation of rights has got as essential values the fraternity or solidarity in the search for overcoming a predatory economic model of exploitation of the man and the nature by man, whose transcendence encloses humanity as a whole, requiring both negative and positive actions, now not only from the State, but also from the society. It is worthy to note that Bonavides (2011, p. 569), testifying the thought, emphasizes that:

a new legal center of manumism of the man is added historically to those of the freedom and the equality. Endowed with a high level of humanism and universality, the third generation rights tend to crystallize at the end of the XX century as rights not specifically designed to the protection of interests of an individual, of a group or a given State. They have first as recipient the human gender itself, in an expressive moment of its affirmation as high value in terms of concrete existentiality. The publicists and lawyers have already easily numbered them, highlighting their fascinating characteristic of coronation of a three hundred year evolution in the path. of the concretization of the fundamental rights. They have emerged from the reflection about themes referring to the development, the peace, the environment, the communication and the humanity common heritage.

In this sense, Fensterseifer (2008, p. 149) points out that the third dimension rights' distinctive mark is in their transindividual nature and with often undefined and indeterminable entitlement. Therefore, while the first and second generation rights refer to the individual person, the third generation ones are of collective entitlement.

However, this diffuse character, or universality of rights, far from excluding the rights of freedom, strengthens them with the presuppositions of better conduction before the effective materialization of the equality and fraternity rights, through the relevant action of the new subjects in the exercise of a participative citizenship, requiring, from then on, new guarantee and protection techniques.

Thus, among the most mentioned third dimension rights stand out the right to the development, to the peace, to the peoples' self-determination, to the environment and to quality of life. Considering the cutting made in the current study, the right to the healthy environment and quality of life will be emphasized for the analysis of the proposed question

To Ferreira Filho (2006, p. 62), the right to the environment is the most elaborate one among the fundamental rights in the third dimension. With the same vision Bobbio (1992, p. 5) declared that "the most important is the one claimed by the ecologic movements: the right to live in a non-polluted environment".

Actually, the recognition of the ecologically balanced environment, as it is frequently referred to as third dimension right, is a result of the new historical confrontations of existential nature posed by the ecological crisis (SARLET, 2014) which increasingly impact the quality of life and the full

development of the human being.

Effectively, this right fundamentality, according to Medeiros (2004, p. 22), is in its indisputable characteristic of indispensable for a healthy life that, in turn, is essential so that the human being lives with dignity.

Following the same reasoning, Benjamin (2012, p. 128) declares that the right fundamentality is justified for three reasons: first, because of its constitutional normative structure ('Everyone has the right...'); second, because the list of the fundamental rights and guarantees in the Constitution article 5th, according to its paragraph 2nd, is not exhaustive; and third, because, as the environment is a vital ecological basis that saves the very right to life, the right to the healthy environment becomes materially fundamental.

Moreover, as fundamental right, the right to the environment does not allow a waiver, alienation or prescription (SILVA, 1994, p. 166). Therefore, based on the understanding that the human being fundamental rights compose the normative-axiological nucleus of the constitutional order, as well as of the entire legal order, according to Fensterseifer (2008, p. 142), the principle of the human dignity represents the base-norm of the Legal State.

As a result, it is important to emphasize that the constitutive elements to characterize a life with dignity vary according to each society and each time, consequently harmonizing with the fundamental rights that are inherent to these, reason why one must take into account a normative conceptual horizon changeable and materially open to the fundamental rights (FENSTERSEIFER, 2008, p. 144).

Cançado Trindade (1993, p. 73), analyzing the relation of the right to a healthy environment with other fundamental rights, linking them intrinsically to the right to a dignified life, says that, considered in its broad dimension, the fundamental right to life encloses the human being's right of not to be deprived of its life, as well as to preserve it, using the appropriate available means to a decent life, which fully demonstrate the inter-relationship and indivisibility of all the human rights.

In fact, the author alleges that from the idea of a right to a dignified life, the right to the healthy environment becomes as an extension of the right to life, creating an inherent connection between them (CANÇADO TRINDADE, 1993, p. 76), as seen below:

33 The right to a healthy environment safeguards the human life itself under two aspects, such as, the human beings physical existence and health, and the dignity of this existence, the quality of life that makes worth living. Thus, the right to the environment comprises and extends the right to health and the right to an adequate or sufficient standard of life

One notes that the quality, then, becomes part of the set of material conditions (fundamental rights) indispensable to life with dignity and health, as well as the individual political-communitary insertion. There is no way to dissociate environmental quality from the personality protection/ human dignity, as the existence of a healthy environment ecologically balanced represents an essential condition for the full development of the human personality (SARLET, 2010, p. 13).

As Sendim (1998, p. 36) says, “the life in a degraded environment frame compromises the free development of the human personality, especially regarding the human being psychophysical integrity”. The quality of the environment in which the life develops contributes for the personality development, which shows the vital link between environment protection and the personality rights.

Therefore, the environmental protection has ambivalent contents (LEITE; AYALA, 2003, p. 94), as it is intended both for the protection of the autonomous environmental legal good and for the subjective individual dimension, especially when concerning the damage caused to the full development of the individual personality due to the inappropriate existential conditions, also caused by the environmental degradation. In other words, an individual subjective right does not subvert the environment collective legal good (BENJAMIM, 2012, p. 129).

Thus, Leite and Ayala (2003, p. 88) highlight the double nature of the fundamental right to the environment: the subjective dimension refers to the personal right of protection against the environmental degradation, which can be exercised individual or collectively, but as an expression of solidarity, as it deals of a diffuse interest. That is why to speak of a “right-function”; and in the objective perspective that is linked to the duty of protection attributed to the State, in order to, for instance, “to preserve and restore the essential ecological procedures and to promote the ecological management of the species and ecosystems” (art. 225, §1º, I CRFB/88), as well as to “promote the environmental education at all levels of education and the public awareness for the environment protection” (art. 225, §

1º, VI CRFB/88). This responsibility does not exclude the collectivity responsibility, as the duty of protection is also supportive.

The requirement of a new State conformation, that is, the current context of risk experienced by the contemporary societies, as well as the awareness about the serious social issues that subsist, even with the liberal or social policies implemented, have precipitated the need to rethink the very foundations of the Legal State conception.

The history identifies a maturation of the society concerning the relevance not only of the environmental protection as legal good, and the importance of the preservation for its own survival, but, especially, of the insertion and recognition of the person as inseparable part of the environment that must be preserved. From this understanding Bosselmann (2010, p. 109) emphasizes:

The human rights ecological approach recognizes the rights and duties interdependence. The human beings need to use the natural resources, but they also depend completely on the natural environment. This makes the self-restrictions essential not only in practical terms, but also in normative terms. Rights to use natural resources and to a healthy environment, usefully expressed in rights, can no longer be perceived in terms purely anthropocentric. Human rights, as all the legal instruments, need to respect the ecological frontiers. These frontiers can be expressed in ethical and legal terms as they define human rights contents and limits.

From this perspective, it is necessary to question the current Legal State capacity to deal with the risks arising from the socio-environmental crisis, considering that the Social State failed to meet the promises of equality and did not contain the spread of the environmental risks.

Thus, considering that the state reforms are closely related to the theory of the fundamental rights, emphasizing that the Liberal Legal State was marked by the first generation fundamental rights, while the Social Legal State was outlined by the second generation rights, one asks: what State model would be thought for this third dimension?

2.3.1 The consecration of the environmental protection in the constitution

In face of the current environmental issues complexity and the new claims from the societies in joining the first, second and third

dimension⁸ rights, particularly due to the emphasis on the protection of the “environmental macro good”⁹, has been one of the relevant vectors of behavioral changes that brought about a responsible ethical and socio-environmental concern, which has caused the configuration of a new State model consistent with this concern.

Consequently, the consumerism ideology and the complexity of the environmental crisis, through the introduction of new technologies, assume currently contours of a multifacetary and global crises, with all kind of risks from every order and nature (BENJAMIN, 2012, p. 60). This reality has generated an unbalanced way of living out of control or on the verge of the out control, which started to be perceived after the World War II.

For Castells (1999, p. 166), as the environmentalist movement has entered a new stage of development, the environmental perception has consolidated the value of life in every expression and this notion has conquered gradually the minds and the policies, with the realization of an evolution in the State conceptions through the legal-political projects.

Thus, to meet these demands, it was necessary to define the constitutional and infra-constitutional foundations and structures in force, as the environment has not been protected or appropriately preserved previously, due to a distorted view of the inexhaustibility of its natural resources (BENJAMIN, 2012, p. 109).

The Law, and especially the Constitutional Law, cannot be silent before the issues and challenges aroused by the environmental crisis. The State, in turn, understood as the political organ of the nation, cannot keep on making viable economical and technical-scientific development with no considerations at all about the environmental and social demands around the risks management (FERREIRA, 2008, p. 227).

Also the revolutionary impulse contained in the environmental protection in the constitutional area, according to Leite and Ayala (2004, p. 147), is in the changes processed in the position taken by the Law in face of the environment, moving away substantially from the bilateral model of the liberal State.

Thus, the environment protection and the promotion start to

⁸ Considering those said of the fourth and fifth dimensions, still not recognized institutionally.

⁹ Morato Leite emphasizes that our legislation gave to the environment the connotation of macro good as it adopted a globalized and integral view, therefore characterizing it as broad, immaterial, indivisible and diffuse, notwithstanding the existence also of the microgood, understood as every goods that compose the environment.

appear as a new constitutional value, able to institute a new public order and a new legal-constitutional program, as, according to Canotilho (2010, p. 31), the constitutional State, besides being a democratic and social State of Law, must also be a State governed by the ecological principles.

In Brazil, although the former Constitutions made reference to some environmental issues, no one treated the rights and duties related to the environment in such a detailed way as the CRFB/88.

Souza Filho (2011, p. 166), describing the CRFB/88 constituent process, asserted that the incorporation of four¹⁰ themes in the text of the Magna Carta, among which a chapter for the guarantee of the ecologically balanced environment as the right of all, show a true rupture with the precepts of modernity.

According to the mentioned author, the modernity, and consequently the State of Law models were based on the private and individualist conception. From the moment one legally recognizes the collective rights and the intangible goods of diffuse entitlement, the concept of the individual right and the contractual or constitutional culture of the XIX century is relativized but not excluded.

Therefore, this great innovation symbolizes a valuable qualitative jump of the environmental protection rules, by renouncing the utilitarian approach hitherto pursued by the legislation, to adopt a more protectionist direction of the environment.

In view of this, Benjamin (2012, p. 84-85) highlights that the CRFB/88 buried the liberal paradigm assuming a holistic conception legally autonomous of the environment reception in a systemic way, but equally constitutionalized. For the mentioned author “the stage of ecological-constitutional miserability” was left in order to achieve the “ecological-constitutional opulence”. Almeida (2006, p. 56), in turn, understands that:

The 1988 Constitution represented a paradigmatic rupture in relation to the Brazilian legal tradition by providing a Democratic State of Law, which represents a normative plus regarding the previous state phases/dimensions, as besides incorporating the liberal State ‘ordination’ elements and the ‘provider’ elements of the social State, brought into the State a new function: the ‘social transformation’.

¹⁰ Besides the right to the ecologically balanced environment as a right of all, protected by the current and future generations (art. 225 CRFB/88), Marés highlights the recognition to each people the right to their own existence (arts. 231 and 232 CRFB/88); the preservation of the Brazilian cultural assets (arts. 215 and 216 CRFB/88) and the property social function (arts. 185 and 186 CRFB/88).

The CRFB/88 (BRASIL, 1988), in the *caput* of its art. 225¹¹, consecrated the fundamental right to the ecologically balanced environment, guaranteed as a diffuse right of the Public Power and the collectivity, the duty to defend and preserve it for the current and future generations, the people's common use and essential to a healthy quality of life, at the same time imposing to the Public Power and the collectivity, the duty to defend it and preserve it for the current and future generations

In this context, it is indispensable that the actions, in all spheres, are fully articulated (CANOTILHO, 2010, p. 36), adopting multidisciplinary approaches able to guarantee an adequate level of protection to the environment, which presupposes the value of solidarity, which will be further approached in the next topic.

Dealing with "ecologization" in the 1988 Constitution of the Federal Republic of Brazil, Benjamim (2012, p. 90) emphasizes that it reflects the "dogmatic and cultural consolidation of a legal view of the world", as the Constitution was preceded, followed and strengthened by the consecration of the environmental protection in the international scope, for the guarantee of a life with dignity and health, included for the future generations (transgenerational).

Consequently, the CRFB/88 ecologization marks the triple fracture of the current paradigm (BENJAMIN, 2012, p. 85), whether through the dilution of the formal positions between creditors and debtors, as it has attributed to everyone, simultaneously, the right and the duty concerning the ecologically balanced environment, or through the irrelevance of the distinction between the state subject and the private subject regarding the duty of protection; and finally, through the weakening of the absolute separation between the object and the subjects of the legal relationship, in view of the characteristic of the environmental macro good.

However, this legal-constitutional adoption, in the eyes of Leite (2012, p. 167), is more advanced and modern because the environmental protection is no longer seen only as the exclusive interest of the man, but is extended to the other forms of life, advocating the so called extended anthropocentrism:

11 Everyone has the right to the ecologically balanced environment, the people's common use good, and essential to the healthy quality of life, imposing to the public power and the collectivity, the duty of defend and preserve it for the current and future generations.

The 88 Carta adopted the “extended anthropocentrism” because considered the environment as a good for the people’s common use, attributing to it the undeniable character of *macrogood*. The article 225 establishes a broad vision of the environment, not restricting the environmental reality to a mere set of material goods (forests, lakes, rivers) subjected to the private legal regime, or even to the *stricto sensu* public; on the contrary, gives it the character of unity and of diffuse entitlement. In this diffuse perspective of *macrogood*, the environment has got an intrinsic value.

Therefore, although the 88 Constitution has not adopted the biocentrism¹², defended by the deep ecology¹³, since the nature and the non-human animals have not a legal and independent personality as rights subjects, there are instruments that surpass the classic anthropocentrism, giving intrinsic value to these goods, such as the prohibition of practices that put at risk the fauna and flora ecological function (art. 225, VII, §1º). In sequence, Pope Francisco (2015, p. 97/98) states:

There is no ecology without an adequate anthropology. When the human being is considered only one more being among the others, which comes from games of chance or from a physical determinism, ‘there is the risk of reducing, in the consciences, the notion of the responsibility. A disordered anthropocentrism should not be replaced by a ‘biocentrism’, as this would imply to introduce a new imbalance that not only will not solve the existing problems, but will add others. One cannot require from the human being a commitment with the world, if at the same time its peculiar capacities of knowledge, will, freedom and responsibility are not recognized and valued.

12 In this view, it is important to emphasize the advance in the normative horizon with no precedents in the contemporary constitutionalism, considering its perspective closer than what one could name a biocentrism legal paradigm from the new Latin-American constitutionalism establishing the recognition of the rights of the nature. Constitutionalism in the Latin America receives new line of program from the constitutions of Venezuela (1999), Ecuador (2008) and Bolivia (2009). Some authors maintain that these three Constitutions formed the basis of the “new Latin-American constitutionalism”. From the analysis of the new texts, especially the Bolivia and Ecuador Constitutions, one notes that, from the European classic constitutionalism, the new Constitutions seek to “advance”, moreover regarding the environmental protection and the cultural and multiethnic pluralism, forming a guarantee model that aims at the socio-environmental sustainability: seeking to balance the use of the economic and environmental resources and valuing the historical-cultural diversity on behalf of a socioeconomic model turned to a better quality of life; the *bem vivir*, or *sumak kawsay* (Constitution of Ecuador) and *suma qamaña* (Constitution of Bolivia). The Constitution of Venezuela is composed of 350 articles, of Bolivia has 411 articles and the one of Ecuador 444 articles. Cf. FERNANDEZ SEGADO, 2003, p. 471; CARBONELL, 2009.

13 Concept proposed by the Norwegian philosopher and ecologist Arne Næss in 1973, the Deep Ecology presents a new paradigm of perception of the world, from a holistic view where the humanity is only one more line in the web of life. From this view, each element in the nature, including the humanity, has its intrinsic value, which must be respected and preserved to guarantee the biosphere system balance.

This new constitutional construction of the fundamental rights seeks to conciliate values, such as the human being dignity, with ecological needs, extending and giving autonomous values of protection to every forms of life. Ayala (2010, p. 333) qualifies these rights as “biodiffuse”, as they are conceived from the harmonization between human and non-human values, attributing them equal¹⁴ position of legal dignity, in view that the latter of these rights is the legal protection of life.

In fact, in the framework of an ‘ecological constitutionalism’ inscribed in the Brazilian Constitution, the right to the environment was assigned with the status of individual and collective fundamental right, consecrating the preeminence and prominence¹⁵ necessary to guarantee its integration with the legal order.

Therefore, the incorporation of ecological values in the axiological nucleus of the Brazilian constitutional system, occurred due to the historical evolution of the fundamental rights, in each dimension of it, as well as the obsolescence of the Rule of Law State models, justify a new model able to support de new human existential challenges. According to Fensterseifer (2008, p. 56), the new model that incorporates in its legal order the new fundamental rights of transindividual nature, was given the name of Socio-environmental State of Law, analysis that will be discussed below.

3 THE SOCIO-ENVIRONMENTAL INSERTION IN THE RULE OF LAW STATE – A NEW PARADIGM

Dealing with the socio-environmental issues, Fernandes and Sampaio (2008) carried out a general analysis on the paradigm meaning, based on the study by Thomas Kuhn. For the mentioned authors, science, as well as the society is dynamic and interlinked. Therefore, the scientific paradigm is no disconnected from the predominant paradigm in the society,

¹⁴ According to the mentioned author, it deals of not to attribute legality to alleged rights that have as subject the nature itself, personifying it. It deals of giving it legal consideration, understood it as legal good. “Nature has got legal dignity in the quality of environmental good, while as, *center of imputation*, it is also considered position or *fundamental legal quality and beneficiary* of activities of guarantee.”

¹⁵ According to Canotilho and Moreira (1984, p. 38-39), preeminence means the superiority and the hierarquical position of the constitutional rule, subjecting the legal order that is inferior to it; while prominence means

The maximum visibility of this rule.. In this sense, Benjamim (CANOTILHO; LEITE, 2012, p. 83-156) highlights that: the preeminence and the prominence of the constitutional text translate, in the practical field, in an unambiguous teaching value. Being there, the highest place in the legal hierarquy, the environment works as a permanent memory of its dorsal position among the unavailable values of the community life.

as the science produces and reproduces for and from these natural, cultural and sociological realities, thus there is no to speaking about a linear process of the theories that improve themselves mutually.

Along with these brief considerations, the above mentioned authors define paradigm as “a set of social-cultural values and rules universally accepted for a given period of time in a society or cultural group, modeling and leading their practices” (FERNANDES; SAMPAIO, 2008, p. 89).

Thus, the models, or paradigms are not extended endlessly. However, from time to time, when the dominant paradigm does not meet adequately the issues it has generated, alternatives for the current model appear. However, the current State and society paradigms, based on the economical-scientific rationality, utilitarian and turned to the unbridled consumerism, is in crisis as it generates a series of socio-environmental problems, which it is not capable to solve.

For Capella (1998), the current paradigm crisis is one of the man/nature relationships, in a much wider complexity, whose heart is in the society and in a way of life essentially turned to economical aims. According to Leite and Ayala (2004, p. 30) it is obvious that the State regulatory capacity is depleted in a world marked by the social inequality and environmental degradation on a planetary scale.

Therefore, this situation eventually precipitated a counter movement (BECK, 2002), an environmentalist legal culture acquired through the realization that the natural resources are finite, as well as the limit situation of the social inequality and the lack of access to the basic social rights for part of the population. In this view, it is clarifying the position of Wolkmer (2012, p. 17):

the impasses and the shortcomings of the current paradigms of the traditional legal science open slowly and constantly the horizon for changes and the construction of new paradigms, directed towards a pluralist perspective, flexible and interdisciplinary. The formalist legal science, instrumental and individualist, is being deeply questioned through its concepts, its sources and its institutes in face of the multiple techno-scientific changes, the different life practices, the increasing complexity of the valued goods and new basic needs, as well as due to the emergence of new social actors, bearers of new subjectivities (individual and collective). Thus, the needs, the conflicts and the new issues put by the society, at the end of an era and the beginning of a new millennium, created also “new” forms of rights that have challenged and

brought difficulties to the traditional legal dogmatic, its formal and material institutes and its individualist modes of protection.

In order to face the new challenges, as an attempt to overcome the current paradigm, a new State model has been established that converts the protection of the social and environmental rights with sustainable patterns and starting from a broader and integrated perspective of the economic, social and environmental rights (SARLET, 2014, p. 113).

Thus, there happens the paradigmatic transition projecting a new State model, named by Sarlet (2010) the Socio-environmental State of Law.

But, building the Socio-environmental State of Law does not symbolize the zero ground (SARLET; FENSTERSEIFER, 2014) in the construction of this new legal-political state community, rather it is simply one more step in the road for the search of respect for the human dignity and the ecologically balanced environment, during the trajectory of the maturation and socio-environmental awareness.

Although approaching the same theme, but with its own terminology, Leite (2007) considers that the Environmental State of Law, as well as also the Socio Environmental State of Law, constitute a theoretical abstract concept that encloses legal, social, and political elements in the search of an environmental condition able to favor both the harmony between the ecosystems, and the guarantee of the full satisfaction of the dignity beyond the human being.

Independently of the terminology in use by various authors to identify this emergent State, such as Pos-Social State (PEREIRA DA SILVA, 2012, p. 24; SARMENTO, 2003), Environmental State of Law (LEITE, 2003, p. 32-54; CANOTILHO; LEITE, 2012; FERREIRA; LEITE, BORATTI, 2010), Ecological Constitutional State (CANOTILHO, 2010), Environment State (HABERLE, 2005, p. 128), Environmental State (KLOEPFER, 2010), Environmental Welfare State (PORTANOVA, 2004, p. 638) and Sustainable State (FREITAS, 2011, p. 278), and still not entering the discussion about substantial differences between the State conception adopted by each author, one sees that the nodal point that unites everyone is the concern to meet or satisfactorily answer the demands generated by the environmental and social crisis that was triggered by the exhaustion of the industrial model and the current hedonistic predatory consumerism.

Sarlet and Fensterseifer (2014, p. 46) emphasize that the Law

must take position in relation to the new threatens that weaken whether the values and the principles of the Democratic State of Law, or the survival and quality of the human and non-human life, in order to safeguard the balance and security in the socio-environmental relations.

To this end, regarding the political context, the contemporary State aims cannot be considered post-social (SARLET, 2010, p. 16), as the second generation rights, the fundamental social rights, are not fully met, as part of the world's population is still deprived of the access to its fundamental social rights.

Therefore, Fensterseifer (2008, p. 27) states:

The new State of Law model aims to conciliate the liberal rights, the social rights and the ecological rights into the same legal-political Project for the state community and the existential development of the human being. This conceptual redefinition of the contemporary State of Law is justified in view of the changes due to this ecological orientation, therefore, the State takes the role of 'guardian' of the fundamental rights in face of the new risks and existential violations to which the human beings are exposed today.

According to the mentioned author, the social dimension and the environmental dimension are integrant elements of the essential nucleus of the principle of the human being dignity in view of the addition of new human values to the principle¹⁶, which is why only a State model that jointly contemplates these dimensions can be consistent with the dignified human life housed in the Fundamental Law.

Faced with the possible conflicts between the fundamental rights from different dimensions Pereira da Silva (2002, p. 28), independently of being using the Environmental State of Law terminology, warns:

The ethic-legal values of the environmental defense do not exhaust all the principles and values of the legal order, so that the implementation of the Environmental State of Law will oblige the conciliation of the fundamental rights in environmental matters with the other subjective law positions constitutionally based, whether of first generation rights, such as freedom and property, or second generation fundamental rights as the economic and social rights (which, otherwise, also have as consequence that the nature preservation does not mean to question the economic development, or

¹⁶ Other conceptions of State model also share the same idea. What makes them different is the fact that they consider the social dimension as intrinsic to the social dimension. With this sense see: LEITE; FERREIRA, 2010, p. 13.

ironically, does not imply 'returning to the Stone Age')

Therefore, the Socio-Environmental State of Law mission is the constitutional duty to meet the normative order of the CRFB/88 art. 225 so as to accomplish, fully and interdependently, the social and environmental rights in the same legal-political project for the sustained development. Such a design also addresses the need to correct the human inequality and degradation in terms of having access to a decent and healthy life, in a safe and balanced environment (SARLET; FENSTERSEIFER, 2014, p. 68).

This meets the perfect harmony with the normative project proposed by the Constitution: to eradicate poverty and reduce social inequalities (art. 3rd, I and III); establish a sustainable economic order (art. 170, VI); ensure the right and duty to the balanced environment.

This is why, the socio-environmental rights, conquered by means of democratic sociopolitical struggles, have a pluralist, collective and indivisible character, and impose new challenges to the legal science as they do not fit within the narrow limits of the public-private dualism, inserting within a non-state public space that allows the public participation.

From this new vision, constitutional and infra-constitutional rules were created, breaking the paradigms of the traditional legal dogmatic to guarantee, through public actions and policies, the protection of the socioenvironmental goods.

For this new paradigm, the idea of progress and development only makes sense viewing from the sustainability perspective that integrates the economic, social and environmental dimensions in a dynamic, dialectic and non-hierarchical way.

In the same way, Guibentif (apud ARNAUD; JUNQUEIRA, 2006, p. 180) emphasizes that the State is no longer fundamental reference as debtor of human and social rights. Now the reference is "provided by the notion of 'citizenship' that expresses the experience of the mobilization capacity, of institutional investment and of solidarity, capable of being updated in any human collectivity".

In a concise and didactic way, Sarlet (2010, p. 19), following the understanding adopted by Canotilho (2003), establishes that the contemporary Socioenvironmental State of Law presents the fundamental dimensions integrated between themselves as follows: juridicity, democracy, sociability and environmental sustainability.

Thus, this State model qualification, according to the mentioned

author, is translated into - at least - two relevant juridical-political dimensions: a) the State obligation, in cooperation with other States and the civil society, to promote public policies ruled by the requirements of the ecological sustainability, and b) the duty to adopt public and private behaviors friends of the environment, giving concrete expression to the assumption of the public power responsibility before the future generations, but without neglecting the necessary sharing of responsibilities between the State and the private actors for achieving the constitutional aim of environmental protection.

With this, the construction of a new paradigm of a Socioenvironmental State of Law seems to be a utopia, in view of the existing antagonism between the current system of capital production and consumption, the finite natural resources and the social inequalities. However, Santos (2010, p. 43-44), from a realistic look on the utopia clarifies:

The only realistic utopia is the democratic and ecologic utopia. The ecologic utopia is utopic as its realization presupposes the global change, not only of the production ways, but also of the scientific knowledge, of the life frameworks, of the sociability, of the symbolic universes and, presupposes, moreover, a new paradigmatic relationship with the nature that replaces the modern paradigmatic relationship. It is a democratic utopia because the change it aspires presupposes a repolitization of the reality and the radical exercise of the individual and collective citizenship, including in it the nature human rights carta. It is a chaotic utopia because there is no privileged historic subject. Its protagonists are all those that, in the diverse power constellations that constitute the social practices, are aware of the fact that their lives are more conditioned by the power the others have on them than by the power they have on the others. From the conscience of the oppression in the last decades the social movements were formed.

Corroborating the same reasoning, Ferreira (2008), although not using the same terminology for the State model, but which fits the Socioenvironmental State of Law, emphasizes that the proposal of a new environmentally-oriented state model refuses to close the horizon of perspectives, enable the visualization of alternatives and rejects the conformism subjectivity.

In fact, what is perceived in the Constitution, and, consequently, in this alleged model of Socioenvironmental State of Law, is that the

collocation of ideals, formerly considered utopic, must be seen as true programmatic norms of the CRFB/88.

Finally, the ethic-juridical advances (BENJAMIN, 2012) set on it when establishing the nature juridical-holistic treatment, when guaranteeing the ecologic balance and the quality of life for the current and future generations, as well as for all the forms of life, must be empowered not only by the State, but by all the society in a participative and plural solidarity.

FINAL CONSIDERATIONS

The current risk context experienced by the contemporary societies, as well as the awareness of the social and environmental issues seriousness, which subsist even despite the implemented liberal or social policies, have been relevant vectors of the behavioral changes that made flourish a responsible concern, ethic and socioenvironmentally. It is noted that this context brings a new dimension of fundamental rights - named the third generation – which imposes to everyone the challenge of inserting between their priority tasks, the environment protection.

However, it is identified a maturation of the society regarding not only the relevance of the environmental protection as juridical good, and of the importance of the environment preservation for their own survival, but, mainly, of the insertion and of recognition of the person as inseparable part of the environment, which must be protected in view of the indispensability of the humanity. But, there will be no new relationship with the nature, without a new more extended anthropology.

These new demands require an analyses of the context of the socio-environmental crisis in a multidimensional way, through the observation of the human being belonging to the environment as a whole, in an inseparable relationship of interdependence and transversality. Thus, there are no two distinct issues, whose solutions can be found separately. The socioenvironmental vision allows a genuinely harmonic, synchronic and balanced approach, in order to get results capable to benefit all, men and nature, from which individual and community see each other as inter-related and interdependent in the quest for the realization of a dignified human life and with environmental quality for all their members..

The incorporation of the ecologic values in the axiological nucleus of the Brazilian constitutional system, due to the historic evolution of the

fundamental rights, in each of its dimensions, as well as the obsolescence of the State of Law models, justify, thus, a new model capable to cope with the new existential human challenges.

To the new model that incorporates in its juridical order the convergence of the protection of the social and environmental rights within the same political-judicial Project, -from an extended perspective and integrating the economic, social and environmental rights, based on sustainable patterns, - is given the name Socioenvironmental State of Law.

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