

---

# THE STATE OF SOCIAL AND ENVIRONMENTAL LAW AS A CONDITION OF POSSIBILITY INTENDED FOR THE GUARANTEE OF THE FUTURE

**José Luis Bolzan de Moraes**

---

Post-Doctorate - University of Coimbra, UC, Portugal. PhD in Law - Federal University of Santa Catarina, UFSC - SC. Master in Law Professor of the University of Vale dos Sinos River. Postgraduate invited professor - Università del Salento, University of Firenze, University of Seville and University of Coimbra Pontifical Catholic University of Rio de Janeiro, PUC-Rio - RJ.  
Email: bolzan@hotmail.com

**Bruno Cozza Saraiva**

---

Doctorate in Public Law UNISINOS. Master in Public Law UNISINOS.  
Member of the State & Constitution Research Group.  
Email: brunocozza19@hotmail.com

*“The work of our hands, distinct from the work of our body - the homo faber, which produces and literally ‘operates in’ distinctly from the animal laborans, who works and ‘mingles with’ - manufactures the infinite variety of things whose sum does not constitute human artifice” (ARENDDT, 2014, p. 169).*

## ABSTRACT

The present work aims to discuss the possibility and preconditions for the construction of a Socio-environmental Law State as a basis for the transformation of the juridical-social conjuncture, so that this new state adjectivation promotes a re-signification of what is understood by social and environmental vulnerability. In addition, also as an objective, we will discuss, from the conception of the “environmental question” - as a global problem, that surpasses the spatiality of the Nation State -, the importance of the construction of an ecological citizenship as a corollary of Environmental Justice, as well as the need to overlap an inter-trans-State

and generational ecological responsibility to the detriment of exclusive and exclusive national sovereignty.

**Keywords:** Socio-environmental Law, Exclusion of the Future, Ecological Responsibility.

*THE STATE OF SOCIO-ENVIRONMENTAL LAW AS A CONDITION OF POSSIBILITY INTENDED FOR THE PROTECTION OF THE FUTURE*

**ABSTRACT**

*This paper aims to discuss the possibility and the preconditions for the construction of a Socio-Environmental Law State as a foundation for the transformation of the juridical-social conjuncture, so that, this new state adjectivation, by socio-environmental vulnerability. In addition, as well as an objective, we will discuss, from the conception of the “environmental question” as a global problem, that goes beyond the spatiality of the Nation-State, the importance of the construction of an ecological citizenship as a corollary of Environmental Justice, as well as the need to overlap ecological and inter-trans state and generational responsibility for the detriment of exclusive and exclusive national sovereignty.*

**Keywords:** State Social and Environmental Law, Future Exclusion, Ecological Responsibility.

## INTRODUCTION

The discussion about the relations arising from the complexification of the contemporary State, Law and society, fundamentally refers to the logic of globalization<sup>1</sup> in its economic aspect.

The capitalist mode of production, which is no longer local but global, constitutes a new configuration of what, previously conditioned to the territory, determined the diversity and plurality inserted in a national legal system and its possibility of safeguarding nature.

Globalization<sup>2</sup> of life in society and of a capitalist model of economy conditioned human existence to a certainty, that is, to the *exclusion of the future* as a consequence of living-abiding on the planet. For this reason, the generalization of the crisis as a contemporary representation of the contradiction between human existence and the (existence / permanence) of the natural environment necessarily presents the traits of the domination-destruction of man on Earth.

In the midst of the institutionalized order of values, that is, politics, economics, and culture as historical / civilizational constructs, in the twenty-first century, the *environmental issue*, as (pre) condition to the existence of a future, is the constituent and necessary value to a new viable global order.

As a consequence, it is in this new scenario that, as a world and existential claim, questions arise about the construction of a State of Socio-environmental Law, whose purpose, based on an intergovernmental cooperative action between States and many other actors, as occurred on the 21st Paris Climate Conference<sup>3</sup>, may determine the axiological compatibility between man and the environment embarrassed in a common future.

Necessarily, the environmental crisis, situated between technological advances and ecological destruction, also stems from the current tutelage provided by the State and by Law that, according to the

1 “However, the innovative component presented by globalization is that the active agent, that is, the conqueror, is not present - at least clearly - and causes the phenomenon to have the characteristic of representing a series of processes of economic-social integration that go beyond the confines of nation-states and of all existing political-juridical structuring” (TEIXEIRA, 2011, p. 3).

2 “La mondialisation ne doit pas être réduite à ses manifestations les plus saillantes, comme une généralisation des échanges, la consécration d’un marché ou l’explosion des nouvelles technologies: elle introduit également un nouveau rapport espace/temps, une nouvelle organisation des rapports politiques et une nouvelle manière d’habiter le monde” (ROSANVALON; GARAPON, 2016, p. 67).

3 “It is a question of thinking from the substitution of the classic tripartition of functions, peculiar to state activity, by a new trilogy: to want, to know and to be able” (Delmas-Marty, 2016, pp. 139-140).

image-scenario produced, does not direct society, science, and especially the economy, to what, at the same time, it was agreed to call, according to Bolzan de Moraes, “environmental question. “This is a new imperative, that is, to guarantee the future, it imposes the conciliation between social promises (vulnerability / lack) and conservation of the balance of nature (environmental risks).

The maximization of risks, in the midst of the continuity of the<sup>4</sup>, questions a whole modern project of political-legal institutionality. In this sense, what is at stake is the human capacity, under the fulcrum of the resumption of the social and, above all, the construction of the environment, of transforming - democratically - the global scenario.

Thus, responsibility linked to the past-present (social) and which, essentially, immediately surrounds the present-future (environmental), refers to the historical condition of humanity as a world-maker and, in turn, a promoter of the ethical reordering of social and environmental factors as conditions of the future. Thus, a new model of society, based on *ecological citizenship* as a condition of possibility for post-national *environmental justice*, should emerge, at this stage of inefficiency in national legal and political systems, as a communitarian-planetary ideal based, above all, on the substitution of national-territorial sovereignty for ecological responsibility shaping a shared sovereignty and a multiplicity of actors, as suggested by M. Delmas-Marty.

Based on these assumptions, the present work will discuss the need to consolidate a transformation-adjectivation in the State and in the Law to overcome national sovereignty, so that, through an opening towards inter-trans-State and generational responsibility, it is possible to construct, ecologically, an adequate way to safeguard the planet, taking into consideration that the state, limited territorially (politically and legally),

---

<sup>4</sup> “In this context, in this transition / composition of the shortcomings for the risks, we can see that they are not distributed equally, as well as shortcomings, although social interventions and humanitarian projects have never been, especially if we remember the north-south differences or, to put it another way, central (developed) countries and peripheral countries (underdeveloped or, as you like, developing) and poor countries. . . “ (BOLZAN DE MORAIS, 2011, p. 81).

has become “small<sup>5</sup> “ to confront the crisis - which is not circumstantial<sup>6</sup> - environmental.

## **1 SOCIETY, RIGHT AND VULNERABILITY: THE NEED FOR AN ENVIRONMENTAL STATE OF LAW**

In the society of uncertainties and accelerated transformations that characterize the course of history there is a certainty. Although technological innovations and the human leap in scientific development point to the idea of evolution and infinite possibilities to the condition of man as the world’s transformer, they nevertheless rediscover the scenario of uncertainty through certainty: the consequences of this action - human - can lead to the destruction of the planet and, because of this, to the inviability of life on Earth for all beings.

Therefore, in the midst of this problem, whose territorial limits disappear<sup>7</sup> and around the planet - perceived as a unit -, nature, which is represented by the so-called “environmental question”, assumes a prominent position. Due to the globalization of the catastrophic effects of the environmental crisis and the indispensability of ensuring the existence of life by inter-human-nature, proclaimed the environment as a common heritage of humanity<sup>8</sup> in an attempt to show how such a “question” affects

5 “There is, however, one more reason, and no less relevant, which makes the paradigm of the old sovereign state today inadequate and obsolete. The state is already too big for small things and too small for big things. It is too large for most of its current administrative functions, which require even forms of autonomy and federal organization that contrast with the old decentralizing molds, even where disruptive or separatist impulses do not act. But above all, the state is too small with respect to the functions of government and tutelage that are necessary due to the processes of internationalization of the economy and to the ever more solid interdependencies that in our time irreversibly condition the lives of all peoples of the Earth” (FERRAJOLI, 2002, p. 50-51).

6 “However, when we talk about environmental catastrophe, globalization and lack of forecasting-decision, it is at the same time a matter of questioning, namely: the constitution, contemporaneously perceived, still in the face of the present world-picture and its nature, as a condition of possibility for another path, that is, for the confrontation of what metaphorically, therefore, not circumstantial, was called the Environmental Crisis?” (SARAIVA, 2016, pp. 146-147)

7 “The environmental issue, therefore, does not submit to the territorial limits of the modern legal order and its strategies, provoking the inability to be treated properly in a legal environment that does not open for the overcoming of such restrictions. That is to say, it takes a new right - or rather a regulatory form - to a brand new interest” (BOLZAN DE MORAIS, 2011, pp. 78-79).

8 In this sense, the interrelationship between the future of humanity and the environment has enabled the latter, because of its importance as a condition of possibility for the survival of present and future generations or, better, life in a common ground, to receive the denomination of Common Heritage of Humanity, so that “outside the horizon of international law, in fact, none of the problems that concern the future of humanity can be solved, and none of the values of our time can be realized : not only peace, but also equality, protection of the rights of freedom and survival, security against crime, protection of the environment conceived as a patrimony of humanity, a concept that also includes future

each and everyone indistinctly.

The conception of crisis, presented to mankind and by this itself created, fundamentally represents the currently established contradiction between human existence and the existence of the natural environment, emphasizing its dual perspective: nothing is possible, at the same time that everything is possible<sup>9</sup>. Faced with this situation and the conditions that circumscribe an adequate environment for maintaining quality of life, it is assumed, as a guarantee of the right to the future<sup>10</sup> the construction of a “new” state that is capable of re-signifying man’s evolution-dominion over Earth. It is in this scenario that the need for a State of Socio-environmental Law arises as a transformer of society, of the law and, above all, as a condition of possibility to eliminate what is understood by socio-environmental vulnerability.

For this proposal to be feasible, taking into account the hegemony of a civilizational standard that is also imposed by globalization in a post-industrial scenario - dominated by a new industrial revolution, that of the internet -, it becomes imperative that the State, no longer circumscribed by a geographically defined territory, internationalize itself<sup>11</sup> through a conception of global citizenship and thereby regulate human-nature relations under a transnational prism, so that this state is the representation of an ecologically satisfactory standard of maintenance and use of the environment.

In the midst of the order of values that emerges at the beginning of this century, the protection of the environment, by finding shelter in adequate ecological maintenance and conditioned to the existence of the future, is a condition of possibility for this future and constitutive value for a new global order, whose intergovernmental purpose will determine the construction and effectiveness of a State of Environmental Law.

---

generations. And this depends not only on the already global nature of the size of these problems, since an integration of the world has already taken place in all the planes and in all the spheres of life in which such problems arise: in economy, in production, in exploitation and in the use of resources, in ecological balances. . . “ (FERRAJOLI, 2002, p. 51).

9 The notion of “crisis” does not necessarily carry a negative mark, an end, a destruction, a ruin. It may, however, bring in the new, and this as the inaugural moment in which everything is “at the disposal” or, rather, “ the moment of crisis is that moment when nothing seems possible. But it is also the moment when many transformations cross. . . That is, the crisis is a conjunction of ‘nothing is possible’ and ‘everything is possible’ . . . “ (FERNANDEZ-SAVATER, 2013, pp. 45-46).

10 “The result should be the idea of a nature committed by human responsibility, that man has the duty to preserve it for the present and the future for present and future generations as well as for the living world as a whole” (ZARKA, 2015, p. 69).

11 Such a position will dispense with the debate about the very disappearance of the state itself, as shaped by modernity.

In spite of the internationalization of social relations, coupled with the deterritorialization of the economy, the aggravation of poverty and the intensification of socio-environmental vulnerability are observed even as a consequence of this scenario and the viability-necessity of the construction of this other State as a consequence of a development model peculiar to the appropriation methods of a capitalist order.

In other words, to globalize a model of environmental destruction (appropriating natural heritage) and, paradoxically, to locate the socio-environmental effects of this appropriation is, as it were, incompatible with the axiological core of a state that intends to become ecological, therefore, today, the social and the environmental are treated as distinct problems: poverty is local, environment, even if it reaches the disadvantaged - excluded from this model of society - with more intensity, is global<sup>12</sup>.

Thus, the discussion about society, law and vulnerability undoubtedly refers to an analysis of the state's role in a context that moves from modernity to a "post-modernity", whose features are not even clear. At this threshold society finds itself, as State, Politics and Law lose their regulatory capacity, on a planet perceived as being environmentally limited, but still bets on the same development model, either as a profit insurer or as a promoter of social promises.

As a result, this society imposes the indispensability of aligning the social issue with the environmental issue, in view of the paradox regarding the reproduction of social relations and the environmental issue, so that the environmental liability, arising from these relations, effectively prevents, the safeguarding of nature and amplifies the possibility of occurrence-maintenance-reinforcement of socio-environmental catastrophes.

To put it another way, what is often perceived is a contradiction<sup>13</sup>

12 In this same sense, or rather, as a result of the localization of the effects of this tax-global-society logic, migration itself is most clearly seen as a humanitarian crisis whose consequences and, above all, occurrences, can be analyzed from the perspective of the social (and its consequent location) and the environment. See REPE & C 7 - The "The Wall Society" and the right to migrate: "In situations such as the one in which, alongside the humanitarian crisis, the economic and social Member States are, they use these matrices to prevent a solution that respects the human rights of migrants who flee, die or are victimized in their countries, and seek the European alternative, in those of history, colonized them - imposing language, customs, beliefs and ways of life - and plundered them. But it would be possible to think migrations otherwise without being through the intolerance and enmity? In modern times, it is necessary to forge a "new" look at humanity itself. If new rights can mean rights related to technological issues and the ultramodern physics of microparticles, proposing an intergenerational law or new possibilities in bioethics can also mean recognizing rights to individuals, groups or even forgotten classes or, for that matters here, to individuals, groups, "displaced" communities. It can mean an "other" right. A "right world" for which the hostile is the guest, not the hostile, is the "diverse friend" (BOLZAN DE MORAIS, 2015).

13 "On account of this, (unlimited) progress as a historical continuity and the social project of the State, as a result of the conjunction of capitalism with the social, through science understood as progress,

- although apparent - between the conditions for confronting the social and the environmental protection issues. Thus, “. . . it seems that, in order to fulfill the social promises, it was based on a development model that, in addition to not promoting the so-called ‘social question’, characterized contemporaneousness from the modern idea of development and of progress “ (SARAIVA, 2016, p. 41), with repercussions on the so-called” environmental issue “.

Clearly, in contemporaneity, still represented in the form of a state, a right and an economic-social model of exclusion, in a postmodern stage of civilization, identified by socio-environmental devastation beyond territorial borders, there is evidence of the mismatch historically and intensified nowadays - between technological advances and political and legal mechanisms of nature protection.

The severity of the environmental crisis and the consequent fragility-limitation of the legal means proposed by the State to solve it represent, far from a reconciliation between development and sustainability, a merely symbolic legal guarantee<sup>14</sup> . Thus, insofar as concerns require a global rethinking of the environmental issue, as well as calling for the resurgence of the social and the environmental in a post-industrial context, the State and the Right are also based on the characteristics modern Westphalian tradition.

In the midst of this crisis, we perceive the exhaustion of individualistic legal rationality that, faced with the incapacity related to the promotion of sustainability, admits the imposition of a process of socio-environmental vulnerability. In this way and also as a consequence of not “[...] reconstructing the legal categories and the ideas and values on which they are based, which is up to the demands, needs and risks of the present, legal responses to ecological problems that today present themselves to humanity are purely symbolic “(PÉREZ LUÑO, 2012, 58-  
human mechanism of construction-destruction of nature” (SARAIVA, 2016, p. 41).

14 As a warning against exaggerated optimism about the virtues that emanate from legal guarantees, I find it interesting to present here the pessimistic theses related in 1990 by the German philosopher and public law theorist Wolf Paul in his suggestive and provocative essay: A {n/2} organized irresponsibility? Comments on the symbolic function of Ecological Law, when it denounced the lack of effectiveness of this new legal discipline to solve the serious and urgent environmental problems. In his view, the ecological regulation arises from the challenge designed by legal reason to limit the catastrophic risks of biosphere degradation, chemical poisoning of nature and the annihilation of energy sources that can lead to the very annihilation of life on the planet. The environmental rights promoted by the hope of legislators and the public to organize, manage and prevent risks to the environment: “has neither the ability nor the power nor the will to solve only some of the myriad if problems of post- modernity with is atom-chemical-genetic technology. “It is a mere semantic entity, of “a weapon without ammunition. . . , far from possessing an instrumental character, only has a symbolic character “ (PÉREZ LUÑO, 2012, p. 58).



59). In other words, there is the dissemination-globalization of the means and processes capable of destroying the environment; however, there is no new, sustainable project capable of adjectifying<sup>15</sup> the State and the Law, under the promotional thrust of inclusive and ecologically balanced development, or rather, to this day, there is no common authority project compatible with these circumstances.

What is at hand is insufficient, and this insufficiency, derived from modern (State and Law) and postmodern contextualization, has centralized the discussion of the “environmental question” about the prohibition of retrocession<sup>16</sup>. And if the “environmental question” - contemporaneously - arises from the prohibition of retrocession as a corollary of right of a modern matrix, it can be said that this conception, in spite of the asymmetry between State, Law and Society, is ecologically ineffective, since it is the product of a Law that has not transformed reality, and which also allows the worsening of the ecological conditions of the planet. As a consequence, how can the prohibition of retrocession protect the future? In the face of these circumstances and in view of the complexity of the requirements arising from human life, there is a general transformation and, consequently, an understanding that refers to and appropriately incorporates the environmental question<sup>17</sup> as a political, juridical and social opening, whose interests, beyond man (nonhumans), are the present and future generations.

To this new need, that is, to save the planet, there is also a resumption of social promises (vulnerability / lack) and the reconciliation between these promises and the safeguarding of nature as a condition of possibility for the continuity of life.

15 “When we see the state surrounded by adjectives, one might say what Carl Schmitt said about the Constitution. More or less this: a State that needs adjectives indicates a clear discomfort of the State itself. It seems to have no substance. It appeals to some qualities. It is everything and nothing. It’s a passepartout formula. It has no DNA. Needs impressions. It is no longer a battle cry. It’s an argument. From political category goes to argumentative topos. Is it so? Let us dare to make a provocation: tell me the adjective of the State and I will tell you what state you have or want” (Canótilho, 2002, 27).

16 “The principle of prohibition of socio-environmental retrogradation is exogenous to that which regulates or emancipates, is intellective, rational; its object, the fence, is endogenous, more instinctive and emotional to psychosocial relationships. Recalling, as we say retro, that law is a cultural product and reveals itself as one of the processes of adaptation and correction of interhuman relations developed in a social space and time, we can intuit that the principle of prohibition of environmental retrogradation is more approximate of aesthetics and conform to an ethic. In addition, the principle of prohibition of the environmental retrogradation, imposes, directly, limits to these ideologies. The principle and its object imply an imperative disposition that results in a position conformed to the maximum common advantage” (MOLINARO, 2007, p. 79).

17 “In other words, for the legal field, the environmental issue imposed not only the revision of its conceptual and structural schemes, but also introduced a new interested actor, hitherto unknown or despised, the future generations” (BOLZAN DE MORAIS, 2011, p. 76).

The emergence of risks, in the midst of the continuity of the needs, places under question the whole modern project of society, together with its institutions<sup>18</sup>. This, it seems, is the way: from rationality to irrationality, from development as a constitutional guarantee (a positive model in Constitutional Letters) to destruction; and from local transformation to irresponsibility about how the “new” world is produced.

However, this all reaffirms the planetary problem and refers to the reinvention of the State<sup>19</sup> on a global scale, so that, by transforming the socioeconomic model of environmental destruction, that is, in the contemporary world-dwelling way of living, it is possible, as a guarantee of the right to the future, to protect the complexity of the XXI century. For this, the need to rethink a new social pact should arise, as the builder of this pact, a State of Socioenvironmental Law that is capable of promoting a socially inclusive development and, from the ecological point of view, propose - globally - something new as a mechanism aimed at eliminating the contradiction between the social and the environmental.

The proposition of a new conjuncture should not be transmuted, in fact, into a hyper-statization of society; on the contrary, it must, fundamentally, develop from the democratic and social insertion, reinvented through the ecological, in all sectors potentially causing damages to the environment (considered as a unique space of development<sup>20</sup> of life).

Between difficulties and possibilities, the transition to an unknown and unplanned future will determine whether or not the environmental crisis, as a phenomenon of global consequences, at the same time as it

18 “It thus appears a time of contradictions. Dark times in which, although smog (as risk) reaches all, the shortcomings have not yet been resolved. In short, pollution and hunger coexist and, as in global warming, those who pay the bill are those who contributed the least” (BOLZAN DE MORAIS, 2011, pp. 80-81).

19 “For this reason, the cooperative constitutional state is committed to the development of a new international order, in which constitutionalism can inspire relations between states, sponsoring the emergence of new supranational structures of a constitutional nature, without renunciation of their own profile and an abdication of their identity. It is worth affirming that this identity is now conceived from an openly integrating and supportive perspective, in the face of the temptation of isolation and exclusion. In this way, the inner-outer scheme is diluted and the doctrine about normative impermeability and the state monopoly of the sources of law is questioned. Its essentially cooperative configuration therefore promotes a new model of relations at the international level, starting with a new political identity, from the imbrication of States with the community of nations and with international organizations, and finally, by means of the development of a cooperative international State until the achievement of a common cooperative state” (JULIOS-CAMPUZANO, 2009, pp. 104-105).

20 “From then on, the culture of development should become an element of education, since the high school. By this term I understand a set of notions that facilitate the understanding of history and prepare the reflection on the future of our societies inscribed in both cultural ecology and natural ecology. Celso Furtado was right in saying that development is a cultural concept in that it implies the invention of the future. I regret that the quotation from Jean-Paul Sartre, “man is a project”, no longer appears in the *Le Petit Robert* dictionary, because if man is a project, society is even more so” (SACHS, 2009, pp. 352).

islocal, will represent what is to come. Given these circumstances, what has been produced up to the present moment have been questions about the (in) human capacity for reinventing the future. However, the reinvention, which is characterized by a political and democratic debate, must be supported by the search for solutions made possible by the State of Social and Environmental Law.

For this reason, to speak of development is, above all, to rediscuss - democratically - the perfecting of the State and the Right as an overcoming of institutions inherited from modernity. It will thus be through a permanent opening to the political debate that society, in the midst of socio-environmental vulnerability, will (culturally) construct a suitable way to safeguard the planet and its present-future<sup>21</sup>.

## **2 THE EXCLUSION OF THE FUTURE: ECOLOGICAL CITIZENSHIP AND ENVIRONMENTAL JUSTICE**

As Zizek (2012, p. 199) points, “[...] what makes our historical moment unique”? The environmental crisis, nature as the limit and the possibility of exclusion of the future as representations of what is strictly human, this would be a possible answer.

Human action, as conquest and submission of nature to the dictates and needs of a so-called rational experience (dwelling), for centuries has been absorbed by nature’s biological capacity to present itself as a privileged space appropriate to the development of man. And this provision was not substantially opposed to the maintenance and preservation of the basis of natural reproduction, since the existence of means capable of undermining the man-nature relationship was timidly explained. At the same time, however, it seems that human development is accompanied by both the inability of the environment to assimilate demographic growth and the increase in the exploitation of natural resources, which, consequently, are detrimental to socio-environmental sustainability.

As the appropriation-destruction of nature has been transmuted from the local to the global, and globalization - in a specific way of inhabiting the planet - prevailed, the acceleration of the process of social and environmental catastrophization, which, above all, stems from the

21 “[. . .] The future, we say and breathe easily, we have already put the label, but in our opinion, we would better understand if we call it another gift, because the earth is the same, yes, but her gifts they vary, some are past gifts, others are gifts to come, it is simple, anyone will notice” (SARAMAGO, 2009, p. 77).

man over the natural environment and over man himself, has spread as a condition to the exercise and anthropocentric continuity of human life.

In other words, the discussion about sustainability as an existential corollary for present and future generations currently conditions environmental protection to the supply of human needs, so that there is, therefore, a proportional relationship between population growth and industrial growth, and thus there is consequently an indetermination-destruction of the Earth as the referential of the dwelling-living of life. Thus, the use of the term sustainable does not direct society to any transformation in the way in which it inhabits the Planet.

Sustainability as a theoretical concept or rather as a performative and revolutionary *slogan*, whose impact would be in the 21st century, has shown that it is possible - contrary to all scientific and technological advice - to continue to rely on the same human model of production and, fundamentally, on the same way of living on Earth.

This is how this concept - anthropocentric - disregards the ecological order and seeks, incessantly, to postpone the fulfillment of human needs, biological or otherwise, and the (un) balance between these claims and the preservation of the environment. In addition, the demographic question and the (dis) concern about its effects - population growth and environmental destruction - will dictate the imminence of the exclusion of the future or, democratically, the human capacity to reinvent itself from new political and legal contours driven by the "environmental issue". In addition to the concept of sustainability, what is proposed, therefore, is "[...] the return to nature! This implies adding to the exclusively social contract the celebration of a natural contract of symbiosis and reciprocity in which our relationship with things would allow domination and possession through admirable listening, reciprocity, contemplation and respect." (SERRES, 1990, p. 65), this return is, so to speak, conditioned by an ecological citizenship aimed at promoting environmental justice in a global perspective.

What is perceived, however, is the inability of the modern anthropological project to reinvent itself from this natural contract, and to rescue nature - human and not human - even though it can be maintained, as F. Ost, that "humanity does not has the right to suicide; there is, he explains, an "obligation of the future", an "ethics of the future", which compels us to act so that there are still men tomorrow" (OST, 1995, p. 389).

While solutions to protect the planet do not emerge from the

anthropocentric desideratum of the human journey around scientific research, and substantially from that research, technologies that are adequate to the repair of what has already been degraded do not emerge, to preserve - symbolically - what is still natural exists is a path umbilically related to the need to establish - globally - a citizenship not only social, but ecological.

Thinking environmentally and consubstantiating this thinking through an ecologically citizen's practice is to build, in spite of the emergence of a society of unequals and the misinformation about the needs and risks caused and tolerated by this society, a worldwide participatory action, capable of promoting a citizenship tied to ecological concern, whose foundations, related to the enjoyment of universal ideals, should consider the right to the future as ethical-civilizational referential.

It is at this juncture that humanity stands at the same time as it "separates the no longer (the past) from the not yet (the future)" (ARENDR, 2013, p. 24), as if chronology and gravity of the events did not demand categorically a historical and citizen's look at the environment and, above all, an environmental justice for life. Thus, aiming at an ecological citizenship is, above all, to raise awareness and seek to understand the inexorability of the current situation and democratically restore the missing link between human nature and the ecosystem of nature.

In this way and based on ecological citizenship, as a corollary of a new world order, environmental justice<sup>22</sup>, together with its axiological (social and environmental) presuppositions of planetary reordering, may lead to the construction of a new paradigm based on globality and, essentially, on the reinvention of human nature through favorable social and environmental conditions for all living beings. To this ethiccivilizational model will be added, as a counterpoint to the anthropocentric paradigm of environmental catastrophization, a utopia as a guarantee to the existence of future generations. This democratic, citizenly ecological utopia will have as its purpose the openness intended for the "repolitization of reality and the radical exercise of individual and collective citizenship, including

<sup>22</sup> "The notion of environmental justice thus, the right to an environment safe, healthy and productive for all, where the" environment "is considered in its entirety, including its ecological dimensions, built physical, social, political, aesthetic and economic. It refers, therefore, to the conditions under which such a right can be freely exercised, while preserving, respecting and fully realizing the individual and group identities, the dignity and autonomy of the communities. The notion of environmental justice, on the other hand, affirms the right of every worker to a healthy and safe working environment, without being forced to choose between a life under risk and unemployment. It also affirms the right of the inhabitants to be free in their homes of the environmental dangers arising from the physical and chemical actions of productive activities" (ACSELRAD, MELLO & BEZERRA, 2009, p. 16-17).

in it the charter of the human rights of nature” (SANTOS, 2008 p. 44), in parallel to environmental justice as a global<sup>23</sup> principle. From another perspective, more radically, one could say that only a “democracy of the common”<sup>24</sup> would be appropriate for these objectives.

Unlike the class conflicts produced in the capitalist environment, the environmental crisis and the emergent and timid ecological citizenship are at the same time reflecting on the complexity of the civilizational paradigm. This debate, circumscribed to the citizen as a cosmopolitan subject and linked to the substantial and promotional need for environmental justice, also raises a salutary discussion on intergenerational equity.

In the midst of a challenging scenario, which deepens and reveals the culture of risk as a historical product of a civilization that is culturally characterized by ecologically predatory processes, it is in this same scenario that ecological citizenship, together with environmental justice, can democratically provide, through scientific and technological development, an existential minimum<sup>25</sup> socio-environmental.

It is important, in terms of tackling environmental issues, to understand that ignorance of the capacity for environmental tolerance reduces, above all, the possibilities of measuring what is socially and ecologically sustainable. It is, therefore, that the idea of socio-environmental existential minimum requires, fundamentally, a scientific and technological quantification to establish a limit to the synergistic effects of man’s interference with nature. “The question is: what are these” limits “and where are they? How far are we from them?” (JONAS, 2006, p. 301). But the realization of this calculation runs counter to what historically limits the projection of analyzes destined to the carrying capacity in the present, as well as also, and especially, in the future, that is to say, it is the economic calculation, consubstantiated from the temporality<sup>26</sup> of the

23 “[. . .] Ecological utopia is utopian because its realization presupposes the global transformation not only of modes of production but also of scientific knowledge, frameworks of life, forms of sociability and symbolic universes, and presupposes, above all, a new paradigmatic relation with nature, that replaces the modern paradigmatic relation” (SANTOS, 2008, pp. 43-44).

24 In this sense: A. Comune. *Oltre il privato e il pubblico*. Milano: 2010. (HARDT, NEGRI, 2010).

25 “Without access to such minimum existential conditions, which necessarily includes a minimum standard of quality (and safety) environment, there is no need to talk about real or factual freedom, let alone in a decent standard of living. The recognition of the guarantee of the social and environmental existential minimum represents, in fact, a condition of possibility for the exercise of the other fundamental rights, be they rights of freedom, social rights or even the so-called rights of solidarity, as is the case of the own right to the environment” (SARLET & FENSTERSEIFER, 2012, pp. 113-114).

26 “The market is the indeterminacy of the future valued for itself, the opening required for the economic game, the development space of the winning strategies of homo economicus. Today, this model triumphs everywhere: associated with certain democratic characteristics (to form the “market democ-

economy and human needs, which determines the decisions about the fate of the “environmental issue”.

To the extent that nature’s time and market time are in disarray, represented, above all, by this disruption, by the continuous environmental degradation, the future of humanity and, consequently, the survival of the planet, may depend on environmental justice possible ecological and citizen tool against the selfish and potentially predatory behavior of man and his way of dwelling on Earth.

It will thus be in a conflictual (preservation-destruction) context that the emergence of another civilizational project - by the coincidence of man and nature, with regard to existence in a common environment - will make it possible to not exceed the limits of environmentally acceptable. In other words, the gravity of the “environmental issue” requires limits in human performance, and the assignment of these boundaries will undoubtedly depend on “the knowledge of biologists, agronomists, chemists, geologists, climatologists and others, as well as economists and engineers, urban planners and transport specialists, whose interdisciplinary collaboration leads to the ecological science we need today “ (JONAS, 2006, p. 301). And, as it could not fail to be, in order for this collaboration to glimpse substantially across national boundaries, the contribution-participation of jurists, with a view to the unification of the law, from constitutionalism as a world reference for the protection of the environment, can thus transform the picture of the global destruction of nature. Of course, this presupposes also the understanding that the law, of which we speak here, should have characteristics different from those of the traditional traditional legal formulas<sup>27</sup> .

As an evaluative horizon linked to the “environmental question” and to the symbiosis of interests related to the human-nature relationship, this science will be essentially based on an ecological logic of results that is capable of overlapping the time and the strength of the market. This technical instrumentalization, in fact, should promote, through the ethical democratization of science, a transformation of human praxis through an understanding of ecological vulnerability. In this sense, “ nature as a human responsibility is surely a *novum* upon which a new ethical theory must be thought. What kind of duties will it require? “ (JONAS, 2006, p. 39).

racy”) and nourishing what we sometimes call the “single thought”, is translated by a real transference of the normative power of States for the most powerful economic agents” (OST, 1999, p. 399).

<sup>27</sup> It is necessary to think “un droit flou, mou et doux, car imprécis, facultatif et non sanctionné” and no longer the old “droit dur - à fois précis, obligatoire et sanctionné” (DELMAS-MARTY, 2016, p 12).

Therefore, the exclusion of the future, as a result of the irreversibility of the damages caused to nature, is the representation, par excellence, of the possibility of extinction of the natural locus and, likewise, the result of human praxis as a destructive form of the world.

### **3 FOR A NEW CONJUNCTURE: PLANETARY RESPONSIBILITY AND NATIONAL SOVEREIGNTY**

Globalization as an economic-social integrating mechanism, on a planetary scale, has made it possible, so to speak, to reduce or even exclude frontiers and the global extension of socio-economic relations. The paradigmatic transition - from sovereignty to responsibility - runs through the discussion of an already weakened Nation-State, as a border-splitting parameter, in view of the need for a possible global model that seeks to protect the environment, proposing above all a democratic and international transformation to build a new framework of civilizational responsibility.

Responsibility as a planetary order, since the nation-state no longer establishes itself as the privileged locus of democracy and the creation of law, would enable the connection and resurrection of common values inherent to the human condition, independently of the State, the Constitution and culture. For this reason, what is claimed in the contemporary civilizational stage is the development, to recall Luigi Ferrajoli, of a “constitutionalism of international law<sup>28</sup>”, so that the tutelage provided by this constitutionalism, condition of possibility for interdependence in what concerns the substitution of sovereignty for responsibility<sup>29</sup> to undo the abuses of the market, states and international institutions, as well as to reaffirm the importance of organizing a collective management of the planet in the social and, above all, in the environmental 28 “The crisis of states can therefore be overcome in a progressive sense, but only if it accepts their growing depoliticalization and the displacement (also) to the international level of the seats of constitutionalism traditionally linked to States: not only the headquarters of enunciation of principles, as has already happened with the UN Charter and with the Declarations and Conventions on the rights, but also with their concrete guarantees” (FERRAJOLI, 2002, p. 53).

29 “For those who, like us, defend a dialectical conception of the man-nature relationship, this is a controversy, largely devoid of purpose. It should be made clear that protecting nature by limiting our excessive removals and reducing our harmful emissions is to work both to restore natural balance and to safeguard human interests. And even in formulating this idea, we remain prisoners of the ideas agreed upon, because we seem to oppose ‘natural balances’ and ‘human interests’, whereas, in fact, human interests are based equally and even first on natural balances (OST, 1995, pp. 310-311).



sphere, whose purpose, as a solidarity principle, is to transform reality on a global scale.

This way of looking at things, that is, through the understanding of the reflexes arising from the human-nature relationship, would enable, between needs and risks, the emergence of responsibility - protector of the present and guarantor of the future - as guardian of a new paradigm based on idea of the common patrimony of humanity, of a “common” of all and no one at the same time. This must be so because the complexity of the interrelationships between the State and the economy, of production and environmental preservation, crosses borders and demands, for the ecological sanity of the planet, the abdication of the principle of sovereignty while guaranteeing the principle of local decisions.

The commitment to the old responses as well as to the maintenance of national sovereignty as a means of avoiding the inevitable, that is, of impeding the institutional advance of the world society, sends environmental efforts to an ecologically abhorrent anachronism. In fact, the imminence that is currently present correlates with the world’s dependence on developing a social and environmental law state, sustained by the conception of transgenerational-intergenerational and trans-state-inter-state responsibility.

But until this other form of authority is conceived politically and juridically, the possibility of the emergence of a responsibility, whether cooperative or binding to a common milieu, as a result of profanation<sup>30</sup> of sovereignty, the State of Socio-environmental Law will be no more than a mere academic argument. Therefore, this other state, environmental par excellence, should emerge, in addition to a bureaucratic institutionalization, as “*liberated behavior*”<sup>31</sup>, that is, outside the limits established by national sovereignty.

To go from unification<sup>32</sup> to plurality and from the plurality of

30 “To desecrate means to open the possibility of a special form of negligence, which ignores separation, or rather makes it a particular use” (AGAMBEN, 2007, p. 66).

31 “What, for the cat, is the possible use of the ball? It consists in releasing a behavior of its genetic inscription in a determined sphere (the predatory activity, the hunting). The behavior thus released reproduces and still expresses gestures of the forms of activity emancipated, but empties them from their meaning and the relation imposed with a purpose, opening them and arranging them for a new use” (AGAMBEN, 2007, p. 74).

32 “In fact, the State, understood as a Political Project, came beforehand from the need founded on the realization-construction of a unity whose purpose would be embodied in the promotion and maintenance of social peace. In the war of all against all, in a state (situation) of eternal uncertainty as a

juridical instances to the unification around a global responsibility, this is the ideal context. In other words, initially, the State as a response to the need founded on the realization-construction of a unity, a unit represented by an internal juridical order, was linked to the promotion of social peace, between continuities and discontinuities, due to the magnitude of social and economic relations - of the way of living on Earth - experience a depletion of its limits and possibilities, that is, the territorially conceived state became unable to face the problems-risks on a global scale. As a consequence, it is acclaimed, both globally and environmentally, for an overcoming and replacing of local moorings with a congenital responsibility<sup>33</sup> so that the controversy between sovereignty and responsibility is transmuted into the protection of the planetary “ecological good”.

Thus, integration between human rights and the environment essentially involves a reformulation of the juridical, political and economic aspects world-wide, as well as, mainly, by cooperation linked to protective interference - the purpose of which is bound to safeguard the future, will depend on the modification of the behaviors averse to the resumption of the biological quality of the environment - becoming the right to act locally, in a state, or multi-state, individually or collectively, par excellence responsible for effecting responsibility as a driver of a new civilizational model.

However, despite the awareness of the magnitude of the problem experienced, both for present and future generations, what is perceived is the difficulty of “(re) thinking the scenario produced and, substantially, constitutionalism - ecological re-enchantment of world-as an ethical foundation and as a decisive predictability mechanism for the transformation, in a global perspective, of the human habitation on the Earth “(SARAIVA, 2016, p. 146).

In other words, if an ethical and solidary responsibility towards condition of impossibility to establish or institutionalize a political community, the State, as a political, juridical and social framework, would have the capacity to act in for the common good. In other words, the State would again support, as part of a human (not a more natural) artifice that was called the Covenant, the exercise of life in common, and, fundamentally, from this, to mediate relations between men” (SARAIVA, 2016, pp. 24-25).

33 “ This extra responsibility is cosmopolitan, that is to say, it has its ontological and juridical foundation in the individual’s belonging to humanity, and this to the living world. The belonging and the solidarity of the human being to the soil-soil, that is, with respect to the whole living world, is not only a vital or biological relation: it is the pre-originating and pre-ecological fondation of a responsibility not only in relation to the neighbor, but also in relation to living beings in general. This responsibility is not only moral but also juridical, as it derives cosmopolitan rights and duties, which are therefore universal and susceptible of being recognized rationally because they result from a reflection on the bonds of belonging and solidarity with the living world” (ZARKA, 2015, p. 83).

future generations dignifies the relation between man and nature and thereby guarantees the survival of the planet, “without succumbing to the illusion of a miraculous recipe the difficulties it contains, beginning with the question posed by the demographic pressure on natural equilibria), at least opens the way to a renewed conception” (OST, 1995, p. 314), which goes beyond complexity arising from the new problems related to the “environmental issue”, the sovereignty characterizing the Nation-State. It seems, therefore, that the formation of a new paradigm also arises through a questioning: is it possible, in the logic of responsibility, the right of the other to the future to be ignored in the face of local and, above all, sovereign conveniences? However, on the other hand, in the contemporary paradigm there is necessarily the consideration of the environment as a common patrimony of humanity and, therefore, the reinvention of relations between States presents itself as a determining criterion for the emergence of a responsibility and an interdependence solidarity<sup>34</sup>.

This solidarity and this interdependence make up the claims that the transformations initiated in the XX century and intensified in the XXI century promoted and still promote in the biological substratum of the Earth. It is possible, it is not yet known, but it is necessary to rethink the structure and priorities of an international democratic society, and to this society fundamentally align the biological conservation of human and non-human life. However, for the viability of the proposal, it is essential to replace the locally created image, in favor of the intransigent defense of sovereignty, by the image of States as one of the international actors, interdependent and responsible for environmental protection.

Contemporary international actors are not the wolves of Hobbes: there are those who find it difficult to see this other face of our world where there is a proliferation of exchanges, connivances, utilitarian or affective solidarities, from a microscopic face-to-face relationship to a massive transnational flow (BIEIE 1999, p. 322).

---

34 “ The post-bipolar world, that of globality and trade, goes awry with hierarchy and limits, monotonous practices and consequent formalism. The internal stakeholders increasingly look abroad, the United opt for complex alliances with new partners that deviate from the beautiful land of old alliances, borders unite rather than separate, and the world seems to belong to moving, they know overcome the distance, build networks and insert themselves in them. Autonomy and interdependence are sought-after values, supplanting independence and cooperation” (BIEIE 1999, 321).

On this path, which is conflicting<sup>35</sup> it becomes latent in the face of necessity that it is difficult to demonstrate that the joint and universal efforts around the projection to another society, or rather to another social logic of consideration of nature, above all, to the way in which man inhabits the Earth and, in parallel with this, is that the end of the intransigence represented by sovereignty can be seen as a result of the created scenario. “Yet this wonderful new world is only one side of history, and it recalls the famous doctor’s jokes about ‘first the good news, then the bad news’” (ZIZEK, 212, 293). The good news refers to the timid possibility of interstate alignment for a cause that is everyone’s: the environmental issue and the insertion of life into a common milieu. The bad refers to what we inhabit and transform daily, that is, the Earth as a common future and as Good on the way to extinction<sup>36</sup>.

Therefore, as a guarantor of these claims, it is of relevance, for the construction of a Socio-environmental Law, the constitutionalization, in the global sphere, of the Fundamental Principle of the High Level of Ecological Protection<sup>37</sup> as a starting point and as an internal and external limit to States. In this sense, similar to the one used in Europe, NEPE should, from a transnational perspective, correspond to the interpretation it initially assumed in the historical context in which it was born:

[...] the *super - leveling* of the regional integration regime in Europe. Particularly with regard to the adoption of legislative acts by the organs of an international organization, NEPE means that the level of ecological protection can not be less than or equal to the level of State protection”

35 “Entering this game, other actors inevitably confront their egoism or their primordialism with the Other, to gain, in turn, certain parts as few as minimal universal. Forcing this possible destiny, perhaps sovereignty can be overcome by responsibility” (BADIE, 1999, 324).

36 The good news may be the result of the Paris Conference in 2015; the bad, the attitude of the Trump Government in 2017. But at the same time that the US government denounced the agreement built in Paris, subnational entities and private actors are expressed in line with such a document. This is evidence, once again, the contemporary complexity, its adventures and misadventures.

37 “It was in 1992 that the Treaty on European Union, signed in the Dutch city of Maastricht, added to the list of environmental principles of the European Community the principle of a high level of protection with the following wording: of the Community in the field of the environment will aim at a high level of protection, taking into account the diversity of situations in the various regions of the Community” (Article 130r (2)). In 1997 the Treaty of Amsterdam slightly amended the wording and stipulated that: ‘Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community’ > (Article 174 (2)). The centrality of NEPE was then emphasized as the central objective of Community environment policy” (ARAGÃO, 2006, pp. 145-146).

The use of this principle, as a brake on disaster-causing activities and also as a global legal protection, would restore environmental public goods in a way that social and environmental became the presuppositions of a civilizational advance in the promotion and to respectability, beyond the human being. In conformity with this advance, the need to replace the previously unrestricted sovereignty with the idea of inter-trans-State and generational responsibility is evident.

Under these conditions, every local authority tends to contradict the sovereign principle doubly: relieving hierarchical pressures to favor responsible behavior towards its managers; developing their activities in an increasingly complex set of regional and transnational spaces (BADIE, 1999, p 178).

This state of crisis, a state as a (permanent) situation resulting from the dismantling of the social dimension, which is limited to a territory and embodied by a revolutionary ideology, now seems to show signs of exhaustion, as well as possibilities of an ecological perspective of global dimension. Thus, for the viability of this opening, it becomes essential the cooperation between the local autonomies<sup>38</sup> (relativized sovereignty), coexisting also the need of the nation state as a reinvention of a State and a law transmuted in ecological representation, whose public and private coverage represents the resumption of social promise and utopia, now planetary, of a Socio-environmental Law State concerned with the “social question” and, above all, directed to the realization of the “environmental issue” as a protective guarantee to safeguard the right to the future.

It is from this right to the future that an ethical responsibility can arise through the relation of the other (man) to the world. Otherwise,

The humanization of nature is nothing more than a hypocritical flattery that masks man’s complete subjugation of nature, with a view to its full exploitation for the latter’s needs. For this, nature needs to be radically transformed. Therefore, the humanized nature is the alienated nature of itself (JONAS, 2006, p. 334).

<sup>38</sup> “In recent years, with the so-called globalization, the conception of modern citizenship has been changed since it is no longer understood as a legal status, that is, as a full member of a particular political community. Today, citizenship is emphasized beyond the traditional borders of the State” (BOLZAN DE MORAIS & NASCIMENTO, 2010, p. 35).

By all indications, in the end, humanity would be heading for a future. Except it is heading for a future no longer as a source, but as an end to human and non-human nature. In this sense, “it is part of the ambiguous blessings of freedom that each one finds and seeks happiness in his own way (which, in turn, can cause evils that need to be treated)” (Jonas, 2006, 331). It is precisely this freedom and this ability to cause evils that it proposes to reduce through the substitution of sovereignty for the concept of “cooperative and world responsibility”.

Therefore, the complexity that arises from the possibility of a (common) future as an end raises - in spite of humanity’s need to maintain this contemporary way of dwelling on Earth, that is, the need to fulfill the social promises still based on unsustainable man-made mechanisms<sup>39</sup> - a reconsideration as anthropocentric construction and, as a consequence of this reconsideration, the implementation of a transformation, anthropologically<sup>40</sup> speaking, whose transintergenerational as well as trans-interstate responsibility establishes the means and the limits necessary for the construction of a truly global and environmental society. This new paradigm, based on the “environmental question”, should propose to the national scenario an opening of borders, so that this opening becomes a dimensional and protective extension of what represents the social and the environmental, making relativize the modern conception of sovereignty to the detriment of the semantic set that translates through the idea of the common responsibility of humanity.

---

39 “The myth of unlimited progress and nature as its image and likeness in contemporaneity makes what historically, that is, chronologically, had been constructed from modernity as a permanent condition of time of progress and, consequently, of crisis. It is on the basis of this logic, that is, progress and crisis-catastrophe, that nature, once self-managed, presents itself today as an image and likeness of a progress which, on the one hand and as an ideal of the world, embodied an entire imaginary social and political life and, on the other hand, gradually established a destructive action as an indispensable possibility for this modern and unsustainable habitation on the earth. “

40 “In the face of this paradoxical situation, to ask oneself about the task of art is to ask what could be its task on the day of the Universal Judgment, that is, in a condition (which is for Kafka the very historical state of man “) in which the angel of history stopped and, in the interval between past and future, man finds himself faced with his own responsibility” (AGAMBEN, 2012, p. 182)

## CONCLUSION

Although one is far from any conclusion, even if relative, between difficulties and possibilities, in a transition to a “other present”, “cosmopolitan democracy”<sup>41</sup> “- as a prerequisite for (re) thinking about another social and environmental reality, on a global scale - it will be able or not to trace what is to come: pollution as a characterizing phenomenon of humanity. This future, despite the maintenance of a normative apparatus<sup>42</sup> inadequate to face the seriousness of the environmental problem, needs guardianship.

And this tutelage can not come from the old politico-legal-institutional formulas forged in modernity and accomplices of their victories and defeats, their good and bad moments. One can not pretend to face this “other gift” with the moorings of its strategies, among them, in the wake of Mireille Delmas-Marty, the need to think of a new normativity, with which it is possible to respond adequately and sufficiently new risks.

A model of protection that rises to these risks and recognizes itself in the complexity and variety of instruments and actors that make up the scene of a globalization that is better understood as *globalization*, not confined to an economy, or hostage to it, has been responsible for making the promises of “just and solidary” societies vain, as expressed in most of the Constitutional Letters that came out after the Second World War.

In the midst of all this, what has been produced up to the present moment have been questions about man as architect-promoter of a common and sustainable future.

41 “El llamado <<contrato natural>> al que ahora aludiré podría abrirse, parafraseando el preámbulo de la Carta de la ONU con estas palabras: <<Nosotros los pueblos de las Naciones occidentales, decididos a salvar a la futura generación del flagelo del desarrollo insostenible que en el curso de esta generación há provocado indecibles devastaciones a nuestro ambiente natural, convenimos. . . >> las siguientes, urgentes medidas, en garantía de los bienes comunes de la humanidad. Estas medidas deben consistir en límites rigurosos impuestos a la iniciativa privada y dirigidos a impedir actividades industriales nocivas para la salud y el medio ambiente: de un lado, los daños para las actuales generaciones inmediatamente provocados por las sustancias tóxicas producidas; de otro, los daños para las generaciones futuras causados por la destrucción y la disolución de los bienes comunes” (FERRAJOLI, 2011, p. 565).

42 “Se trata, no obstante, de um aparato normativo francamente inadecuado para la gravedad y el desarrollo exponencial de las agresiones y de los peligros que debería afrontar. Sobre todo, faltan instituciones idóneas de garantía primaria y secundaria capaces de asegurar la efectividad de éstas mediante modelos idóneos de responsabilidade penal, civil, administrativa que sería urgente instituir em los diversos niveles – internacional, regionales, estatales e infraestatales – del sistema jurídico” (FERRAJOLI, 2011, p. 566).

For this “common future”, it is necessary to discuss, in a global context, the substitution of national sovereignty for responsibility as a fundamental guarantee of a new project adequate to the construction of this State of Socio-environmental Law.

The subject of the discussion, evidenced here, undeniably refers to what, at the same time, still punishes mankind and devastates nature: man itself and its (in) capacity to reinvent itself.

## REFERENCES

ACSELRAD, Henri; MELLO, Cecilia Campello do Amaral; BEZERRA, Gustavo das Neves. *What is Environmental Justice*. Rio de Janeiro: Garamond University, 2009.

Page 2 *The man without content*. Belo Horizonte: Authentic Publisher, 2012.

Page 2 *Profanations*. São Paulo: Boitempo, 2007.

ARAGÃO, Maria Alexandra de Sousa. *The High Level Principle of Protection and Ecological Renewal of Environmental and Waste Law*. Coimbra: Almedina, 2006.

ARENDT, Hannah. *Between the past and the future*. São Paulo: Perspectiva, 2013.

BADIE, Bertrand. *A world without sovereignty: the States between the artifice and the responsibility*. Lisbon: Instituto Piaget, 1999.

BOLZAN DE MORAIS, Jose Luis. *The Crises of the State and of the Constitution and the spatio-temporal transformation of Human Rights*. 2nd ed. Porto Alegre: Livraria do Advogado Editora, 2011.

BOLZAN DE MORAIS, Jose Luis; NASCIMENTO, Valéria Ribas do. *Constitutionalism and Citizenship*. Porto Alegre: Livraria do Advogado



Editora, 2010.

BOLZAN DE MORAIS, Jose Luis; HOFFMAM, Fernando; SARAIVA, Bruno Cozza. *È possibile la costruzione di uno Stato Costituzionale Socio-Ambientale Cosmopolita?* In: TEIXEIRA, Anderson Vichinkeski; SOUZA, Maria Claudia da Silva Antunes de. *Verso Uno Stato Sostenibile: Globalizzazione, Sostenibilità Ambientale and Sviluppo Socioeconomico*. Rome: Aracne editrice, 2015.

BOLZAN DE MORAIS, Jose Luis. *REPE & C 7: The “The Wall Society” and the Right to Migrate!* <http://emporiiodireito.com.br/repec-7-a-sociedad-the-wall-eo-right-of-migrar-por-jose-luis-bolzan-de-morais/>. Accessed on June 20, 2017

CANOTILHO, Joaquim José Gomes. *The Adjectivized State and Theory of the Constitution*. Journal of the Attorney General’s Office of the State of Rio Grande do Sul, v. 25, no. 56, Porto Alegre, 2002.

DELMAS-MARTY, Mireille. *Aux quatre vents du monde. Petit guide de navigation sur l’océan de la mondialisation*. Paris: SEUIL, 2016.

FERRAJOLI, Luigi. *Sovereignty in the Modern World: birth and crisis of the national state*. São Paulo: Martins Fontes, 2002.

JULIOS-CAMPUZANO, Alfonso de. *Constitutionalism in times of globalization*. By to Alegre: Livraria do Advogado Editora, 2009.

FERNANDEZ-SAVATER, Amador. *Out of place Conversations between crisis and transformation*. Madrid: Watercolor and Machado Distribution Group, 2013.

FERRAJOLI, Luigi. *Principia iuris. Theory of law and democracy. 2. Theory of democracy*. Madrid: Editorial Trotta, 2011.

HARDT, Michael; NEGRI, Antonio. *Comune. Oltre il privato e il pubblico*.

Milano: 2010.

JONAS, Hans. *The principle of responsibility: Essay on an ethics for technological civilization*. Rio de Janeiro: Counterpoint Ed. PUC-Rio, 2006.

MOLINARO, Carlos Alberto. *Environmental Law: Prohibition of Retrocession*. Porto Alegre: Livraria do Advogado Editora, 2007.

OST, François. *Nature outside the law: Ecology to the test of law*. Lisbon: Piaget Institute, 1995.

OST. François. *The Right Time*. Lisbon: Instituto Piaget, 1999.

PÉREZ LUÑO, Antonio Enrique. *Current perspectives and trends of the Constitutional State*. Porto Alegre: Livraria do Advogado Editora, 2012.

ROSANVALON, Michel; GARAPON, Antoine. *Démocraties sous stress. Les défis du terrorisme global*. Paris: PUF, 2016.

SARAIVA, Bruno Cozza. *State, Constitution and Environment: The Anthropological Project as disenchantment and the Environmental Crisis as desacralization of the inhabit-to live on Earth*. Curitiba: Juruá Editora, 2016.

SACHS, Ignacy. *The Third Margin: In search of ecodevelopment*. São Paulo: Companhia das Letras, 2009.

SANTOS, Boaventura de Sousa. *By the Hand of Alice: the social and political in postmodernity*. São Paulo: Cortez, 2008.

Page 2 Cain. São Paulo: Companhia das Letras, 2009

SARLET, Ingo Wolfgang; FENSTERSEIFER, James. *Constitutional Environmental Law: Constitution, Fundamental Rights and Protection of*

*the Environment*. São Paulo: Editora Revista dos Tribunais, 2012.

SERRES, Michel. *The Natural Contract*. Lisbon: Instituto Piaget, 1990.

TEIXEIRA, Anderson Vichinkeski. *Pluriversalist theory of international law*. São Paulo: Editora WMF Martins Fontes, 2011.

ZARKA, Yves Charles. *The common destiny of Humanity of Earth*. São Leopoldo: Unisinos Publishing House, 2015.

ZIZEK, Slavoj. *Living at the End of Time*. São Paulo: Boitempo, 2012.