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THE SYMBOLIC FUNCTION OF ENVIRONMENTAL LAW: CONSIDERATIONS ON THE THEME 30 YEARS AFTER THE 1988 CONSTITUTION

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ABSTRACT

The symbolic function of the Environmental is a present and critical subject. For this reason, there is an urge to revisit the theme, 30 years from the Constitution of 1988. The present text opens the debate around the many definitions of symbolic, regarding the work "the symbolic constitutionalization" from Marcelo Neves. The next subject is dedicated to presenting and up-to-date reading of the actual case mentioned by Professor Wolf Paul his text that generated the current discussion regarding the symbolic function of the Environmental Law. The following topic approaches the questioning about the legal argument as the ideologization of truth that exposes a real "alliance between opposites". Ultimately, it is approached the function of Law, the positivation of new values and their reflexes in the field of Environmental Law. These values are inserted in the technical-rational and technical-instrumental scopes. The methodology used is based on bibliographical research and a analytic--descriptive and exploratory study.

Keywords: Symbolic function; Environmental Law; 30 years of Constitution of 1988.

A FUNÇÃO SIMBÓLICA DO DIREITO AMBIENTAL: CONSIDERAÇÕES SOBRE O TEMA 30 ANOS DEPOIS DA CONSTITUIÇÃO DE 1988

RESUMO

A função simbólica do Direito Ambiental é assunto atual e grave. Por esse motivo insiste-se em uma revisita ao tema, 30 anos depois da Constituição de 1988. O presente texto abre discussão acerca das várias definições do conceito de simbólico, no contexto da obra "a constitucionalização simbólica", de Marcelo Neves. O tópico seguinte é dedicado à apresentação e à leitura atualizada do caso concreto citado pelo Prof. Wolf Paul no seu texto, que deu origem à presente discussão acerca da função simbólica do Direito Ambiental. O próximo tópico é dedicado ao questionamento sobre a argumentação jurídica como ideologização da verdade que expõe uma verdadeira "aliança entre opostos". Por fim, é abordada a função do Direito, a positivação de novos valores e seus reflexos, na seara do Direito Ambiental. Estes valores encontram-se inseridos no âmbito técnico-racional e no técnico-instrumental. A metodologia seguida baseia-se em pesquisa bibliográfica e em estudo analítico-descritivo e exploratório.

Palavras-chave: *Função Simbólica; Direito Ambiental; 30 anos da Constituição de 1988.*

INTRODUCTION

> **"**It is necessary to pretend another relation between thought and being. A refusal of the logocentric illusion, which shows itself in its totalitarian limit and believes that it can reduce the real to the concept: "mundo, mundo/ vasto mundo/se eu me chamasse Raimundo/ seria uma rima, não uma solução".
> (Carlos Drummond de Andrade)

In a book entitled *O Novo em Direito e Política*, published in 1997, Prof. Wolf Paul questioned "organized irresponsibility" by "commenting on the symbolic function of Environmental Law". The subject is, sadly, more current and serious than ever before, so there is a return to the theme more than twenty years later.

In addressing the risk society, Ulrich Beck (2015) argues that "organized irresponsibility" is due to market sovereignty, which poses a deadly threat. In addition, Enrique Leff (2006), in his work "Environmental Rationality: The Social Re-Appropriation of Nature", argues that economic rationality, dominant in contemporary society, is "deadly" and that it is imperative to construct an environmental rationality. The author makes a significant reference to psychoanalysis, especially to the French or Lacanian school (LACAN, 1975), pointing out in his doctrinal construction one of the three psychic instances created by psychoanalysis, more specifically by Jacques Lacan: the real, the imaginary and the symbolic. Leff says that the "real", considered as a content inaccessible and impossible to be symbolized, according to Lacanian psychoanalysis, invades the daily lives of human beings through environmental catastrophes preventing the enjoyment of their "infinite desires".

The definition of "symbolic" for Lacan, in turn, is opposed to the conception of the term adopted by Wolf Paul in dealing with the symbolic function of Environmental Law. While for Lacan the symbolic is what makes "sense" for the individual, the Environmental Law in the sense adopted by the text means the *non-sense* that is produced by a normative and its respective application, with respect to the protection of the object to that this is addressed.

In this way, the inaugural section of the present text opens a discussion about the various definitions of the concept of symbolic, in the

context of Marcelo Neves' work "a constitucionalizacão simbólica". It points to the importance of linking meaning to the signifier (SAUSSURE, 2002), the concept to practice, more specifically, the environmental standard to its current application and effectiveness.

The following section is dedicated to the presentation and updated reading of the concrete case quoted by Prof.Wolf Paul in the text that gave rise to the discussion about the symbolic function of Environmental Law, that is, the action brought by the Sea Wolves of the North Sea against the German State. The specific case analyzed serves to illustrate the lack of legal protection in the midst of legal statements protecting the environment, more specifically marine fauna.

Section III is devoted to the questioning of the juridical argument as an ideologization of truth and exposes a true "alliance between opposites", which, in turn, generates the impossibility of effecting any protection in the midst of a schizophrenic discourse and practice: yes, the state declares environmental protection and even creates guarantees for its protection, but when the same State is faced with the concrete case, it certifies that its norms are not able to effect the protection that it "symbolically" promise.

In the last section, the role of Law and the positivation of new values involving the advent of Environmental Law, which, at the same time as it forms a new branch of Law, have characteristics that do not fit within the measures of the Public and Private. From there is the need for the emergence of a third branch of law, Diffuse Rights. The new values are found in the technical-rational and in the technical-instrumental context.

Revisiting the symbolic function of Environmental Law means more than describing the situation of precarious effectiveness of the environmental legal order, based on the investigation and verification already made by Prof. Paul Wolf more than 20 years ago. More than pointing out and regretting the flaws, the present text intends to show the juridical path already covered, regarding the subject, and to draw attention to the fact that it is necessary to dare to draw new routes and directions for Environmental Law in the contemporaneity.

The methodology followed is based on bibliographic research and on an analytical-descriptive and exploratory study.

1 ON THE DEFINITION OF THE CONCEPT OF "SYMBOLIC" IN THE CONTEXT OF THE WORK "A CONSTITUCIONALIZACÃO SIMBÓLICA"

Marcelo Neves (1994), in his book entitled *A Constitucionalizacão Simbólica*, explains the various meanings that the term includes, from the common sense, through the linguistics of Saussure, analytical psychology, psychoanalysis, to finally refer to a sense of "symbolic" that refers specifically to what we want to communicate in the present discourse: it is the discrepancy between the hypertrophy of legal provisions that are, in fact, devoid of applicability. This is the insufficiency in the implementation of the rich environmental regulations. This would be a true "alibi-law", in the sense of setting an excuse for the allegation of a possible lack of effective legal protection on a relevant issue.

The trichotomic model of Marcelo Neves may well be applied to the symbolic function of Environmental Law 30 years ago, as well as the current one. It can be affirmed that the symbolic character, in its negative bias, was exacerbated by the immediate demands, as is explained by the regulations of the so-called "Code of Ruralists", current Forest Code (Law 12.651/12), which violates the principle of prohibition of ecological regression in several of its devices; by the "amendment of the vaquejada" (Constitutional Amendment 96/2017), which establishes a perverse mutation in the sense of words to allow torture against animals: by the so-called "flexibilization of environmental licensing", in view of the speed of implementation of (Law 6,729/2002), which also changes the name "agrotoxic" to "agricultural pesticide" among many others inconsistencies that mediate the space between the effectiveness of the norm and socio-environmental needs.

The examples given serve well to illustrate the trichotomic model created by Marcelo Neves, inspired by Kindermann to outline the symbolic legislation: confirmation of social values; demonstration of the State's capacity for action and postponement of the resolution of social conflicts through dilatory commitments. Environmental Law thus becomes a hybrid structure of law and politics, in which one feeds the other: it provides a legal solution to the problem of self-reference of the political system and inherently a political solution to the problem of self-reference of the legal system (LUHMANN, 2004).

The art. 225 *caput* of the 1988 Constitution proclaims the "right to an ecologically balanced environment". In fact, the demands of ecological thinking and the imperatives of an ethics of responsibility for the protection and conservation of nature were and are increasingly pressing and convincing, experienced in the daily lives of people throughout the globalized world.

In the juridical context, what came to be called "environmental good" was also duly conceptualized by the doctrine and understood by the jurisprudence as being a property of diffuse nature, given the impossibility of delimiting the precise ownership of the property, the extent of this and the intense and wide conflict that involves environmental issues - the same lawsuit involves civil, criminal and administrative demands (MANCUSO, 2013). There was no lack of coherence or clarity in the definition of this good which, by its very nature, already presents itself in a complex and diffuse structure.

The change of philosophical paradigm, in the sense of a transformation of anthropocentric juridical thinking into ecocentric juridical thought was evident, even though this latter modality of juridical rationality means the possibility of *Anthropos* survival in the medium and long term.

However, what is known here as Positive Ecological Law worldwide propagated by the Stockholm Conventions of 1972 and Rio, 2002, as well as its implementation through Public Policies and the attempt to link the action of Public Power and the collective - as expressed in the *caput* of art. 225 of the 1988 Constitution - brought to the conclusion that "the purposes are noble, but the effects, which were difficult to achieve 20 years ago, have not been achieved to date".

Today, more than twenty years ago, mankind finds itself in a situation of "danger" and no more of "risk", to use the Luhmannian nomenclature (LUHMANN, 1993). Thus, one has to say that the perishing of the human species is no longer in the scope of possibility, but in probability. The "civilization of technological progress" has already shown that it is not capable of providing security. Nor was the Law able to provide adequate "legal security".

Humanity is facing what may be called the fourth narcissistic coup: the first was that of Copernicus, when he affirmed that the earth was not the center of the universe; the second was that of Darwin, when he inserted the human being into the role of animals, in his theory of the

evolution of species; the third was led by Freud, by showing that it is not the reason that is in charge of human actions, but that the unconscious is the king; the fourth does not allow itself to be identified in a single person, but is diluted in the diffuse effects, in the form of a kind of technological failure or imposition of nature, before human arrogance.

Thus, Environmental Law, created by the Industrial and Technological State to ensure proper administration and prevention of the dangers, risks and conflicts typical of the so-called postmodernity, cannot fulfill the function for which it was conceived. It continues to be the bearer of semantic signs in the sense of preventing, avoiding and sanitizing environmental destruction and degradation, even though the text of the law itself begins to distort, in the sense of injury, to the prohibition of ecological regression, as shown above, to point out the New Brazilian Forest Code, the New Environmental Licensing Law and the Vaquejada Constitutional Amendment.

Environmental Law continues to be the legal counter-weapon that will eliminate the contaminating forces, the legal contravene to avoid the poisoning of nature. In relation to global contamination and degradation of the biosphere, Environmental Law is more than ever represented through the Chinese paper's "paper tiger" metaphor: far from possessing an instrumental character, it has a "merely symbolic" character.

The globalized and "technologized" world of yesterday becomes increasingly "virtualized" in the sense that concrete references like time and space disappear (CHAUÍ, 2015), while what happens in space and short time lapse in terms of injury to the environment invades and destroys the "schemes" of the globalized and "technologicalized" world.

The *status quo* of the world, in relation to the maintenance and perpetuation of a life of limitless consumption and comfort on the one hand and the very possibility of giving continuity to our "eternal gift", as Umberto Galimberti (PINHEIRO, 2014) affirms, breeds the contradiction of contemporary life.

Thus, it is no longer necessary to speak of the relationship between man and nature, with man occupying the place of the one who "owns and exploits" natural resources. It becomes imperative to speak of man as part of nature, as being dependent to it, not it's master. As Carlos Walter Porto Gonçalves affirms: man is the nature that became aware of himself (GONÇALVES, 2000).

2 NORTHERN FUR SEAL: LEGAL PROTECTION IN THE CONTEXT OF LEGAL PROVISIONS OF PROTECTION

The "ecological problem" shown by the legal bias of the revised text concerns the fact that the northern fur seals off the coast of Germany have brought proceedings against the Federal Republic of Germany represented by the Ministry of Transit and the Institute Hydrographic of Germany.

Through the action, it was intended to avoid the transportation of waste to the high seas. In ecological terms, it could be said that the objective was to prevent the contamination or pollution of the North Sea by companies carrying liquid and/or solid industrial waste, such as toxic acids, radioactive waste and plastics, by means of combustion, submersion or simple evacuation.

The fur seals pointed out the decrease of their species, which, of the 8,000 originals, only 20% survived. For them, fur seals, the German State was primarily responsible for the catastrophe that struck their species, since it allowed companies to deposit polluting waste (ALVES, 2003)[1]. The authors of the action requested the annulment of the administrative act of the Hydrographic Institute, that is, the suspension of the license to continue to deposit industrial waste in the waters of the North Sea.

The German court rejected the action and returned the costs to the plaintiffs - that is, the fur seals - who were represented by various NGOs such as Greenpeace, *World Wildlife* and others. The court's arguments were as follows:

- The fur seals, being wild animals, inhabit the high seas, that is, territory outside the jurisdiction of the Federal Republic of Germany.
- Fur seals are animals, not possessing subjectivity or legal capacity, nor to be part of the court - since only natural or juridical persons have the capacity to be in court: they cannot be plaintiffs. The lawsuit in an analysis, was based on the juridical dogmatic established since Heinrich Dernburg in 1846, that considers the animals with things (Dernburgur, 2000). Translating: where there are things, there are no people, nor claimants, and therefore there is no judgment.
- Animals or things, according to the legal fiction of the time, which

1 In the sense, the action of the "polluter State", title of Sergio Alves work. The author makes a study of the Brazilian state's role as a major polluter, either by action or by means of permits that trigger pollution by default, by not taking preventive and repressive measures to avoid pollution of the environment.

unfortunately did not change significantly in the 21st century, are deprived of legal personality and rights, which implies inability to constitute a procedural representative. In this way, it was impossible to produce the procedural mandate of lawyers, that is, empowerment of lawyers of ecological associations.

- Ecological associations would not be legitimated procedurally to be part of the demand, since as protectors of rights of third parties could not represent non-existent rights, since animals are things and are not bearers of rights. They also lack capacity as plaintiffs because they do not have the legitimacy to sue on their own behalf, since associations do not need legal protection in view of the actual damage to their rights: fur seals are not owned by associations, as are the place they inhabit, namely the North Sea, in that way they have no right, no legal interest to be protected. There is also no place for reimbursement of any damage, lacking what is known in German as *Rechtschutzbedurfinis* (right to legal protection, as an assumption of the claim). It should be added that the German Constitution does not contemplate any kind of popular action aimed at protecting the environment harmful to the mold of the Public Civil Action, the main instrument of protection of the environment in Brazilian Law.

Even if the hypothesis were accepted that associations are entitled to sue, there would be no full proof of the causal link between the contamination of the North Sea - from toxic wastes and toxic materials - and the death of fur seals. The causal relationship between the elimination of the supposed toxic wastes under state authorization and control by the companies and the death of fur seals is scientifically inconsistent. Rebuilding the causal relationships that determine the source of variation in the quality of marine waters is scientifically improbable. Thus, the Court's argument, that is to say, forensic management through the abovementioned argument, has shown that current law, just as the courts, not only do not condemn as well as protect those responsible for ecological tragedies. Thus, a formalist and inadequate rationality is perpetuated.

3 LEGAL ARGUMENTATION AS IDEOLOGIZATION OF TRUTH: ALLIANCE BETWEEN OPPOSITES?

In Brazil, there is no Administrative Court, following the guidelines of Germany. The Public Administration has the power to issue

licenses with the possibility of access to the judiciary, in case of conflict of interests between State and private individuals. In the case of fur seals, the German State has authorized the disposal of toxic wastes at sea with the ecological consequence of marine degradation and extinction of marine species. The Administrative Court ratified the authorization by means of a judgment.

At the same time as marine pollution persists, international debates on environmental protection and the search for ways to achieve the so-called "sustainability" are growing: balance between economic, social and environmental interests, with a view to maintaining a dignified life for present and future generations.

However, neither purely economic arguments from the perspective of productivity and profits in the short and medium term and which point to contamination as folly or ethical arguments that lead to the conclusion that the destruction of nature is an immoral act and, above all, nor the environmental arguments themselves, in the sense that natural resources are being seriously affected by actions or their misuse by the human being are sufficient to curb the merely symbolic movement of Environmental Law.

The paradox lies in the fact that, at the same time that society and the State support the discourse of protection to the environment, they authorize and support the attitudes that go against it for the same purpose. Thus producing a ambiguous and "schizophrenic" speech (BATESON, 1987).In short, we have that Law provides instruments to legitimize and justify damages to the good that Law itself wants to protect, through a body of norms belonging to the same legal order.

Both the Court and the petitioners themselves, the ecological associations, and all those involved do not seem to be aware of the eminently symbolic dimension of the legal argumentation that leads to the catastrophes experienced in everyday social life.

The fact is that a complex and sophisticated system of linguistic maneuvering has been constructed in order to maintain a status quo that is clearly unfavorable to the sustainability that is to be promoted, as can be well illustrated by the above case of the Northern Fur Seal.

The courts continue to rely on purely formal logic obeying a legal architecture that does not find support or legitimacy in the factual reality. The fiction of legal reality goes in a collision course with ecological reality, when nature reveals what actually happens, when its laws are not obeyed.

The legal language of nature is expressed through the reflection on man, generated by the contaminated sea, the devastated forest, the poisoned fur seal, etc. In this sense, Giddens, Beck and Lash (2012) have been well-known for calling the period and the characteristics of what is called postmodernity of "reflexive modernization": man, no longer emerges unscathed in the fulfillment of his consumer desires, as until the middle of the 20th century. Manifestations of human mismanagement of nature in the short, medium, and long run fall now upon themselves.

The juridical rationality presents itself to us as a protector of the environment and obeys an economic-juridical logic. For example, it has been pointed out that the German Positive Law, in the form of the so-called "Deep Sea Waste Act", which introduced into German law the principles of the Stockholm Convention of 1972, is a political-programmatic declaration, administrative interests, without having any normative force with regard to the concrete protection of the marine biosphere. What results from this position is the fact that environmental protection has to give way to interests other than those directed to the survival of the environment in the short, medium and long term.

Paragraph 342 of the German Penal Code characterizes as a crime water contamination and deterioration of water quality, but the doctrine insists on constructing arguments that make the enforcement of the law a ratification of a crime against the North Sea. The German Criminal Code standard contains a significant regulatory defect: it penalizes exclusively any act of "unauthorized" contamination, according to the letter of the law. Accordingly, the argument declares any act of contamination authorized by the public authorities as legal and legitimate.

All the Constitutions promulgated in the last 25 years, such as the Brazilian Constitution of 1988, defend the right to the environment ecologically balanced (art 225). However, this protection is not effective. This lack of effectiveness is supported by the infra-constitutional environmental legislation that has been increasingly modified in order to comply with the eminently economic rationality, as exemplified above, through the guidelines of the New Forest Code, the Vaquejada Amendment, and the Law on Agrochemicals. The hypertrophy of economic interests unbalances the triad of sustainability: socio-environmental interests are not taken into account, as a result the sustainability outcome is increasingly far from being achieved.

In German law, there is no possibility for the German citizen to appeal to the fundamental right to life and physical integrity to compel the public authority to revoke its authorizations, in relation to the discharge of waste at sea, or to the construction of nuclear plants or other relevant social interests. Also, in Germany, the immediate economic interest overlapped the socio-environmental interests. It lacks the perception that in the medium and long terms the economic interests are affected, if not made unable by the reflexive modernization of Giddens, Lash and Beck (2012).

In this respect, also in Brazilian law, despite the range of constitutional actions for the realization of socio-environmental rights, one cannot, by simple action, based on art. 225 of the Constitution of 1988, oblige the government to revoke the construction of dams in the Amazon, for example, even though those responsible knew that this project would have as a consequence the forest devastation and the destruction of the natural *habitat* of several species and, finally, a significant ecological imbalance, as can be seen.

The Brazilian Constitution protects the native and their traditions, as expressed in art 231, paragraph 6. in the sense that "acts that are intended to occupy and dominate the possession of the lands traditionally occupied by the natives to which this article relates, or the exploitation of natural resources of the soil, rivers and lakes, unless when subject to the relevant public interest of the Union, are forbidden and have no juridical cause". This protection is merely symbolic and ineffective when we are faced with the countless actions that "transit" in the Federal Supreme Court on the subject. Actions that come and go, as one regards the Raposa Serra do Sol, who returned to be discussed in 2017.

4 THE FUNCTION OF LAW AND THE POSITIVATION OF NEW VALUES: THE TECHNICAL-RATIONAL AND THE TECHNICAL-INSTRUMENTAL

The so-called Postmodern Law, that is, the Law of super-industrialized and highly technological societies points specificities that break the classic paradigms of the Philosophy of Law.

The so-called Modern Law - Formal Law of bourgeois society - which was intensified by Postmodern Law is, in all its expressions, a Right oriented towards rational ends, a right of finalist rationality, that is, a "Teleological-rational Law" or *zweckrationales Recht*, as Max Weber

(2013) stated. As Private Law, it fulfills the imperative of a functioning system, of an economic system, regulated by free markets and by the traffic of goods and, as expressed by Habermas (1985), designed to give place to the strategic rationality of legal subjects oriented towards rational ends in actions. If the core is the institutional guarantee of private property, with the guarantees attached to it, such as: business freedom or economic freedom in general and property rights. As public law, it fulfills the functional imperative of the contemporary state. That is, supported by a centralized administrative apparatus, guarantees the essential conditions for the development of a free, autonomous and private economic order. In this sense, current law functions as an instrument of the systemic rationality of free market society; as such, maintains the functional *status quo*, promotes its developmental conditions, controls dysfunctional systems, and regulates its risks (LUHMANN, 1993).

The functions of contemporary law are anchored in the teleological-rational and technical-instrumental categories, since they have the following characteristics:

- Is a "positive" right. That is, a sovereign legislator regulates social relations in order to transform the imperatives of systemic rationality into formal laws. The State creates a Positive Right, that is, codified and symbolically manifest.
- Is a "general" positive law. It consists of general obligatory norms, which are valid for and against all and is therefore legitimized as an expression of widespread interests. It creates calculable forecasts and external guidelines for action (ensuring formal equality before the law), which are independent of moral values. It simply has formal validity. Private autonomy is still the dominant rationality.
- Is a formal operational right. This means that the creation and application of law is the task of "legal operators", built in a complex and hermetic legal language. By virtue of the rationalization and systematization of legal norms, the coherence of legal dogmatics, analytical conceptualization, unity and strict deductibility of legal thinking, as well as the uniformization and standardization of valuation criteria, the current Law becomes operational law, a feature that allow us to think of an automatism. The Law thus emerges as the instrument of government which, in turn, allows for specific interests to be recognized by the law, which, in most cases, does not coincide with social interests. With the help of legislation, it is intended to address the behavior of the

receiver, either through incentives, permits or prohibitions, in a way that generates the intended effects. The success of the laws is controlled by the administrative and social implementation of the rules and their efficiency by the execution and fulfillment of their objectives. Guided by this instrumental spirit of laws, the legislature becomes super or hyper-producers of laws, which is especially evident in legislation on environmental protection in several countries. The Environmental Law has been established in Germany as an autonomous right, involving civil, criminal and administrative interests. It compiles a legislative work that spans more than three hundred normative instruments, among laws, decrees and regulations. Also, in this field, there has been a large institutional infrastructure, with specific administrative techniques, with a view to the execution and state control of ecological behaviors, be it entrepreneurs, citizens, or communities.

Institutional concern with the environment has encountered many obstacles, especially with regard to the process of implementing this category of good in the European Union. The *leitmotiv* that gives impulse to the "hysterical movement" in the field of Law can be summarized from the philosophical perspective, as follows: "environment" and "nature" were discovered as ethical values and, in the face of its ostensible destruction, was declared their absolute protection, when they are redefined as "legal assets". The almost natural consecration of the fundamental value of nature, the "natural right of nature" is positive, that is, it is symbolically manifested in legal norms that multiply and are organized towards an effective implementation of the regulations.

In summary, it can be stated that, in view of the entire legal, technical and professional framework, as well as the operational and presumed control, behavioral changes towards an ecologically correct attitude regarding the subject, there was an advance of Environmental Law as bearer of all hope in politics, state and society. The protection of the environment was totally entrusted to the regulations around environmental law. This regulation, however, needs to be implemented.

CONCLUSION

The idea that a law constitutes the political practice of philosophical reason, that legislation constitutes the affirmation of legal reason and that law, as an instrumental practical reason, forms the basis

of every organization of the State and society, persists in European jurist-philosophical tradition, since Plato. Also the historical function of Hobbes's Natural Right up to Hegel is implicit in this discourse. The great European codifications of the eighteenth until the nineteenth century are understood as positive aspects of natural bourgeois law. The question that arises is: These theoretical models can explain or make it possible to understand contemporary development about Environmental Law as a codification of ethico-ecological reason, as an instrument of its transformation into praxis, as a guide for all political and social posture under the conditions of hyper industrialization and so-called "dirty" technologies, generators of great risks to the environment?

The pretensions of Environmental Law are associated with a contradictory systemic rationality, which can also be named as rationality of organized irresponsibility. It functions as an effective instrument when it comes to the use of the environment, its exploitation, use, distribution, administration, planning, organization, information, determination of values, limits of emissions of damages and risks and calculation of compatibility. However, it operates at the level of legal effectiveness in a merely symbolic way.

The ecological interest continues to be protected by a purely symbolic regulation, according to the definition of the symbolic concept established in the present study. Thus, most norms, declarations of constitutionally protected rights, institutions, administrative acts, and judicial decisions create a false impression that Environmental Law is a branch of law in full swing. This position of the state legislator, executive and judiciary makes citizens believe and trust the system.

In this sense, legal symbols have a manipulative function, since they create expectations and appease the public opinion. They represent a fictitious reality, a false consciousness. It is well known that the political owners, legislators, judges and professionals involved in Environmental Law are not only producers, but also victims of their symbolic interpretations of ecological reality. In its imperturbable belief in the normative pretensions and instrumental possibilities of Environmental Law, the real situation of the being is replaced by the fictitious situation of being.

Environmental Law and its applicability show itself as a multidimensional and dazzling work, rationally constructed, on the basis of which one cannot distinguish appearance from reality. The historical task of humankind, that is, the protection of the environment, which

has erupted since the mid-nineteenth and seventy years in all states, in both developed and developing countries, today appears to be a crusade symbolically staged in all the spaces of the planet.

In the mentioned crusade, battles are carried out, victories are propagated and the perpetual control of the enemy is declared. An enemy with whom we never had contact, until the presumed enemy manifests itself in the imposing and tragic form of atomic winters, climatic catastrophes, desertification of vast regions, dead seas and fur seals, extinction of species of fauna and of flora and other catastrophes of this nature, born of the dreams of human reason and brought about by the system of organized irresponsibility. There is today a very old philosophical jus truth that says: *Fiat iustitia pereat mundus.*

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