

INDIVIDUAL, SOCIETY AND HUMAN RIGHTS: SUSTAINABILITY INTEGRATED TO THE IDEA OF WELL-LIVING AND ITS RELATIONSHIP WITH LEGAL BUSINESS IN THE GLOBALIZED WORLD

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ABSTRACT

The purpose of this study is to discuss the re-signification of the concept of sustainability so that it can respond to the socio-environmental crises of the Modern State, thus contributing to the strengthening of legal business, within the scope of business law, respecting the protection of the environment. The problem faced is that the concept of sustainability in its current configuration has not responded satisfactorily to crises and contemporary problems. The aim of this study is to examine, from the perspective of the critical environmental school, if the integration of the idea of well-living into sustainability in the context of the Socio-environmental State can contribute to reinvigorating the concept so that it can cope with the new transnational powers that result from the globalized capitalist world. As for the methodology, the research is characterized as bibliographic and exploratory, since it intends to open up a discussion, from works already published, for a better understanding of the theme. It is hoped, with the result, that it will be used to support concrete social practices such as critical awareness, use of the new concept and justification for new studies.

Keywords: Business Law; globalization; Socio-environmental State; sustainability; well-living.

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*INDIVÍDUO, SOCIEDADE E DIREITOS HUMANOS:
A SUSTENTABILIDADE INTEGRADA À IDEIA DE BEM VIVER
E SUA RELAÇÃO COM OS NEGÓCIOS JURÍDICOS NO MUNDO
GLOBALIZADO*

RESUMO

Este trabalho tem por intuito discutir a resignificação do conceito de sustentabilidade para que ele possa responder às crises socioambientais do Estado Moderno, contribuindo, assim, para o fortalecimento dos negócios jurídicos, no âmbito do direito negocial, respeitando a proteção ao meio ambiente. O problema enfrentado é que o conceito de sustentabilidade em sua atual configuração não tem respondido, de forma satisfatória, às crises e aos problemas contemporâneos. Com isso, busca-se averiguar, sob a perspectiva da escola ambiental crítica, se a integração da ideia de bem viver à sustentabilidade, no contexto do Estado Socioambiental, pode contribuir para revigorar o conceito, a fim de que ele possa fazer frente aos novos poderes transnacionais que resultam do mundo capitalista globalizado. Quanto à metodologia, a pesquisa se caracteriza como bibliográfica e exploratória, uma vez que pretende fazer uma discussão, a partir de obras já publicadas, para melhor compreensão do tema. Espera-se, ainda, com o resultado, que possa ser utilizado para fundamentar práticas sociais concretas como conscientização crítica, utilização do novo conceito e fundamentação para novos estudos.

Palavras-chave: *bem viver; Direito Negocial; Estado Socioambiental; globalização; sustentabilidade.*

INTRODUCTION

Initially, in view of the topic to be discussed within the scope of Business Law, some preliminary considerations are necessary in order to demarcate the development of this article. To this end, Business Law is understood as a specific branch of law responsible for interpreting, regulating and directing legal businesses, which are manifestations of will capable of generating legal effects.

It is also essential to mention art. 170 of the 1988 Federal Constitution, which symbolizes a milestone in human work and free initiative. By tying the alliance that exists between the economic order and democracy, art. 170 is the initial starting point of this work: the humanist, democratic and social justice look at economic rationality. Therefore, it starts from the idea that the commercial relations of exchange, purchase and sale, and legal businesses themselves, in the globalized capitalist world, are related with – and cannot be separated from – the construction of the Democratic Rule of Law.

In this sense, with the help of Eros Grau (2010), it is interpreted that the economic order constitutes a set of programmatic norms in a leading constitution, that is, they are norms that aim at the ends and objectives of a Social State, and they should not be seen in isolation or displaced from the entire constitutional order. Thus, art. 170 et seq. should be interpreted from the perspective of justice and social function of property and contracts, being in tune with the fundamentals and objectives of the republic, such as the dignity of the human person and the construction of a free, just and solidary society, as stipulated in art. 1 and art. 3 of the 1988 Federal Constitution (BRASIL, 1988).

No less important but essential, it is the integrative interpretation that one should make, also, of the economic order with art. 225 of the Federal Constitution (CF/88), which promotes the defense of the environment combined with a healthy quality of life and sustainability. Professor Eros Grau (2010, p. 256) explains that:

The principle of *protecting the environment* shapes the economic order (world of being), substantially informing the principles of guaranteeing development and full employment. In addition to being an objective in itself, it is a necessary – and indispensable – instrument for the realization of the end of that order, that of *ensuring a dignified existence for all*. It also nourishes the dictates of *social justice*. Everyone has the right to an ecologically balanced environment, a common use good – says art. 225, head provision.

Thus, in the current modern capitalist State, it is essential to consider the effective protection of the environment an end in itself, and also necessary for the realization of the economic order. Today, companies carrying out legal businesses should be guided by principles of social and environmental sustainability. This interpretation, achieved over centuries and at the cost of many lives, should be maintained and changed only for its expansion and improvement of rights.

According to Canotilho (2003), the principle of no social setback institutes a kind of protection to the constitutional norms of social and economic rights against policies and interests of transitional governments. Thus, this principle gives an aura of protection by assigning the status of State policy to the economic and social constitutional order. He also affirms that when generating this institutional guarantee and a subjective right, the action of the legislator and the provisional governments is limited, requiring a permanent political action, consistent with these guarantees, so that any measure that damages the essential nucleus of those rights is considered unconstitutional.

With the institution of the principle of no social setback, in the words of Professor José Gomes Canotilho (2003, p. 338):

[...] it means that social and economic rights (e.g., workers' rights, right to assistance, right to education), once a certain degree of achievement has been achieved, become both an institutional guarantee and a subjective right. The "prohibition of social setback" can do nothing against recessions and economic crises (factual reversibility), but the principle under analysis limits the reversibility of acquired rights (e.g., social security, unemployment benefit, health benefits), clearly breach of the *principle of protecting the confidence and security of citizens in the economic, social and cultural sphere*, and of the *essential nucleus* of the minimum existence inherent in respecting the dignity of the human person.

The reinforcement and discussion of this position, which is demonstrated in the course of this article, are fundamental in view of the transnational capitalist fronts and powers that directly confront socioenvironmental interests – in the search for the construction of a more just, balanced and sustainable society.

In fair criticism, contrary to the individualistic interpretation of legal business, Edson Fachin (2012, p. 277) infers that:

Private autonomy, seen as a dogma, is theoretically outdated. However, the question remains as to what substitutes for its concept, in the scope of contracts. It is clear, then, the need for a new proposal for transdisciplinary reflection, so that

this moment can be better understood. The establishment of a kind of cartography of transdisciplinarity requires rethinking the subject and the object, as well as the methodology of scientific investigation, focused on these fundamental legal statutes.

Finally, it is added that this article broadly adopts the notion of legal business and environment, with which the human being is integrated, as well as adopting sustainability as a basic concept that promotes the encounter between individual, society and human rights, under the focus of Business Law in the current globalized world.

Thus, the next chapters will address, in the following order: (1) the historical construction and positioning of this work regarding the concept of sustainability; (2) the crisis of the National State, in the context of the globalized world; (3) the integration of the idea of well-living with the concept of sustainability, in a socio-environmental State, and, finally, (4) the final considerations about the reflections of this work.

1 CRITICAL AND HISTORICAL-PHILOSOPHICAL APPROACH TO SUSTAINABILITY

Since the 1972 Stockholm conference, discussions on economic development in line with the preservation of the environment have gained emphasis. Since then, some policies and concepts have matured along with a collective global awareness. The concept of sustainability – derived from sustainable development –, originated from the 1987 Brundtland Report,³ represents a milestone in global environmental history, having already undergone some transformations.

There is another milestone in this regard, such as the creation of the Triple Bottom Line,⁴ an instrument that measures the sustainable results of a company in social, environmental and economic terms. The expression, created by John Elkington (1994), helps understanding that companies should contribute to sustainability. In this line, sustainable practices

3 The Brundtland Report is the result of studies that followed the Conference on the Human Environment in Stockholm, Sweden, in 1972.

4 The phrase ‘the triple bottom line’ was first coined in 1994 by John Elkington, the founder of a British consultancy called SustainAbility. His argument was that companies should be preparing three different (and quite separate) baselines. One is the traditional measure of corporate profit – the “bottom line” of the profit and loss account. The second is the bottom line of a company’s “people account” – a measure in some shape or form of how socially responsible an organisation [sic] has been throughout its operations. The third is the bottom line of the company’s “planet” account – a measure of how environmentally responsible it has been. The triple bottom line (TBL) thus consists of three Ps: profit, people and planet. It aims to measure the financial, social and environmental performance of the corporation over a period of time. Only a company that produces a TBL is taking account of the full cost involved in doing business”. (TRIPLE..., 2009).

have been increasingly valued by the consumer market, since population awareness is increasing and causing greater interest from corporate sectors in meeting socio-environmental expectations.

Nowadays, according to some authors, the idea of guaranteeing the means and the needs of present and future generations is outdated. Already in 1996, in an article written for the Cambridge Journal of Public Policy, Dovers criticized this concept saying that it lacked clarity and therefore brought an important conceptual differentiation between sustainability and sustainable development:

Sustainability is the ability of a natural, human or mixed system to withstand or adapt to, over an indefinite time scale, endogenous or exogenous changes perceived as threatening. Sustainable development is a pathway of deliberate endogenous change (improvement) that maintains or enhances this attribute to some degree, while answering the needs of the present population (DOVERS, 1996, p. 304).

From this understanding, it is noted that sustainability is linked to the capacity of resistance or adaptation of a system, natural or human, to the changes that threaten it, that is, in the same meaning of capacity to support the ecological footprint.⁵

Modern environmental doctrine has evaluated the concept of sustainability from the point of view of the critical environmental school, political ecology and environmental justice, which form, according to Loureiro and Layrargues (2013), a counter-hegemonic alliance in the search for overcoming alienating social relationships destructive of nature.

The authors define the traditional environmental school as being hegemonic, having a mechanistic view of science, in addition to not wanting to reveal the structuring power relations of society (LOUREIRO; LAYRARGUES, 2013).

This traditional aspect is conservative and functions as one more mechanism for maintaining the capitalist logic. This exploitation system is constituted and adapted according to the needs of the market of each season. Today, the need that is imposed is sustainability itself and protection of the environment and, therefore, the business sector tries at all times to reproduce its vision of sustainability as hegemonic, a false vision – according to the adherents of the other theory – that only seeks to give people the

⁵ According to the NGO WWF-Brazil (World Wildlife Fund), “The Ecological Footprint is an environmental accounting methodology that assesses the consumption pressure of human populations on natural resources. Expressed in global hectares (gha), it allows comparing different consumption patterns, checking if they are within the planet’s ecological capacity. One global hectare means one hectare of world average productivity for productive land and water in one year” (WWF, 2018).

feeling that the ecosystem has been protected.

On the other hand, the critical, counter-hegemonic environmental school is capable of unveiling these relations of domination, making the contradictions of modern society explicit, in addition to empowering individuals for a critical social formation, and it is fundamental to overcoming the current socio-environmental crisis.

These environmental aspects seek to re-frame the concept of sustainability from a critical-social perspective. In the same sense, Ayala and Rodrigues (2013, p. 325) maintain that

[...] the principle of sustainability should be reframed, in order to offer protection not only to situations that deal with ecological integrity as a means to enable the dignity of human life, but also in order to understand the environment, in its entirety, as deserving protection due to its intrinsic value.

With this, it is sought, based on justice and equity, to redistribute wealth from the developed world in a more reasonable way, and on the other hand, to redistribute the adversities caused by economic development that, in general, affect only the poorest population: lack of basic sanitation, open sewage drains, landfills in residential areas, expropriation of neighborhoods and villages for high impact construction, among others.

Sociologist Ulrich Beck (2010) builds the thesis of the so-called risk society. It is understood that this social characteristic refers to the current modern situation, where risk prevention, economic compensation and liability for damages are not effective. It is a society where legal and administrative instruments are unable to confer environmental justice in the distribution of damages and risks felt by the population.

Environmental justice, according to Iván López (2014), is a broad concept that has a series of criticisms and definitions in the legal-social literature.

Since it is not the purpose of this article to debate the different concepts and theoretical divergences, it is worth mentioning the definition adopted here: environmental justice is related to “the principles that ensure that no group of people, whether ethnic, racial or class group, supports a disproportionate amount of degradation of the collective space” (ACSEL-RAD; HERCULANO; PÁDUA, 2004, p. 10).

Environmental justice is related to socio-environmental inequality caused by the structural conditions of capitalism. In the free market society, those with better economic conditions can establish their homes in

environmentally safe places, far from any dumps, landfills, toxic or deteriorating products. On the other hand, the least favored suffer due to an uneven distribution of degrading conditions. These are political and power inequalities that are discussed and reframed by critical perspective (ACSELRAD, 2010).

Environmental justice, in this way, comes close to the critical perspective of sustainability addressed in this article, and it is a fundamental element for this new understanding. For a better understanding of the theme, Iván López (2014, p. 265) points out that:

The concept of environmental justice thus questions the fundamentals of environmental and social policy in several ways. On the one hand, redefining environmentalism, integrating it with social and human needs to a greater extent; on the other hand, questioning the ecocentric positions, as well as the economic development of a capitalist cut that produces the environmental impact; and also, challenging the foundations, the scientific method and the positivist paradigm of the scientific community.⁶

As an example of the government's approach to critical perspectives, the concept disseminated by the United States Environmental Protection Agency⁷ (EPA, 2019) also points out:

Environmental justice (EJ) is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. Fair treatment means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.

Still reinforcing the necessary convergence between sustainability and environmental justice, from the perspective of the risk society, Ulrich Beck (2010, p. 23) clarifies that:

[...] the social production of wealth is systematically accompanied by the social production of risks. Consequently, the problems and conflicts arising from the production, definition and distribution of scientifically and technologically produced risks overlap the distributive problems and conflicts of the society of scarcity.

6 Original text: "El concepto de justicia ambiental cuestiona así las bases de la política medioambiental y social, de varias maneras. Por una parte, redefiniendo el medioambientalismo al integrarlo en mayor medida con las necesidades sociales y humanas; por otra parte, cuestionando las posiciones eco-céntricas al igual que el desarrollo económico de corte capitalista productor del impacto medioambiental; e igualmente, retando los fundamentos, el método científico y del paradigma positivista de la comunidad científica".

7 The United States Environmental Protection Agency is a federal agency of the government of the United States of America, assigned with protecting human health and the environment: air, water and land. EPA started operating on December 2, 1970, when it was instituted by President Richard Nixon.

As an example, we can mention the collapse of an occupied building⁸ in the central zone of the city of São Paulo: a serious and sad urban tragedy that reflects the lack of socio-environmental planning of a failed State that does not fulfill its social function. In view of the concepts discussed above, it is a clear example of lack of commitment to environmental justice, where the State seeks at all times to exempt itself from responsibility and commitment towards the neediest portions of society. Furthermore, it demonstrates a restricted and limited understanding of sustainability, which does not attend communities in need of socio-environmental services.

Based on the studies by Kempfer (2011) and Clodomiro José Bannwart Júnior (2012), at a global level, the Modern State was not able to implement public policies that would guarantee human security. In this sense, companies, as social institutions, should seek interests that converge with those of the State in order to implement policies to protect and guarantee human rights. They should seek to develop socio-cultural benefits to the detriment of the losses resulting from economic exploitation, which is highly aggressive and degrading to the various forms of environment and culture. Thus, when companies fulfill their community role, they fulfill their social responsibility duty.

Corroborating this understanding, Clodomiro José Bannwart Júnior (2017, p. 40) states that:

[...] it is possible to see that in the face of the process of raising awareness of the natural resources finitude and the environmental impacts on productive activity, companies have been held responsible and increasingly charged for the way they interact with the environment. They are therefore at the forefront to respond to the challenges of sustainable development.

Going deeper into this discussion, it is essential to make a brief historical-philosophical reconstruction regarding state models in order to have a critical understanding of the potential of capitalist interference in the ecosystem.

Rescuing the classic liberalism, with Adam Smith and John Locke being the greatest exponents, Clodomiro José Bannwart Júnior (2012) states that this model was not able to guarantee the adequate and social conditions expected by humankind. He comments that progress for progress was responsible for the decrease in quality of life, exploitation of workers and intensification of environmental problems.

⁸ The news of the collapse is in the public domain and can be found on several communication channels. In an article dated July 25, 2018, Carta Capital magazine highlighted the characteristics of the tragedy: <https://www.cartacapital.com.br/sociedade/apos-incendio-predio-ocupado-no-centro-de-sao-paulo-desaba/>.

For Locke, the right to property, natural and inalienable, represented the maximum freedom of human beings and the solution to problems of nature. Meanwhile, for Rousseau it represented the very violence and inequality for civil society. For this philosopher, liberalism could never solve humankind's problems and anxieties and would never bring the much-promised freedom, because it could not walk along with justice and equality. It should, therefore, be replaced by a model where the general will overlaps the individual, and social justice overlaps private interests (WEFFORT, 2006).

In a post-World War II model of social well-being, the State finds space for a positive intervention that acts to mitigate the social and environmental transformations of post-industrial society. However, with the consolidation of globalized and financially binding capitalism, in the neoliberal era, the interesting phenomenon of relativization and even loss of state sovereignty has been observed, which certainly affects countries' ability to deal with environmental problems.

As a reflection of the reorganization of the State, resuming Loureiro and Layrargues (2013), the movements and struggles, now minimized, give way to the discourse of consensus and dialogue, of conciliatory practices, against which the authors made a harsh criticism, especially regarding ways of dialogue and approximation that nowadays has been attempted, a consensus of nonsense:

One goes from the explanation of conflicts as a condition for democratization to the logic of consensus and dialogue, as if the inequality and antagonism of class interests had ended or as if communication between social agents led to consensus and emancipation (LOUREIRO; LAYRARGUES, 2013, p. 59).

In other words, there is criticism against the traditional environmental school that tries to solve environmental problems illusively from a friendly discourse with the logic of capital. The authors continue, saying that the expansion of capital, because it finds limits in nature, will overlap it to achieve its objectives and goals. It is evident, then, that it is necessary to effectively combat these socio-environmental issues.

In this regard, Loureiro and Layrargues (2013), critical-Marxist authors, agree that the solution to the real effectiveness of social and environmental sustainability is the extinction of the capitalist mode of production, highly degrading and that manipulates political-state relations. According to the authors, there is no possibility of a dialogue between sustainable aspirations and the logic of capitalist production.

Faced with an aggressive cultural, social and, above all, economic globalization, national States and the environment find themselves as hostages of large corporations and transnational and multinational companies, which concentrate greater financial power and political influence than many countries and also dictate the directions and needs of globalization under the illusion of bringing technological development, employability and state autonomy.

In spite of largely agreeing with Loureiro and Layrargues, it is understood that it is necessary to establish a dialogue between business globalization and the environment in order to reflect on this enigmatic relationship. In the global scenario, this clash runs through the crisis of National States, and it is necessary to develop a topic about this relationship – which is done below.

2 ENVIRONMENT, GLOBALIZATION AND NATIONAL STATE CRISIS

In the debate about the crisis of National States, Luigi Ferrajoli (2002) discusses the viability of a stateless democracy, given that some authors point to its disappearance in the face of new transnational and multinational economic powers.

The answer seems to be negative. Democracy and the defense of the environment depend on a State that is capable of dictating its own directions, that is capable of not giving in to external pressure that is contrary to the internal interests of each country. Faced with the emergence of transnational powers, characterized by a deficit in democracy, Ferrajoli (2002) says that it is necessary to rethink the State and the international order itself. One depends on the other, and should not overlap the other.

In order to think about a dialogue between the transnational economic power and the States, one should be the *size* of the other, and there is risk of this *dialogue* remaining a monologue of the capitalist regime. Nation-states should organize themselves into supranational institutions, capable of regulating, pressuring and sanctioning large corporations and sectors of the global economy. Ferrajoli (2002) also calls attention to the fact that at the international level there is no institution capable of domesticating these global powers; there is not, in the public sphere, an organization that effectively acts in the defense of general interests such as peace, security, the environment, sustainability and fundamental rights. It is precisely this

gap that leads the author to point out a vacuum in international public law.

Global capitalism directly interferes with the capacity for sustainability. Under pressure, national states are obliged to accept the free movement of multinational and transnational companies, which seek cheap labor, fragile labor legislation and States unable to adequately measure or punish socio-environmental damage – pollution of ecosystems; mischaracterization of local culture; increased crime, prostitution, alcohol and drug use, and worker exploitation, among others.

Cristiane Derani (2008) is contrary to this idea, and affirms that the economic foundations of an environmental policy are inextricably linked. According to the author, in order to manage economic production, it is not possible to deviate from a policy of protecting the environment and natural resources. What is intended with this is the adequate conciliation that allows, with the help of law, maintaining the current order of capitalist development with a rational and conscious use of resources and nature, fundamental in this process.

Environmental law arises from the dilemma of industrial progress versus protection of the environment, trying to alleviate this conflict. The author goes on saying that the risks brought by the idea of industrial development create a prospect of irreversible damage and, consequently, need to think about how to avoid it.

However, it is understood that there is a kind of contradiction in the perspective of Cristiane Derani (2008). In view of the damage to the environment, often irreparable, that industrial capitalism creates and has created for many decades, it is possible to argue that this alliance, in current terms, may not produce good results.

Furthermore, this law does not work, as Derani (2008) said, as a consensus aimed at ultimately ensuring people's quality of life – which is a concern of both economic and environmental law. But it works as little protection as possible, within the exploitation logic. In fact, Environmental Law, hostage to the economic sector, goes as far as State's economic, political and social interests confluence allows it to reach.

In view of this scenario, the possibility considered by Ferrajoli (2002) consists of the reformulation, or even creation, of global institutions that can effectively guarantee the protection of fundamental rights, protecting the internal environment of each State against the effects of globalization. These supranational organizations should have strength and instruments necessary to pressure, sanction and compel states and

transnational economic powers to comply with their directions.

This solution may represent a filling in the vacuum in international public law to which Ferrajoli (2002) refers. Nowadays, this vacuum can be seen, for example, in the recent war-nuclear episodes of North Korea, which has confronted the world for years without absolutely any organism with effective power to coerce it to stop: the issue took a diplomatic turn only when the country decided it.

The same warning applies to the United States, which rejects previously agreed environmental pacts and does not submit to the guidelines and adjustments of the United Nations (UN) in the sense of not assuming global pacts for cooperation and universal accountability, such as the exit from the Paris Agreement (PRESIDENT TRUMP..., 2017) on climate change, the Iranian Nuclear Deal (PRESIDENT DONALD J. TRUMP IS ENDING..., 2018), and the suspension of the Intermediate-Range Nuclear Forces Treaty (PRESIDENT DONALD J. TRUMP TO WITHDRAW..., 2019) with Russia – the latter on the grounds that Russia would be breaching it.

This all demonstrates that there is still a long way to go. Environment, democracy and humankind itself are at imminent risk. As Ferrajoli (2002) noted, there is no definitive and reliable international security. Even Kant (2008), in the eighteenth century, would not have imagined that the long-awaited perpetual peace would not have been achieved in the twenty-first century. The philosopher, already in his time, signaled the importance of international diplomatic paths, as well as the need for a type of global code of law, with the definitive articles that would lead to peace.

However, it is necessary to discuss new possibilities that could contribute to ensuring a minimum of security and peace for both humankind and the environment.

3 THE SOCIO-ENVIRONMENTAL STATE AND THE IDEA OF WELL-LIVING INTEGRATED WITH SUSTAINABILITY

In view of the crises suggested in the previous chapters, Ayala and Rodrigues (2013) criticize the fact that the dominant Western concept of sustainability has an anthropocentric approach, in the sense that something is only protected by the sustainable aura when it has some use for human beings. Correcting this criticism in the field of Brazilian law, the authors continue:

[...] with regard to the Brazilian legal-constitutional order, even considering a principle of sustainability [...] it is understood that the levels of protection to the environment that result from it are insufficient, as they are unable to contemplate the protection of life in general, and culturally diverse minorities, such as indigenous peoples (AYALA; RODRIGUES, 2013, p. 318).

Given this position, protection of the environment is not guaranteed because the existent understanding of the principle of sustainability does not address ecological complexity through cultural diversity. The authors state that “the idea of sustainability needs to interact with non-Western cultural experiences, so that dignified life projects can be made possible, committed to the whole community, in an integral and lasting way” (AYALA; RODRIGUES, 2013, p. 318).

Ayala and Rodrigues (2013) continue saying that the Rule of Law is that which should provide answers to the problems and crises experienced, offering complete protection to life and dignity. Nevertheless, for the authors, the current concept of the Rule of Law is insufficient to face the range of global crises and risks. With that, they suggest adoption of a Socio-Environmental State that obeys the rule of law, whose idea is:

[...] to aggregate in the same political-legal project the conquests of the Liberal State and the Social State, in terms of protection to dignity, incorporating also the requirements and values linked to the Socio-Environmental State that obeys the rule of law, in order to achieve the greater objective of the State, that is, the development of life, and the guarantee of its perpetuation in time (AYALA; RODRIGUES, 2013, p. 319).

Thus, this new configuration of the State may provide greater support for environmental and humanitarian issues, since the duties of protection would bind state powers. There would also be a limitation of the State’s margin of discretion in the choice of protective measures for the environment, “After all, the Social-Environmental State has an active role in promoting fundamental rights, especially with regard to environmental protection” (AYALA; RODRIGUES, 2013, p. 320).

Within the idea of this new state model, the authors propose a cultural dialogue with indigenous peoples in Latin America that can “favor reinforced protection to the environment, built from a sense of integration and balance, and of broadening essential values, as dignity itself” (AYALA; RODRIGUES, 2013, p. 321).

According to the authors, it is the ideal of well-living, which consists of “a true existential project, collectively built, which requires, therefore, a

break of paradigms in relation to traditional categories of Western Law in favor of building a pluralistic society, founded on harmony and respect for life” (AYALA; RODRIGUES, 2013, p. 324).

Under this focus, it is argued that it is necessary to integrate the idea of well-living into the concept of sustainability. This idea, which was rescued by the third wave of the Latin American Constitutionalist movement, is characterized by a look at cultural diversity, whose objective is to provide effective constitutional mechanisms with full respect for different cultures and peoples and their relationship with their respective ecosystems – in particular respect for and protection of indigenous peoples and their traditions, customs, understanding of the world and development, including from indigenous jurisdiction and courts, as in the Bolivian case.

This new constitutionalism, or Andean constitutionalism, represents the elevation of cultural diversity and plurality to constitutional levels, marking the construction of an identity specific to Latin American countries founded on respect, dignity, interculturality and historicity. Wolkmer (2010) divides the movement into three cycles: (1) social and decentralizing – Constitutions of Brazil in 1988 and Colombia in 1991; (2) participatory and pluralist – Constitution of Venezuela in 1999. And finally, (3) the community multi-national cycle – marked by the Constitutions of Ecuador and Bolivia, in 2008 and 2009.

For Fernanda Bragato and Natalia Castilho (2014, p. 11-12), in the context of Latin America, the new movement:

[...] has represented some changes, advances and ruptures with the constitutional model of European and North American matrix that, as a rule, served as a theoretical model for the Constitutions of these countries since their respective independence. [...] it has decolonizing characteristics, with the recognition of the indigenous worldview and with a new societal project, which seeks to include historically excluded and marginalized subjects and groups, especially the indigenous, women and peasants.

Latin American constitutionalism, in its third cycle, finally marks the break with the western paradigms of traditional, or colonial, constitutionalism. It is an act of freedom and bravery. As the work of Eduardo Val and Enzo Bello (2014) suggests, it represents a *decolonial thought*, a re-foundation of the State under a new perspective, built from the most diverse social, historical and culturally founding groups in each country.

This movement embodied well-living in the constitutions of Ecuador (2008) and Bolivia (2009), making plurinationalism, rights to well-living, and rights to nature official.

In the words of Wolkmer (2001, p. 171), for purposes of conceptualization, the theoretical framework of Pluralism means “the existence of more than one reality, multiple forms of practical action and the diversity of social or cultural fields with their own particularity, that is, it involves the set of autonomous phenomena and heterogeneous elements that cannot be reduced among themselves”.

The Constitution of Ecuador, in art. 1, defines plurinationalism as a constitutive element of the State. It also grants, for example, the following rights related to well-living: “water and food, a healthy environment, communication and information, culture and science, education, habitat and housing, health, work and social security”. And still within the title “Regime of well-living” (Regimen Del Buen Vivir), the chapters: “Inclusion and equity” and “Biodiversity and natural resources” (Constitution of Ecuador, 2008).

It is noted that the idea of well-living has a meaning of integration and balance, seeking, in human origin, respect for the most diverse forms of life and culture, having an understanding of humankind and nature as one.

Thus, the resignification of sustainability for it to be integrated with the idea of well-living represents, in a way, possibility of protection to and guarantee of human dignity from a plural and collective perspective, with the active participation of the Socio-Environmental State and society, serving as aid to responses to crises experienced in modern times.

The Constitution, in the traditional way, no longer responds to social expectations and demands. The new understanding presupposes not a catalog letter of fundamental rights and written duties, but a real normative force of interaction, which understands the deep social transformations and cultural rescue, as well as the unequivocal fulfillment of democratic principles.

CONCLUSION

The integration of the concepts of sustainability and well-being does not only mean a transformation in the scope of language and grammar, but also propulsion of the reflection itself about a Socio-Environmental State that obeys the rule of law.

In view of the ideas discussed here, a dialogue is proposed between capitalist economic forces, legal businesses and the environment. However, a dialogue in more equal conditions of debate. In order for this conversation

to be possible, it is necessary to establish a Socio-Environmental State that promotes the inversion of social values, leading the human being, dignity, cultural plurality and the environment in the foreground to the detriment of materialism and economic rationality.

Business Law is intrinsically connected to the current stage of the contemporary State according as legal affairs, regulated by private autonomy, derive, indirectly, from the capacity for internal control, strength and political influence of States.

Economic law, as an economic policy, has the power to constitute new legal norms and vice versa. There is a dialectical relationship between economic law and the legal norm. In this respect, the former cannot be reduced to the mere instrumentality of the economy; it cannot, in the words of Cristiane Derani (2008, p. 41), “renounce the realization of the idea of justice and, consequently, influencing the shaping of relations, in this case of the ordering of the economy”. In this sense, the theory of economic law is understood by its broadest aspect, which does not refer merely to the elaboration and circulation of goods, but to the entire production of economic and social life.

Social reality is intrinsic to the analysis of economic law, it is an essential part of its formation; therefore, it is not possible to ignore this interaction. As the purpose of law is social peace, the search for a complete development of societies, both social and environmental, becomes essential and, as a result, the necessary regulation and protection of these, which involves environmental law.

Based on Derani (2008), the double dimension of economic law stands out: on the one hand, protecting the search for the common good, and on the other, guaranteeing private initiative. Speaking of economic law is to work with the issue of profit, productivity and, therefore, the norms referring to it should have the ability to cyclically adapt in order not to lose the focus on the development of the common good. In fact, law has to provide the conditions for socio-environmental development.

Legal businesses, from the perspective of private autonomy and the Socio-Environmental State, should effectively protect human rights from the perspective of sustainability.

Thus, it is concluded that the capitalist system is not contradictory to environmental development, but should, nevertheless, be placed in the background, controlled and submitted to forces and a new state. Its role should be that of building commercial and exchange relations in line with

socioenvironmental and sustainable objectives.

Environmental law cannot be treated, say Ana Carla Freitas and Gina Vidal Pompeu (2019), as an instrument of mere symbolic staging in the fight against the enemy called environmental tragedies and concretized in the structure of “organized irresponsibility”.

Finally, the need for conceptual construction of the Socio-Environmental State that obeys the rule of law is paramount in the face of the current crises in the changing world and the pressures carried out by transnational capitalist powers. The alliance of the idea of well-living with the principle of sustainability is also essential as a way of corroborating this concept so that it can serve as a response to the crises of the contemporary State.

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Article received on: 06/18/2019.

Article accepted on: 03/04/2020.

How to mention this article (ABNT):

ARAUJO JUNIOR, M. E.; MARTINS, L. G. C. Individual, society and human rights: sustainability integrated to the idea of well-living and its relationship with legal business in the globalized world. *Veredas do Direito*, Belo Horizonte, v. 17, n. 37, p. 157-177, jan.-abr. 2020. Available at: <http://www.domhelder.edu.br/revista/index.php/veredas/article/view/1566>. Access on: Month day, year.