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CONSTITUTIONAL FOUNDATIONS OF THE LEGAL-ENVIRONMENTAL RELATIONSHIP

Julio Cesar Garcia[1]

Centro Universitário Cascavel (UNIVEL)

ABSTRACT

The environmental impacts on a planetary scale crisis point to a probable collapse of the main indicators of the sustainability of life on the planet. The legal response through Environmental Law has allowed the advance from a set of administrative rules to a legal micro-system with a constitutional foundation. The Brazilian Federal Constitution of 1988 elevated the balanced environment to the category of fundamental good, breaking with the individualistic and utilitarian traditions of conventional legal relations on the environment. The understanding of the macro-environmental good prioritizes the fulfillment of fundamental duties by the community, leading to the transformation of several traditional legal institutes, which among the legal relationship. This article reviews the literature and Brazilian legislation employing the deductive method to support the emergence of the fundamental legal-environmental relationship. This is a new kind of legal relation, which presents two distinctive marks: its diffuse nature, and its object, the environmental good, which defines the immaterial condition of the ecological balance, elevated to the condition of a fundamental good by the constitution. This produces the effect of the preponderance of the duty to preserve the environmental good beyond the most conventional fundamental rights of its subjects by imposing limits and objective guidelines for the pursuit of a balanced environment by its intrinsic values.

Keywords: Constitutional Law; environmental good; legal relationship.

1 Ph.D. in State Relations by Universidade Federal do Paraná (UFPR). Master's Degree in Supraindividual Rights by Universidade Estadual de Maringá (UEM). Visiting Scholar at University of Florida (UF). Professor of the Law Post-Graduation Course of Centro Universitário de Cascavel (UNIVEL). Professor of the Law course of UNIOESTE. Attorney. ORCID: https://orcid.org/0000-0003-2075-4988 / email: julio.garcia@univel.br

FUNDAMENTOS CONSTITUCIONAIS DA RELAÇÃO JURÍDICO-AMBIENTAL

RESUMO

Os impactos ambientais da atual crise ecológica em escala planetária apontam para o provável colapso dos principais indicadores da sustentabilidade da vida no planeta. A resposta jurídica por meio do Direito Ambiental permitiu avançar, de um conjunto de normas administrativas, para um microssistema legal, com fundamentação constitucional. A Constituição Federal de 1988 elevou o meio ambiente equilibrado à categoria de bem jurídico fundamental, rompendo com as tradições individualistas e utilitaristas das relações jurídicas convencionais. A compreensão do macrobem ambiental prioriza o cumprimento de deveres fundamentais pela coletividade, conduzindo a transformação de diversos institutos jurídicos tradicionais, entre os quais, o da relação jurídica. O presente artigo realiza revisão bibliográfica e da legislação brasileira, empregando o método dedutivo para sustentar o surgimento da relação jurídico-ambiental fundamental. Uma nova espécie de relação jurídica com dois marcos distintivos: sua natureza difusa e seu objeto, o bem ambiental, que define a imaterial condição do equilíbrio ecológico, elevado à condição de bem fundamental pelo texto constitucional. Isso gera a preponderância do dever de preservação do bem ambiental, para além dos Direitos fundamentais de seus sujeitos, impondo limites e diretrizes objetivas para a persecução de um ambiente equilibrado por seus valores intrínsecos.

Palavras-chave: *bem ambiental; Direito Constitucional; relação jurídica.*

INTRODUCTION

The negative interference generated by human activities on the planet reached incomparable levels in history, largely due to the effects of the mastery of new technologies and very intense interaction between different cultures, modes of production, and the broad global consumer market.

If, on the one hand, there were beneficial consequences for humanity, such as the considerable increase in the production of wealth, food, and life expectancy, albeit in more privileged regions of the globe, on the other hand, there is an increase in inequalities worldwide, based on unsustainable models of exploitation of natural resources. There is an unprecedented ecological crisis on a planetary scale.

Despite the slowness of political and legal processes, given the increasingly rapid advance of scientific discoveries about ecological processes and phenomena, Law fulfills its historical function of social adaptation. An important legal transformation took place in the approach to law holders and their object, being decisive for the interpretation of the constitutional text, infra-constitutional legislation, and public policies.

The evolution of legal models presupposes the overcoming of traditions and conceptions that have become outdated, in general through the understanding of their limits and the identification of advantages of the new models. One of these relevant advances was the overcoming of the individualist and utilitarian model of legal relations, which until then had been seen from a predominantly economic perspective. The formulation of the theory of collective rights made it possible to broaden the understanding of environmental phenomenon through Law, following the molds of what in ecology is represented by the interdependence between all living beings, and the factors that allow and sustain life.

The Brazilian Federal Constitution of 1988 reflected the constituent's sensitivity to the demands of a new democratic order, which demanded the recognition of the quality of life as a result of ecological balance. The concept of this relationship was substantiated in the new environmental good, a legal institute renewed from the Roman traditions and the last centuries of evolution of Public Law. The environmental good, provided for in the Federal Constitution, brought new characteristics, which connect it to the diffuse interests and the immateriality of the object it seeks to express.

In the tradition of law, the classical notion of legal relationship was first developed by civilists, and later it was also incorporated into criminal

law logic. This is a concept according to which subjects who submit to a legal order establish bonds that link them to each other, as a result of a legal provision that distributes legal rights and obligations, upon the occurrence of certain factual conditions recognized by Law.

A problem arising from the adoption of this definition is that of not fitting the new and dynamic reality to the old legal models, which reflect systems and understandings about human interactions with nature that are now outdated. Therefore, a simple conceptual transposition of the classical notion of the legal relationship to the Environmental Law of the 21st century is not possible.

This study starts from the systematization of new legal and legal instruments, principles and changes, compiled by the doctrine in the last decades, in the scope of Environmental Law, to revisit the classic concept of the legal relationship. This is one of the reasons for the use of older bibliographic sources, as they continue to be a reference for the study of the legal relationship to the present day, a concept that is rarely challenged by contemporary doctrine.

Such a comparative process makes it possible to identify legal innovations capable of creating a new modality of legal relationship. More than that, it points to ongoing transformations, which can lead to scenarios considered revolutionary for conventional paradigms, especially regarding the transition of other living beings from the condition of an object, or legal fact, to the position of subjects of rights.

The problem to be faced can be summarized in the following questions. How to qualify and characterize the legal-environmental relationship in Brazilian Law? Is it possible to sustain a new modality of legal relationship capable of meeting legal provisions and promoting constitutional programmatic guidelines for harmonizing human relations with the environment?

Through the deductive methodology, and a specialized bibliographic review, with comparison between classical and current references, this study seeks to demonstrate the existence of a new kind of legal relationship in the scope of Environmental Law. The foundation of this new kind of legal relationship lies in the transition from a subjective perspective, based on fundamental human rights, to an objectification of the fundamental environmental good, which recognizes values and, consequently, prioritizes the duties of citizens to protect and defend the ecological balance.

Despite the hypothesis that the existence of direct legal links between

human beings and nature has gained supporters in recent years, the present study is still based on the foundations of anthropocentric epistemology. In other words, to recognize that the legal-environmental relationship establishes bonds only between human beings, considered subjects of law, and attributing to the environment, qualified as a fundamental legal good, the condition of the object of the underlying legal relationship. Despite this, the Federal Constitution is capable of raising this object to the level of maximum protection, based on the recognition that the object is in "revolt", demanding changes in behavior by the subjects of the legal-environmental relationship.

Without proposing a paradigm revolution or rupture, the concept of the new fundamental legal-environmental relationship points to advances in valuing other living beings, not by necessarily recognizing their rights, but by adopting a pragmatic position when imposing duties on human beings, so that they must preserve the essential factual conditions for the existence with the dignity of all living beings.

1 STARTING POINT: THE CLASSIC CONCEPT OF LEGAL RELATIONSHIP

The trajectory of understanding and formulating a new modality of legal-environmental relationship necessarily starts from the classic concepts that involve this institute. This topic presents some of these essential concepts to establish the basis for evaluating the occurrence of significant changes arising from the rules of Environmental Law.

Among some of the most relevant definitions for the term relationship[2], there is the link between two or more objects that, in some way, have communication interfaces, giving them unity. From the point of view of Aristotelian philosophy, the relationship refers to the way of being or behaving of objects among themselves, as explained by Abbagnano (2012, p. 841), who saw the relationship as that whose being consists in behaving in a way towards something.

In Allemar's synthesis (2003, p. 31), a relationship is

> […] one of the fundamental categories of thought, that is, the quality of two or more objects of thought (or beings), which are or can be understood in a single intellectual

2 "[…] 5. Reference, connection, link. 6. Comparison between two measurable amounts. […] 8. Phyla. The fundamental category that designates the character of ideas (eg., of comparison, fraternity, adequacy) that give unity to two or more objects. […] 9. Log. Operation that determines the aggregation or connection of two objects" (FERREIRA, 1999, p. 1735).

> act of determined nature, such as identity, coexistence, agreement, conformity, correspondence, succession, etc.

A universal structure of the *relationship* is identified, with terms and an operator that performs the function of relating. Its differentiation is due to the peculiarity of the fields in which it manifests itself: mathematical, physical, social, among others (VILANOVA, 2015).

To be accepted as an object of a relationship, in the broadest sense possible by the theory of knowledge, it is enough that the object is apprehended by human intelligence.[3] Therefore, it is possible to identify a legal manifestation of the relationship, by meeting specific criteria required by the legal system, which guarantee scientific autonomy to the Law.

By delimiting the legal relationship, the proper object of Law is being delimited. Exactly for this reason, Ihering (1840 *apud* REALE, 2013, p. 157) stated that the legal relationship is to the science of Law as the alphabet is to the word. As it is a kind of social relationship (REALE, 2013), the legal relationship has as its central focus the interests of human subjects, therefore, social. This led Karl Engisch (2008, p. 33) to write that "a legal relationship is a relationship of life defined by law".

If the various relationships are characterized based on their objects, it is possible to identify that what characterizes any legal relationship is the existence of human beings as main and related objects. In other words, what in a broad sense is called an object (according to gnosiology), in the legal relationship it takes the form of a subject of law, which seeks to assert its interests in the various social relationships in which it participates with others subjects.

The first striking definition of a legal relationship is elaborated in the last century by Savigny, who understands it as "a bond between people, by which one of them can claim something that the other is obligated to". According to this understanding, every legal relationship has a material element, constituted by the social relationship, and a formal one, which is the legal determination of the fact, through the rules of Law (NADER, 2020, p. 347).

Among the criteria required by the science of Law for any relationship to be considered legal, Pontes de Miranda (1970, p. 129) teaches that "the

3 Such a statement has divergences for some philosophers, mainly regarding the role of object and subject in the act of knowing, with currents overestimating one or the other. The object theory, or ontognoseology, aims to determine the nature or structure of what is likely to be considered an object of knowledge. On the other hand, the knowing subject is studied by Gnosis, that is, the study of the subject's capacity or conditions (REALE, 2002, p. 176).

legal rule, focusing on the facts, qualifies them as legal,[4] give them the juridical color, mark them". This objective and heteronomous function can only be exercised, as it is intended to regulate inter-human relations, through the connection between people. The legal rule then addresses these, so that its purpose is not vain, and links them, turning relationships into juridical ones. Therefore, it is the legal norm that has the power to qualify a fact or social relationship, understood as factual supports (MELLO, 2019), to be recognized as legal, this being the so-called plane of existence of facts (MIRANDA, 1970, p. XX).[5]

A classic concept of legal relationship is presented by Andrade (1977, p. 2), according to which, in a broader sense, the legal relationship is "all the situation or relationship of real-life (social), legally relevant (productive of consequences laws), that is, disciplined by Law".[6] The legal relationship is made up of elements necessary for its existence. Among the divergent doctrinal positions, Andrade (1977, p. 6) cites four essential elements: in addition to the subjects, also the object, the legal fact, and the guarantee. But the Portuguese jurist does not confuse the elements, taken only as external aspects, with the essence of the relationship: "the center or nucleus of the relationship is the link, the bond, the nexus that is established through it between the respective subjects" (ANDRADE, 1977, p. 168).[7]

According to the general theory of the legal relationship described by Andrade (1999, p. 168), the legal fact "is any fact in common sense (natural event or human action) that produces legal consequences". These can be constitutive, modifying, or extinguishing legal relationships (TUHR, 1947, p. 05).

For Mello (2019), Pontes de Miranda is responsible for the classification accuracy of legal facts, according to the rigorous application of the criterion of individualizing them based on the nuclear data (core)[8] of their factual support. Based on this methodological orientation, the

4 Following the term used by Pontes de Miranda, meaning "to become legal". This phenomenon is metaphorically represented as the lighting of social facts (REALE, 2013, p. 211) or as the idea of lighting spaces on a blackboard (PIVA, 2000, p. 117-118).

5 In a similar sense, see Gomes (2016).

6 Adopting the same meaning, Pinto (2017).

7 In a similar sense, see Pinto (2017, p. 168).

8 In addition to the core, other facts complete the nucleus of the factual support and, therefore, are called *completing elements of the core*. Note that both (core and completing elements) are considered by the author as being nuclear, in such a way that, in their absence, the legal fact will be non-existent (MELLO, 2019).

following are identified as differential nuclear elements: (a) the conformity or non-conformity of the legal fact with the Law; (b) the presence, or not, of a human volitional act in the factual support as hypothetically described in the legal norm (RAO, 1997, p. 20).

The subjects of the legal relationship are the people between whom the link, the respective bond, is established. They are the holders of the subjective right and the corresponding liability positions: legal duty or subjection. The dominant thesis understands that subjects are always persons, as legal personality is precisely the susceptibility to being the holder of rights and obligations, that is, the susceptibility to being the holder of legal relationships. It can be natural persons or legal persons (PINTO, 2017).

According to Andrade (1977, p. 20), the object of the legal relationship "is what the subjective law focuses on; on what influence the power or powers in which this right is analyzed". Pontes de Miranda (1970, p. 9) explains that the object of law is some good of life that can be an element of the factual support of some legal rule, whose incidence emanates a legal fact, a product of law. Thus, the good of life that can be an element of support is not excluded; for example, the human body, human freedom.

Therefore, tangible and intangible things (personality and immaterial goods) can be objects of legal relationships. But people can also be the object of legal relationships, even though this hypothesis is restricted to some cases, such as family power. It is argued that there are still rights over the person himself, insofar as the material power of the human will do not extend only to the outside world, but encompasses the very person of the man who is the subject of that will.

The object of the legal relationship has been classified by the doctrine, according to the greater purpose sought by the subjects, and in what way the powers affect it, with or without a mediating element. In this sense, the object can be mediate or immediate. Didactically Lisbon (2002, p. 170) presents the following differentiation: "(a) the immediate or direct object, which is the operation, which is the act or legal transaction considered in itself and which constitutes a means to obtain the person's intended need or utility; and (b) the mediate or indirect object, which is the good of life (thing)".

As a legal institute, the legal relationship can be classified into several types, according to different criteria. There are several types of legal relationships, whether obligatory, business, ownership and ownership relationships, family relationships, and succession relationships (LISBOA, 2002, p. 172).

Based on the regulated object, it is possible, then, to differentiate and classify legal relationships, as real or obligatory. Or given the subject, such as the relationships that have a minor subject regulated by the Statute of Children and Adolescents. Or, still, when a commercial relationship identifies a vulnerable subject in front of a professional supplier, submitting the relationship to the rules of Consumer Law.

As a result of the social and legal evolution of recent times, with fundamentals that will be better exposed in the next topics, it is possible to verify the emergence of new types of legal relationships that are based on the rights of the third dimension, that is, those related to interests and diffuse rights, of public order, but which act and interfere in the private sphere as if they were relations of this nature. This is the case of legal relationships based on norms for the protection of an ecologically balanced environment.

2 THE PATH: FROM SUBJECTIVE LAW TO FUNDAMENTAL LEGAL GOOD

The Law bases its foundations on general principles and values that make up a system or legal order, in constant evolution. During most of its historical trajectory, the problems related to supra-individual rights remained unformulated, as they were not perceived by the individualistic legal paradigm in force. Only with increasingly drastic changes in the social, political, and economic reality of the planet, these new rights began to be recognized by the legal community.

These changes brought about major changes in contemporary legal thinking, especially from the construction of the idea of interests belonging to indeterminate and indeterminable subjects and, also, of intergenerational responsibility (WEISS, 1992). Other current phenomena have contributed to these transformations, such as economic globalization, its effects on the globalization of Law (LIMA, 2002), the definitions of mass or post-industrial society (DE MASI, 1999) and risk society (BECK, 2019), and the most recent formulation of society 4.0 (SCHWAB, 2015).

However, a careful reading of all these sociological formulations points to their inability to reach the phenomenon of the contemporary environmental crisis, in all its magnitude. Unlike facts of typically human nature, the environmental object does not allow it to be dominated by the laws of men, as it transcends them insofar as it understands them. From a

legal point of view, this means a new way to respond to social needs and, above all, to legislate. For now, new strictly technical factors have taken the place of the previously predominant discretion of political representatives and public authorities, and these same factors seem to take society, increasingly, to a borderline point of a new time, of a new paradigm, of a new world system of development.

It is the phenomenon called by Antunes (1998, p. 95-96) as *the revolt of the object*, according to which the legal system, in the past, was directed to guarantee the free exercise of the subject's will or interest and, indirectly, the in favor of society. But currently, on the other hand, the tendency of Environmental Law is the opposite, that of immediately and directly protecting the object of Law, in comparison with the faculties exercised by holders of traditional subjective legal situations. In the author's words, there is a revolt of the object "in the sense that the protection of the constitutionally protected asset is obtained by directly and objectively safeguarding or recognizing (by the legal system itself) certain qualities of the object". As Jean Rivero said (1980, *apud* MANCUSO, p. 45, 2019), "La nature se rit des décrets".

It was in this context that Brazilian law went beyond recognizing the right to an ecologically balanced environment as a fundamental right, a principle, and even a duty. Under Article 225, the Federal Constitution of 1988 recognizes it as a fundamental legal asset. It is, therefore, the objective facet of the legal-environmental relationship, which gains even greater relevance when it proves to be sufficient and necessary to transform the limits and conditions of its relationship with other fundamental rights and goods of human interest.

Among the essential elements of any legal relationship, the importance of its object is highlighted. Also called a blegal asset, the object of the legal relationship refers to all things, material or immaterial, tangible or not, individual or collective, which are recognized by the laws of a given society as endowed with some relevance, which may vary from minimal to the maximum, according to historical and spatiotemporal criteria.

To demonstrate the existence and configuration of a distinct legal-environmental relationship, it is necessary to analyze its elements, among which, the environmental legal asset stands out, described by Piva (2000, p. 152) as "one diffuse and immaterial value, which serves as a mediate object to legal relationships of an environmental nature".

It is based on express and implicit precepts and provisions in the

Federal Constitution that the extent and depth of this fundamental legal asset are delimited. But also in infra-constitutional legislation, other sources of exact understanding of this concept can be found.

One of the reasons that make the environmental good of unique importance for the legal-environmental relationship is its role in defining the legal nature of this relationship. This is because, alongside the subjects and the environmental legal fact, it is the environmental good that acts directly influencing the private, public or diffuse character of the legal relationship.

In the dichotomous tradition of law in public and private, the environment was related to the category of *res nulius*, that is, things without economic value, considered *outside of trade*, as they represented resources considered inexhaustible.

With the increase in the economic importance of certain natural resources (especially those related to agriculture and energy production) and the gradual increase in the knowledge of their limitations, the Law began to classify them as corporeal, immovable, mobile, or non-moving things, as provided for in the Civil Code of 1916 and reproduced in the Civil Code of 2003. Therefore, what could be identified as a sketch of the environmental good came to be treated by the Law of Things together with private rights.

Following the legal maxim that accessories follow the fate of the principal (art. 59, Civil Code of 1916 – with no similarity in the new code), the environment was treated as material support and accessory of property, which, yes, deserved the intellectual effort of the thinkers of Law and was strengthened until reaching extraordinary conditions autonomy and importance for the legal system and social coexistence.

This is what Magalhães reported (1982, p. 45) almost three decades ago, stating that "natural resources, as goods that are, movable or immovable, constitute, par excellence, the object of the real property right". The disregard for the environment was such that, according to the same author, "when they are insusceptible of appropriation, such as the air and the high sea, they are considered non-commercial goods, that is, they cannot be the object of a legal relationship" (MAGALHÃES, 1982, p. 45).

With the social, economic, and political transformation that took place in the last century, the legal bias of this transformation reached the environment, which went from being a mere accessory to the role of the main and autonomous legal asset. This new and original legal asset reveals an important change in the current legal paradigm, surpassing the centrality of only economic, individual and selfish human needs, to

consider the interests of all humanity to life with quality and harmony with the environment. And beyond that, it makes room for the debate of nature's interests, regardless of its usefulness for human interests.

It should be noted that this change in the legal paradigm is still in progress and, while this transitional phase lasts, it will be possible to find many distortions between theory and practice, that is, between legal requirements, between the intentions of the legislator and between compliance of the law and its interpretation by society and the courts. The disruptive potential of the environmental good remains latent, but it is provoked to awaken at any moment.

The human relationship with the environment can be recognized as mandatory, either in a weak sense, as obligations between humans, or in a strong sense, as an ethical human relationship with nature. In this case, the mediate and immediate objects are identified, based on the conventional theoretical assumptions of the general theory of the legal relationship.

It is extracted from the analysis of art. 225 of the Federal Constitution the identification of the immediate object consisting in the constitutional obligation or duty to protect and preserve the environment for present and future generations. The mediate object, in this case, literally the good of life, is expressed in the environmental legal good itself, that is, the ecologically balanced environment.

The relationship established between the environmental legal asset and the "life" legal asset, provided for in the same Article 225 of the Federal Constitution, is another sign of the transitional paradigmatic period. This is because in 1988 the constituent still did not have mental and cultural constructs other than anthropocentrism to raise environmental protection to the maximum level of protection, without relating it to the human right to life. But it is not surprising that, in an increasingly near future, the environmental legal asset absorbs, by logic or essence, the right to life, by recognizing in the ethical scope the identity of these values, also in the ecological plan the interdependence between beings alive and, still, in the biotechnological plan, the breaking of the limits that separate human life from other forms of life.

What the new paradigm outlines are the effective transformation of priorities and maximum values defended by Law, gradually leaving its anthropocentrism marked by unsustainable biases (FREITAS, 2019), to assume the high principles and duties of humanity towards life in all its shapes.

In the construction of this path of legal-theoretical reorientation, the distinction between the material or immaterial character of the environmental asset, as well as its private, public or diffuse nature, gains importance. From a legal reading of Brazilian environmental legislation, two distinct and interrelated definitions of the environment are identified, as a legal asset: the micro-good and the macro-environment.

In the precursory analysis of the theme, the environmental micro-good (BENJAMIN, 1993, p. 60), was taken as the physical, objective, and material environment. In other words, it means the environment seen as a natural resource, such as air, water, soil, flora, fauna, etc. These elements represent the visible aspect or face of the immediate object of the environmental legal relationship. It is characterized by being able to be individually appropriated and thus considered as belonging to an individual or the State. This is the treatment that these goods receive under Civil Law, according to arts. 43 and 47 (Civil Code of 2003).

The influence of this concept can also be found in the Federal Constitution of 1988, which, following the same line of previous constitutions, maintained as assets of the Union and States, several natural resources provided for in its arts. 20 and 26. Note that almost all assets of the Union and all assets of the States referred to by the Federal Constitution are natural resources. Therefore, these environmental micro-goods assume the nature of public goods (primary or secondary)[9] or private, according to their reception by legislation, with special emphasis on water courses.

The definition of the environmental macro-good starts with art. 3, paragraph I, of Law no. 6,938/81 and is complemented by art. 225 of the Federal Constitution. In this new conception of the environmental good, a globalized and integrated vision of natural resources prevails. These cease to appear as mere things appropriable by individuals or by the Government, to integrate a collective heritage by nature, that is, to acquire the appearance of a diffused asset, belonging to an indeterminate and indeterminable number of subjects, who relate to each other through an actual situation. This is the evolution brought by third-generation rights (LORENZETTI, 1998, p. 153-154).

9 According to Rodrigues (2021), the public interest is divided into (a) primary public interest (properly said, belonging to the people); and (b) secondary public interest (private interest of the State as a legal entity under public law), with the former prevailing. And this author also emphasizes that an updated definition of the primary public interest should take into account the transformations from the Liberal State to the Welfare State, in such a way that the diffuse interests are, in short, the primary public interests materialized in a concrete case, that is, those interests that ceased to be "what was not individual to be what belongs to the people" (RODRIGUES, 2021, p. 40).

Benjamin objectively demonstrates this differentiation when dealing with the environmental function: "The environment, as an object of the environmental function, is a broad genus (macro-good) that welcomes an infinity of other goods – in a relationship similar to that of atoms and molecules, less generic and more material (micro-goods)" (BENJAMIN, 1993, p. 60).

This abstraction of the environmental legal asset was also perceived by Iturraspe, Hutchinson, and Donna (1999, p. 318), when they stated that "the object of legal protection is not so much the environment nor its constituent elements. What the Law protects is the quality of the environment […] in terms of the quality of life". And "only when the alteration or destruction of the property can mean the disappearance of cultural representation or environmental imbalance is preservation imposed" (ITURRASPE, HUTCHINSON; DONNA, 1999, p. 319).

Despite expressing apparently distinct legal concepts, in the natural world, the relationship between micro and macro-goods is one of overlap and interdependence. It is impossible to separate the material from the immaterial dimension of the environment. This is justified because the diffuse character of the environmental good, or its immateriality, is a legal fiction that seeks to recognize its collective nature, on the one hand, and its characteristic of quality, on the other. Therefore, it is molded on material environmental goods, in the mold of a public soul inserted in private bodies.

The concept of multidimensionality of the environmental good is an expression that demonstrates, with immense clarity and simplicity, the full magnitude of the interrelationships and consequences of the different dimensions of the environmental good (GARCIA, 2004). Following this same logic, Leite and Ayala (2007, p. 86) warn that " the owner, whether public or private, will not be able to have the quality of the ecologically balanced environment, due to the constitutional provision, considering it the macro-good of all".

This means that the immateriality of the environmental legal asset does not result, as stated by Piva (2000), only from its normative abstract nature, but mainly from the very essence or nature of the protected object that defines it. Environmental balance is, therefore, a qualitative conception and, for this reason, immaterial and symbolic, which illustrates the effects capable of being legally perceived and that represent an ecological condition or result by the healthy interaction of natural elements.

3 POINT OF ARRIVAL: THE LEGAL-ENVIRONMENTAL RELATIONSHIP

The relevance of the environmental legal asset goes beyond its descriptive and multidimensional capacity. The effects of its constitutional provision reach the very constitutive nature of the legal relationship that involves it. The analysis of its characteristics, especially its diffuse character, reveals its decisive role in sustaining a legal relationship proper to Environmental Law.

It appears that all components of the legal-environmental relationship, including its subjects that have peculiarities, are defined based on their object. In other words, the active subject corresponds to an indeterminable set of individuals because the very amplitude and indivisibility of its object, the fundamental good, prevents the individualization of holders.

In this sense, a review of the component elements of the legal relationship allows detailing the effects arising from the environmental legal asset, to support the originality and differentiation of this legal relationship from the others provided for in the Brazilian legal system.

As in any legal relationship, subjects are divided into assets and liabilities. However, given the diffuse condition of the effects of the attachment of the holders to the object, the active subject of the environmental legal relationship will never be limited to just one individual. Subjects holding a diffuse interest are more than indeterminate; are indeterminable.

When environmental interests interfere in the individual sphere, its indivisibility with the collective must be recognized, so that, even if a relative individual procedural protection is possible, the effects will continue to reach collective and indeterminable subjects. In its way, Environmental Law seeks to mimic the natural and ecological condition of inseparability between living beings, so that even legal-procedural regulations are incapable of removing the unity or interdependence of human environmental interests.

When the affected interest is related to the environmental micro-good, it appears that the legal relationships established, strictly in the analysis of this dimension, will correspond to the traditional relationships submitted to private law or public law. What is interesting to remember, in these cases, is that the coexisting dimension of the environmental macro-good will be present, so that the theory of multidimensionality of the environmental good must be applied to accommodate the intercurrent diffuse effects.

A didactic and figurative resource to illustrate this interposition is the comparison of each individual's interest in the environment with the images that make up a hologram,[10] a visual property capable of recording, in each small part, the properties that characterize the diffused whole. Comparatively, in each subjective right or of a group or any of those legitimated for collective protection, the protection of diffuse rights is directly or indirectly represented. In the same way that ecological integrity manifests itself and is protected in a specific environmental resource, the diffuse interest in preserving the environmental macro-good also supersedes the particular and individual interest.

What unites the subjects of a diffused right or interest is a certain factual situation. In the case of the environmental legal relationship, what unites active subjects, holders of a diffuse interest is the existence of an environmental legal fact (*lato sensu*). Therefore, the "absolutely mysterious character" (VILLONE, 1976*,* p. 73), when represented by a person legitimated to defend the interest, will not act in his interest and that of everyone, but will only act as a *bearer* of that interest, which will be brought to the appreciation of the Judiciary.

The subject of the environmental legal relationship will be the one who presents himself as the holder of an environmental legal duty. This environmental obligation may result from an unlawful act or from the fundamental constitutional obligation to respect environmental balance.

Therefore, the polluter or environmental degrader (art. 3, of Federal Law n. 6.938/81), whether an individual or a legal entity, whether a single subject or a group of persons responsible, may appear as the subject in the environmental legal relationship, responding to the community (active subject), with its obligation to recover environmental damage caused or to prevent any damage from occurring as a result of non-compliance with environmental legislation.

The subject may be a person who, despite the legality of their acts, and even carrying an authorization from the Public Authority, is developing work or activity that causes or may cause damage to the environment, in disagreement with the minimum protected by the Federal Constitution.

The collectivity as a whole may also appear as a passive subject in the environmental legal relationship, creating a *suis generis* situation in which the same subjects overlap. This is because collectivity will always

10 The theory of holography was developed by Dennis Gabor, a Hungarian physicist, in 1947. The most remarkable feature of a hologram is that even a very small fragment of it can reconstruct the whole. That is, within each part is included the whole. Cf. Castillo (2004, p. 11).

be, necessarily, an active subject of the legal-environmental relationship. But it will also define the subject by the general environmental obligation (art. 225, *caption*, CF), which imposes the duty to preserve and defend the environment for present and future generations. It is the protection of "everyone against everyone", or the obligation of everyone to everyone.

Another element of the legal relationship arising from the original composition of the environmental asset is the environmental legal fact. As already seen, a legal fact is any fact in common sense (natural event or human action) that produces legal consequences. These consequences can be constitutive, modifying, or extinguishing legal relationships.

Based on the view of Washington de Barros Monteiro (2016), all rights, whatever their nature, come from some fact, positive or negative, normal or abnormal, instantaneous or progressively elaborated. They survive, through their exercise, or their defense, and are extinguished, when there is any circumstance, provided for by law, capable of causing them to perish.

Therefore, the legal-environmental relationship also depends on the existence of a legal fact that is recognized by the law as sufficient for the constitution of the relationship. Just like any legal fact in the broad sense, the environmental legal fact can also be classified as an environmental legal fact *stricto sensu*, and an environmental legal act.

The *stricto sensu* environmental legal fact does not depend on any human will or act for its configuration. For this reason, it reflects the paradigmatic transition phase, as in the classical legal system it referred only to the forces or events of nature that were beyond human control or will. In this logic, the environment was considered for centuries as *res nullius.*

However, in the emerging paradigm, the *stricto sensu* legal fact represents a sophisticated, complex, and endowed system with its own evolutionary intelligence, which allows, shelters, and sustains life in all its forms. To observe it no longer depends on the inference of a singular occurrence but reflects the continued existence of life on the planet. Its recognition no longer depends on the usefulness it presents to human beings but is imposed by its own, inherent valuation. It reflects the human sensitivity of rescuing their respect and humility before the greatness of nature and the evolution of life in the universe.

The verification of a *stricto sensu* legal fact results from the process of internalization, or legalization of the environment and its natural effects by the legal system. It is precisely the legal recognition of the importance

of the ecological integrity of the environment that turns natural facts, previously devoid of any legal meaning or value, into facts endowed with the capacity to create, modify or terminate legal relationships of an environmental nature. As a highlight, it points to the general obligation or fundamental duty to preserve the ecological balance.

This is what happens, for example, with the protection of animals at risk of extinction. If a short time ago the birth of a golden lion tamarin had no legal significance, currently, the same fact is considered relevant for the preservation of the environmental balance (remote objective) and for the preservation of the national genetic heritage (close objective), although occurring in the most distant and uninhabited areas of the Amazon Forest.

The verification of the ecological balance, as well as the verification of its absence, are both considered by the Federal Constitution as factual supports capable of establishing the link of a fundamental legal relationship that imposes duties on the community, taken from a general or broad perspective, but also special duties to the polluter, raising a set of administrative and criminal penalties, in addition to civil liability.

The Federal Constitution employs two innovative concepts developed from Ecology, which serve as operational guidelines to materialize the most abstract notion of ecological balance: essential ecological processes and ecological functions. Both serve as examples of *stricto sensu* legal facts for the configuration of the legal-environmental relationship.

Essential ecological processes can be defined as natural phenomena that obey an order of interconnected and interdependent events, on whose existence all other phenomena depend, especially life in all its forms and, therefore, human life itself. And they also depend on the notion of ecological function, that is, the elements that make up the fundamental ecological processes (GARCIA, 2016).

The ecological environmental function, as its name suggests, refers to natural phenomena typical of living organisms and their interface with organic and inorganic matter, which act to establish an ecological balance, which in turn shelters all forms of life (GARCIA, 2016).

Both concepts, interconnected and interdependent, point to innovative legal objectives and means to safeguard ecological balance and life.

The other categories of legal facts, specifically legal acts that have the environment as their object, relate to human actions that interfere with the environment or are interfered with by it. Whether from the perspective of legal transactions (the sale of a private forest area, for example) or *stricto*

sensu legal acts (such as administrative acts of environmental licensing, environmental impact study, or the very creation of a conservation unit), it appears that these do not create fundamental legal-environmental relationships, limiting themselves to legal relationships typically under private law or public law.

Strictly speaking, legal acts can only produce effects that act indirectly on the environmental macro-good. In this case, the generating fact of the legal-environmental relationship will not be the manifestation of human will, but the one corresponding to the valuation granted to the environmental asset by the Federal Constitution, from which arise duties and rights for the community.

Because it corresponds to an overlapping dimension and, to a certain extent, preponderant by its very nature essential to life, the environmental macro-good, or its legal reading as a manifestation or absence of environmental balance, it presents itself as a single factor for the generation of the legal- environmental.

The same fact can, therefore, produce different legal bonds, or different legal relationships, even if with a unitary appearance. However, with the detailed analysis, it is possible to differentiate the different links that manifest themselves. This is the case of the citizen's bonds with the State, of the owners in a purchase and sale relationship, or the entrepreneur with the public agency responsible for the environmental license. All are examples that characterize legal relationships related to environmental micro-goods. Thus, differentiating them from the effects they produce on the environmental macro-good constitutes a distinct reality capable of generating typically fundamental bonds of respect for ecological balance.

The creation of specially protected spaces is an example of a legal act with diffuse environmental effects. Despite this, its nature is typically a public administrative act, subject to the formal and material rules of the State powers. The environment, in this case, is just the mediate object addressed by an administrative act, whose immediate object is the formalization of a state decision, or formally, of a legal act. In this case, the main objective will be to promote the protection of ecological attributes considered significant in a given geographic space.

The provision of art. 225, item 1, of the Federal Constitution asserts that "to ensure the effectiveness of this right, it is up to the public authorities" to carry out the commands provided for in its following items. The right referred to is the right to an ecologically balanced environment.

Therefore, through the arguments sustained so far, it appears that, in addition to the traditional subjective aspect of the theory of fundamental rights, the very fundamental environmental good defined by the caption of art. 225, and the need for its preservation, are sufficient for the establishment of a new kind of legal-environmental relationship.

The legal relationship arising from the recognition of the fundamental right to an ecologically balanced environment still maintains the primary focus on human interests, notably on their quality of life. What happens concerning this right is that the environment is seen merely as material support that allows the realization of human well-being. Even in the face of doctrine initiatives that try to broaden this understanding, seeking to recognize a kind of ecological dignity. Strictly speaking, what is observed is the need to create concepts such as the essential ecological minimum, that is, a minimum threshold level that is subject to preponderant human interests.

The fundamental right to the environment thus produces a legal relationship, but conventional in the sense of promoting duties to protect the environment in a utilitarian and mediating nature. It may even be called fundamental by the doctrine, but because it provides for a fundamental human right. On the other hand, the fundamental legal-environmental relationship, founded on the environmental legal good, has an objective and innovative character, as it imposes links between the human components of nature as a means of sustaining, by itself, and for its intrinsic value, the environment balanced environment. And, for this reason, the collective duties of preserving the attributes that sustain ecological integrity prevail. Possible to express, in this case, the logic of a right to a duty.

CONCLUSION

The social transformations of the last decades forced a series of changes in human behavior, based on a change in concepts and standards established as true, that is, a paradigm shift, from considering the environment as *res nullius* to *res comunes omnium.* This new paradigm, still in transition, directly affects the relationship between man and the environment, and therefore, it also affects the means of production of wealth and energy, the treatment given to waste, and the ethical and philosophical bases of legal science.

One of the great transformations characteristics of this new legal paradigm was the emergence of new fundamental rights, of a diffuse nature.

These rights have the characteristic of being installed in the legal system to use norms and instruments from different branches of Law, lending them new meanings by the very principles that are peculiar to them.

This is the case of Environmental Law, in a first phase derived from public law, having as its object human health, and more recently, in a new phase still in progress, dealing with a specific object that gives it scientific autonomy, namely, the study of relationships between man and the environment in a balanced way.

The constitutional protection of the environment in Brazil is carried out through the institution of a legal microsystem, which is characterized by the joint action of rules and legal institutes of different natures, adapted to the principles of Environmental Law, which elect ecological balance as a fundamental legal good, condition for human existence with dignity and quality.

It appears that the fundamental legal norm elected the ecological balance, characterized as a fundamental environmental asset, as indispensable to the survival of man and essential for his healthy quality of life. Given this, the entire community has not only a right to an ecologically balanced environment, as well as a common good for the people (art. 225, CF), but also a fundamental duty to defend and preserve it for present and future generations.

The result of this standardization is the legalization of a reality hitherto considered without relevance to the Law, and which is now raised to the level of a fundamental good. These facts result from legal bounds between the members of the community, and which are projected on an immediate object (the environmental micro-good, concerning the tangible elements of the environment) to protect the valuable mediate object, namely, the environmental macro-good, consistent in the ecological balance.

This legal relationship differs from the previous ones, which leads to the construction of a new kind of legal relationship, the legal-environmental relationship. The legal nature of this new relationship is that of a diffuse legal bond, which goes beyond merely individual or group interests and connections, to reach an indeterminate and indeterminable number of subjects bonded together by a factual circumstance. It is about the recognition of the survival of everyone depending on the biotic and abiotic elements that make up the environment, in a state of dynamic equilibrium.

This new conception transforms the legal system, by causing an expansion of the concept of subjective law, because when referring to a

relationship whose subjects are indeterminable, therefore supra-subjective, it eliminates the effects of the old rules of linking interest to a single individual.

Another relevant distinguishing feature of the fundamental legal-environmental relationship is the valuation of its object. The environmental good is the main responsible for the diffuse legal nature of the legal-environmental relationship, as this is an intrinsic characteristic. So much so that the qualification of the subjects of the legal relationship as indeterminable also results from the collective use of the environmental good.

One of the main characteristics of this good is its immateriality, which rests on the nature of *ecological balance*, an essentially immaterial concept. In the opposite sense, natural resources are understood as material elements (water, air, soil, fauna, flora, etc.) that make up the physical environment. The traditional rules of public or private Law apply to these environmental micro-goods, and they may be appropriated under the terms and limits recognized in the Property Law.

Despite this, there is a prevalence of constitutional order for protection of the environmental macro-goods, in case of conflicts between individual and collective rights, in such a way that the entire traditional legal system must be subject to and molded to the environmental norms of public interest.

If the fundamental right to the environment focuses on human beings and their interests, the environmental legal good modifies the point of reference to bring the reality of the "in revolt" object to the center of legal interest. And, based on that, it imposes limiting consequences of human action itself, but which, in short, seek to optimize the conditions that allow the realization of all other interests and rights of humanity. It is a fundamental duty, prevailing and sustained not only in the opposing collective right but in the intrinsic value recognized over nature.

In practical terms, the limits and obligations imposed by the fundamental duty to preserve the environment do not have the power to stop the development or the realization of human desires. On the contrary, they seek to make viable the skillful means of satisfying human interests in a lasting way, which is known to demand respect for the objective conditions that sustain the ecological balance.

Understanding these distinctions, from the reference of the historical and fundamental institute of the legal relationship, helps to understand the different bundles of rights and duties and the different dimensions and

levels that need to be harmonized in the social, economic and ecological dynamics, defining the permanent human interaction with nature.

Thus, Brazilian Constitutional Law presents a model to the world on how to establish an objective reference for the legal valuation of the environment. In this case, it does so by the creation of the environmental good and the consequent creation of the fundamental legal-environmental relationship. In Brazilian law, the environment finds constitutional support to be recognized as an autonomous entity, regardless of the ongoing debate on the recognition of other living beings as subjects of law or even the consecrated theory of fundamental rights. In this way, the legal aspect of the environment produces essential practical effects by imposing duties on the entire community to protect it in the present, to allow for its continued future evolution.

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