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ECOLOGICAL ETHICS AND THE ECO-COLONIAL TURN: TOWARD THE ECOLOGIZATION OF THE ENVIRONMENTAL LAW

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ABSTRACT

The environmental movement in Brazil emerged as a response to the colonial exploitation model, and the consequent unbridled environmental degradation. Since then, the historical normative process of legislative initiatives has re-signified the concept of the environment, in order to systematize and constitutionalize the environmental protection. However, due to the current ecological crisis, the narrative of modern Environmental Law is problematized. After all, Law, in itself, is considered a project of Modernity and its regulatory frameworks instrumentalize Nature as nothing but a resource for the capitalist production system. With this problematization, this article seeks to promote reflections on the need to decolonize Environmental Law through the ecologization of Law, that is, through a

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decolonial ecology theory. Methodologically, it is based on a qualitative research driven by the deductive method, and the collection and analysis of bibliographic data as an investigation technique. The results achieved point to the subordination of Nature in Modernity, and the need to break with ecological coloniality through the ecologization of the Environmental Law.

Keywords: decolonial ecology; ecological crisis; environment; modernity.

A ÉTICA ECOLÓGICA E O GIRO ECODECOLONIAL: RUMO À ECOLOGIZAÇÃO DO DIREITO AMBIENTAL

RESUMO

O movimento ambientalista no Brasil surgiu como uma resposta ao modelo de exploração colonial e a consequente degradação desenfreada do meio ambiente. A partir de então, o processo histórico normativo das iniciativas legislativas ressignificaram a concepção de meio ambiente, de modo a sistematizar e a constitucionalizar a proteção ambiental. Porém, em razão da atual crise ecológica, problematiza-se a narrativa do Direito Ambiental moderno. Afinal, o Direito, em si, é considerado um projeto da Modernidade e seus marcos regulatórios instrumentalizam a natureza como mero recurso para o sistema capitalista de produção. Com essa problematização, busca-se promover reflexões sobre a necessidade de decolonizar o Direito Ambiental por meio da ecologização do Direito, isto é, por meio de uma teoria decolonial ecology. Metodologicamente, parte-se de uma pesquisa de natureza qualitativa, pautada no método dedutivo e no levantamento e análise de dados bibliográficos como técnica de investigação. Os resultados alcançados apontam para a subalternização da natureza na Modernidade e para necessidade de se romper com a colonialidade ecológica por meio da ecologização do Direito Ambiental.

***Palavras-chave**: crise ecológica; ecodecolonialidade; meio ambiente; modernidade.*

INTRODUCTION

The environmental movement in Brazil emerged in the early 20th century, as a response to the colonial exploitation model characterized by intense devastation and degradation of Nature. The latifundium, slavery, mistreatment of land and other categories of predatory relationship with the environment rouse great criticism of the consumption and production system of the Capitalism. Indeed, in 1920 the "first cycle of codes" on environmental issues started, constituting a new milestone in the protective and conservationist regulation of natural resources.

However, this first legislative initiative was far from being considered an ecological proposal for environmental protection, mainly because it proposed a fragmented and utilitarian codification. The Water Code and the first Forest Code, both from 1934, are clear examples of the anthropocentric perspective established in the Brazilian legal plan at the time. After all, the interest in environmental regulation was primarily based on the use of water resources for power generation and forest exploitation, respectively.

In 1981, however, with the advent of the Brazilian National Environmental Policy (*Política Nacional do Meio Ambiente*, PNMA), the environment started being acknowledged as an autonomous legal microsystem of protection, and to be recognized as something systemic, evaluative, and integrated. The fragmentary phase was then overcome, giving rise to the very genesis of modern Environmental Law, according to current legal theory[4]. In 1988, with the re-democratization of Brazil, and the passing of the Federal Constitution of the Republic (*Constituição Federal da República*, CFR), the environmental protection – now unified and crucial in the view of fundamental rights – was incorporated into the Brazilian constitution.

Despite the legal-evolutionary nature of the environmental legislation in Brazil, those norms failed to limit the unbridled use of natural resources and the development of the current ecological crisis. This is because the narrative of the constitutive period of Environmental Law may be considered a product of Modernity, which operationalizes and "objectifies" Nature from a cartesian and colonial legal-philosophical perspective. This ecological coloniality allows us to state that the regulatory framework of environmental protection is based on the human interest of using Nature as a mere resource, rather than as a constitutive requirement of human and non-human life on Earth.

4 On this matter, please see Sarlet; Fernsterseifer (2020).

This paper than problematizes the narrative of Environmental Law, based on what is proposed as decolonial ecology, i.e., a disruptive movement of ecological coloniality inherent in the perspective of Modernity. To this end, the general objective is to promote reflections on the insurgence of the Environmental Law ecologization as an epistemic alternative to the decolonial turn. Methodologically, it is based on a qualitative research driven by the deductive method, and the collection and analysis of bibliographic data as an investigation technique.

Considering the objective stated, it first seeks to highlight the relationship between colonial thought and modern Environmental Law, to demonstrate ecological coloniality. Next, decolonial ecology is presented as the result of epistemic perspectives proposed by both the decolonial turn and ecological ethics, in counterpoint to Modernity's legal narrative on environmental protection. Finally, the importance of the Environmental Law ecologization from the decolonial ecology turn is analyzed.

1 ECOLOGICAL COLONIALITY AND MODERN ENVIRONMENTAL LAW

For environmentalists such as Sarlet and Fernsterseifer (2020), Environmental Law came into being with law 6.938/81 (BRAZIL, 1981), because it was only after this legal milestone that environmental protection became a new legal and valuative microsystem, as well as an autonomous legal discipline. Now unified, the environment is also understood as a holistic and integrated element, breaking away from the cycle of fragmented and utilitarian codes typical to the previous phase.

With this law, the values, principles, and rights that were not previously expressed and guaranteed in the Brazilian legislation are now recognized, establishing a new paradigm for the very conception of environment. New material and procedural orientations such as objective liability, and the role of the Public Prosecutor's Office – seek to break with the liberal-individualistic bias of previous laws. However, by that time, the PNAMA held a place in the Brazilian legal system that was still peripheral, especially due to the validity and hierarchy of the private codification, dating from 1916.

In this sense, it was only with the enactment of the CFR that this new legal perspective of environmental protection was incorporated into the Brazilian constitution, becoming part of the centrality of fundamental rights. By establishing for the first time an exclusive chapter on environment, the

CFR recognizes to everyone, without distinction, the right to an ecologically balanced environment, and the right and duty to preserve it for present and future generations (BRASIL, 1988). Now, there is a constitutional basis that was missing to give new meaning to the axiological narrative of environmental rules.

In fact, the CFR paved the way to several other legislations that started consolidating this new understanding. For example, the Environmental Crimes Law, the National System of Conservation Units (SNUC) and the National Policy on Solid Waste (PNRS), among others. Based on these new initiatives, there was an attempt to break with the anthropocentric and instrumental bias of the relationship of human beings with natural resources, so as to grant a perspective based on the dignity of life, whether human or not. However, this historical-normative process of Environmental Law is insufficient to deal with the contemporary ecological crisis.

Since the promulgation of the CFR, cases involving rampant environmental degradation have taken on a proportion never before seen. Socio-environmental conflicts, such as the cases of Belo Monte, Mariana, Brumadinho, and even the COVID-19 pandemic, have drawn the attention of the judiciary branch, the doctrine and society to the need to rethink and re-signify the understanding and the human-Nature relationship. After all, according to Capra (2004) and Harding (2008), the global ecological crisis is a crisis of perception.

In this sense, one can state that the problem, in fact, is in the legal-philosophical conception of Environmental Law itself, which, despite the advances in environmental protection, was built from a dichotomic, cartesian and instrumental viewpoint. This hermeneutic separates human beings from Nature, and does not recognize the inseparability of these elements and their interrelationships. For Armstrong (2002, p. 2), this is mainly due to the new type of economy that emerged in the 16th century – the Capitalism – and the Industrial Revolution, when "[…] humanity began to consider itself hierarchically superior to the environment and, consequently, to have greater technical-scientific control over natural resources."

In an attempt to explain the paths taken from the 16th century to the present day, Mignolo (2017) states that the changes occurred result from the rhetoric of salvation and novelty, primarily based on European conquests during the Renaissance. This narrative emerges as typical to the Modern period, considered to be a phase of history that builds a colonial matrix of power beyond the geographical criteria of colonization. This

Eurocentric discourse, largely disseminated to the world, unveils only one face of Modernity: that of glories and triumphs.

In this respect, it is essential to uncover the hidden and obscure – but also constitutive – face of Modernity: the Coloniality. After all, Modernity was established contaminated by a logic of superiority and domination that pervaded the way of understanding the world, power relations, knowledge and subjectivities, based on a single, universal, Eurocentric vision. Thus, as the hidden face of Modernity, coloniality needs to be revealed in all its negative effects that remain to this day, despite the independence of the former colonies.

The term coloniality was introduced in the late 1980s by the Peruvian sociologist Anibal Quijano. It is already a decolonial concept per se, which implies the idea that it emerged with the European invasions, the formation of the Americas and the Caribbean, and the massive trafficking of enslaved people. Thus, the rhetoric of Modernity progress since the conquests of the Renaissance, hides the dimensions of what occurred in the economic and knowledge perspective, the disposability of human life, both in general and Nature itself, seen as an object to be mastered and exploited, from the Industrial Revolution to the present moment (MIGNOLO, 2017).

> Another version of what happened between 1500 and 2000 is that the great transformation of the 16th century in the Atlantic – which connected European initiatives, enslaved Africans, dismantled civilizations (the Tawantinsuyu and Anahuac, and the already decaying Maya), and involved genocide in Ayiti (which Columbus had named Hispaniola in 1492) – was the emergence of an authoritative structure of control and administration, economy, subjectivity, and gender and sex norms and relations driven by the Western (Atlantic) Europeans (the Iberian peninsula, the Netherlands, France, and England) both in their internal conflicts and in their labor exploitation and land expropriation (MIGNOLO, 2017, p. 05).

In this sense, if Modernity is seen as a civilizing project, everything that emerges as resistant to this project will be understood as a savage and primitive reluctance to the very progress of humanity. Thus, the very idea of fair war serves to justify and exempt from blame the violence against those who dared to oppose the civilizing process. Modernity, then, becomes an ideal of universality in which advances are conceived in terms of understanding and state organization, capitalist economic development, the understanding and progress of science, culture and legal rationality itself, recognizing the first subjective public rights.

The Eurocentric focus involves the narratives and the imaginary of

progress and development, typical to Modernity. Moreover, it can be seen that in the decolonial inflection this universal narrative does not belong to one single country or region (Europe), but is part of what is called the modern/colonial world-system. In other words, it is in the global system of power that we find the key to understand the production and reproduction of the very idea of Modernity.

> The perspective of the globalized system of power is key to understanding how modernity is produced, expanding on a planetary scale the political and economic forms imagined as typical of the European experience, and its repercussions in all areas of life up to the present. The modern world system is produced in the process of European colonial expansion that connects for the first time the different regions of the planet, thus giving it a new (global) scale. Since then, the local experiences of any region of the planet have become unthinkable outside of their interconnection within the framework of this world system. Now, this does not mean that modernity 'reaches' everywhere in the same way, or that an outside of modernity is not possible then […] (RESTREPO; ROJAS, 2010, p. 19, our translation)

Mignolo (2017, p. 2) adds that "[…] Modernity is a complex narrative whose point of origin was Europe; a narrative that constructs Western civilization by celebrating its conquests." In turn, when these victories are globalized, they end up also disseminating a discourse based exclusively on the Eurocentric – and supposedly victorious – side of society. For this reason, Montañez (2016) considers Modernity as a period in which other histories, other perspectives, and other ways of life and development are belittled.

The invisibilization of the other(s) advances the idea of progress in the light of specific space-time, and on behalf of the Eurocentric civilizing ethic (LIMA; KOSOP, 2018). However, this epistemic order presents hidden traits that are representative of the colonization process in the 16th century: the capitalist, sexist, racist and speciesism side of Modernity. This hidden matter, corresponding to what is understood as coloniality (DUSSEL, 2005; QUIJANO, 2007; MIGNOLO, 2017), hides, as already stated, the dark and uncounted side in the modern and global civilizing process.

Coloniality, therefore, corresponds to the epistemic remnants of colonization that transcend the geographical sphere of domination. Likewise, it is constitutive of Modernity itself, since there has not been (and still is not) progress without subordination, vulnerability, and exclusion. For Lima and Kosop (2018, p. 2602), the "[…] project of Coloniality is about an arrangement of forms of power, knowledge, and being constituted from

local and temporal hierarchy: Western Europe and modernity." It is, therefore, the consolidation of the anthropocentric and Eurocentric discourse in/of contemporaneity.

Almeida and Silva (2015) state that Coloniality is understood as the permanence of the negative effects of colonialism, which have not been extinguished by decolonization. Behind the triumphs of Modernity, coloniality covers up – but legitimizes – the reflections of a world centered on the human being and, more precisely, on man. According to Preciado (2014), modern humanism created a body to call human: the body of the white, European, heterosexual, healthy, sovereign, and landowner man.

What happens is that in this pathologizing of other beings (human or not), the environment ends up being understood as a mere natural resource, that is, nurturing the capitalist economic order of production, exploitation, and consumption. For Lander (2005), it results in the international division of the conception of Nature, denying local models and all the rational practices and categories that accompany them, as in the Ecuadorian perspective of *La Pachamama*[5]. This analogy of Nature and resource also reveals the self-attributed position of domination by humans, strengthening the colonial narrative that controls and transforms Nature.

In the same sense, Mignolo (2017, p. 7) states that "[…] the legacy of this transformation remains today in our presumption that 'Nature' is the supplier of 'natural resources' for the daily survival: water as a bottled commodity. Within this context, there is an ecological coloniality, as it hinders an effective holistic and integrated view of the biophysical and natural ecosystemic elements, on behalf of the reductionist and mechanistic logic described by Descartes (1983). It is in this setting that, despite the advances of Environmental Law, its capacity to deal with the Modernity ecological problems are problematized.

Similarly, it is also important to highlight that, for authors such as Montañez (2016) and Lima and Kosop (2018), Law itself is the product of a Western invention. It also promotes an epistemic subordination by being placed exclusively as a normative standard of power. It is constituted as a colonial legal system that normatively perpetuates the subordination and invisibilization of the other(s), in order to enable, for example, Nature in its Western concept. It has a regulatory framework based on human interest in the objectification and instrumentalization of the environment and natural resources, as further shown herein.

5 For further information, please see the Ecuadorian constitution of 2008 (ECUADOR, 2008), which recognizes and celebrates in its Preamble that we are part of Nature – La Pachamama – and that Nature is vital for our existence.

Moreover, according to Rocha (2019, p. 40), "[…] the modern view of Law as a system of legal norms that are formulated and fed back in a solipsistic manner lends itself to the purpose of managing bodies, institutions, and relations at the service of a specific pattern of power circulation." This pattern of power, however, is also a constitutive and feedback element of Modernity, which characterizes the legal order as "intersected" by the colonial matrix of domination proper and intrinsic to coloniality. There is no way to disassociate Law from the epistemic and axiological obedience of the Western-Modern-World-System.

Pietro Costa (1997, p. 163) also notes that Modernity was responsible for breaking the unitary character of the subject, resulting in a process that generates the most varied antinomies that, in one way or another, permeated the process of knowledge until the second half of the last century. The consequences are intertwined in knowledge and in Law, understood as a field of knowledge, until today. This will produce, as is known, the separation between the object to be recognized and described, and the subject that intends to describe it in its pure reality.

In the search for a scientific standard linked to the accuracy of its results, the separation between subject and object will occur, as well as the construction of the great dichotomies that still exist: reason/emotion; logic/imagination; science/art; civilized/wild; modern/primitive. In other words, the distancing between the domain of science, reason and reality, and the domain of passion, art and invention or imagination. These great dichotomies have contributed to the idea that law, seen as science, can only be legitimately built in the dimension of modern civilization; what lies outside this dimension is not recognized as law, but as primitive or savage customs. A pre-legal and even pre-social field.

The very allusion to the idea of contract _ a typical instrument of private law to give rise to an organized and civilized social order, and typical to the theories of contractualism that gave rise to the modern political account. It is symptomatic of this view that the uncivilized lives in a permanent state of Nature and, therefore, always unable to create their own "civilized" social and legal order. From Bonilla's (2015) perspective, it is even possible to speak of a colonial model of production of legal knowledge.

For Bonilla (2015), the production, exchange and use of legal knowledge are subject to a political economy that assumes a subject, a space and a time that define the way we understand the processes that allow the emergence, development and consumption of legal knowledge. The rules

and principles that structure this model are based on several oppositions that describe and value the legal-political imaginary of the Global South and Global North categories, namely:

> The main four are the following: mimesis / autopoiesis, local knowledge / universal knowledge; culture / law; and languages suitable for legal knowledge / useless languages for legal knowledge. These conceptual oppositions go hand in hand with a set of reasons that attempt to explain why the Global North is a rich context for the production of legal knowledge and why the Global South is a poor context in this matter. These arguments refer to the formalism of the legal communities of the Global South, to the fact that these are minor iterations of the great legal families of the world, the Romano-Germanic and the Anglo-American, to the weaknesses of the academic communities of law of the Global South (Bonilla, 2013c), the enormous influence that US law has had in this part of the world, the supposed self-sufficiency of the legal communities of the Global North (Mattei, 1998) and the direct or indirect imperial relationship that has occurred between countries Global North and South (BONILLA, 2015, p. 31, our translation).

Mimesis characterizes the colony that is able not to create, but to import legal models from the matrix. Colonial legal systems are the mimetic space of legal transplants that the metropolis is capable of creating. These transplants often place the author, the colonial subject, in a position of epistemic subordination. There is no horizontal dialogue between the colonial subject and the matrix subject, which could be expected and productive. What actually occurs, however, is that the former becomes an uncritical diffuser of the knowledge created by the latter.

Local knowledge, typical to the Colony, is spatially limited and cannot be reproduced elsewhere, since the realities of the Global South countries are neither generalizable nor useful outside their borders. The metropolis' knowledge, on the other hand, is conceived as universal, since its relevance and importance outdo its borders. In the conceptual opposition between culture and law, it is assumed that there is no law in the colony, but a given type of culture.

In the colony law is just an appearance, since most of the time it emerges as a space of violation and ineffectiveness of the whole legal apparatus. The interest of studying the colony's structures attracts sociologists and anthropologists, but not jurists, since its legal structure is considered ineffective. Some cultures facilitate the emergence of law, such as that of the metropolis, while others do not.

> Hence, the civilizing process that has gone hand in hand with many imperial companies begins with a cultural change: the barbarians must adopt the religion,

> language and morals of the metropolis. Legal barbarism has as one of its main causes cultural barbarism (BONILLA, 2015, p. 48, our translation).

In this light, the metropolis has law, has a legal order that reflects its culture keeping a symbiotic relationship with it. Thus, Law originates from culture, and fulfills the duty of defending and preserving it. It is important to note that language is a core part of culture. In this sense, the language responsive to legal knowledge is that of the metropolis – especially the English language with great influence on the legal theory, and considered a more direct, accurate and flexible language, thus more apt to produce knowledge (BONILLA, 2015).

Still according to Bonilla (2015), in a colonial model of production of knowledge and legal exchanges the subject, territorialized and racialized, understands themselves as bearing only the ability to reproduce, apply and disseminate the legal knowledge created by the metropolis. This subject sees themselves as situated in a permanent state of nature, for they have not managed to build a civil society that places them above the violence that threatens them and their property. In other words, this is a non-political subject that has not created its own rules for peaceful social coexistence.

In the opposite sense, the metropolitan subject understands themselves as a political subject, creator of law and society. "[…] *These subjects of knowledge are, therefore, territorialized, racialized and have a particular relationship with history. The identity of the subject-metropolis and the colonial subject is defined in part by the place where they are located, the metropolis or the colony, the Global North or the Global South.*" (BONILLA, 2015, p. 39, our translation). The colonial subject clearly reproduces the same pattern of power as the metropolis, and adopts its values. Thus, the colonial legal order reproduces, mimics the anthropocentric paradigm which separates man from Nature, even assigning man rights over Nature.

Finally, it is also worth noting the understanding of Lima and Kosop (2018) when they reinforce the understanding that Western epistemology during the last five centuries was imposed as the only one capable of providing valid knowledge about social fields, as is the case of Law. For Lander (2005, p. 8), "[…] this requires questioning the intentions of objectivity and neutrality of the main instruments of naturalization and legitimation of this social order: the body of knowledge that we globally know as social sciences". In this way, alternatives must be (re)thought out to overcome the modern rationality of Environmental Law, which limits itself in trying to solve the ecological crisis of contemporaneity.

2 THE DECOLONIAL TURN AND ECOLOGICAL ETHICS: BRIEF NOTES ON DECOLONIAL ECOLOGY

As seen above, coloniality corresponds to the unrevealed agenda in the narrative of Modernity. It is the epistemic domination that legitimizes the perpetuation of the dark, Eurocentric, capitalist, racist, sexist, and particularistic side of the modern period of humanity. From what Dussel (2005) predicts, coloniality shows us the opposite of the myth of Modernity, as by transcending the geographical spheres of the colonial period, it maintains the negative effects of colonization: the vulnerability, invisibilization, and subalternation of the other(s).

In an attempt to unveil and, above all, to make humanity aware of this subalternation, the decolonial movement emerges as a continuous struggle against the rhetoric of Modernity. Alternatives to the Eurocentric concept of subjects, histories, and cosmoperceptions are sought based on the decolonial perspective. In this sense, Colaço (2012, p. 7) states that this resistance should be understood as decolonial and not decolonial, because "[…] it wants to emphasize that the intention is not to undo the colonial or reverse it, that is, to overcome the colonial moment by the post-colonial moment. The intention is to provoke a continuous positioning of transgressing and insurging."

In this way, one could affirm that decoloniality critically questions Eurocentrism, and confronts it with certain epistemic disobedience. Thus, from the reality experienced especially by the peoples and countries dominated in the civilizing process of the Modern-World-System, knowledge and legitimation of other discourses are allowed, such as La Pachamama as an alternative to the Eurocentric concept of Nature as a mere resource for capitalism. For Rocha (2019), with decoloniality means learn to unlearn in order to relearn.

In the same line, Lima and Kosop (2018, p. 2606) state that the election of the term decolonial has to do with "[…] an effort to demonstrate heterogeneity with inter and transdisciplinary intentions in the aspect of an inclusion of different knowledges without any epistemological exclusion or domination, giving voice to the multiple visions of reality." It is, therefore, the consolidation of the possibility of speaking of the other(s) from the other(s) themselves, making up an epistemic subversion of the contemporary colonial matrix of power. Maldonado-Torres (2018, p. 28) describes decoloniality

> […] as a concept [that] offers two key reminders: first, it clearly keeps colonization and its many dimensions on the horizon of struggle; second, it serves as a constant reminder that the logic and legacies of colonialism may continue to exist even after the end of formal colonization, and the achievement of economic and political independence.

As a result of these colonial legacies, as is the case of the ecological coloniality described in the previous topic, decoloniality criticizes the constitutive elements of Modernity. At the same time, it proposes alternatives based on other epistemologies, i.e., alternatives to confront the patterns of power, knowledge, and being ensuing from colonial thought. This conceptual expansion brings about a paradigmatic incursion in favor of coexistence (HENNING et al., 2016). In effect, we have what doctrinaires such as Montañez (2016) and Rocha (2018) propose as the decolonial turn, which re-signifies the Euro-centered epistemological grounds.

This insurgent movement tries to fill the gaps that give rise to the concealment of the dark side of Modernity, in order to explain that the historical products of modern space and time, such as Law, the Constitution and legal education, find no connection with distinct realities, such as that of Latin America (MONTAÑEZ, 2016). It is opening the doors to the thought of the other(s) through a "bottom-up" movement in the hierarchy imposed by coloniality. In the terms of Mignolo (2007, p. 28), "[…] the decolonial epistemic turn is a consequence of the constitution and establishment of the colonial matrix of power"[6].

Specifically regarding the ecological coloniality, which subordinates the holistic and integrated understanding of Nature and all its biotic and abiotic elements, the decolonial turn enables a new epistemological and axiological ground in the interrelationship between human beings and the environment. And this is necessary because, when explaining how Nature was expelled from Modernity, Souza Filho (2015) states that modern rationality moves away from natural reality in favor of technological progress. However, the costs of this violent and unprecedented dismissal result in the current planetary ecological crisis.

On this matter, Capra (2006) states that the idea of progress is bound to the increasing technological capacity; however, it points out that the costs of this logic are based primarily on the destructive capacity of humanity. And all that because in the construction of Modernity the intrinsic value of Nature is replaced by its instrumental character, so as to understand it as

6 Author's free translation. In the original, "*el giro epistémico decolonial es una consecuencia de la formación e instauración de la matriz colonial de poder*".

something foreign to human beings themselves. This understanding makes it is impossible to perceive Nature as something that integrates – and sustains – the existential condition of human life on Earth.

Through decolonial ecology, then, an ecological perspective of the environment becomes viable assumes, according to Capra (2006), a web of life, proposing the idea of an integrated whole based mainly on solidarity, and no longer on hierarchy, on subalternation. Ecological ethics, added to decoloniality, represents a new paradigm toward the break with modern anthropocentric and cartesian rationality. The recognition of the ecosystemic dignity ceases the objectification of Nature in the civilizing and predatory paths of Modernity.

This ecologization of the Eurocentric epistemic grounds fulfills the criticism of the exclusivity of the white, heterosexual, landowner and European man as the exclusive holder of rights. For Sarlet and Fernsterseifer (2020, p. 4), this bias makes it essential to deconstruct "[…] the Cartesian philosophical artifice that intended to separate what cannot be separated in ontology," that is, the human being and Nature. Thus, the decolonial ecology turn is based on the widening of moral, ethical, and epistemic frontiers of the liberal-individualistic humanist perspective that characterizes the modern thought.

Moreover, Azevedo (2005, p. 90) states that the current ecological crisis "[…] demonstrates the insufficiency of the current ethics, which is anthropocentric, individualistic, incapable of perceiving the close connection between all living organisms, in interconnection with each other and with the inorganic environment". That is why it should be used with caution and driven by a solidarity-based ethic Decolonial ecology, summarized by ecological ethics and the decolonial turn, then, symbolizes new paths in search of integration and balance between human and ecoplanetary interests. This also gives rise to a new perspective to think about Environmental Law, giving it a new meaning.

3 THE GREENING OF ENVIRONMENTAL LAW BASED ON THE DECOLONIAL ECOLOGY TURN

The decolonial ecology turn unmasks and at the same time fills in the gaps of Modernity's civilizing and self-destructive process. Grounded in untold narratives, this movement of epistemic transgression comes to consolidate the historical struggles of re-existence of the invisible other(s)

that, for Silva (2017), imply the desire – and also the right – to leave subalternation to exist in the collectivity. This new perspective crosses the colonial ties to canonize a new paradigm for society.

The importance of establishing decolonial ecology and, therefore, the decolonial ecology turn, lies on the possibility of re-signifying Environmental Law itself, outlining new paradigms for the legal relationship between human beings and Nature. After all, according to Capra and Mattei (2018), only science has managed to break with the mechanistic, reductionist and Cartesian bias in its understanding of the world. The legal system, however, is still in the process of building new paradigms based on systemic, holistic and, therefore, ecological thinking.

According to Capra (2004), this systemic thinking implies changing the focus from objects to processes and relationships, from hierarchies to networks, and from objective knowledge to contextual knowledge. For Capra and Mattei (2018, p. 29), in fact it is "[…] a profound change of metaphors: from viewing the world as a machine, one begins to understand it as a network." The goal here is the de-hierarchization on behalf of partnership and solidarity between the society and its surrounding area.

According to Ferreira (2016, p. 140), one should pay attention to "[…] the symbolic function of Law as an element of reference to legislative documents drafted with a single purpose: to remain ineffective at the legal level". On this matter, it's important to highlight that under the aegis of the risk society in which we live, the rationality of organized irresponsibility proposed by Beck (2002) is accomplished through rules inserted into the legal system without effectively offering any protection. And, in the scope of Environmental Law, the phenomenon of this organized irresponsibility also corroborates the progressive use of fossil fuels, as well as the exponential population growth, and the unbridled consumption of natural resources.

In this regard, in the classic "Silent Spring", Carson (1994) already pointed to the (self)destructive capacity of human intervention in the planetary life, changing even the course of history. By highlighting the negative effects of abusive use of pesticides, and pollution of the natural environment, the work also reports the conduct of chemical companies in disseminating misinformation about the risks of their activities, making up the very existence of organized irresponsibility at the time of their publication. However, it was in the year 2009 that planetary boundaries came to the surface, and showed the urgent need to break through the crisis of global ecological perception.

The planetary boundaries, as they were originally called, identify the reduction and, in some cases, the jeopardizing of the capacity for self-regulation and resilience of the main biophysical processes of the Earth system. In all, nine categories are identified[7]. However, in at least three of these – biodiversity loss, interference in the global phosphorus and nitrogen cycles, and climate change – Rocktrom et al (2009) estimate that the limits and margin of safety have already been exceeded on a global scale. It is therefore, and necessarily, invoked that human intervention in Gaia's life has to recede.

In addition, in May 2019, one of the latest scientific alerts highlighted the unprecedented decline of Nature in human history. With the release of the Global Assessment Report on Biodiversity and Ecosystem Services, approved by the United Nations' Intergovernmental Scientific-Policy Platform on Biodiversity and Ecosystem Services, data on the acceleration of rates of species extinction on the planet highlighted that one million species are currently threatened with extinction[8]. According to the report, however, the global response to the planetary crisis has been insufficient, including that of Environmental Law.

As seen above, Environmental Law presents a very significant historical-normative evolution in terms of environmental protection, especially since the CFR. This legal construction, however, was not able to prevent some of the major environmental disasters that have occurred in Brazil, such as the case of the dam collapse in Mariana, Minas Gerais. Not because the legislation did not provide, at the time, sufficient instruments to prevent the occurrence, but because, in short, there is no normative evidence capable of overcoming the liberal-individualistic bias of the legislation itself.

On this regard, Leite and Silveira (2018, p. 112) state that "[…] legal dogmatic has been efficient in the regulation and resolution of individual conflicts, but has not achieved fully satisfactory level in the scope of its social and natural functionality, in the scope of social and ecological demands". In effect, one can see in current Environmental Law attempts to rule the mitigation of damage and use of natural elements, but not to insert into society new values and principles capable of decolonizing this dominant modern paradigm.

7 According to Rocktrom et al (2009), the new categories identified as planetary boundaries are: climate change; ocean acidification; stratospheric ozone depletion or reduction; atmospheric aerosol loading; interference with global phosphorus and nitrogen cycles; rate or ratio of biodiversity loss; global freshwater use; changing soil systems; and chemical pollution.

8 Available from: https://ipbes.net/global-assessment.

In the same line, Sarlet and Fernsterseifer (2020, p. 4) state that

> […] there is no denying a certain failure of classical environmental law, both internationally and domestically, after approximately five decades of existence, and built on a predominantly anthropocentric paradigm, to contain the civilizational paths in the relationship with Nature.

This, of course, makes the decolonial ecology turn in the narrative of the environmental norm fundamental. After all, as warned by Hosle (1991), never in the legal system has the discussion about the copernican turn of the ecocentric matrix been so present and necessary. However, it is clear that the official institutional mechanisms have not been effective in coping with the planetary crisis.

What we see, thus, is the need for a radical paradigm shift that overcomes the fragmentation, and the cartesian approach of traditional legal rationality. The epistemic disobedience proposed by the decolonial ecology turn fills in the gaps of modern environmental legal institutes on behalf of an ecological rationality. Certainly, this new perception demands a systemic, integrated, and planetary approach.

For Harding (2008, p. 39), "[…] holistic science interweaves the empirical and archetypal aspects of the mind, so that they work together as equal partners in a quest that aims not at a complete understanding and mastery of Nature, but strives for a genuine partnership with it." There is thus a greater capacity to understand the intrinsic value of Nature itself, and it is possible to recognize it as a subject of rights, as occurs in countries such as Ecuador (2008) and Bolivia (2009). With decolonization ecology, and the consequent ecologization of Law, there are new opportunities and expectations to change the course of the current planetary crisis.

According to Pope (2017, p. 323), with the process of ecologization or greening of Law, "[…] a new public order could be proposed, defended and constructed, focusing on increasing everyone's responsibility towards the true basis of life, the planet Earth." This is what some doctrinaires understand as the path to new Ecological State of Law (LEITE; SILVEIRA, 2018), which changes the anthropocentric epistemological bases in search of ecocentrism. The latter, in turn, recognizes planetary life as the core element of its concern.

For Sarlet and Fernsterseifer (2020, p. 3), "[…] it is not a matter, therefore, of ideology (left or right), but of scientifically proven facts. In other words, it is the truth that is at stake, however inconvenient it may be for the

interests of some". Faced with this planetary ecological state, it is imposed the urgent need for transformative changes to restore and protect Nature from an ecocentric theoretical matrix. Such an epistemological turn, therefore, takes place with the ecologization of Environmental Law, toward the newly arrived Ecological Law.

CONCLUSION

In Brazil, the historical-normative process of Environmental Law has gone through several phases, giving it new meaning and expanding its normative bases of protection. However, even after the incorporation of such protection into the 1988 Brazilian constitution, recognizing the fundamental right to an ecologically balanced environment, it was not possible to curb the spread of the ecological crisis. The same occurs in the global context, showing that the crisis is, in fact, planetary.

Among other factors, this process stems from a mistaken perception that permeates the current relationship between human beings and Nature: in Modernity, everything that can be economically exploited, generating profit, should be appropriated. Thus, even in face of the proposed systemic and evaluative understanding, the environment ends up being set apart from its unified character, so that it can then be the object of exploitation; and that is how the Law perceives it: fragmented. That because the modern legal narrative brings with it the dark side of Modernity itself, which transcends the geographical spheres of colonization: coloniality.

With this understanding, we have a colonial legal system that normatively perpetuates the subalternation and invisibilization of Nature, establishing a regulatory framework based on human interest in the objectification and instrumentalization of the environment and natural elements, resulting in what is proposed as ecological coloniality. For this reason, alternatives should be thought in order to overcome the modern rationality of Environmental Law, which limits itself in trying to solve the contemporary ecological crisis.

From what is proposed as decoloniality ecology, we have a disruptive movement of ecological coloniality. This is because the encounter between ecological ethics and the decolonial turn gives rise to a transformation in the understanding of the world, and of the macrosystem of which we are part, that is, planet Earth, in order to show new paths in search of integration and balance between human and ecoplanetary interests. As a result, the

ecologization of modern Environmental Law emerges with the objective of re-signifying the epistemic, axiological, and legal-philosophical grounds existing in the current legal scenario.

This way, a new path is taken through the planetary ecological crisis, directing the alternatives toward a systemic and empathetic relationship between human beings and the environment. In this sense, not only are the constitutive elements of Modernity criticized, but, at the same time, perceptions based on other epistemologies are proposed. These perceptions are capable of confronting the patterns of power, being, and knowledge, originating in colonial thought and reproduced in the current legal construction of environmental protection. It is the insurgent path that directs Law toward the idea of the "web of life", and indicates that after all "we are all Nature".

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