

# STUDY ON THE RIGHT TO ECONOMIC FREEDOM AND TO ECOLOGICALLY BALANCED ENVIRONMENT: CONFLICTS AND APPROACHES

*ESTUDO SOBRE O DIREITO À LIBERDADE ECONÔMICA E AO MEIO AMBIENTE ECOLÓGICAMENTE EQUILIBRADO: CONFLITOS E APROXIMAÇÕES*

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## **Abstract**

This study will analyze the right to economic freedom and the right to an ecologically balanced environment. These rights are constitutionally sheltered and occupy the heart of discussions in the political, social, and economic environments. It is known that economic development, largely guaranteed by the right to economic freedom, is essential for humanity. At the same time, the right to an ecologically balanced environment is

## **Resumo**

*O estudo analisará o direito à liberdade econômica e o direito ao meio ambiente ecologicamente equilibrado. Esses direitos têm guarida constitucional e ocupam o cerne de discussões nos meios político, social e econômico. Sabe-se que o desenvolvimento econômico, garantido em grande parte pelo direito à liberdade econômica, é imprescindível para a humanidade. Paralelamente, o direito ao meio ambiente ecologicamente equilibrado é inerente à vida humana, sendo fator crucial a*



inherent to human life and is a crucial factor to the perpetuation of future generations. Given this context, the problem of the study arises: is it possible to simultaneously guarantee and benefit from the right to economic freedom and the right to an ecologically balanced environment? The study aims to analyze the compatibility of the mentioned rights, supporting the initial hypothesis that the adoption of the sustainable development model allows the simultaneous and harmonious enjoyment of these rights. To answer this question, the methodology applied in this work is theoretical in nature. For the development of the narrative, secondary sources of bibliographic and documentary research were used. In the end, it is concluded that sustainable development presents itself as the bridge of balance between these two rights.

**Keywords:** constitution; economic development; economic freedom; environment.

## Introduction

Society was irreversibly transformed in the wake of the Industrial Revolution. The strides made in the fields of science, technology, politics, economics, and sociopolitical dynamics are clear and irrefutable. Not only did the capital custodians amass fortunes but the entire societal construct took a leap forward. Nevertheless, the hastened tempo of expansion exacerbated the degradation of the environment, a fact underscored by internationally accessible scientific reports.

Given this backdrop of economic growth, environmental concerns have taken center stage in international debates. The first environmental conference took place in Stockholm in 1972<sup>1</sup>. Since then, the core principles of the declaration stemming from the assembly have posed as guiding vectors for forthcoming environmental programs.

It is well-known that economic development, largely underpinned by the

*perpetuação das futuras gerações. Diante desse contexto, surge a problemática do estudo: é possível usufruir e garantir o direito à liberdade econômica e o direito ao meio ambiente simultaneamente? O estudo tem como objetivo analisar a compatibilidade dos mencionados direitos, sustentando a hipótese inicial de que a adoção do modelo de desenvolvimento sustentável permite o usufruto simultâneo e harmonioso desses direitos. A metodologia utilizada na pesquisa para responder à indagação tem cunho teórico. Para o desenvolvimento da narrativa, serão utilizadas fontes secundárias oriundas de pesquisa bibliográfica e documental. Ao final, conclui-se que o desenvolvimento sustentável se apresenta como a ponte de equilíbrio entre os direitos analisados.*

**Palavras-chave:** constituição; desenvolvimento econômico; liberdade econômica; meio ambiente.

<sup>1</sup> While a number of international agreements had been signed previously, the Conference of 1972 is regarded as the primary starting point of the international ecological movement.

right to economic freedom, is indispensable for humanity. Simultaneously, the right to an ecologically balanced environment is intrinsic to human life, serving as a pivotal factor for the continuity of future generations. Within this context, the research conundrum emerges: is it conceivable to simultaneously uphold and ensure the right to economic freedom and the right to the environment?

Upon initial analysis, it is plausible to infer that the right to economic freedom and the right to an ecologically balanced environment are seemingly conflicting values. However, the analysis departs from the premise that there is no inherent incompatibility between the two categories of fundamental rights. From this line of thought arises the initial hypothesis of this investigation, which posits that the harmonization of the enjoyment of the mentioned rights calls for the adoption of a paradigm of development rooted in sustainability – namely, sustainable development.

The main goal of this endeavor is to showcase the extent to which these two foundational rights can coexist harmoniously. To attain this objective, the research process will delve deeply into the concept of the environment, its legal essence, protective measures, and interplay with other fundamental rights. Subsequently, the legal construct of freedom and its delineations will be subjected to meticulous scrutiny. Ultimately, the aspiration is to reconcile the right to freedom within its economic dimension with the environmental perspective, thereby illuminating the points of divergence and the existing points of convergence in the practical application of these rights.

The methodological approach undertaken in this research is fundamentally rooted in theoretical exploration. Secondary sources from bibliographic and documentary research will be employed to shape the narrative. This study concludes that the coexistence of the aforementioned rights is indeed feasible within the collective pursuit of a shared objective – sustainable economic development.

## **1 Environment and Environmental Law: aspects and concepts**

First, it is imperative to expound upon the concept of “environment”. According to most scholars, the environment encompasses both biotic and abiotic entities, along with their respective relationships. It transcends mere spatial confinement, presenting itself as a multifaceted reality characterized by a multitude of variables (MILARÉ, 2015).

Two nuanced perspectives emerge within this concept: a narrow and a broader view. From a constrained perspective, the environment signifies the

embodiment of natural heritage and its intricate interplays with living organisms. On the other hand, in a broader conception, the environment encompasses both natural and artificial realms, as well as their related cultural assets.

Given the arguments, it is clear that not all that is categorized as “the environment” adheres to a strictly natural state. Thus, the comprehensive understanding leads to the conclusion that the environment constitutes the ensemble of interactions among natural, artificial, and cultural elements, fostering development based on equilibrium (SILVA, 2019).

Environmental Law emerges precisely to safeguard these elements and can be defined as a branch of Public Law composed of principles and regulations that govern human conduct affecting, either potentially or effectively, directly or indirectly, the environment – be it natural, cultural, or artificial<sup>2</sup>.

The environmental asset is construed as autonomous, intangible, and characterized by diffusion, transcending the conventional classification of public and private goods, given that the entire community possesses this entitlement. In essence, it is a communal asset<sup>3</sup>.

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2 Most scholarly works and jurisprudence (STF, ADI 3540 – 4 initial developments) split the concept of environment into:

a) Natural Environment (or Physical Environment): The combination of biotic and abiotic natural resources. The natural environment is protected by the main clause of Art. 225 of the Federal Constitution.

b) Built Environment: Constructs or alterations made by humans, encompassing urban buildings (enclosed public spaces) and community facilities (open public spaces). The constructed environment is constitutionally addressed primarily within the section dedicated to urban policy. The most pivotal legislation related to the built environment is the City Statute (Law No. 10.257/2001). Presently, the Statute of the Metropolis also holds significant prominence.

c) Cultural environment: historical, artistic, landscape, ecological, scientific, and touristic heritage, encompassing both tangible and intangible assets. It is particularly protected under its culture-oriented section, especially in Art. 216 of the Federal Constitution (CF/88). Moreover, Resolution No. 306/02 of the National Environmental Council (Conama) incorporates the cultural facet of the environment, expanding the legal definition of the National Environmental Policy (PNMA).

d) Occupational environment: an assemblage of factors pertaining to working conditions, including the dynamics between workers and the physical and psychological milieu in which services are rendered. This scope is not confined solely to employment relationships, as its foundation rests on the promotion of health and safety for all workers, regardless of the activity, location, or individuals involved.

e) Genetic environment: this is acknowledged by a subset of scholarly viewpoints. It constitutes an innovative component of the environment, comprising genetic information originating from living beings across all species. It encapsulates the acquired knowledge concerning biodiversity.

3 The right to a healthy environment – a quintessential third-generation right – embodies a legal entitlement of collective ownership. In the trajectory of human rights affirmation, it embodies a significant manifestation of authority attributed not solely to individuals in their singular identities but, on a broader level, to the wider social collective. While first-generation rights (civil and political rights) – encompassing classic, negative, or formal liberties – emphasize the principle of freedom, and second-generation rights (economic, social, and cultural rights) – aligned with positive, tangible, or

Indeed, the initial articulation of the environment within Brazilian legal text emerged through the enactment of the National Environmental Policy (Law No. 6.938/1981)<sup>4</sup>. The interpretation established within the law was meticulously drawn from scientific rigor and performed the essential role of formally delimiting the concept within the legal framework (MILARÉ, 2015). Therefore, the concept of the environment as established within the Constitution resonates with those expounded in other regulatory frameworks and specialized doctrines. This perspective encompasses, in addition to natural resources, the cultural, artificial, occupational, and genetic environments.

### 1.1 Constitutional safeguard

The Federal Constitution of 1988 accorded substantial prominence to matters pertaining to the environment. Unlike its predecessors that merely touched upon the subject in isolated provisions, the dimension attributed to this foundational right transcends the confines of the chapter devoted to the social order, extending its reach into various other regulations.

The worldwide trend of constitutionalizing the right to an ecologically balanced environment, particularly evident in progressive social constitutions, underscores an analytical approach. The constitutional mandate elevates the significance of environmental principles and regulations, endowing them with heightened legal and institutional protection.

At present, the bedrock of Environmental Law is firmly rooted within the CF/88: legislative competencies (Arts. 22 and 24), administrative authorities (Art. 23), the environmental economic framework (Art. 170), the built environment (Art. 182), the cultural environment (Arts. 215 and 216), the natural environment (Art. 225), among others, collectively shaping the corpus of the Constitutional Environmental Law.

Art. 225 of the CF/88<sup>5</sup> crystallizes the normative foundation for

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concrete liberties – underscore the principle of equality, third-generation rights materialize powers of collective ownership, broadly attributed to all societal structures. These rights substantiate the principle of solidarity and constitute a pivotal juncture in the progression of human rights, characterized as fundamental, non-disposable values, epitomized by the intrinsic attribute of inexhaustibility (STF). MS 22.164, Rel. Min. Celso de Mello, Tribunal Pleno, DJ 17/11/1995).

<sup>4</sup> Art. 3 – For the purposes set forth in this Law, the following definitions apply:

I – Environment, the ensemble of conditions, laws, influences, and physical, chemical, and biological interactions that enable, accommodate, and govern life in all its manifestations; [...] (BRAZIL, 1981).

<sup>5</sup> By considering an ecologically balanced environment as a fundamental human right (Art. 225), the

environmental protection within the national legal system. This provision begets three distinct sets of norms. The first, present in the main clause (matrix norm), expounds on the entitlement of all to an ecologically balanced environment. The second, comprised by §1 along with its subsections, meticulously delineates the mechanisms for ensuring and effectuating the right enunciated in the primary clause of the article. Lastly, the third set encompasses specific stipulations referenced in §§2-6 (SILVA, 2019).

The constitutionalization of environmental protection yields numerous benefits. Some are substantive in nature and establish the balance of rights and duties within the legal framework. Others manifest as the concrete affirmation or implementation of environmental protection norms, reflecting formal or external advantages (BENJAMIN, 2002).

Attributing the status of a fundamental right with environmental protection attributes to an ecologically balanced environment highlights three qualities intrinsically associated with this categorization: non-waiver, indispensability, and imprescriptibility (SILVA, 2018). These are the attributes behind its essence and safeguard.

Ultimately, the constitutionalization of Environmental Law operationalized the shift from an environmental legality concept to an environmental constitutionality paradigm. Legal compliance gives way to constitutional compliance, thereby contributing to the establishment of a constitutionalized environmental public order (BENJAMIN, 2002). The fundamental right of the Brazilian State extends beyond the legally regulated entitlement.

## 1.2 Environmental protection as a principle of the social and economic order

We must first highlight that the significance attributed to the environment reaches past Chapter VI and Title VII, pertaining to the social order. The Constitution of 1988, often dubbed the “Green Constitution”, significantly emphasizes the right to the environment throughout the legal text, in contrast to earlier constitutions (MILARÉ, 2015).

In the present document, this protection is conceived through a systemic

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CF/88 embraced the anthropocentric perspective, placing humanity at the center of discussions and the holder of the right given its unique capacity to adhere to rational norms. However, contemporary Environmental Law is incompatible with a purely anthropocentric stance, leading to an increased focus on biocentric approaches to safeguard fauna and flora, known as extended, relativized, or mitigated anthropocentrism. In legal precedents, the acknowledgment of the unconstitutionality of cock-fighting and *vaquejada* provides clear indications of this nuanced departure from anthropocentrism, consequently signaling a closer alignment with biocentrism.

approach, elevating the environment as a principle of both the economic and social order. The economic order<sup>6</sup>, founded on valuing human labor and free enterprise, incorporates the protection of the environment among its principles. Hence, the exercise of free enterprise must factor in this principle.

The Constitution's clear focus on the social aspect is evident throughout. The social factor has been elevated to the primary objective of both State and societal actions. The economic order, as established by the Constitution, is subservient to the social order. As a result, while pursuing economic development founded on economic freedom, the objective should encompass not only material growth but also serve as a genuine instrument for advancing social goals.

In this line of reasoning, the environment should be comprehended from both economic and social perspectives, as a facilitator of well-being within legal and political relations. Whether viewed through an economic or social lens, it should be examined, evaluated, and applied in appropriate proportions.

## 2 Delimiting the right to economic freedom in the rule of Law

Defining freedom has been proven a complex endeavor. Scholars from various schools and periods have dedicated significant efforts to characterize this right. The sensation of lacking freedom, or the limitation of freedom, as interpreted in a Hegelian context, can also be perceived through a unique experience – such as death itself (BITTAR; ALMEIDA, 2006).

The Rule of Law carries the responsibility of upholding individual freedom. This obligation takes the shape of a negative obligation, a genuine duty of non-interference. The freedom ensured by the Law is the same that was present during the genesis of the Modern State following the French Revolution. Being the foundational principle of this revolutionary movement, freedom takes on two dimensions: *ex-parte principii* and *ex-parte populli*. The former restrains the actions of the State, while the latter safeguards individual freedom (BITTAR; ALMEIDA, 2006).

Freedom stands as a fundamental value in the construction of the social contract. The concept of the Rule of Law is intimately connected with safeguarding this fundamental right, necessitating respect for the law – a law characterized by its general, abstract nature applicable to all, including the State. Consequently,

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6 Art. 170. The economic order, founded on the valorization of human labor and free enterprise, aims to ensure dignified livelihoods for all, in accordance with the principles of social justice, while adhering to the following principles:  
[...]

VI – Environmental defense, including through differentiated treatment based on the environmental impact of products, services, and their production and provision processes; (BRAZIL, 1988).

only explicit legal provisions can curtail freedom and establish obligations for citizens, as arbitrary actions have no place within a Rule of Law framework. Therefore, the law ensures and defends individual freedom.

As previously highlighted, freedom can be defined in various ways and has even been used as a scope for simulating entirely arbitrary behaviors. A prominent figure within the positivist school, the jurist and philosopher Hans Kelsen<sup>7</sup> conceived freedom as a normative determination, dissociated from free will.

Kelsen argues that something is not imputed to a person because they are free; rather, a person is only considered free because something is imputed to them<sup>8</sup> (KELSEN, 2009). Thus, the Law would select the social facts that would be prohibited by the positive norm. It's evident that from this perspective, the Law is concerned solely with predicting conduct and sanctioning it.

However, from a contrary perspective, philosopher Ricardo Marcondes<sup>9</sup> argues that such a conception is no longer compatible with the contemporary notion of freedom in society. Any unreasoned imputation is inadmissible. The justification for this limitation should be based on material foundations – in other words, on evaluative realization rather than mere competency established (MARTINS, 2015). Consequently, the right to freedom is not merely a normative determination, nor is it an archetype.

In conclusion, freedom within the Law is established by legal norms. The law grants freedom with a distinct language and inherent meaning, distinguishing it from other philosophical, sociological, and religious concepts (MARTINS, 2015). Ultimately, the Law governs freedom in society as the limits to individual freedom are necessary, and these limitations can solely derive from the law.

## 2.1 Delimitation of the right to economic freedom under the Federal Constitution and the role of the State

The concept of economic freedom is not unanimous or uncontroversial. In the Constitution of 1988, the aforementioned right is present in Art. 170, Sole

<sup>7</sup> Kelsen did not believe in the existence of free will. According to the author, imputation is the pivotal element in his legal theory. The choice of imputation as a central concept stems from a political perspective.

<sup>8</sup> In theory alone, the foundation for imputation was competency, independent of the phenomenal world.

<sup>9</sup> The author posits that freedom is not just a legal construct, nor is it an archetype. Freedom also is not a reality merely reflected by the Law. There isn't a separation between "what is" and "what ought to be", as they communicate with each other. The Law has an instrumental nature and is conceived to resolve intersubjective conflicts. It must be designed for the world of being and, thus, cannot be understood without taking it into consideration.



Paragraph. Economic action relates to the provision of material activities, the supply of commodities and utilities. It is within the individual's private sphere to decide how to exercise it (MARTINS, 2015).

This establishes the direct or indirect relationship between the Law and economic activity. To varying degrees, the State's role can influence the economy at either macro or micro levels. Through a systematic interpretation of the Constitution, it can be deduced that State intervention is characterized by a regulatory purpose within the Brazilian context<sup>10</sup>.

This regulatory framework aims to ensure economic freedom as defined by the Federal Constitution. Its objective is not only to prevent individuals from infringing on each other's rights, thus promoting economic efficiency, but also to establish a context of social justice. From this perspective, any restriction on economic freedom benefits both the individual's interests and the broader social liberty. The regulatory function can be characterized by the pursuit of equity or efficiency. Equity aligns with the principles of the Social State, while efficiency aligns with those of the Liberal State.

According to Martins' doctrine (2015), regulation can take on various forms: directional, inductive, participatory, or exceptional. Directional regulation aims to prevent private entities from engaging in abusive behavior that harms others' economic activities, thus impinging on economic freedom<sup>11</sup>. This form of regulation aims at both economic efficiency and social justice.

Regulation by induction enables the State to utilize public revenues to stimulate or discourage specific economic activities. This action is not bound by a predetermined competency but rather discretionary in nature. From a liberal perspective, administrative promotion is considered the most valued administrative activity.

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10 Regulating economic activity presupposes intervention in the private realm to achieve greater economic equity or efficiency. This can be done through various means, including restrictions on private actions, incentives, discouragement of certain behaviors, and the state's participation in economic activities to compete with private interests. In the first case, the State establishes conduct as obligatory or prohibited, while in the latter two cases, it influences private behavior through public revenues (MARTINS, 2015).

11 According to the author, the Law prohibits the arbitrary pursuit of profit, abusive use of economic power, and private monopolies resulting from illicit or abusive practices. It does not oppose the acquisition of profit but rather objects to the use of abusive or illicit means to attain it, if applicable. Currently, it is the interpreter's role to determine the arbitrary nature of profit-seeking. This falls under the realm of administrative promotion, an instrument used for regulatory induction. Through this approach, the State employs public revenues to encourage or discourage specific private behaviors. Administrative promotion can be categorized into various forms, including honorary, positive, and negative tax incentives, subsidies, real investments, and credit-based measures (MARTINS, 2015).

Conversely, regulation by participation, characterized by State involvement, is an exceptional measure outlined within the Constitution of 1988. As covered in Art. 173, main clause<sup>12</sup>, State participation in the economy is only justified in the presence of imperatives of national security or significant collective interest. This can entail the State competing with private entities, either for regulatory or non-regulatory purposes. The State may enter competition with private entities,

Furthermore, Art. 177 of the Constitution of 1988 grants the Brazilian State the authority to establish State monopolies, thereby excluding private involvement. Such instances are exceptional and explicitly specified in the Constitution. For example, activities related to the exploration of petroleum derivatives and nuclear minerals, closely tied to State sovereignty, fall outside the realm of economic freedom. Private entities can only engage in such undertakings through grants or concessions.

Therefore, exceptional regulation safeguards economic activities conducted by private entities, highlighting an interventionist role for the State. Freedom concerning these activities<sup>13</sup> is further restricted due to limitations imposed by the State, which aren't observed in other forms of economic exploitation. These activities are governed by special regulations, as the objective of this type of intervention is to protect specific legal interests associated with them.

Given the exposed, it can be inferred that the Constitution of 1988, in its regulation of economic freedom, ensured that everyone has the right to engage in any economic activity, except in cases defined by law, without previous authorization from public authorities. Free enterprise stands as one of the core principles that govern the Brazilian Republic.

Through a systematic interpretation of the Constitution of 1988, it becomes apparent that a model of Economic Order was embraced, rooted in the principles of the liberal political movement. Consequently, State intervention in economic activities is exceptional, subsidiary, and regulatory in nature. Hence, restrictions on exercising this right must be constitutionally grounded, and the State must provide justifications for its interventions.

<sup>12</sup> This means of exploitation may serve either regulatory purposes or other objectives. If the intervention is driven by regulatory motives, it falls under the category of regulation by participation. Additionally, if the State acts based on Art. 173 of the Brazilian Constitution, it becomes partially subject to Private Law norms. Failing to adhere to these norms could be deemed unfair competition (MARTINS, 2015).

<sup>13</sup> These activities are grouped into four categories: (a) hazardous activities such as cigarette production; (b) activities related to social services, like health and social security; (c) financial activities; and (d) activities related to human dignity. The principle of autonomy of will holds less weight in comparison to general economic activities (MARTINS, 2015).

## 2.2 Private property as a product of the right to freedom and how it interferes with the environment

The right to private property is enshrined within the Constitution of 1988 in Art. 5, XXII. This right is placed within the realm of fundamental rights. In addition to being a fundamental right, private property serves as a guiding principle by imposing limits on third parties, both in the private and public domains.

Private property is closely related to freedom, serving as a foundation for the Rule of Law and the market economy. By realizing the right to property, one also realizes a dimension of human dignity (WEBER, 2016). The right to property presents itself as a way of realizing freedom<sup>14</sup>, as hinted by Hegel. Furthermore, it enables economic and social development<sup>15</sup>. Additionally, there's a direct link between property ownership and an individual's act of free choice, as property is not limited to mere possession (ROSENFELD, 2010). This right encompasses the free disposition of an individual's relationships, whether of a patrimonial nature or not.

Similar to the previously mentioned right to freedom, the right to property and the environment engage in either direct or indirect dialogue. Environmental Law is said to stem from the combination of property law and Public Law. The protection of the environment directly affects the exercise of the right to property, not just in terms of guidance but also in terms of limitation of possession (BEN-JAMIN, 1996).

As stated in the Constitution of 1988, private property ceases to fulfill its social function when it clashes with the environment (MILARÉ, 2015). Similarly, the Civil Code of 2002 stipulates that the right to property must be exercised while respecting economic, social, and environmental values<sup>16</sup>. Hence, a connection exists between economic freedom, property, and the environment, as the first is also a product of the utilization of the right to property and the natural resources within it.

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<sup>14</sup> Justifying the right to property as a historical achievement of freedom is to point to a criterion other than Kantian rational authority exclusivity. Justifying it as an expression of freedom imbues it with the character of inviolability (WEBER, 2016).

<sup>15</sup> Property does not merely entail the legalized possession of a specific asset; it encompasses one's life, physical and legal security, freedom to move, and self-satisfaction. It pertains to the free disposition of voluntary actions and one's assets, the acquired and preserved heritage of each person, the outcome of their activities (ROSENFELD, 2010).

<sup>16</sup> Art. 1,228 of the Civil Code (BRAZIL, 2002) [...].

§ 1º The right to property must be exercised in harmony with its economic and social purposes and in a manner that preserves, in accordance with the provisions of special laws, the flora, fauna, natural wonders, ecological balance, and historical and artistic heritage, as well as prevents air and water pollution.

According to some proponents of a more libertarian perspective, environmental protection measures are perceived as State interventions that violate the right to private property and consequently restrict freedom in its various dimensions. However, it's important to emphasize that these rights are constitutionally recognized, which means that they all must be protected and, when conflict arises, balanced by the State. Therefore, just as it's not appropriate to use environmental concerns as a veiled form of indirect expropriation, neither should the irresponsible exploitation of natural resources be allowed solely at the discretion of the property owner. Instead, a balance must be sought that guarantees both individual rights and environmental preservation.

In this context, it's understood that environmental protection, as formally established in the Constitution, is not in conflict with the right to property. On the contrary, both elements are part of the same societal-individual relationship that gives the property its meaning and legal support (BENJAMIN, 1996). Given this, it's understood that exploitative activities involving natural resources on private property are better aligned with the model of sustainable development.

The Constitution of 1988 establishes the protection of the environment as an essential requirement for the recognition of the right to property. Some scholars, influenced by a liberal political perspective, argue that this protection constitutes undue interference in property rights and might even amount to a means of indirect expropriation. However, the legal-philosophical approach adopted in this study understands that the right to property does not allow for the indiscriminate use of natural resources solely for the benefit of the owner or in support of an economically unrestricted development.

In reality, the right to property allows its holder to enjoy natural resources, but their use must consider the impacts and degradation inflicted on the environment. Nevertheless, the spheres of State intervention must be limited and regulated by general law to avoid curbing the private autonomy of owners and the ability for private resolution of environmental conflicts.

Hence, this right to property, seen from the perspective of economic freedom, cannot be exercised without considering its implications for the environment. From this emerges the concept of sustainable development, which emphasizes the need to align economic growth with environmental protection. Based on this premise, all legislation concerning this matter must not only stimulate economic progress but also ensure the preservation of the environment.

However, this harmonization of interests still faces challenges in being effectively implemented today. For instance, Law No. 13.874/2019, known as the

Economic Freedom Law, sought to encourage entrepreneurial initiative at the national level. Within its content, it's possible to discern provisions that, instead of reconciling the pursuit of economic development in line with environmental protection, exacerbate the issue even further<sup>17</sup>.

In this context, there's no doubt about the regulatory role of the Law. However, it can also be understood as a vehicle for bringing about social change, largely due to its coercive nature, which makes norms obligatory for society. Thus, the Law can influence behaviors that are more beneficial (or detrimental) to rights protection. This observation is relevant because, in certain situations, a particular law that seemingly leads to positive outcomes might contain conflicting elements regarding the protection of other rights. This premise can even be exemplified within the Economic Freedom Law itself, which, while aiming to streamline economic activities, inadvertently weakened some aspects related to environmental protection.

Therefore, within the context of economic freedom, the right to private property must be accompanied by stringent guarantees regarding environmental protection. As such, it's crucial for both the public and private sectors to make concrete efforts to enforce the normative guidelines established in laws and strengthen mechanisms of supervision, regulation, and control.

### 3 Environment, development, and economic freedom

The term “underdevelopment” became widely used following the end of World War II. The understanding of development was bound to the notion of material progress, something that every nation should strive for (PIZZI, 2005). Subsequently, movements emerged to analyze the development model to be pursued by nations, allowing progress in underdeveloped countries.

In the post-war period, environmental movements began questioning the environmental degradation<sup>18</sup> stemming from liberal policies. Indeed, it is well

<sup>17</sup> The law aimed to streamline economic activity in Brazil. Within its framework, one can observe measures aimed at reducing State intervention in business activities. However, this encouragement of entrepreneurial activity cannot come at the expense of the environment. For example, Art. 3, IX, of the Economic Freedom Law establishes that administrative silence in the face of requests for permits for economic activities will result in tacit approval of such activities. This could potentially allow environmentally harmful activities to be authorized, leading to irreversible environmental impacts.

<sup>18</sup> Environmental issues did not arise in the post-war era, as records of environmental destruction exist since the Middle Ages. Historical records document deforestation in Europe during that time. In 13th-century northern France, wood was so scarce and expensive that coffins were rented for the funerals of the poor, so they would be buried directly in their graves after the service (OLIVEIRA, 2012).

understood that environmental issues are not exclusive to the last century but have been a part of the entire evolutionary trajectory of society. However, it's noticeable that alongside the economic growth tied to a policy of economic freedom, mankind has faced more significant environmental challenges.

This highlights the (dis)harmony between economic and environmental policies. Can the enjoyment of both the right to economic freedom and the right to a balanced ecological environment be reconciled? The finite nature of environmental resources is accepted, as are the benefits of market expansion. Balancing economic progress and environmental protection is crucial and requires careful consideration. It's worth noting that environmental problems arising from unsustainable development aren't short-term phenomena but an extensive process affecting all aspects of society (MASLENNIKOVA, 2022)<sup>19</sup>.

Drawing on Amartya Sen's (2000) perspective, development is the foundation of freedom. To the author, this principle will address various social problems, such as hunger and poverty. Individual freedom will bring development and eliminate chaos. In essence, through freedom, society would harmoniously and sustainably self-regulate.

The publication of the Brundtland Report<sup>20</sup> titled "Our Common Future" (CMMAD, 1991) initiated the alignment of economic interests with environmental concerns (OLIVEIRA, 2012). This context gave rise to the term "sustainable development". It was in this context that the term "sustainable development" emerged – a proposal launched as a means to achieve economic development while responsibly safeguarding environmental resources.

Sustainable development<sup>21</sup> operates on three interconnected perspectives: environmental, economic, and social. This model proposes a balanced use of natural resources alongside economic growth. According to United Nations documents, implementing sustainable development requires cooperation among countries within the international community – a stance supported by economist Amartya Sen.

19 According to Maslennikova (2022), the economy represents society's activity aimed at satisfying human needs, bringing both benefits and disadvantages. While it enables a more comfortable life, production efficiency, and industrialization, it also poses considerable damage to both the environment and human health.

20 The Brundtland Report aimed to demonstrate that growth is possible if all countries adhere to its guidelines, in contrast to the "*Limits to Growth*" perspective. Unlike the pessimistic view presented in the "*Limits to Growth*", the Brundtland Report conveys an optimistic vision and strategies for sustainable development within the capitalist system (OLIVEIRA, 2012).

21 The core idea is that sustainable development should meet the needs of the present society without compromising resources for future generations. This involves the responsible utilization of the environment to achieve holistic social, economic, and environmental progress (CMMAD, 1991).

In the ongoing discussion, the challenge is how to reconcile liberal economic policy with environmental protection. Liberalism, which influences thinking in both the Western and Eastern worlds, advocates for minimal government intervention and a free market, as pointed out by Amartya Sen (2000). However, a conflict arises: how to protect the environment – a public good – while pursuing an economic development policy based on the principle of economic freedom<sup>22</sup>.

From the perspective of sustainable development, sustainability combines eco-efficiency, social responsibility, and the foundation of development based on a system of open and competitive markets. In such a system, the private sector would introduce products transparently accounting for costs, including environmental ones (ALMEIDA, 2002). Hence, integrating the expenses tied to balanced natural resource exploitation into the final product's value would become standard. Moreover, corporations ought to infuse technology into their production methods that mitigate or even preclude environmental deterioration.

This underscores the pressing need to advance studies within the realm of sustainable development, intending to augment sustainability strategies alongside a novel comprehension of the post-modern Western society and the liberal paradigm (ALBERTON, 2014). Furthermore, businesses should draft their agendas grounded in sustainable development principles, firmly committing to environmental concerns within their expansion strategies. This necessitates conducting business in good faith to ensure that eco-friendly pledges transcend mere marketing tools.

Additionally, capitalist economies thrive on the introduction of novel goods, production techniques, or commercial prospects within their industrial framework (ROSENFELD, 2010). Apprehensions about resource scarcity, intrinsically linked to economics, have precipitated the emergence of an environmentally conscious consumer base. Consequently, enterprises are impelled to adapt to these new consumer expectations by integrating technology and practices into their production cycles that prevent environmental impact.

Recognizing that businesses drive capitalism, the private sector must foster innovation, fabricate novel consumer commodities, and usher in technology

<sup>22</sup> Within the context of climate change, Jean-Marc Daniel (2023) emphasized in a published study that it is indeed possible to reconcile economic growth and the fight against climate change. The author criticizes the "radical environmentalism" that advocates for an end to the market economy and emphasizes the importance of adopting an ecological program rooted in economic science. Daniel argues that it is feasible to combat climate change, preserve the environment, and protect individual freedoms without compromising the market economy. He also underscores the significance of respecting property rights and promoting competition as essential elements for a sustainable approach to both the economy and the environment.

to heighten efficiency and reduce environmental repercussions. Furthermore, an in-depth analysis of capitalism's mechanics exposes that genuine market-oriented policies can indeed champion and incentivize environmental conservation. Nevertheless, this study's standpoint acknowledges that relying solely on the private sector<sup>23</sup> for environmental safeguarding proves inadequate; the government's involvement as a regulatory entity is indispensable. This is further elaborated below.

Government interventions in environmental protection aren't discordant with an economic development model hinged on a free-market approach, as long as the government's role neither overshadows nor negates market dynamics. As emphasized by Hayek (2010), a bona fide market economy relies on certain government activities, provided they bolster and align with market functioning<sup>24</sup>.

The Austrian author pointed out that there are areas where the advisability of government action should not be contested. This category encompassed services that are beneficial but aren't provided by competitive firms because attributing the costs to beneficiaries would be challenging. For instance, sanitation services, construction, and maintenance of roads and green areas fall within this category (HAYEK, 2010).

In this Hayekian perspective, it can be inferred that services linked to environmental protection could generally be delivered more efficiently and yield better results if the government assumed partial or complete financial responsibility. However, this should be done while keeping in mind that the private sector should continue to pursue its business endeavors within a competitive framework.

Furthermore, all regulations on environmental matters should stem from generic, specific, and obligatory provisions that apply to all engaged in the activity. Thus, it is concluded that economic development, grounded in a free-market

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23 Safeguarding the environment stands as a collective duty shared by both the State and the private sector. While the State wields regulatory and legislative authority to formulate environmental laws and regulations and ensure compliance, the private sector complements this role by embracing sustainable practices and investing in innovation and technology to curtail detrimental environmental impacts. Additionally, the State can motivate the private sector to adopt sustainable practices through policies, subsidies, and fiscal incentives, thereby fostering corporate environmental accountability. Significantly, the government's role should not be supplanted by the private sector, given that its regulatory and legislative responsibilities empower it to ensure environmental protection even amid commercial pressures.

24 The Brazilian Constitution of 1988 establishes a comprehensive set of regulations that influence economic activity. Art. 170 of the core law underscores the significance of environmental protection. In this context, the State's intervention in the economic domain seeks, rather than restricting individual initiative and freedom, to preserve them. It recognizes that legal transactions must have a social function, taking into consideration the environmental impact of products and services. The implementation of these principles, encompassing environmental protection, necessitates State intervention to ensure harmony and balance within society (DIAS; SOUZA; SOUZA, 2023).



economy and guided by the principle of economic freedom, is compatible with the progressive safeguarding of the environment and the reduction of environmental impacts.

## Conclusions

It is understood that environmental good is autonomous, immaterial, and of diffuse nature. Furthermore, it transcends the traditional classification of public and private goods. It constitutes a common property good. The legal protection granted to this good makes it a fundamental right that finds provision both under the Constitution and other national or international legal regulations.

The economic system based on the free market has facilitated social development and predominantly governs Western countries. Economic freedom stands as a premise of this economic governance. In conjunction with this regime, the defense of a healthy environment must be pursued for both the present and future generations, as stipulated by the Constitution.

In conclusion, a harmonious relationship between the right to economic freedom and the right to an ecologically balanced environment is feasible. Both are of utmost importance for the nation's growth and economic development. Regulations aimed at safeguarding natural resources must be observed by everyone, including the State, which, however, cannot deprive the owner of their property through regulations. In light of this, the pursuit of sustainable development is advocated as the bridge of balance between the analyzed rights.

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