

# APPROXIMATION BETWEEN LAW AND SUSTAINABILITY: CRITICAL THEORETICAL APPROACHES

**Gabriela Fauth<sup>1</sup>**

Universitat Oberta de Catalunya (UOC) |

**Alberto Olivares<sup>2</sup>**

Universidad Internacional de La Rioja (UNIR) |

## ABSTRACT

The so-called environmental crisis explains an expressive structural crisis that led societies to rethink their production and consumption patterns, producing an interpretation of the sustainable development paradigm that reached several mechanisms of legal regulation in the context of the international economic system, legitimizing powers and discourses converted into hegemonic ones. From this context, the sustainable development paradigm was used methodologically as a tool for International Agreements, Treaties and Protocols, generally limited to the logical matrix of legal positivism and to parameters of the international economic system, driven by the current globalization process. In this sense, based on a bibliographic review, this work criticizes the appropriation of the sustainable development concept by capitalism, when, supposedly, such concept was born to oppose it. At the same time, it points out paths in the field of Law, when the response of legal instruments has proved to be insufficient and even inadequate in the face of current global challenges. The methodology of this work is based on documentary research, based on a critical interpretation of classical legal theories, delving into the evolution of legal pluralism. The work concludes that there is an important need to transform the legal and political instruments in order to mediate the different dimensions that

---

1 Postdoc in Urbanism at the Universidade Federal do Rio de Janeiro (UFRJ). Doctor in Law from Universitat Rovira i Virgili (URV). Master in Urbanism, History and Architecture of the City from Universidade Federal de Santa Catarina (UFSC). Degree in Law from the Universidade do Vale do Itaja (UNIVALI). Professor at the Universitat Oberta de Catalunya (UOC). Lattes Curriculum: <http://lattes.cnpq.br/2925327956062215> / ORCID: <http://orcid.org/0000-0002-0650-4221> / e-mail: [gf-auth@uoc.edu](mailto:gf-auth@uoc.edu)

2 Postdoc at the Centro de Estudios Avanzados de Blanes del Consejo Superior de Investigaciones Científicas (CEAB-CSIC). Doctor in Law and Master in Environmental Law from Universitat Rovira i Virgili (URV). Master in Economics and Regulation of Public Services from the Universitat de Barcelona (UB). Professor at the Universidad Internacional de La Rioja (UNIR). ORCID: <http://orcid.org/0000-0003-3294-4658> / email: [albertopatricio.olivares@unir.net](mailto:albertopatricio.olivares@unir.net)

comprise the environmental issue and its reflexes in the context of contemporary society.

**Keywords:** environmental crisis; Law; environmental justice; instituting practices; sustainability.

**UMA APROXIMAÇÃO ENTRE DIREITO E  
SUSTENTABILIDADE A PARTIR DO PLURALISMO  
JURÍDICO: ABORDAGENS TEÓRICAS CRÍTICAS**

**RESUMO**

*A chamada crise ambiental explicita uma expressiva crise estrutural que levou as sociedades a repensarem seus padrões de produção e consumo, produzindo uma interpretação do paradigma do desenvolvimento sustentável que alcançou diversos mecanismos de regulação jurídica no contexto do sistema econômico internacional, legitimando poderes e discursos convertidos em hegemônicos. A partir desse contexto, o paradigma do desenvolvimento sustentável foi utilizado metodologicamente como ferramenta para Acordos, Tratados e Protocolos Internacionais, geralmente limitado à matriz lógica do positivismo jurídico e a parâmetros do sistema econômico internacional, conduzidos pelo atual processo de globalização. Nesse sentido, a partir de revisão bibliográfica, este trabalho realiza uma crítica a apropriação do conceito desenvolvimento sustentável pelo capitalismo, quando, supostamente, nasceu para contrapô-lo. Ao mesmo tempo, aponta caminhos no campo do Direito, quando a resposta do instrumental jurídico tem se mostrado insuficiente e, inclusive, inadequada, diante dos desafios globais atuais. A metodologia deste trabalho está baseada na pesquisa documental, a partir de uma interpretação crítica das teorias jurídicas clássicas, aprofundando na evolução do pluralismo jurídico. O trabalho conclui que existe uma importante necessidade de transformação do instrumental jurídico-político no intuito de mediar as diferentes dimensões que compreende a questão ambiental e seus reflexos no contexto da sociedade contemporânea.*

**Palavras-chave:** crise ambiental; Direito; justiça ambiental; práticas instituintes; sustentabilidade.

## INTRODUCTION

The so-called environmental crisis supposedly led societies to rethink their production and consumption patterns, leading to the dissemination of a development model acclaimed for its sustainable character. This interpretation of a development pattern that would balance economic, environmental and social development in a single theoretical framework reached several mechanisms of legal regulation in the context of an international economic system, legitimizing powers and discourses converted into hegemonic ones.

From this context, the then paradigm of sustainable development, methodologically used as a tool for international Treaties, Conventions and Protocols, was fundamentally limited to the logical matrix of legal positivism and to the paradigms of Modernity.

Understanding the various conflicts inserted in the complexity of the current globalization process constitutes an important turning point on the socio-environmental theme, since vulnerabilities, both social and environmental, are amplified.

Therefore, however, it is necessary to reflect on the conflicts that the environmental issue suggests in its various dimensions, among them, the one that includes the conflicts in the social space and the economy's current protagonism.

That said, it is relevant to contextualize situations, subjects and spaces of vulnerability, in order to shield interests and guarantee rights. And, thus, to identify that in the field of Law new forms of social relations and power relations need to be developed in order to reconfigure outdated categories, especially between the State-market and public-private binomials. In this sense, today's debate on environmental policies, including the sustainability paradigm, requires the examination of issues that go beyond the scope of the normative framework alone, whether international, constitutional or administrative. This is because the interdisciplinary approach recognizes the production of a theoretical instrument capable of dealing with the plurality and unpredictability of contemporary demands in different territories, considering the different geographies constructed and reconstructed from capitalism in its phases.

## 1 CRISIS AND SUSTAINABLE DEVELOPMENT: A CRITICAL APPROACH

We have chosen to use the expression “current process of globalization” because, as well formulated by David Harvey (2013), contemporary globalization refers to a process that has taken place and is still ongoing. Currently, this process is represented by globalized financial capital and by a situation of large and rapid capital flows in which cities enter as the central subject par excellence. This is due to the fact that cities represent the space where political, economic and social transformations have repercussions, since, according to the UN, they comprise 55% of the world’s population. Every movement characteristic of capitalism and the contemporary world leads to direct reflections on the urban territory and citizenship.

In this sense, initially, we start from the understanding that it is necessary to recognize the environment not only as a scenario, but as a core piece in the social production of space itself. This space reflects and interferes in the culture of a place and a historical period; in the means of subsistence of a given social context and in its meanings; and, in the forms of appropriation of natural assets and territory.

This reflection allows an understanding of the environmental issue beyond just an ecological issue. It is a matter of context, of a medium, in this case, of environment, that is, of the territorialization of environmental issues.

The current globalization process and financialized economy produce a geopolitics of conflicts and local environmental problems in which the production of new vulnerabilities, connected and arising from global processes and relationships, tends to aggravate them, increasing risk situations and hindering access or the pursuit of environmental and climate justice, given that the distribution of risks is unequal.

In fact, globalization as a process is characterized as a permanent crisis. However, as stated by Zygmunt Bauman, based on his theory on “the liquid society” (BAUMAN, 2000; 2007), in the postmodern world nothing is permanent, so the world changes quickly, being susceptible to liquidity.

And crises, according to Milton Santos (2001, p. 17), are successive, lasting and global:

[...] whose evidence takes place both through global phenomena and particular manifestations, in this or that country, at this or that moment, but to produce the new stage of crisis [...] E. So, **in this historical period, the crisis is structural.**

Therefore, when solutions are sought, the result is the generation of more crisis. What is considered as a solution comes from the exclusive interest of the hegemonic actors, tending to participate in their own nature and their own characteristics (emphasis added).

In today's society, it is the "market" that determines the rules, since society is permanently transformed according to the norms that the "market" imposes (BAUMAN, 2007). In this sense, Dardot and Laval (2016) reflect on the rationality of this market that presents itself as neoliberal and, therefore, configures itself in an ideology capable of acting from global policies and a universal system of norms that transform all aspects of life, with strong consequences for the social and intercultural dimension of society. The French authors reaffirm the great classic by Karl Polanyi (*The Great Transformation*, 1944) which supposes the implantation of an economic system that would convert both human labor and nature into a commodity, compromising their very existence.

Globalization, therefore, assumes the role of accelerator of the capitalist, industrial and westernizing hegemony of the world (CAVALLAZZI; RIBEIRO, 2019).

Thus, the so-called environmental crisis led societies to rethink their production and consumption patterns, due to the impossibility of a development and 'progress' model adopted by most central countries. This model, understood as a supposed new paradigm, that of sustainable development, set out in the Brundtland Report in 1987, contradictorily, pointed to a feasible development that could minimize the degenerative effects that were being caused to the environment. To delve deeper into this topic, read Loureiro (2003).

According to Pigrau and Jaria i Manzano (2017), the combination of social and technological conditions led to a resurgence of the environmental crisis that, from the point of view of hegemonic institutional mechanisms, was responded to based on management policies built on the notion of sustainable development, which failed to act on the inequities in the distribution of the burdens and benefits of global social metabolism. But it did not even lead to its progressive growth and, consequently, the increase in pressure on the biosphere of global society.

In this context, there is no doubt that the concept of sustainable development as a theoretical and practical framework has been an important reference in and for the history of the environmental movement, but especially on the logic of capitalist accumulation. "The environmental issue, as

it is posed in the hegemonic discourse of sustainability, indicates that the solution to be adopted by society as a whole is to integrate the cycles of nature with the logic of capitalist accumulation” (LOUREIRO, 2003, p. 38).

Thus, what initially may have been considered an innovative and inspiring theory, was eroding over time, due to inconsistencies and different interpretations, not always rigorous. Due to its breadth, it was intended to be practical and operational, however, precisely for this reason, it was interpreted by different social actors, according to their respective perceptions and interests.

Currently, the debate around key concepts in the environmental theme is fundamental. The constant challenge of not falling into the theoretical common sense regarding the use of the concepts of sustainability, sustainable, development, climate change and the environmental issue itself is a challenge. This is also a debate on territoriality (HARVEY, 2013), so that the construction of new forms of social relations may allow instituting spaces for the production and strengthening of rights.

Rodríguez e Sánchez (2020, p. 133), in a recent publication, analyze precisely this issue and state that:

The widespread discourse of sustainable development and the 2030 Agenda can be a political device in order to promote values and principles inherited from modern reason itself, which, however, does not necessarily discuss the real causes of the environmental crisis. The risk lies in maintaining schemes that may nullify the critical awareness and political participation of the population directly affected.

According to Naredo (2022), the widespread use of the ‘sustainable’ qualification in the economic-environmental literature is characterized by a practice of the social sciences that induces the use of so-called fashion concepts, but which, in fact, are ambiguous. They only serve as an illusion rather than as useful concepts for solving and understanding real-world problems.

The ambivalence of the discourse is largely due to the polysemy of the terms sustainability and sustainable development.

According to Cardesa-Salzmann and Cocciolo (2019), it was inevitable and continues to be fundamental to question the concept’s capacity, since, as it is currently presented, it does not match the possibility of stabilizing social reproduction and promoting global justice affected by the resonance of advanced capitalism in world society and ecological systems.

The proposal of an economic alternative compatible with the preservation of an ecologically balanced environment has its starting point with

the expansion of the concepts of sustainable development and sustainability presented in the Brundtland Report, opening expectations about the possibility of a development that managed to minimize the degenerative effects that had been occurring directly on the environment in solidarity with social justice. However, this alternative required an abstract and generic social context, supported by a politics that was surrounded by a universal ethics and, more importantly, that there was an “ecological conscience” of each individual to reach a collective dimension of citizenship.

Evidently, the concept of sustainable development as a paradigm of change, as already mentioned, has major limitations. And, thus, the persistence of ecologically unequal exchange, the pressure on resources and the progressive loss of social control over global economic processes allow us to conclude that measures inspired by the idea of sustainable development are absolutely insufficient. According to Pigrau and Jaria i Manzano (2017, p. 4), “the notion of sustainable development, which, on the basis of belief in a social and economic progress based on the global expansion of the economy and technological innovation, intended to unite the demands for economic growth, social justice and environmental protection”.

Following this reasoning, in the current historical context, more than the co-option of the paradigm of sustainable development by the market – since its intention was never to question the market – there is a relationship of interdependence between them. The “feel” of the environmental crisis is currently disconnected from the concrete conditions of its own production.

For Acselrad (2004, p. 3):

The diagnoses and definitions have been situated in the technical field, presenting themselves as detached from the dynamics of society and, consequently, from the social struggle. We can cite the definition of the Brundtland report itself: sustainable development is one “that meets the needs of the present without compromising the ability of future generations to meet their own needs”. This intergenerational cut undoubtedly abdicates from perceiving social diversity within the future and the present itself.

Social criticism, fundamental to understanding contemporary environmentalism, more committed to the social dimension of sustainability and to poor countries and classes, is sufficiently known and is not restricted to the specific field of the environment (PIERRE, 2005).

As highlighted by Riechmann (2000, p. 16), “The globalized international economic order, far from mitigating social inequalities and environmental imbalances, deepens the gap [...]”. Considering that

social inequality and the environmental crisis are conjunctural and are correlated, both indicate that the distribution of the burdens and benefits of environmental goods (ecological debt), as well as the possibilities of resisting its effects, are different according to social groups and the countries' relative situation (North-South, Center-Periphery categories).

The consequences of the environmental crisis, thus perceived, could be related to two distinct and opposing perspectives. Part of the doctrine understands and disseminates it as catastrophic, while for another part, the crisis can be easily overcome through science and technology. The latter is the dominant ideology. However, in both cases, according to Tommasino, Foladori and Taks (2005), the discussion is technical, formal and apolitical, incompatible with the environmental context, since the environment is not foreign to human beings. And, as mentioned earlier, the environment needs to be understood as a context.

When the very internal nature of human society is differentiated and full of contradictions in its relationship with its surroundings (environment), therefore, evaluating the ecological and environmental issue demands policies that address the interests of different classes, countries and sectors.

Given this scenario, realizing that the sustainable development paradigm does not generate pluralism is not a difficult task. As it continues to rely on traditional structures (rationality and legal technique), it does not provide sufficiently secure answers to the issues: poverty, cohesion and social justice, sustainability and democracy.

The very ideological system that justifies the globalization process contributes to the understanding of a single possible historical path (hegemonic forces) and ends up imposing a vision of the crisis and its exclusive solutions. This finding is justified when it is observed that most countries, regions and individuals behave uniformly and organize themselves with the same actions, as if the crisis was reflected in everyone and in all territories equally. And so, according to Santos (2001), as if there was a single "recipe" to face it.

## **2 LEGAL POSITIVISM AS AN EPISTEMOLOGICAL OBSTACLE AND THE CRISIS OF MODERN PARADIGMS**

The positivist scientific knowledge, supported by Hans Kelsen's legal formalism, diverges from interdisciplinarity, and makes it difficult to



support the demands of Law in the contemporary globalized context. For this reason, it is also in crisis.

This crisis is structural and epochal, shaking the foundations arising from Modernity and, likewise, the legal field as a science ends up being absorbed by it<sup>3</sup>.

The historical transition understood as a crisis of law is certainly the crisis of modern paradigms and the questioning of these paradigms (HOBSBAWM, 2007). It is clearly explained in the legal field from the crisis of confidence in legal relations, institutions and public policies and, more precisely, with the daily observation of the inadequacies of the paradigms in the sense of understanding the inherent conflicts in the consumption society.

However, classical state legal dogmatics persists, without advances, in facing the crisis and, likewise, the Law, far from solving the current conflicts, does not even address them.

The models assumed in the period of Modernity reached a permanence and, even if there was a reassessment of the so-called modern project, there is a coincidence of factors that point to the same practice, but now with a postmodernist focus.

José A. Estévez Araújo (2021), in the work *El derecho ya no es lo que era*, precisely analyzes the changes in the legal framework during the different phases of neoliberal globalization, reaffirming the profound transformations that have arisen from the globalized world, especially with regard to a new legal-political architecture of the global market and the financialization of economy.

From this perspective, it is important to historically situate Law in modern thought and support its arguments. However, it requires the understanding of what constituted the rational modern State and its insertion in the process of codification and systematization of the dogmatic science of Law.

Therefore, reinterpreting the Law means strengthening a critical theoretical framework beyond positivism, giving way to new meanings that reach new regulatory frameworks, new forms of conflict resolution and new instituting practices capable of creating institutions and guaranteeing the protection of rights.

De Cabo Martín (2014, p. 46) states that the legal discourse, that is,

---

<sup>3</sup> On the crisis of modern paradigms, read more at: David Harvey, Alain Tourain, Marshal Berman, among others.

the very production of meanings in Law, is understood from three levels of production, namely:

[...] the one that configures the current positive legal reality, formed by the norms, sentences and negotiable legal relationships and that is the “product” of the bodies and subjects authorized to “act” in Law (*ius dicere, ius dare*); the doctrinal one, “produced” by the theoretical practice of the jurists, and, finally, **the one “produced” by the users, a certain social, or symbolic, imaginary of the Law formed through a permanent play of beliefs or fictions** (emphasis added).

Legal discourse is what is understood as a producer of meanings. This production of new meanings demands, therefore, a review of the legal field, of the international order and of the State itself, to affirm new forms of conflict mediation and of identification of vulnerabilities arising from the current globalization process.

The permanence of legal positivism as a dominant ideology<sup>4</sup> highlights a legal ideology as an epistemological obstacle to the social effectiveness of new rights (CAVALLAZZI; FAUTH; ASSIS, 2018). Therefore, positivism, based on its influence on legal thought, prevents the rise of philosophical ideas that admit the rupture of paradigms embedded in scientific knowledge and that obstruct the construction of an adequate conceptual matrix with sustainability.

Law in its logical-formal instrument born with Modernity cannot respond to the conflicts of a globalized world, although it has favored the construction of a modern capitalist economy. The misunderstandings present in the current century deepen the crisis of modern paradigms, both in the science of Law and in capitalism.

Therefore, it is up to Law interpreters and operators to recognize and identify, in legal pluralism, other theoretical and instrumental frameworks that demonstrate a proposal for the reconfiguration of sustainability in the present time, reflecting on the dominant trend.

In addition to the conception of a new dogmatic, it is necessary that the Law acts as an instrument of power regulation or limitation. It is essential to shield social subjects and processes in order to guarantee rights to the vulnerable people.

In this sense, critical theory of law will inevitably lead to a critique of prevailing law, representing an alternative to positivism. However, this should not be restricted to theorizing, or simply criticizing the Law; it

---

<sup>4</sup> According to Gustavo Zagrebelsky, with regard to legal technique, Law in a rational and closed system does not attain its own ends (1995).

should, nevertheless, seek options for a legal practice that corresponds to what is socially desired, through instituting social practices, for example.

This debate, which is not recent, seeks in social aspiration the materialization of demands that many times originate in the social movements themselves, constituting, therefore, full legal and social effectiveness, promoting the social effectiveness of the norm. On the concept of social effectiveness of the norm, see Cavallazzi (1993).

The social effectiveness of the norm allows the feasibility of the normative content according to legitimacy criteria. Its claim will make the Law feasible, based on social demands (CAVALLAZZI, 1993).

A legal system's legitimacy lies in the possibility of its acceptance by the set of a given society, a right that effectively represents the interests of the entire social set. However, to achieve this end, legal theory must be able to transmit its elementary principles (GONÇALVES, 2007).

The preference for legal formality and technical decisions of social control does not seem to favor legal science in its role as a social transformer. According to Pierre Bourdieu (2001), in addition to the symbolic power of Law, the French sociologist states that a "rule" is not automatically effective by itself, it is necessary to question under what conditions a rule can act. From the development of his theory, the notion of *habitus* arises to emphasize that along with the norm, expressed and explicit or of rational calculation, other principles that generate practices must coexist.

Therefore, it is evident that the Law exercises a specific effectiveness, but only to the extent that it is socially recognized and finds tacit and partial consent, thus, it will respond, at least in appearance, to real needs and interests (BOURDIEU, 2001).

In summary, the expansion of legal pluralism expresses the key of meaning that articulates: the formal, in the normative complex, with the materiality of Law and, equally, the construction of its own normative code that has already been disseminated in the social collective imagination and in the legal order.

In addition to reflecting on the fragility of rights today, which are increasingly weakened in the face of economic triumph, it is important to recognize the vulnerability of subjects and relationships. Here lies the possibility of guaranteeing the protection of subjects, processes, spaces, communities, ethnic groups, ecosystems, etc.

### 3 BEYOND A DIAGNOSIS: ARE THERE ALTERNATIVES?

A critical reading of the nature of conflicts in general, and specifically environmental ones, allows the perception that the processes that guide and shape the environmental issue are not the same in privileged areas of a given space or region. Also known as environmental injustice, it is characterized as the core of the crisis. For this reason, it is essential to contextualize spaces and subjects, territorializing conflicts.

Thus, the idea that vulnerability is directly associated with the environmental field is corroborated and becomes a requirement for the effectiveness of rights.

The thesis defended in this work referred to the general idea that the sustainable development paradigm needs a critical examination, since it is limited in the sense of promoting equity and balance of economic, environmental and social forces in the current globalized world. In this logic, the foundations of environmental justice as a theoretical reference would be an alternative to deal with the environmental crisis. As a theory conceived from the social movement, the matrix of environmental justice, emerging and integrating a historical process of construction of rights, could protect sustainability and be able to intervene in inequality and promote greater cohesion and social justice.

Valdivieso (2005) states that environmental justice is linked to the unequal distribution of environmental ills and access to resources; in exclusion; in quality and responsibilities. However, at the same time, it highlights another scenario, that of the new paradigm, when it mentions the unequal distribution of social resilience, identifying both environmental damage and socially constructed disasters.

Thus, understanding that Law, in this matrix of justice, is not only the point of departure, but also the point of arrival in the reproduction of social space, it allows the recognition of plural and instituting spaces. And it thus can represent spaces that respect new social practices, based on new criteria for participation and negotiation from an emancipatory perspective.

Understanding sustainability based on the concept of environmental justice, from the perspective of this work, can be the key to face the environmental crisis from a perspective that refutes paradigms that are considered hegemonic about sustainable development today<sup>5</sup>.

---

<sup>5</sup> For a deeper analysis of the notion of sustainable development as a hegemonic response to the environmental crisis and the identification of its shortcomings, see Jaria i Manzano (2017).

Environmental justice characterizes the articulation of a social response to the environmental crisis, considering the equity aspects that arise in its context (JARIA I MANZANO, 2012).

The great challenge in the era of the financialized global economy and the very limits of the concept of sustainable development requires a holistic approach and beyond a solely positivist debate on Law. An economic, market and power discussion (North-South, Center-Periphery) is necessary in order to generate a real pluralism and a notion of sustainable development that expands the parameters projected through normative constructions ingrained in the modern matrix and that do not overcome the current conflicts. Added to this, new legal categories can serve as a critical and transformational tool to rethink new dogmatics and new forms of social action from praxis (WARAT, 1982).

For Pigrau and Jaria i Manzano (2017, p. 18), environmental justice is the instrument that can contribute to overcoming the limitations of sustainable development as a concept and paradigm, and can support counter-hegemonic strategies, both in the field of social movements and in the implementation of jurisdiction.

From this perspective, Leff (2006, p. 139) explains that:

The sustainable development discourse promotes economic growth by denying the ecological and thermodynamic conditions that establish the limits and possibilities of a sustainable economy. Nature is being incorporated into capital through a double operation: on the one hand, it seeks to internalize the environmental costs of progress by attributing economic values to nature; at the same time, a symbolic operation is used, a 'calculation of significance' that recodes man, culture and nature as apparent forms of the same essence: capital. Thus, ecological and symbolic processes are converted into natural, human and cultural capital, to be assimilated by the process of reproduction and expansion of the economic order, restructuring the conditions of production through an economically rational management of the environment.

This point is very important, since rights are not linked to the globalized economic-financial modus operandi, but to the configuration of nation-states, a category that is no longer completely imposed on the world. The triumph of the economic interpretation (neoliberalism) of the Law and economic reason is above any other mechanism of democratic reason or political reason.

Therefore, advancing in the critical analysis of governance strategies based on sustainable development that already suggest the inadequacy of its use, allows the questioning of the fragmentation, social exclusion,

depoliticization and commodification processes in the sense of producing spaces that reconcile the public, the democratic and the plural. This is the great challenge of this century in the face of the established political-institutional crisis.

## CONCLUSIONS

In conclusion, this work explained that in the environmental theme and in the Law itself, multiple facets are intertwined, so that the debate does not advance when the same reductionist and common sense analyses regarding sustainability and the environmental crisis are maintained.

The analysis carried out here sought to identify the legal-institutional obstacles of sustainability, understanding that the notion of sustainability needs to be extended to segments other than just the environment, in a multidisciplinary perspective.

The diagnosis, in some way already majority, that the legal mechanisms reduced to the modern matrix do not allow the advancement of instituting policies and practices clearly did not manage to unify the demands of economic growth, social justice and environmental protection. Therefore, the opposition to the sustainability paradigm hegemonically defended today has not advanced in facing the crisis.

In this sense, strengthening the theoretical framework of criticism and allowing the expansion of new meanings, dialoguing with new regulatory frameworks and forms of negotiation may represent the consolidation of another practical-theoretical path.

The epistemological challenges faced for a change that allows expanding the framework of normative constructions consistent with contemporary socio-environmental vulnerabilities permeate an interdisciplinary approach. This approach is based on the convergence between different fields of knowledge and on the recognition of the production of instruments capable of feeding criticism in a more comprehensive and plural way, either as a theoretical response or in the governance spaces themselves.

In the globalized political-economic context, simultaneously with the reduction of the State in the face of the market logic, resistance and emancipation movements are produced from the instituting social practices, new forms of social relationship and with power.

The present study considered it relevant to explain the relationship between the aggravation of subjects' vulnerabilities, in which the dimension

of the current globalization process ends up generating new social and environmental vulnerabilities, bluntly questioning the perspectives of sustainability in contemporary society.

The faithful relationship of new techniques and legal theories supported by legal pluralism represents an adequacy of principles to build public policies in line with the demands of this century. When the challenges, obstacles and paths to follow are really recognized, as regards the pillars of environmental policies – especially those related to conceptions based on modern dogmas and built according to a neoliberal world order –, the diagnoses can transform themselves into actions.

The construction of a theory or a dogmatic critique of Law is fundamental and, in part, has already been carried out. However, the implementation of these measures, based on, strictly speaking, conservative instruments does not allow the Law to fulfill its role as a mechanism of social transformation. And, the effectiveness of social transformation depends directly on changes in power relations.

The most important thing is to open up dissenting possibilities, accepting so-called peripheral debates that go beyond prescribed hermeneutics and a legal dogmatics that exploits the Law. This is because, when rights are the point of arrival rather than the point of departure, new rights are achieved through collective bargaining that strengthened them.

In this logic, the environmental justice movement, originating from the social and instituting movement, rescues the debate around the economy, powers and current geopolitics, collaborating for the construction of social spaces and normative constructions of social effectiveness. This study established, above all, the dialogue between the fields of Law and environmental political theory, in which environmental justice is a key concept and can play a structuring role in equitable justice in the scope of sustainability.

## REFERENCES

ACSELRAD, H. Sustentabilidade e articulação territorial do desenvolvimento brasileiro. *In: SEMINÁRIO INTERNACIONAL SOBRE DESENVOLVIMENTO REGIONAL*, 2., 2004, Santa Cruz do Sul. *Anais [...]* Santa Cruz do Sul: UNISC, 2004. p. 1-47.

ESTÉVEZ ARAÚJO, J. A. *El derecho ya no es lo que era – las transformaciones jurídicas en la globalización neoliberal*. Madrid: Trotta, 2021.

BAUMAN, Z. *Modernidade líquida*. Buenos Aires: Fondo de Cultura Econômica, 2000.

BAUMAN, Z. *Tempos líquidos: viver em uma época de incertidumbre*. Oaxaca: Modus Vivendi, 2007.

BOURDIEU, P. *Poder, Direito y clases sociales*. 2. ed. Bilbao: Desclée de Brouwer, 2001.

CAVALLAZZI, R. L. *A plasticidade na teoria contratual*. 1993. Tese (Doutorado em Direito) – Faculdade de Ciências Jurídicas, Universidade Federal do Rio de Janeiro, Rio de Janeiro, 1993.

CAVALLAZZI, R. L.; FAUTH, G.; ASSIS, V. A. A. Direito à cidade em movimento: uma disputa epistêmica para a eficácia social da norma. In: HANAI, F. Y.; NUNES DE SOUSA, I. C.; BARBOSA, F. D. *Novos direitos: Direito, ambiente e urbanismo*. São Carlos: UFSCAR, 2018. p. 65-74.

CAVALLAZZI, R. L.; RIBEIRO, C. R. Direito à cidade, patrimônio, globalização e justiça social: o caso referência Porto Maravilha no Rio de Janeiro. In: DOMINGUES, J.; PRAGMÁCIO, M. *Memória, patrimônio cultural e a questão urbana no Rio de Janeiro*. Rio de Janeiro: Letra Capital, 2019. p. 206-228.

DARDOT, P.; LAVAL, C. *A nova razão do mundo: ensaio sobre a sociedade neoliberal*. São Paulo: Boitempo, 2016.

DE CABO MARTÍN, C. *Pensamiento crítico, constitucionalismo crítico*. Madrid: Trotta, 2014.

GONÇALVES, M. R. G. *Surrealismo Jurídico: a invenção do Cabaret Macunaíma. Uma concepção emancipatória do Direito*. 2007. Dissertação (Mestrado em Direito) – Faculdade de Direito, Universidade de Brasília, Brasília, DF, 2007.

HOBSBAWM, E. *Globalização, democracia e terrorismo*. São Paulo: Companhia das Letras, 2007.

JARIA I MANZANO, J. Environmental Justice, social change and pluralism, *IUCN Academy of Environmental Law e-Journal*, n. 1, p. 13-29, 2012.

JARIA I MANZANO, J. Constitución, desarrollo y medio ambiente en un contexto de crisis, *RCDA*, v. VIII, n. 1, p. 1-46, 2017.

LEFF, E., *Racionalidade ambiental: a reapropriação social da natureza*. Rio de Janeiro: Civilização Brasileira, 2006.



LOUREIRO, C. F. B. *O Movimento ambientalista e o pensamento crítico: uma abordagem política*. Rio de Janeiro: Quartet, 2003.

NAREDO, J. M. *La crítica agotada: claves para el cambio de la civilización*. Madrid: Siglo XXI, 2022.

PIERRI, N. Historia del concepto de desarrollo sustentable, In: FOLADORI, G.; PIERRI, N. (coord.) *¿Sustentabilidad? Desacuerdos sobre el desarrollo sustentable*. México, DF: Universidad Autónoma de Zacatecas, 2005. p. 27-81.

PIGRAU, A.; JARIA I MANZANO, J. *Del desarrollo sostenible a la justicia ambiental: hacia una matriz conceptual para la gobernanza*. Tarragona, Universitat Rovira i Virgili, 2017. (Relatório do projeto Del desarrollo sostenible a la justicia ambiental). Available from: <https://www.dret-public.urv.cat/en/research-groups/territory-citizenship-sustainability/der2013-44009-p/working-papers/>. Access on: Feb. 10, 2022.

RIECHMANN, J. *Un mundo vulnerable*. Madrid: Libros de Catarata, 2000.

RODRÍGUEZ MARTÍNEZ, V.; SÁNCHEZ BARRETO, R. Reflexiones críticas de la sostenibilidad como construcción políticamente correcta del desarrollo. *Pluriversidad*, [S. l.], n. 4, p. 133-150, 2020. Available from: <http://revistas.urp.edu.pe/index.php/pluriversidad/article/view/2775>. Access on: Apr. 16, 2022.

SANTOS, M. *Por uma outra globalização: do pensamento único à consciência universal*. São Paulo: Record, 2001.

TOMMASINO, H.; FOLADORI, G.; TAKS, J. La crisis ambiental contemporánea. In: FOLADORI, G.; PIERRI, N. (coord.). *¿Sustentabilidad? Desacuerdos sobre el desarrollo sustentable*. México, DF: Universidad Autónoma de Zacatecas, 2005. p. 9-26.

VALDIVIESO, J. La globalización del ecologismo. Del ecocentrismo a la justicia ambiental. *Medio Ambiente y Comportamiento Humano*, v. 6. n. 2, p. 183-204, 2005.

WARAT, L. A. Saber crítico e senso comum teórico dos juristas. *Sequência – Revista de Estudos Jurídicos e Políticos*, Florianópolis, v. 3, n. 5, p. 48-57, 1982.

ZAGREBELSKY, G. *El derecho dúctil: ley, derechos, justicia*, Madrid: Trotta, 1995.

Article received on: 06/13/2022.

Article accepted on: 10/05/2022.

**How to cite this article (ABNT):**

FAUTH, G.; OLIVARES, A. Approximation between Law and sustainability: critical theoretical approaches. *Veredas do Direito*, Belo Horizonte, v. 19, n. 45, p. 137-154, sep/dec. 2022. Available from: <http://www.domhelder.edu.br/revista/index.php/veredas/article/view/2381>. Access on: Month. day, year.