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HUMAN RIGHTS AND RIGHTS OF NATURE: CHALLENGES FOR THE LEGAL SYSTEM, THE STATE AND SOCIETY

DIREITOS HUMANOS E DIREITOS DA NATUREZA: DESAFIOS PARA O SISTEMA JURÍDICO, PARA O ESTADO E PARA A SOCIEDADE

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Abstract
There are several contradictions that are evident with the environmental and civilizational crisis. In this context, the struggle for human rights and the recognition of the rights of nature, particularly in Latin America, are gaining prominence in the political, socio-environmental, and academic fields. This article aims to analyze the sociohistorical process of constitution and implementation of human rights and rights of nature in Latin America. The specific objectives are to highlight aspects of

Resumo
Diversas são as contradições que se evidenciam com a crise ambiental e civilizatória. Nesse contexto, a luta pelos direitos humanos e pelo reconhecimento dos direitos da natureza, nomeadamente na América Latina, ganham destaque nos campos político, socioambiental e acadêmico. Este texto tem como objetivo geral analisar o processo sócio-histórico de constituição e de efetivação dos direitos humanos e dos direitos da natureza na América Latina. Os objetivos específicos são: evidenciar aspectos desse processo sócio-histórico e aprofundar

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this sociohistorical process and to delve into the challenges faced by the state and civil society in achieving these rights. Two hypotheses guided this work: a) the reality of environmental contradictions, obstacles to the effectiveness of human rights, and difficulties in recognizing that the rights of nature are related to anthropocentric views; b) resistance to anthropocentrism marks new perspectives and fields of struggle for human rights and rights of nature in Latin America. Methodologically, bibliographic and documentary methods were used. We concluded by highlighting the flourishing of new constitutional and hermeneutical perspectives in favor of Human Rights and the Rights of Nature.
Keywords: latin american constitutional constructions; rights of nature; human rights; resistance to anthropocentrism.

sobre os desafios do Estado e da sociedade civil para a efetivação desses direitos. Por isso, duas hipóteses nortearam este trabalho: (a) a realidade de contradições ambientais, de obstáculos à efetividade dos direitos humanos e de dificuldades para o reconhecimento dos direitos da natureza estão relacionados à visão antropocêntrica; e (b) a resistência ao antropocentrismo marca as novas perspectivas e campos de luta em prol dos direitos humanos e dos direitos da natureza na América Latina. Em termos metodológicos utilizaram-se os métodos bibliográfico e documental. Concluiu-se destacando o florescimento de novas perspectivas constitucionais e hermenêuticas em prol dos direitos humanos e dos direitos da natureza.
Palavras-chave: *construções constitucionais latino-americanas; direitos da natureza; direitos humanos; resistência ao antropocentrismo.*

Introduction

Since the sociohistorical process of European colonization, Latin America has suffered its consequences: genocide of the original peoples, extractive exploitation of nature, absolute denial of the culture of traditional peoples, and the use of Indigenous labor, later replaced by other enslaved peoples, continuing the process of subjugation and denial of the other and of nature.

On the other hand, there have been multiple experiences of resistance on the part of traditional peoples (Indigenous peoples and, later, *quilombolas* as well), which is still happening today in broad processes of resistance involving cultural, political and other elements. It is worth highlighting, however, the resistance to anthropocentrism—centered on European man—which has been and continues to be present today with new perspectives and fields of struggle, so that the old concealments and denials have given way to realities and struggles for the cultural and social appreciation of the oppressed people of our Latin America.

In this process of struggles by oppressed peoples and populations, the banner of human rights has gained prominence since the last century, first raised by Europeans themselves, but then also taken up by those who also experienced the consequences of human exploitation, especially as a result of the advance of capitalism.

The struggles for human rights had a strong correlation with the struggles already being experienced here, because they were, after all, about affirming values that were also felt to be necessary in this region: freedom, the guarantee of life and better living conditions, the fight for equality in contexts of oppression and inequality.

In the 20th century, however, another condition became apparent to humanity, even if it had been foreseen by some in earlier times: the unbridled exploitation of nature in the pursuit of economic growth. The same quest that guided the actions of colonizers at the end of the 15th century and in the following centuries around the world, but which would lead human beings to suffer its consequences, which are becoming increasingly evident, leading to an urgent search for significant changes in the development model, which is still contested by those who continue to benefit from the model of exploitation of human beings and nature.

Faced with this reality of environmental contradictions, the native peoples of Latin America have a history to learn from those who adopt a modern, anthropocentric education: a way of life and relationships in harmony with *Mother Nature*.

It is in this recent process of contradictions and struggles involving human rights and the more recent issue of the rights of nature in Latin America, and especially in Brazil, that the subject of this research was defined: human rights and the rights of nature in Latin America. The general objective is to analyze the sociohistorical process of constitution and implementation of human rights and the rights of nature in Latin America. The specific objectives were, firstly, to highlight aspects of this sociohistorical process and, secondly, to delve into the challenges faced by the state and civil society in making these rights a reality.

The following hypotheses are put forward: (1) the reality of environmental contradictions, obstacles to the effectiveness of human rights and difficulties in recognizing the rights of nature are related to the anthropocentric vision; and (2) resistance to anthropocentrism marks the new perspectives and fields of struggle for human rights and the rights of nature in Latin America.

In methodological terms, we worked on bibliographical and documentary research. In the first part, the analysis will be based on theoretical references that more directly highlight this reality: Mouffe, Gudynas, Leff, among others. In the second part, it was decided to work fundamentally on the basis of Niklas Luhmann's theory of autopoietic systems, which should favor, in the third part of the text, a correlation with new Latin American hermeneutical and constitutional

perspectives on improving the realization of human rights, which implies the recognition and implementation of the rights of nature.

1 The reality of human rights and the rights of nature

In view of a set of regulations in favor of human rights, a question seems to arise: why, in the face of constructions that indicate the result of humanity's sociohistorical structuring in favor of a common good and human dignity, do so many obstacles appear to their observance and implementation? A first element that can help us understand the problem is the complexity of Law—and, consequently, of human rights—which is expressed in various aspects: from the political perspective of Law, the plurality of conceptions, which will lead to different interpretations and, therefore, to different and often opposing positions and decisions. In addition, there are disputes over certain rights between the different actors in society, which occurs in contexts of power articulations, inequalities and, at the same time, the challenge of fulfilling society's expectations for the realization of justice.

Since the reality of human rights is related to all of these aspects – which are only pointed out here as indicating, and not excluding others – they will be present in the analysis of new realities or new rights, especially when they highlight the limits of anthropocentrism, as is the case with the affirmation of the rights of nature, as we will see below.

1.1 Human rights: between norms and the challenges of broad implementation

A first aspect to be highlighted is that human rights took on a shape close to the one we work with today in the modern period; initially with the affirmation of rights linked to the liberal political perspective, with Locke (1994) highlighting the rights of the individual which, for him, would precede the state: life and property. Then, in opposition to this individualist perspective, the socialist political vision affirmed the prioritization of social and collective rights. It is therefore important to emphasize that human rights were initially formed from this process of social and political constructions and contradictions in modern society in Europe; debates and struggles that were expanded to other parts of the world, as demonstrated by the Inconfidência Mineira and the Conjuração Baiana, revolts in 18th century Brazil.

However, the reality and the struggles against oppression in Brazil go back a long way: against colonization, against the exploitation of traditional peoples and also against slavery and for freedom, as demonstrated by the struggles of leaders like Zumbi dos Palmares, back in the 17th century.

This initial linking of the history of the affirmation of human rights to social and political contradictions, but also to political struggles and positions, whether expressing liberal values or defending more social and collective values, highlights the political character of human rights in their modern genesis, in Europe and in other parts of the world.

What does this original political character show? Mouffe (2011), dealing with the political and its fundamental characteristic, points out that it is "adversarial", which is already shown in the composition of values that is formed around human rights, coming from opposing political projects: liberalism and socialism.

However, with the articulation and recognition of rights as basic to human, social, political and legal relations with each and every human being, international and national organizations have consolidated the moral and normative basis of human rights, making them ethical and political references—when they are linked to the different declarations—and obligatory—when these rights become protected by international legal instruments, such as covenants, and when they become part of most national constitutions.

However, the normative integration of states into their constitutions has not been enough for human rights to become an effective reality for everyone. So, what are the main factors that will interfere in this process?

As they are surrounded by political disputes, the adversarial nature will be present throughout the process of approval, observance and implementation of human rights. Thus, even after regulatory approval, disputes continue in the epistemological field around the understanding of these rights.

Thus, various conceptions of human rights are present in society, some of which are far removed from the actual reality, such as the one that points to the correlation between human rights and the "defending of criminals", which has the clear objective of denying or restricting the advancement of human rights in society. Other views can be presented as limiting, those that prioritize civil and political rights over economic, social, cultural and environmental rights. Others include conceptions that seek to highlight the broad and integral nature of the field of human rights, articulating all these rights.

This political dispute over the broad or narrow implementation of human rights is mainly related to economic interests, which often translates into attempts

to maintain privileges and historical exploitation (of both human beings and nature). After all, the implementation of all human rights for everyone would imply the transformation of social reality, with the overcoming of extreme inequalities, leading to a better distribution of society's resources, starting with effective access to quality education, health, culture, etc.

Therefore, the disputes surrounding broad or restricted access to human rights are present in society, reproduced in academia, in political choices and disputes, in the state and its structures, including Congress and the judiciary.

1.2 The contradictions surrounding nature

In the debates on human rights, there is a very clear defense that the growth of poverty and hunger, the greatest offense to the continuity of life, is the result of social inequality and, in this context, anthropocentrists argue that these social impacts can be solved by strengthening the exploitation of nature. In this sense, Gudynas (2019, p. 81) recognizes that in Latin America this idea—"the need to exploit nature in order to reduce poverty" (free translation)—has contaminated more progressive public administrations to the point of making environmental guarantees more flexible, as is the case with the growing authorization of mineral exploration in Brazil, the construction of hydroelectric plants to the detriment of sustainable alternatives, such as the production of wind energy, which, even considering the 2023 increase, provided by the National Electric Energy Agency (ANEEL), 5.1 gigawatts is still very low in view of the current situation of the ecological crisis in Brazil.

This stance, which has been tried out by various initiatives, has not been successful; quite the opposite, it has resulted in growing environmental degradation, damage to biodiversity, mining extraction and, therefore, global climate change is reaching a frightening level, regardless of these alternatives for increasing the exploitation of nature in the name of reducing poverty and hunger. In this scenario, the UN reports on climate change (2023) set out in the Intergovernmental Panel on Climate *Change* (IPCC) recognize that the increase in the average temperature is on the rise and, consequently, denounce that the initiatives are bringing irreversible losses to the field of protecting life, humanity and nature (UN, 2023). In this sense, the latest IPCC recognizes that around 3.3 billion people are vulnerable to the consequences of global warming, demonstrating that, in this scenario, hunger features prominently (Beghin, 2023).

The scientific academic debate on whether nature should be recognized by the state as a subject of intrinsic rights has been gaining momentum to the same

extent as the environmental crisis has grown. In this context, the rights of nature in Latin America have gained prominence, resulting in their inclusion, expressly recognized, in the Constitutions of Ecuador (2008) and Bolivia (2009), and, in Brazil, in various municipal organic laws.

Municipalities that have already included this recognition include Bonito, in Mato Grosso do Sul (2017), Paudalho, in Pernambuco (2018), Florianópolis, in Santa Catarina (2019); Serro, in Minas Gerais (2022); and Guajará-Mirim, in Rondônia (2023). Also in Brazil, but at the state level, bills are being drafted to include the corresponding rights of nature in the constitutional text, in the states of Santa Catarina, Pará, Paraíba and Minas Gerais, and to recognize the rights of rivers, as is the case with the Laje river, in the municipality of Guajará-Mirim (RO), in 2023. All these initiatives share the understanding that nature has intrinsic rights.

It is thought that these initiatives require, first of all, the recognition that all living beings are worthy and thus bearers of intrinsic human and non-human rights. This reality is perceived by various scholars on the subject as an important step in the resistance of the Latin American people to anthropocentric colonialism, whose core postulates are recognized by Boaventura de Sousa Santos (2018) as the epistemology of the Global South. Initiatives investigated in various studies, such as Leff (2012), Gutierrez and Prado (2013), Acosta (2016), and Rios (2020).

In the field of environmental public policies, there are several other studies developed from other perspectives on this powerful public instrument for realizing rights, whose common challenge is to rethink public policies from the perspective of conserving and preserving all life, human and non-human. By way of example, it is worth recalling studies by Leff (1998), who defends the idea that only a new rationality and way of thinking is capable of broadening the human view of the complexity of the environmental crisis and thus translating new perspectives for protecting nature into public policy, and by Gudynas (2019).

In this field, a scientific study—in the 1940s/1950s—carried out by Leopold (1966) in the United States, which was first published in 1949, highlights the ethics of the land, narrating the author's experience in his *Cabana*[1], confirming in the 21st century that science, although it has made an effort, has failed to have an impact with alternatives and results in terms of reducing the environmental crisis, which is currently reaching the peak of certainty that we are heading towards global collapse.

1 A rural space chosen by the researcher to calmly observe natural events, whose hypothesis was to discover how important the Earth's metabolism is for the preservation and conservation of all life. In this sense, it can be said that this is one of the first studies on the importance of the rights of nature for the conservation, defense and preservation of the planet.

This is not intended to be a theoretical reading on land ethics, but it can be said that recognizing the rights of nature requires, first of all, recognizing that a new literacy is needed to recover the knowledge of how to live with the land. In the case of Latin America, this was deliberately excluded from its human and cultural formation. The original identity was excluded by colonialism, leading to the belief that society is made up of what anthropocentrism has determined and, in this way, one has the feeling of being colonized, in which one thinks not of what forms society, but of what one has been told it is made up of.

In this field, the struggle for human rights is historically marked by the same anthropocentric idea, making it difficult to build alternatives that can overcome, for example, the structural racism that plagues the new continental coexistence. In this respect, Ferdinand's (2022) reading is fundamental. In a process of conceptual recovery, Grosfoguel, Costa and Torres (2020) invite people to understand how much their identity has been destroyed and offended by what they call the excess of anthropocentric modernity in history.

However, this struggle to defend the identity and dignity of all life—nature and humanity—was the subject of dialogue for Pinto, González Botija and Rios (2023), whose direction was conceptual space in the field of environmental epistemology. On this occasion, the authors argue that the dialog between nature and humanity is a fundamental challenge both in understanding ecological challenges and in strengthening the struggle for the quality of all lives. This reality, historically pressured by liberal economic growth, results, for example, in the loss of water and soil quality and, consequently, of food and production, and confronts yet another step in the recovery of the dignity and rights of humanity and nature, as a condition for the continuity of life on the planet, on Earth.

For Leopold (1966), there is an urgent need to put a brake on the freedom to act while fighting for existence. In this reference is the idea of the supremacy of the anthropocentric over the identities of Latin America, which has been seeking alternatives to the unprecedented environmental disaster on the continent, in a daring process that challenges the anthropocentric model, based on the unprecedented exploitation of nature. This model under construction is based on the idea that nature and humanity can, together, build viable alternatives for protecting life with legal security and sustainability, as Boff (2016) and Sachs (2004) point out[2].

2 On the subject of sustainability, Boff shifts from anthropocentric thinking, sustainability as economic growth, to a systemic vision based on the cosmology of life. Sachs defines that non-destructive sustainable growth requires thinking in a systemic way, encompassing the social, environmental, territorial, economic and political pillars and, in this context, making the transition from the unsustainable to the sustainable, with the absence of one pillar jeopardizing this transition.

2 Human rights and the rights of nature: a political and legal construction

It was pointed out earlier that the fact of having normative recognition of human rights, although an important factor, is not enough to consolidate these rights. Their implementation—which is the subject of social, political and legal disputes—has entailed advances and setbacks, depending on society's political choices, but also often requiring political agreements to make public policies viable and the necessary resources to guarantee access to these rights.

In this political dispute over the expansion or denial and restriction of access to human rights, which in societies with a history of colonial exploitation, in conjunction with national and local elites, such as Brazil and Latin America, and with a legal system that is always open to different interpretations, the Judiciary has been a strategic space for these disputes, with some wanting to maintain privileges and usurpations—for example, of land—and others fighting to regain or conquer their rights.

Many legal thinkers, linked to certain theoretical currents, such as legal positivism, historicism or even dialectical materialism, brought their contributions to the problem of the search for conflict resolution, but still from the perspective of a modern order and conceptions, such as the link to anthropocentrism. However, since the second half of the 20th century, when the problem of complexity (Morin, 1990) and uncertainty (Prigogine, 1996) became evident, a thinker, Niklas Luhmann, who was attentive to these multiple contributions from different areas, developed a theory that, in some way, sought to offer new possibilities for the various systems of society in this contemporary context of complexity and uncertainty: the theory of autopoietic systems (Luhmann, 1991). It would be a theory with a claim to universality, and would therefore apply to all social systems, including political and legal systems.

However, could the Luhmannian theory provide elements for the challenges we are facing today in the search for the effectiveness of human rights and the recognition and observance of the rights of nature? We will now consider some of the central points of this theory in order to answer this question.

A first aspect to be considered is the relevance of systemic differentiation, i.e. the system, in order to distinguish itself, needs to establish a very specific difference: the difference between system and surroundings[3].

3 "*Die Differenz von System und Umwelt*". The German term *Umwelt* can be translated as "environment" or "surroundings". In this text, we have chosen to use the translation "surroundings" to avoid possible confusion with the use of the term "environment" in relation to environmental issues.

Drawing on the analysis of mathematician George Spencer Brown (1969), Luhmann believes that there is a universality in the operation that separates the internal and external parts of the difference. Every value must be situated by the observer, whether in the internal or external part of the difference, which means being able to situate each and every value produced in society, in the system or in the externality of the difference.

To better understand these indications around systemic differentiation, it is important to point out that Luhmann's theory considers social systems and psychic systems as meaning-producing systems. For him, society is made up of communications, all communications (Luhmann, 1990). So, what will each system produce through its operations, established on the basis of a specific binary code? New communications.

The autopoiesis or self-referentiality of the system—a reference that the author recalls from two biologists, Maturana and Varela (1980), who first pointed out autopoiesis in the study of cells—will be integrated by Luhmann into the analysis of social systems, considering that these too receive nothing from the outside in their process of self-differentiation and systemic creation, their final elements being communications, which are specific to each system and creations of social systems.

For Luhmann, systems are established and differentiated in view of a very specific function, which allows them to be uniquely differentiated in the world, in society. The functional specificity of each system can be inferred from the indication of some of them: the political system, the economic system, the legal system, the art system, science… And so on.

The binary code established by each system in its differentiation indicates the focus, the lenses that will make it possible to situate each value or reality as something that is dealt with by the system (in the internal part of the difference) or not (situating them, in this case, in the external part of the difference, in other words, in the surroundings). Thus, in the surroundings will be all the realities under which the system, in principle, does not operate, being blind to all external reality and operating only with what is related to its binary code.

This binary code will always have a positive and a negative value. Thus, while in the political system the binary code will be: power/not power or, as Luhmann presents at other times, as situation/opposition, in the economic system it will be: having/not having; and in the science system: true/false. For the legal system, Luhmann presents the binary code: "*Recht/ Unrecht",* which, in a more literal translation, can be indicated as "right/not right", but can also be indicated as

"lawful/unlawful" or as "legal/illegal". Thus, each system, with its binary coding, can and should observe the world, but attending only to the values of its code and being blind to any and all other values.

After indicating a few points related to systemic differentiation, it will be relevant to deal with the system's operational perspective. For Luhmann, the system is operationally closed, which means that only a specific system carries out its operations and that no other system can do so. Thus, Luhmann (1990) states: only Law creates law; meaning that only the legal system can produce communications specific to it, in this case, communications with legal consequences.

It should be noted that with the specific communications of the legal system, which are the ultimate elements of the system, the system seeks to continually update itself, at the same time as it seeks to update society's behavioral expectations with regard to the Law and the legal system.

However, while the complexity of the system will be an "organized complexity" established by each system, the complexity of the surroundings, of the world, will be a "disorganized complexity". In this sense, the system's complexity will always be an attempt to reduce or organize something more complex. However, paradoxically, each new communication of the system increases its complexity and, consequently, the complexity of the world, since each system is, more properly, "the system/surroundings difference" (Luhmann, 1991; Pinto, 2016).

Now, if the system does not have the same degree of complexity as its surroundings and if, on the other hand, the system must try to maintain its connection with society, seeking to respond through new communications to society's possible demands or expectations, Luhmann will open up a fundamental perspective in his theory of autopoietic systems: cognitive openness.

It should be noted that this cognitive opening will represent an opening to the world, to other productions in society, when the system does not have the necessary conditions in its structure or previous productions to respond adequately to some demand from society. In this case, the system can and must open itself up to other productions in the surroundings, which in some way can serve as "information" to be worked on and analyzed, according to Luhmann, through the method of "functional analysis". Having carried out this cognitive opening procedure, the system selects and decides, based on the meanings guided by its own differentiation, that is, based on its own difference and its binary coding, how that information will be considered by the system, which ultimately maintains its self-referentiality and its autopoiesis, but in connection with its surroundings, with the world.

After this brief review of some of the central points of Luhmannian theory, it is possible to return to the question posed earlier about the potential of this theory to meet the challenges in relation to the effectiveness of human rights and the recognition and effectiveness of the rights of nature. However, like Kelsen and neopositivism, he continues to analyze Law from the perspective of positive law.

However, the most innovative aspect of Luhmann's thinking lies in the fundamental interconnection between the system and its surroundings, in other words, the world, which is achieved through the difference in meanings established by the system. Therefore, the self-referentiality of social systems, including the legal system, in no way means absolute autonomy, as the system is required to be constantly linked to reality and current issues in society, otherwise it will no longer respond to society's expectations and its function will be shaken.

This represents, on the one hand, a great responsibility for those who operate the legal system, for the "legal staff", for those who effectively decide on the demands and controversies brought before the courts, since it demands of them this "cognitive openness", this continuous capacity to open up to the new realities of society. On the other hand, for civil society, it represents the legal community's recognition, including in the Luhmannian theory, which has marked contemporary legal thinking, of the possibility and need for society's struggles for progress in relation to law, human rights and new rights, such as the struggle for recognition and observation of the rights of nature, to always be on the radar of the legal system or the judiciary and the other systems of society, with a view to continually updating their functions and potentials.

2.1 The "cognitive opening" in the legal system and the new constructions and struggles of civil society

The "cognitive opening" of the legal system occurs in various ways. It occurs when judges and judicial bodies seek new contributions to broaden their hermeneutical references or bases for understanding the Law. They do this when they are faced with demands with new elements, what the English and North American doctrines usually call "new cases", on which the Judiciary and/or the judge are still forming their convictions. This occurs either due to a lack of consolidated case law on a given topic, or due to advances in the social practices of a given society, which cause a portion of these professionals—who have the role of deciding on the demands presented to the Judiciary—to look for new elements, new bases on which to base their decisions.

In this way, "cognitive openness" has great breadth; it can occur in relation to doctrine, encompassing the various branches of legal science, in this case, especially the more theoretical, philosophical fields and portraying the transformations of society and the Law; just as it can occur by opening up to other knowledge, other areas, organizations or professionals who work or have mastery over a subject in question. This is the situation experienced in the public hearings held by the Judiciary, especially the STF, in Brazil.

The STF organized and held its first public hearing (PH) in 2007, on embryonic stem cell research, "to support the judgment of ADI No. 3.510" (free translation). Since then, there have been 38 public hearings on a wide range of topics, including, in addition to this first one, PH No. 3, in 2008, to discuss "the possibility of terminating pregnancy in cases of anencephalic fetuses"; PH No. 7, in 2012, to discuss "the ban on the use of asbestos"; PH No. 10, in 2013, to discuss "burning in sugarcane fields"; PH No. 19, in 2016, to discuss the "New Forest Code"; PH No. 34, in 2021, to discuss the "National Special Education Policy"; and PH 38, held in March 2023, to discuss the "civil liability of providers for illegal content generated by third parties"; among others of great relevance (Brasil, 2016, free translation).

It should be noted that in these hearings, depending on the topic, space was opened up for entities and specialists to participate and speak, for representatives of public authorities and civil society, and it was also possible, at least in some cases, for entities and specialists who were not registered or selected to speak at the hearings to send in their contributions. In this way, the aim was to open up space for those who in some way had significant contributions to make on the issues, but in the end, and close to what the Luhmannian theory points out, the last word was the Judiciary's on how it would start to decide certain cases.

These realities reaffirm that the Law and the legal system—and therefore the judiciary and its operators—must be attentive and open to the new realities of society. Attentive to demands for improvements in access to rights and, in this case, especially access to or the effectiveness of human rights, especially economic, social, cultural and environmental rights, but also to certain groups, classes or realities that continue to be the preferred victims of racism, sexism and exploitation—of human beings and nature—by part of the powers present in society. Powers such as the economy and its neoliberal concept of weakening the state and, consequently, the social, prioritizing the market.

3 New constitutional and hermeneutical perspectives

Since the 1970s, a number of constitutions have included environmental rights in the list of fundamental rights, such as Brazil, which guarantees that "everyone has the right to an ecologically balanced environment [...] essential to a healthy quality of life [...]" (Brasil, 1988, free translation), and Chile, which affirms "[...] the right to live in an environment free from contamination" (Chile, 1980, free translation). And in the 21st century, Ecuador (2008) and Bolivia (2009) recognize that, in addition to humanity, nature has intrinsic rights.

Little if anything is known about the impact of these efforts on the protection of nature and humanity. On the contrary, there are growing voices around the world about the increase in predatory actions on Planet Earth, focused above all on the exploitation of nature, the increase in hunger and the extractive model of production. This notion has not distanced itself from the reductionism of recognizing values in economic terms, forgetting that nature has multiple values and that, in the ecocentric logic, recognizing its intrinsic values is a condition for understanding its link to the environment, to the ecosystem.

On this neuralgic point, the recognition of intrinsic values in nature, several authors have shown that it is unnecessary for science to continue advocating the classic idea that nature is an object. Gudynas (2019, p. 47, free translation) states that these values "[...] are intrinsic or inherent to living beings and their habitats, and are therefore independent of valuations based on the commercial utility of natural resources". In the same vein, Leonardo Boff, Alberto Acosta and Enrique Leff have developed research of great scientific importance.

This debate on the recognition of the intrinsic rights of nature, with Latin America as a backdrop, goes back to a short overview of the construction of modern constitutionalism (19th century) through to Latin American constitutionalism (20th and 21st centuries). With regard to the former, it can be said that the logic of homogenization and the struggle for universalization marked its construction process. The 20th century marked a new era with the welfare state, based on the logic of state intervention in the economic sphere and the idea that the Constitution has normative force over other rules, with direct effectiveness in the realization of collective, social human rights, represented by the Mexican Constitution (1917) and the German Constitution (1919).

In this way, the theory of the normative force of the Constitution was born with the studies of Konrad Hesse (2009), giving strength to the supremacy of the collective and social character and recognition, in the Brazilian case, with

the inclusion, in the constitutional text, of specific rights of Indigenous peoples and *quilombolas* and the right to the environment in the list of fundamental constitutional rights.

Among the contents of the guiding logic of these changes, in addition to the inclusion of new rights and the strengthening of the normative force of the Constitution directly linked to the effectiveness of constitutional norms, there is the historical resistance of more than 200 years of a people to Western colonialism, guaranteeing greater protection for indigenous peoples and Afro-descendants and, in the same direction, the environment.

However, this logic of protection has not been able to have an impact on protecting the planet and thus reducing the environmental crisis. It is in this context that the Constitutions of Ecuador (2008) and Bolivia (2009) stand as examples of a new constitutional moment, expressly recognizing in their respective texts that nature is the bearer of intrinsic rights.

Thus, the scenario of resistance and struggle of the Latin American people is taking on new contours, distancing itself from colonialism, a form of exploitation of labor, slavery, genocide and extractive exploitation of nature, giving life to the emergence of a plurinational state. This is being built step by step, giving life to and reinforcing historical resistance to the colonial model.

In this context, Article 14 of Convention 169/1957 guarantees the right of indigenous and tribal peoples to their territories, a pluricultural state (OIT, 1957). In the same vein, the Brazilian Constitution of 1988 recognizes the rights of indigenous peoples, a multicultural State, and finally, Ecuador and Bolivia have gone a step further, recognizing the plurinationality of identities in the same territory along the path of recognizing that nature is a bearer of rights.

Finally, Gudynas (2019, p. 52, free translation) reminds us "that this step towards the rights of nature does not negate or alter the content related to citizens' rights to a healthy environment, known in general as third generation human rights".

Final considerations

The aim of this text is to highlight the sociohistorical process of contradictions and struggles involving human rights and the rights of nature in Latin America, as well as the challenges faced by the state and civil society in realizing these rights.

Drawing on theorists who point out the adversarial perspective of the struggle for human rights, such as Chantal Mouffe, the link between human rights and the

realm of politics, and consequently with the other powers in society, is evident. This conflictual relationship is at the root of the conflicts over whether or not these rights are realized, which can also be seen in relation to the rights of nature.

It was also pointed out that this conflictual perspective was present in the anthropocentric colonialism to which Latin America was subjected, which led to an offended Latin American identity, as it distanced itself from the values of traditional peoples.

The resistance pointed out was precisely in the sense of rescuing these values of solidarity and valuing nature, distancing ourselves from the path of exploitation of human beings and nature.

However, it was pointed out that these contradictions are still present and are still challenges to be overcome. In this sense, the third part of the text sought to highlight the theoretical foundations of Niklas Luhmann, who, with his theory of autopoietic systems, updated the perspectives of neopositivism and established new challenges for social systems, including the legal system, particularly highlighted in this study.

With his cognitive openness, Luhmann offers more than one possibility to systems, he offers a requirement to connect with society, with the world, which is undoubtedly an element that makes the legal system—and the political system in particular—attentive to the realities present in society, such as the struggles and movements around the realization of human rights and the rights of nature.

This requirement for systems to be connected to the world can be seen in the analysis of the new Latin American constitutional constructions, which certainly highlights new hermeneutical perspectives, in order to consider society's expectations for human rights and the rights of nature as interconnected realities, an aspect that needs to be relearned and whose implementation is seen as the last hope for guaranteeing a future for humanity on Mother Earth.

In this way, the two initial hypotheses of the research were evidenced and confirmed: that the reality of environmental contradictions, obstacles to the effectiveness of human rights and difficulties in recognizing the rights of nature are related to the anthropocentric vision; and that resistance to anthropocentrism marks the new perspectives and fields of struggle for human rights and the rights of nature in Latin America.

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