FROM FORESTRY LAW TO ENVIRONMENTAL LAW: A HISTORICAL RESCUE OF JURIDICAL PROTECTION OF THE ENVIRONMENT

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Abstract: The protection of the environment and the understanding of its function for the maintenance of life are indispensable for the realization of the constitutional project of strengthening of the State of Socio-Environmental Law. The aim of this article is to contribute to a better understanding of the aspects involved in this issue, this paper deals with the development of environmental legal protection, demonstrating the historical origin of Forestry Law from a brief comparative perspective and reconstructing its development in the planning Brazilian law, besides presenting the paradigm shift that occurred with the inclusion of new objects of protection giving rise to Environmental Law and thereby redefining the concept of State from the recognition of new rights and reinterpretation of previously recognized rights. For this purpose, it was used of legal dogmatic, the review of Brazilian literature and legislation.

Keywords: Environment; Forestry Law; Environmental Law; Constitutional greening; Environmental legislation.

1 Introduction

Society is constantly changing and the law, to meet its needs, tends to transform itself, being characterized as essentially changeable. The complexity of environmental problems in contemporary times points to the need to develop new essential and urgent environmental protection measures, measures that are legally insofar as they aim at guaranteeing fundamental constitutionally protected rights.

In Brazil, the ecological movement of the 1970s inaugurated a new moment in the history of environmental protection, promoting paradigmatic changes with regard to the scope of environmental protection and exercising a direct influence on the constituent process, while allowing the recognition of the right to the healthy environment as a fundamental right and the introduction of a chapter on the Environment in the Title reserved for Social Order in the Federal Constitution of 1988.

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In this sense, the present work questions how it is possible to build the legal-constitutional protection of the Environment in a development model capable of considering future generations and the sustainability of natural resources. The provisional answer to this question lies in the delimitation of a new state paradigm, the State of Environmental Law.

To do so, initially the historical origin of Forestry Law will be demonstrated from a brief comparative perspective, as well as its development in the Brazilian legal system, as well as demonstrating the paradigm shift that occurred with the inclusion of new rights object of legal-constitutional protection, giving rise to Environmental Law and thus redefining the concept of State based on the recognition of new rights and reinterpretation of previously recognized rights.

2 Brief comments on the Forestry Law paradigm in Comparative Law

Comparative Law offers means for a better understanding of the process of construction of Law through legislative activity, so that for the proper conception of the object of study of the present work, its historical and spatial context is essential. Thus, in this sequence, the origin of the legal protection of forests in different countries will be summarized.

According to Pereira (1950) the history of Forestry Law is condensed with the economic history of wood, its abundance and crisis, demonstrating that concerns about forests began when people began to feel the consequences of their lack, reflected in the climatic effects, in agriculture and the disappearance of raw materials for the needs of industrial society.

According to the author, the origin of Forestry Law is closely linked to the physical importance of forests and the legal protection afforded to trees in all civilizations since ancient times, with references to religious veneration that was made to forests and sacrifices to gods in all points on earth, establishing sanctions in favor of their protection. (PEREIRA, 1950, p. 17).

The author mentions that forest protection in Ancient Greece was restricted to fire, considered a criminal offense that could be punished. It also records imperial recommendations from various Chinese dynasties on the spread of forestry making this country a reference in the study, analysis and development of its scientific knowledge, as well as Japan, which instituted four higher schools of forestry, giving international importance to the matter.

The Law of the XII Tables, in 450 BC had provisions to prevent forest devastation. According to Venosa (2016, p. 30), “If someone, without reason, cut someone else's trees, let him be condemned to indemnify at the rate of 25 *asses* per cut tree”, paving the ways for the construction of forest protection in Rome, which also had a law against arsonists, such as Medieval Italian Law, where forest fire was considered a very serious crime.

In the French Law, the various laws demonstrate the special protectionist concern for forest resources, establishing strict penalties as corporal punishment in fire crimes, influenced by German Law, which in the Middle Ages, punished the arsonists with the death penalty, a model

also adopted by the Austrian Criminal Code (PEREIRA, 1950). Thus, throughout history, it is observed that the forest has become the object of legal protection, by the most varied peoples, always through the penal punitive bias. However, with the growth of the population, the development of society and the consequent valorization of forest resources, which are fundamental to the economy, forest protection restricted to the criminal sphere remained insufficient. Given this scenario, Osny Duarte Pereira explained:

> It was understood that punishing destruction was not enough. Coercive provisions were needed to apply means to conserve and develop this natural wealth, indispensable for the maintenance of life in urban areas and for the very survival of mankind, avoiding the danger of hunger, droughts, floods, climatic variety and other damages known to be linked to the devastation of the jungle. (PEREIRA, 1950, p. 15).

Legislation for the rational use of land emerges, establishing rules to promote the best use of the land, using new techniques from the evolution of biological sciences and ecology, which together with forestry have established forms of extraction that would guarantee the maintaining fertility and stabilizing forest resources.

Such techniques became complex due to the lack of knowledge of these sciences on the part of their recipients, which led the State to recognize the need to establish a specialized administrative department to assist the population in the implementation of this new cultivation model, as well as responsible for the production of a codified forest legislation.

It is important to note that the content of these legal diplomas was not uniformly instituted and that they received direct influence from each country's economic policy. This state intervention varied according to the paradigms of their respective constitutions, adopting individualist or socialist tendencies in the regulation of the exploitation, conservation and reproduction of forest resources, including in private lands (AHRENS, 2003).

In England, the Magna Carta of 1215 extended the rights of the nobility over the forests. In France, the creation of forestry courts contributed to the emergence of more specific forestry laws such as the enactment of *Ordonnance dês Eaux et Forêts*[1] in 1669 by Minister Jean-Baptiste Colbert (DUBY, 1993). Although there has been a continuity in the development of other international laws on the protection of forests, it should be noted that in the meantime Brazil has already had a strong expression in the wood exploitation scenario, as will be discussed below.

[1] The Ordinance of Louis XVI, known as the Ordinance of 1669, arose out of the concern of Jean-Baptiste Colbert with the scarcity of wood in the Kingdom for the construction of vessels. Thus, Louis XIV promulgated an order of reform in the Waters and Forests with the objective of controlling the subjects' access to natural resources, unifying forestry laws, reorganizing administration, specifying the responsibilities of royal officials, and imposing a uniform mode of forest exploitation on the entire kingdom. It is for this reason that the Ordinance of 1669 is sometimes considered the first Forest Code (CARNEIRO, 2011)

3 Historical evolution of Forestry Law in Brazil

The relevance given to the Environment has evolved over the centuries, so that it has only recently been conceived as indispensable for the maintenance of life. Initially, anthropocentrism was legitimized, with the human being as the center of everything, the measure of all things, and in this context, great importance was not given to the environment itself, the object of human exploitation as if there were no limits to be respected. Although the first rules regarding the protection of forests by the most varied peoples have their genesis in ancient times, currently the term Forestry Law is unusual in the legal environment, despite being the embryo of Environmental Law, which only came to be expressed in the second half of the century XX.

In Brazil, the adoption of protectionist rules about forests comes from the Brazilian colonial period, when the Portuguese Crown began to restrict their property rights. Since then, several laws have been created as a way to intervene in the way man explores the environment involving ecological, political and economic issues.

For a better understanding it is necessary to reconstruct the substantial milestones of their evolution, establishing in a laconic way a historical dialogue indicating their advances and setbacks.

3.1 Colonial Period

In Portugal, the construction of Forestry Law followed the characteristics of the rules observed worldwide, initially prescribing matters related to fire cases. However, with the commercial development of wood, especially the *Pau-brasil* (*Paubrasilia echinata*), the Portuguese colonizers expanded the forest heritage regulation regime, demonstrating since then that forests were considered important economic assets and therefore the need to establish it as an object of judicial protection in *terrae brasilis*, not for the purpose of preservation, but as a value of exclusive interest to the public power, it was the "Pau-brasil Regiment" (PEREIRA, 1950).

At the time of the discovery of Brazil, the Afonsine Ordinances enacted in 1446 by Dom Afonso V were in force in Portugal, considered the first complete code of legislation to appear in Europe after the Middle Ages, being subsequently replaced by the Manueline Ordinances, published in 1514 and promulgated in 1521 (MAGALHÃES, 2002).

In 1530, the Portuguese Crown instituted the hereditary captaincies in Brazil as a measure to combat the smuggling of wood common at the time and to maintain the colony's territorial extension. Thus, natural resources were protected due to economic reasons, due to the high consumption of wood as fuel and other utilities, in addition to favoring the systematic occupation of Brazil.

According to Dean (2006), in the colonial period the scarcity of wood in the royal shipyards of Lisbon, led the Portuguese Crown to issue royal orders in 1698, which limited the

private right of the captain-majors to explore and negotiate the wood extracted in Brazilian territory, favored the central interest of the Portuguese, an attitude essential to the defense of the Empire and the increase of its trade. Thus, the Crown declared all naval wood to be "hardwood", that is, of its property, including the so-called "Naval Reserve Areas".

In the same vein, Pereira (1950) states that on June 11, 1799, Judge Francisco Nunes da Costa, who held the position of "Inspector of the Royal Courts", established the first regiment of logging in Brazil. This diploma established strict rules for the logging, in addition to other restrictions and was strengthened with the instructions of José Bonifácio in 1802, which determined the reforestation of the Brazilian coast.

The legal concern with forests, which began with the Brazilian colonization, was established by the Portuguese Crown, with a view to the metropolitan needs to consolidate the colonial empire, while the policy built over the economic development cycles, has always persisted in an articulation elitist, patrimonial and focused specifically on capital accumulation, carried out without any care or concern with forest resources, in an inexorable search for development.

In this way, the colonial model promoted a destructive and unproductive economy, compromising the regime of large concessions of land promoted by the sesmarias that reached the Empire weakened, generating political instability and favoring the weakening of forest protection.

3.2 Imperial Period

The Brazilian imperial period was marked by the end of the sesmaria regime on July 17, 1822 and contributed significantly to the state monopoly on timber trade, motivated by the valorization of the export of *Pau-brasil*. In this context, there was the enactment of the Criminal Code of 1830 that made illegal logging a crime. In 1886, the enactment of Law no. 3,311 established the fire as a special crime. Thus, it became evident that the protection of forests was restricted to the criminal sphere.

The Imperial Constitution of Brazil in 1824 was silent on environmental matters and maintained the classic conception of property as a general right, of a perpetual character, enjoyed regardless of the way in which this right is exercised, featuring an obviously liberal model, as noted in its article 179, XXII:

> The inviolability of Civil Rights and Political Rights of Brazilian Citizens, which is based on freedom, individual security, and property, is guaranteed by the Constitution of the Empire, as follows:
> (...)
> XXII - The Right to Property is guaranteed in all its fullness. If the legally verified public good requires the use and application of the Citizen's Property, it will be previously indemnified from its value. The Law will mark the cases,

> in which this single exception will take place, and will give the rules for determining compensation. (BRASIL, 1824)

In the course of the imperial period, two new legal acts were also issued: Law No. 601, of 1850, which introduced relevant ecological innovations, since it instituted the principle of liability for environmental damage, establishing administrative, criminal and civil sanctions for the infringer, and Decree n. 4,887, of February 5, 1872, which required a government license for any forest exploitation, establishing the first company specialized in wood cutting, the *Companhia Florestal Paranaense* (MAGALHÃES, 2002). During this period, important advances in environmental matters were achieved, becoming an object of debate during the Republic, as will be seen below.

3.3 Republican Period

In the midst of the political turbulence arising from the abolition of slavery, forest protection and its resources received a significant boost in the republican phase, presenting, according to Magalhães (2002), three clearly delimited periods: a) period of evolution of Environmental Law, from 1889 to 1981; b) period of consolidation of Environmental Law, from 1981 to 1988 and c) period of improvement of Environmental Law, starting in 1988. Despite the advance of editions of legal diplomas until the end of the imperial period, the first Constitution of the Republic was silent on the advances already made in forestry:

> The Constitution of February 24, 1891 does not contain a word about a tree. It limited itself to dispose, in art. 34 – The National Congress is exclusively responsible for: 29. Legislating on lands and mines owned by the Federal Government. In art. 35 - It is also incumbent upon Congress, but not exclusively: 2. To encourage, in the country, the development of letters, arts and sciences, as well as immigration, agriculture, industry and commerce, without privileges that hinder the action of local governments (PEREIRA, 1950, p.107)

In addition, the Brazilian Constitution of 1891 consolidated the unlimited right over property, legitimizing the powers to use *(ius utendi),* enjoy *(ius fruendi)* and abuse *(ius abutendi)* indiscriminately. Thus, natural resources started to appear as the right object of their owner and were under his full discretion, which led to growth in the country's deforestation levels (BRASIL, 1891).

Through Decree No. 8,843, of June 26, 1911, the first forest reserve in Brazil was established in the then Territory of Acre (although it was not implemented), as well as the first attempt to elaborate a Forest Code, which did not materialize, demonstrating the resumption of concern with national forests).

In 1921, the Forest Service of Brazil[2] was created with the objective of conserving and using forests, regulated by the Department of Renewable Natural Resources[3] and this was later replaced by the Brazilian Institute for Forest Development[4], succeeded by IBAMA – Brazilian Institute of Environment and Renewable Natural Resources[5].

The Federal Constitution of 1934 introduced changes in the area of environmental protection and redefined the system for the division of powers in relation to the Federal Government and the States:

> Art. 5.º The Federal Government is exclusively responsible for:
> XIX - legislate on:
> (...)
> j) federal assets, subsoil wealth, mining, metallurgy, waters, hydroelectric energy, forests, hunting and fishing and their exploitation;
> § 3.º The federal competence to legislate on [...} subsoil wealth, mining, metallurgy, waters, hydroelectric energy, forests, hunting and fishing and their exploitation does not exclude supplementary or complementary state legislation on the same subjects. State laws, in these cases, may, given the peculiarities of the location, fill the gaps or deficiencies of the federal legislation, without dispensing with its requirements (BRASIL, 1934).

In the same year, the Forest Code, instituted by Decree nº 23.793, of 10 July 1934 and the Water Code, Decree nº 24.643, came into force, in addition to the first Brazilian Conference for the protection of Nature. (MAGALHÃES, 2002).

The Federal Constitution of 1937 represented a step backwards in relation to the previous Constitution since it only guaranteed the right to property, and making vague reference that its content and limits would be defined in the laws that regulate its exercise: "the right of property, except for expropriation for necessity or public utility, upon prior indemnity. Its content and limits will be those defined in the laws that regulate the exercise". (BRASIL, 1937).

In contrast, the Federal Constitution of 1946 represented a legal framework for environmental protection, as it established expropriation for social interest and, above all, to ensure fair distribution and equal opportunity of access to property, as can be explicitly extracted from its article 147: "the use of the property will be conditioned to social welfare. The Law may, in compliance with the provisions of article 141[6], paragraph 16[7], promote the fair distribution of property, with equal opportunity for all." (BRASIL, 1946).

[2] Decree No. 4.421 / 1921 - Create the Forest Service of Brazil (BRASIL, 1921)
[3] Decree No. 17.042 / 1925 - Gives regulation to the Forest Service of Brazil. (BRASIL, 1925)
[4] Decree No. 289/1967 - Creates the Brazilian Institute for Forestry Development and makes other provisions (BRASIL, 1967b).
[5] Law No. 7,735 / 1989 - Provides for the extinction of an organ and autarchic entity, creates the Brazilian Institute for the Environment and Renewable Natural Resources and makes other provisions (BRASIL, 1989).
[6] Art 141 - The Constitution assures Brazilians and foreigners residing in the Country the inviolability of the rights concerning life, liberty, individual security and property, in the following terms:
[7] § 16. The right to property is guaranteed, except in the case of expropriation for necessity or public benefit, or for social interest, through prior and fair compensation in cash, with the exception provided for in § 1 of art. 147. In the

This Constitution gave the federal Government the power to legislate on forests, in addition to the subsoil wealth, mining, water, among others. It also introduced expropriation for social interest in Forest Reserve Areas, regulated by Law No. 4.132 / 62, promoting advances in environmental protection and contributing to the development of conservation awareness that has been observed worldwide.

In this scenario, the Forest Code of 1965, Law No. 4,778, of September 22, 1965, replaced the Code of 1934, and in 1967, the National Basic Sanitation Policy was established by Decree No. 248, of February 28, 1967, containing guidelines for the adoption of government programs to combat pollution. On the same date, Decree No. 289 was issued, creating the Brazilian Institute for Forestry Development.

In spite of the progressive development observed in that period with regard to legal protection for the environment, the Constitution of 1967 preserved the same provisions of the previous Constitution. In its articles 8, XVII, h and 172, sole paragraph, which prescribe that "it is for the Federal Government: [...] XVII - legislate on: [...] h) deposits, mines and other mineral resources; metallurgy; forests, hunting and fishing" and that "documents, works and places of historical or artistic value, monuments and notable natural landscapes, as well as archaeological sites are under the special protection of the Public Power" (BRASIL, 1967a).

On the other hand, Constitutional Amendment No. 01, of October 17, 1969, maintained the defense of historical, cultural and landscape heritage, as well as provisions on jurisdiction rules from the predecessor Constitution, as shown in its article 172, according to which "the law will regulate, by means of a previous ecological survey, the agricultural use of lands subject to weather and calamities. The misuse of the land will prevent the owner from receiving incentives and aid from the Government" (BRASIL, 1969).

The elaboration of the I National Development Plan, approved on November 4, 1971, by Law No. 5.727 meant a real setback, since with the introduction of the National Interaction Program (Portuguese acronym: PIN)[8] and the Program for the Redistribution of Land and Stimuli to Agro-business in the North and Northeast (Portuguese acronym: PROTERRA)[9], there was accentuated deforestation by the large contingent of people who migrated to the Amazon region, encouraged by the ease of acquiring land and work due to the miracle Brazilian economic system (MAGALHÃES, 2002).

According to Magalhães, the II National Development Plan, approved by Law No. 6.151 of December 1974, established a change in the developmental strategy and adopted measures of

event of imminent danger, such as war or intestinal commotion, the competent authorities may use private property, if the public good so requires, however, the right to subsequent compensation is ensured (BRASIL, 1946).

[8] It creates the National Integration Program, alters the legislation on legal entities' income tax in the part related to tax incentives and makes other provisions.

[9] It institutes the Program for the Redistribution of Land and Stimuli to Agro-business in the North and Northeast (PROTERRA), changes the income tax legislation related to tax incentives and makes other provisions.

a conservationist nature, establishing a policy aligned with paradigms of environmental law discussed internationally (MAGALHÃES, 2002).

According to the aforementioned author, the model proposed by the II National Development Plan, brought numerous benefits to Brazilian environmental policy, maximizing the creation of legal diplomas that contributed to the strengthening of the protection of natural resources, among which the following stand out: a) Law No. 6,225, of July 14, 1975[10]; b) Decree No. 76,470, of October 16, 1975[11]; c) Decree No. 1,413, of August 14, 1975[12]; d) Law No. 6,766, of December 19, 1979[13]; e) Law No. 6,902, of April 27, 1981[14]; f) Law No. 6,803, of June 2, 1980[15]; g) Decree No. 73.030, of October 30, 1973[16].

Despite the developmental character adopted by the State during the military regime, there was an evolution in environmental legislation, with the redefinition of the competences of the matter, as well as the imposition of legal control over the exploratory activities of natural resources by the economic initiative.

The approval of the III National Development Plan, on December 5, 1979, represented a true consolidation of Environmental Law in Brazil, promoting discussion of environmental policies of national scope. (MAGALHÃES, 2002). In addition, according to item II of chapter VI of the referred Plan (III PND), from then on:

> The emphasis on preserving the public, artistic, cultural heritage and natural resources of Brazil, as well as preventing, controlling and combating pollution in all its forms will be present in all the deployments of the national development policy and in its execution (BRASIL, 1980, p. 92).

From the aforementioned reading, it is understood that the new model proposed by the III PND established well-defined principles and objectives, which contributed to the strengthening of policies aimed at the environment. In this scenario, bodies were created, such as the National Environment Council - CONAMA and the National Environment System - SISNAMA, as well as instruments to guarantee environmental preservation, such as pollution control, environmental zoning, such as, pollution control, environmental zoning, environmental impact assessment, objective accountability for polluters, legitimacy for the Public Prosecutor to bring Public Civil Action, among others. (MAGALHÃES, 2002).

The III PDN, therefore, had a direct influence on the profusion of Brazilian environmental legislation and its reflexes can be observed in the historical context of the ordinary legislations[17]

[10]It provides for discrimination, by the Ministry of Agriculture, of regions for mandatory implementation of plans to protect the soil and combat erosion and makes other provisions;
[11] It creates the National Soil Conservation Plan.
[12] It provides for the control of environmental pollution caused by industrial activities.
[13] It provides for the land division.
[14] It creates so-called ecological stations and Environmental Protection Areas.
[15] It establishes basic guidelines for the industrial zoning of Critical Pollution Areas.
[16] It creates the Special Secretariat for the Environment - SEMA.
[17] Decree no. 84,464, of February 7, 1980 - Provides for the creation of the Working Group to review and reformulate Forestry Legislation;
* Law no. 6,902, of April 27, 1981 - Provides for the creation of Ecological Stations, Environmental Protection Areas;

of the time, with regard to protection of the environment, reflecting its principles, objectives and instruments in all political decisions, and the approval of Law No. 7,486, of 1986, which dedicated a special chapter to the Environmental Police, consolidating Environmental Law.

According to Magalhães (2002), the promulgation of the Federal Constitution of 1988 inaugurated a period of improvement of Environmental Law. An entire chapter of the constitutional text was dedicated to the protection of the environment, placing Brazil in prominence, due to significant changes and the great political, ecological, social and economic repercussion of its new constitutional text.

Article 23, in sections III, VI and VII of the new Constitution, established that the competence to "protect documents, works and other assets of historical, artistic and cultural value, monuments, notable natural landscapes and archaeological sites"; "protect the environment and combat pollution in any of its forms", in addition to "preserve forests, fauna and flora "is common to the Federal Government, States, Federal District and Municipalities, creating a kind of "cooperative federalism" in environmental matters (BRASIL, [2019]).

Thus, the original constituent, to guarantee the effective protection of the Environment, the implementation of guidelines, policies and precepts related to environmental protection, established in the sole paragraph of article 23 of CRFB / 88, that "complementary laws will establish rules for cooperation between the Federal Government and the States, the Federal District and the Municipalities, with a view to balancing development and well-being at the national level." (BRASIL, [2019]). It is inferred, in this way, that competence in environmental matters is common to all political entities and shared to carry out tasks in a cooperative way. (THOMÉ, 2014, p. 136).

Accordingly, Complementary Law No. 140/2011 represents a regulatory framework for various themes in the environmental sector, as it establishes guidelines for the decentralization of management, in a qualified manner and with transparency of information for better conservation of the natural environment.

According to Benjamin, this moment was "the summit that symbolizes the dogmatic and cultural consolidation of a legal world view", burying, therefore, the liberal paradigm and jumping to a stage of constitutional ecological opulence. (BENJAMIN, 2012, p. 90).

In this context, the *Nossa Natureza* (Our Nature) Program was implemented, one of the most important ecological preservation programs, whose objectives were: a) to contain anthropic action on the environment and renewable natural resources; b) to structure the environmental protection system; c) to develop environmental education and public awareness for nature conservation; d) to discipline the occupation and exploration of the Amazon, based on land use;

* Law no. 6,902, of April 27, 1981 - Provides for the basic guidelines for industrial zoning of Critical Pollution Areas;
* Law no. 6,938, of August 31, 1981 - Provides for the National Environment Policy, its purposes and formulation and application mechanisms.

e) to regenerate the complex of ecosystems affected by anthropic action; f) to protect indigenous communities and populations involved in the extraction process.

The advent of Decree No. 96,944, of October 12, 1988[18], promoted the correction of flaws in both forestry legislation and the National Environmental Policy Law, in addition to tax incentives for the Amazon. Thus, the environmental administration was restructured and the Secretariat of Environment was created, with Ministry status.

Contributing to the improvement of Environmental Law in Brazil, the city of Rio de Janeiro hosted, in 1992, the United Nations Conference on Environment and Development, known as ECO-92. This event had worldwide repercussion, as it managed to bring together more than 80% of the countries in the world to pursue the same objective – the defense of the environment (MAGALHÃES, 2002).

ECO-92 was an extremely relevant event for the consolidation of Environmental Law, which can be observed by the five documents produced in this event, namely: a) Declaration of Rio de Janeiro;[19] b) Declaration of Principles on Forests;[20] c) Convention on Biodiversity;[21] d) Convention on the climate;[22] e) Agenda 21.[23]

For its part, the constitutional greening demanded changes and transformations in the State and in Law, thus, the green movement of the 1970s inaugurated a new moment in the history of the protection of environmental goods, since it promoted paradigmatic changes with regard to the scope environmental protection directly influencing the construction of the text of the Federal Constitution of 1988.

Since then, the Environment has come to be recognized as a constitutional right, since its violation encompasses risks that include political, legal and social insecurity, standing out for the rapid trajectory of transformation and incorporation in the law, passing from a very little legal status and reaching the apex of the normative hierarchy, reaching even transnational political pacts.

In Soares' words, Environmental Law in an integrated way arose due to the necessity deriving from phenomena that society itself conceived and that resulted in the desolation of harmonic relations between man and his surroundings. (SOARES, 2011, p. 65).

[18] It creates the Program for the Defense of the Complex of Ecosystems of the Legal Amazon and makes other provisions to establish conditions for the use and preservation of the environment and renewable natural resources in the Legal Amazon, through the concentration of efforts of all government agencies and the cooperation of other segments of society active in the preservation of the environment.
[19] It cumulates 27 environmental principles and guides the implementation of sustainable development on Earth, also known as the Earth Charter.
[20] It establishes forest protection in various types of forests.
[21] 112 countries are committed to protecting biological wealth.
[22] It establishes what is agreed by 152 countries about the preservation of the atmospheric balance, mainly the control of ²emission.
[23] An international cooperation guide, which proposes instruments for participatory planning aimed at sustainable development.

Consequently, Environmental Law appears as "a means to establish rules of behavior, obligations to do and not to do, to safeguard a fundamental right that fulfills the function of integrating rights to healthy quality of life, economic development and protection of natural resources". (ANTUNES, 2002, p.8).

There is a clear change in paradigms: the protection model strictly forestry, is replaced by a model based on the sustainability of natural resources, as will be demonstrated below.

4 Changing paradigms: from Forestry Law to Environmental Law

The reconstruction of the evolution of the legal protection of the Environment allows us to infer that the transformations that occurred in Brazil, both with regard to the passage of the colonial period to the Empire and later to the Republic, as well as to the democratic regimes and their different economic cycles, accompanied the changes in the protection of environmental goods. (BENJAMIN, 2015).

In the same way, the perception of intellectuals, politicians, non-governmental organizations, among so many social actors, gradually gained emphasis on the need for transformative practices and the adoption of means that guarantee sustainable development, deconstructing the idea of something abstract and regressive, becoming to be recognized by the world community as the biggest challenge today.

In this context, Law No. 9,638, of August 31, 1981, which instituted the National Environmental Policy (PNMA), inspired by the guiding principles of the United Nations Conference on the Human Environment, held in Stockholm in 1972, inaugurated a process of greening of the Brazilian legal system, tracing a normative model that reconciled economy and sustainability, what became known as ecologist outbreak. (BENJAMIN, 2015).

However, the culmination of the expression of ecological sensitivity in Brazilian constitutionalism, materialized with the promulgation of the Republican Constitution of 1988, which in its article 225, *caput*, established the right of all to the ecologically balanced environment, a common use of the people and essential to a healthy quality of life, imposing on the Public Power and the community the duty to defend it and preserve it for present and future generations." (BRASIL, [2019]).

Observing the world trend, Brazil has innovated the treatment of the environmental issue in its current Policy Charter, dedicating a chapter to the matter, with this, the Environment is no longer seen as an individual right and has reached social status, interesting to the whole community. Thus, recognizing its fundamental character, the right to an ecologically balanced environment is included in the list of entrenched clauses, being incorporated into the set of rights strictly protected. Thus, it can be said, according to José Afonso da Silva, that "the chapter on the environment is one of the most important and advanced in the Constitution of 1988." (SILVA, 2005, p. 845).

In this context, the Federal Constitution of 1988 represents a milestone in the Brazilian environmental legal system, being characterized as innovative when compared to other environmental legislation, since it is uniquely treated in the matter, previously marked by the fragmentation of the elements. Since then, the State started to organize itself in the form of a constitutional environmental public order. (BENJAMIN, 2012).

Such protection extended from the preservation of nature and its essential elements to human life, such as air, water, flora, fauna, vegetation, solid residues, among others, to the maintenance of these resources for the guarantee of a healthy and ecologically balanced environment, of common use of the people and essential to the quality of life, with the need to protect and preserve it for present and future generations, thus establishing what was defined as an intergenerational right. It translated the Federal Constitution of 1988 into several devices, which can be considered one of the "most comprehensive and current systems in the world on the protection of the environment." (MILARÉ, 2013, p.168).

In this scenario, the first laws with a protectionist nature to natural assets emerged substantiated by the State Constitutions, Organic Laws, adding to the new and diverse diplomas from all levels of Public Power and normative hierarchy, aimed at protecting the depleted natural heritage of the country. Therefore, the proposal for a new State paradigm is discussed, which separates itself from the anthropocentric vision, where man is the center of the universe, the maximum and absolute reference of the State and Law and establishes the environment as indispensable for the maintenance of life on the globe in a relationship of mutualism with man, with a focus on life and all aspects that it involves.

The State of Environmental Law then comes with an imminent challenge: to establish biocentrism in a context of global risks that only grows continuously, mainly from the moment when the healthy and balanced environment is identified as a *sine qua non* condition for life in general. The State of Environmental Law presents itself, as the legal form of realization of the constitutional project to guarantee fundamental rights, among which the environmental one is included in a special way.

Considering that Law does not operate in a vacuum, but redefines itself due to changes in society itself, McNeill (2011) reveals the emergence of a State of Environmental Law and considers the 20th century as the century of environmentalism. In this way, environmental history would be the main legacy of the 20th century.

For Barros (2013) this results from the social construction of socio-environmentalism as a political meta-report, which is justified by its complex discursive nature and its interdisciplinary character, characterizing it as an increasingly structured, organized and centralized field of power. According to the author, such construction took place from conceptions and knowledge produced by multiple actors and political discourses, whether from social movements, scientific entities,

political parties, environmentalists or state institutions, and as a result, such discussions should not be understood as independent production.

The author points out that in addition to the plurality of actors, the public debate started to promote the incorporation of different factors related to environmental issues, such as: natural, political, economic, cultural, ideological factors. Thus, it is characterized as a discourse conditioned by multiple factors and social, cultural and political actors, with their diversity in terms of action and reaction logics.

In this sense, Morin (1994) considers environmentalism as part of the complex thinking that has come to characterize contemporary scientific debate, since the environmental crisis also affects reason, social thinking, political knowledge, cultural practices and human behavior. In addition to the need for contributions from several scientific areas.

Corroborating, Leff (2009) refers to environmentalism as an articulator of a new rationality, since this field of knowledge gathers and integrates knowledge from several other fields, such as theoretical, normative and practical. This dialogue encourages social actors to participate in the elaboration of alternative strategies for reappropriating nature in a conflicting field of power, from which different and often antagonistic meanings unfold, in the construction of a sustainable future.

Thus, a State of Law, in addition to being constitutional and democratic, must also be a State of Environmental Law, incorporating new elements, such as globalization, techno scientific development and rights related to development, thus meeting social demands and adapting to the evolution of society.

However, for the real achievement of a Democratic State of Law, it is not enough that constitutional norms protect the individual's autonomy before the power of the state, the guarantee of their rights and freedoms is of paramount importance. In this sense, it is an unfinished work, with a not yet ready concept, so it is actually “a process of constant updating and improvement. It is a dynamic concept that, by incorporating new elements and new concepts, modifies its own structure and rationality.” (TARREGA; SANTOS NETO, 2006, p. 9).

Thus, the State of Environmental Law “is a political-legal process of greening the State, marked by a constant updating, improvement and incorporation of new elements that modify its own traditional structure and rationality”. (LEITE; CAETANO, 2012, p. 53). In this way, it incorporates the environment as a fundamental right in Brazilian law, redefining the concept of the State from the recognition of new rights and the reinterpretation of previously recognized rights.

For the objective definition of the State of Environmental Law, Leite and Belchior (2012, p. 19) affirm that it "can be understood as a product of the new fundamental demands of the human being and particularized by the emphasis it gives to the protection of the environment." It is worth mentioning that this new model of State, built from the Federal Constitution of 1988, is

endowed with its own structuring principles, which together form the theoretical-legal foundation of the State of Environmental Law.

Thus, the State of Environmental Law, no matter the emergence of another State, but the strengthening of perspectives based on an ecological conscience, where both the Public Power and the community can use different instruments, goals and activities in an integrated, preventive, precautionary and supportive manner, which are capable of properly managing the environmental risks that arise with advanced modernity.

5 Final Considerations

The present work questioned about the conditions and possibilities of legal-constitutional protection of the Environment in a development model capable of considering future generations and guaranteeing the sustainability of natural resources. The provisional answer given initially to this questioning rested on the recognition of a new paradigmatic model of the State, that of Environmental Law.

From the reconstruction of the evolution of the legal protection of the Environment, carried out based on the reconstruction of different legal systems of foreign states, with a view to carrying out a comparative legal analysis, it appears that the model initially adopted had a protectionist perspective of forests although restricted to the penal sphere, it is possible to infer that since the first civilizations man has sought ways to protect the environment, even if incipient.

Going through the evolution of Brazilian forestry legislation, it was noted that such protection permeated the colonial, imperial, as well as the republican periods of our history. The latter, influenced by the ecological outbreak of the 1970s, promoted the expansion of the object of protection of Forestry Law, promoting a real change of paradigms, since it reached new objects of protection, leaving the forest model instituting the idea of the global environment and thus exercising influence on the Federal Constitution of 1988.

The Federal Constitution of 1988, when dedicating a specific chapter to the environment, revealed its commitment to the preservation of nature and its essential goods to human life, such as air, water, flora, vegetation, solid waste, among others, as well as a healthy and ecologically balanced environment for present and future generations.

Thus, with the understanding of the history of environmental protection and the guiding principles of constitutional greening, in addition to recognizing the risks of today, Environmental Law enables the effective use of its instruments as a way of safeguarding the Environment. Thus, a dimension of environmental legal security appears to effect environmental justice based on intergenerational solidarity.

The State of Environmental Law, in founding the biocentric logic, presents itself as the legal form of realization of the constitutional project to guarantee fundamental rights, among

which the right to an ecologically balanced environment stands out, allowing the conclusion of this work by confirmation of the hypothesis initially presented.

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