THE RIGHT TO ENVIRONMENT: SOLIDARITY AS AN INTERGENERATIONAL BOND AND THE JURISPRUDENCE OF THE BRAZILIAN SUPREME COURT

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Abstract
The environmental crisis stems from a human development process. The risk that is assumed is the commitment of the future generations. However, the guarantee of the quality of the future generations is shown as a time-present problem. Another aspect of this coexistence between present and future is the formation of the subject of the right to the environment and its analysis by the jurisprudence of the Brazilian Supreme Court. Since solidarity acts in law as an intergenerational bond is important to note how this jurisprudence has interpreted this "new subject" and how the future dimension of the right to the environment has been interpreted. The objective of this paper is to emphasize the need to "resituate" the relationship between man and the natural order in the face of environmental crisis and how necessary it is to take responsibility for the future time, even with regard to unborn subjects. It is hoped that it will contribute to the analysis of the jurisprudence on the need to take on responsibility for the transgenerational subject and its right to the environment, being that the future tense becomes the present of this new epoch.

Keywords
Environment. Sustainability. Risks;. Subject. Environmental crisis.

Summary

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1. INTRODUCTION: WHEN THE FUTURE BECOMES PART OF THE PRESENT CRISIS

The realization that the future of the environmental crisis is already part of the present, or, in environmental terms, present and future lack a well-defined temporal border, resulting in some implications pertaining to the right to the environment. This "state of crisis" is marked, among other things, by the need for an analysis of the future effects of environmental risks. Additionally, an analysis of existing obligations, not as a duty that is yet to come, implies another need that is no less urgent: the transgenerational analysis of the right to the environment and the consequent formation of a "new subject". After the law had guaranteed the right to the environment, the legal doctrine had to confront a new type of subject of law, who partly exists and is also partly unborn.

The identification of the community and government as subjects of constitutional duty to environmental preservation, as well as the present and future generations as beneficiaries of that duty, gives rise to the question of the existence of an intergenerational bond in the right to the environment. The figure of a "total subject", not limited temporally, who is partly "unborn", presents intergenerational equity. That is, the sustainable use of resources to allow future access by the generations, which are yet to come.

As a reaction to what has been called the "risk scenario", the international community turned to the concept of sustainable development in the realization that humanity could no longer follow the growth model once adopted by the industrialization process. In this sense, this article considers the concept of sustainability, based on solidarity as an intergenerational bond, whose dimension of ethical responsibility requires new considerations, especially about future time.

Furthermore, it aims to underline the right to the environment as transgenerational and the need of a jurisprudence that includes the future terms of this right in its decision-making. This project exceeds the

proximity of subjects and approaches future generations. Lastly, it emphasizes the bond between the present and future, and points to a "new subject" in the environmental crisis scenario, which can be considered a "state of crisis".

2. WHEN PRESENT AND FUTURE COEXIST: THE JURISPRUDENCE OF THE BRAZILIAN SUPREME COURT AND THE RIGHT TO THE ENVIRONMENT

The acknowledgement that the environmental crisis is one of the aspects of the crisis of the liberal Western model faces the hypothesis that it is necessary to rise to the challenge. This challenge involves considering the possibility of ethical coexistence between the non-human and future time and it assumes the obligation of sustainable behaviour, as well as includes as subjects of the right to the environment those who are not yet born. It is necessary to consider the reunification of man and natural order and take responsibility for a time that is yet to come but given the circumstances of the crisis is shown as present. The same analysis has to be executed with regards to the unborn subjects of the right to the environment, despite their non-existent condition; they should already be a part of the present considerations of that right.

Ironically, the crisis would be placed in the challenge of present and future coexisting; situated in a scenario which is already broken but integrates a future that is yet to come, as contradictory as it may seem. It might represent the difficulty in facing the fact that natural representation forms are not always under man's control. What is more that natural manifestations many times surpass the barrier of human desire and simply present themselves – in the present or future – regardless of their will. Or maybe, that the crisis finds a place beyond the understanding of the natural order and its own and will question what humanism has always thought had been deemed unquestionable: man (LYOTARD, 1991).

However, the environmental crisis provokes, not only the need to question man's behaviour, but also the need to assume that the subject of

the environmental right is composed, at the same time, by present and future actors. Again, present and future coexist.

As a sign of reaction to what has been called the "risk scenario", the international community turned to the concept of sustainable development[2] in the realization that humanity could no longer follow the growth model adopted by the industrialization process.

For Ignacy Sachs, sustainable development is one of three elements that make up the idea of development. In other words, development was formed by socially inclusive development, environmentally sustainable and economically sustainable elements (SACHS, 2009). The justification of Sachs, regarding socially inclusive development, would be that development goals are ethical and social. In addition, social progress would be promoted "based on an ethical postulate of synchronic solidarity with their generation" (SACHS, 2009, p. 23).

It should be noted that converting the synchronic solidarity with their generation in an ethical postulate, in service of social progress, is not a theoretical possibility for the present article. The right to the environment

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[2] V. GARNIER, Christian. De La nature au dévelopement durable: La construction d'un concept pératoire. In: BOITEUX, Marcel. **L'homme et sa planète**. Paris: PUF, 2003, p. 55. "Le développement durable signifie que la satisfaction des besoins humains d'aujourd'hui ne doit pás se faire au prix d'une destruction irréversible des ressources naturelles et d'une mise en péril des grands equilibres de la biosphère". SMOUTS, Marie-Claude. Le développement durable: valeurs et pratiques. In: SMOUTS, Marie-Claude. **Le développement durable**. Lês termes du débat. Paris: Armand Colin, 2008, p. 15. "Le développement durable peut être perçu comme de la croissance économique sous contrainte écologique. Dans cette perspective, Il s'agit de respecter lês conditions de reproduction des écosystèmes et d'économiser les ressouces rares". GOUGUET, Jean-Jacques. Développement durable et décroissance. Deux paradigmes incommensurables. In: **Pour un droit commun de l'environnement.** Mélanges en l'honneur de Michel Prieur. Paris: Dalloz, 2007, p. 133. "Le développement durable, moins que un concept, designe plutôt un champ d'investigations et d'activités, reconfigurant ce que signifie l'humanisation sur fond d'une nature reconnue précieuse mais fragile". PIERRON, Jean-Philippe. **Penser le développement durable**. Paris: Ellipses, 2009, p. 16.

is analyzed here from a perspective that goes beyond the present time, it turns also to the future dimension of the subjects and moves away from the indifference to the "unborn" subjects.

Sustainability is based on a concept of solidarity as an intergenerational bond in the right to the environment and allows a new conception of an ethical responsibility that goes beyond the sphere of proximity of the subjects involved; it turns to future generations. A sense of solidarity guided by "non-reciprocity" with a view that is established between the present generations and those to come.

The subjects of future generations to this extent, of course, do not yet exist, the timing remains impaired as what is proposed is a solidarity between the subjects of today towards the future. To put it differently, a relationship that breaks with the contractualist modern heritage and surpasses the reciprocity proposal, based on exchange between the poles of the juridical situation.

It is true that the future generations in no way contribute to this quality of life. However, the author explains that for the desired social progress to become possible, it is necessary to respect "ecological conditionalities, environmental conditionalities from another ethical concept: the ethical concept of diachronic solidarity with future generations". In this sense, Sachs emphasizes this point with the idea of an environmental ethics and solidarity with future generations. He demonstrates that the promotion of an environmentally sustainable development requires the consideration of the need for a new ethical position. The result is solidarity that is mainly diachronic with future generations and thus not reciprocal.

The mandatory ethics of synchronic solidarity with the current generation amounted to diachronic solidarity with future generations, and for some, the ethical principle of responsibility for the future of all living species on Earth. In other words, the social contract which underpins the governance of our society should be complemented by a natural contract (SACHS, 2009, p. 49).

To Raffaele Bifulco, there is no doubt that the principle of sustainable development is structurally oriented towards the future. His proposal considers an economic component, a social component and an environmental component but also proposes the recognition of a fourth element: the intergenerational character that would cross the others transversely (BIFULCO, 2008). Thus, when environmental problems were seen not only as the inevitable result of scientific and technical growth and nature was recognized as a fragile condition, the proposal for an environmental protection policy gained ground. More than a scientific study of the situation, this policy appeals to ethics and law. That is, for an analysis of moral and legal norms that is able to drive our actions (LARRÈRE; LARRÈRE, 2009) through a reflective thinking that recognizes the links between the risks and the future; a diachronic proposal.

The Brazilian Constitution of 1988 promoted the perspective of sustainable development, when established in article 170, that the freedom of initiative is one of the foundations of the constitutional economic order, provided people comply with its principles, one of which is the protection of the environment. That is, freedom of enterprise is not disconnected from the environmental protection duty but subject to it and is one of its conditions; it is an immanent limit on the right to free enterprise. The Brazilian Supreme Court has even ruled to identify the limitation of freedom of initiative based on the principle of environmental protection:

Economic activity cannot be exercised without harmony with the principles to make effective the environmental protection. The safety of the environment can not be compromised by corporate interests or become dependent on purely economic nature of motivations, especially if it is present that economic activity, considered the constitutional discipline that governs it, is under conditions, among other general principles, of the principle that focuses on 'environmental protection' (CF, art. 170, VI), which translates broad and comprehensive concept of the notions of the natural environment, cultural environment, the artificial environment

(urban space) and through the work environment. Doctrine. The juridical instruments of legal character and constitutional aim to enable the effective protection of the environment, so it does not alter the properties and attributes that are inherent, which would cause unacceptable compromising of the health, safety, culture, work and well- being of the population and would cause serious ecological damage to the environmental heritage, considered this in their physical or natural aspect[3]
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The question of national development (Constitution, Article 3, II.) And the need to preserve the environmental integrity (Constitution, Article 225.): the principle of sustainable development as a factor getting the right balance between the requirements of economy and ecology. The principle of sustainable development, impregnated by an eminent constitutional character, finds a legitimizing support on international commitments made by the Brazilian government and is factor for getting the right balance between the demands of the economy and the ecology, under conditions, however, of the invocation of this postulate, when occurring conflict situation between relevant constitutional values to an unremovable condition, which must not compromise or empty the essential content of one of the most significant fundamental rights: the right to preserve the environment, which translates well to the use of common general people to be safeguarded for the benefit of present and future generations[4].

This decision illustrates how economic activity is paired with legal conditions, as the environment protection. However, it doesn't give prominence to the fact that the environmental protection involves a transgenerational subject. In fact, it only mentions, very discreetly, the

[3] **ADI 3.540-MC**, Rel. Min. Celso de Mello, judgment on 1-9-2005, Plenário, *DJ* de 3-2-2006.
[4] **ADI 3.540-MC,** Rel. Min. Celso de Mello, judgment on 1-9-2005, Plenário*, DJ* de 3-2-2006.

importance of avoiding damages to the environmental heritage as well as the preservation of the environment for the benefit of present and future generations.

It is worth noting that with this pronouncement the Supreme Court, which in addition to having identified sustainable development as a constitutional principle, highlighted its role in the international commitments made by Brazil and indicated its function to balance the promotion of the economy and the environment.

The recognition of future effects of the risks begins with the acceptance that the representation of the future hitherto adopted, whose control was given through reasonably foreseeable conditions, proves to be insufficient for the current state. "In contemporary societies, it is no longer possible to represent - the future - with certainty and security. Any such effort would be deductible in terms of only a simplified description of a probable or possible society" (LEITE; AYALA, 2002, p. 14).

In addition to the rational management of natural resources, the notion of sustainability reflects on the legacy to be passed on to future generations. This would not be limited to a natural heritage of quality, but mainly to allow the possibility of choice. In other words, not creating irreversible situations (SMOUTS, 2008) for the future and preserving the intergenerational equity.

More than the concern to ensure future choices, it seems necessary to overcome the modern paradigm subject-object, introducing a dialectical conception of man and nature (OST, 1995). This is so, that the domination and exploitation of one over the other is replaced by a sustainable logic and thus equitable access to resources is promoted lastingly.

The Brazilian doctrinal law mentions the "principle of intergenerational equity", whose content provides man with the duty and responsibility to the future. It also emphasizes the link with the precautionary principle, given that this principle is a temporal projection instrument with respect to the variables involved in potentially degrading activities (LEITE; AYALA, 2002). The equity proposal reinforces the promotion of an ethics

of intergenerational otherness, revealing the legal difficulty with using only normative criteria for assessing the transcendence of dimensions not only on space but also on time with regard to the transgenerational subject of the environment right (LEITE; AYALA, 2002).

It is also noteworthy that intergenerational equity was based on three principles: the "principle of conservation options", according to which, each generation must appreciate the conservation of natural and cultural resources, allowing future generations to be able to evaluate the solution of their problems and meeting their needs. The second is the "principle of quality conservation", that would guarantee the right of future generations to enjoy a quality of planet, proportional, to the quality enjoyed by previous generations. Lastly, the "principle of conservation of access" in which each generation would have the obligation to allow its members to have the right to the legacy of past generations as well as the obligation to preserve access for future generations (LEITE; AYALA, 2002).

It is important to note that the main objective of this article is neither an analysis of the theory of sustainable development, nor a contribution to the debate about the ability of this theory to deconstruct the modern economic paradigm and limit effectively the new economic paradigms undertaken by a contemporary society. That is, to identifying sustainable development as a skilled instrument or not to promote the recognition of threats and contingencies called the "risk society". The aim is to demonstrate how the ideas of risk and sustainability are interrelated and how past, present and future form the acting scene of this "new subject" and the transgenerational right to the environment.

The constitutional consecration of the right to the environment as a fundamental right indicates more than an engagement with the sustainability of the planet. It suggests that after the duty imposed on the Government and the community to "defend and preserve it for present and future generations" (article 225 of the Brazilian Constitution of 1988), people not yet born now account by the Law as subjects of this right. It instituted a constitutional duty to preserve and, at the foundation of this

duty, is solidarity as a limiter intergenerational bond. This suggests a break of the identified subject paradigm.

This disruption ocurred not only because the subject now is presented in a non-quantifiable way, but specifically, because of the possibility of a transgenerational subject, that operates at the same time with the present and future generations. Is this a paradox, as something that does not exist is being presented and protected by the Constitution? (SILVEIRA, 2007) Would the law be prepared to deal with the change in the subject and temporal dimensions?

It is assumed that, from the construction of fundamental rights under the influence of individualism, there would be a natural difficulty of the realization of the right to the environment as a supportive duty. It means considering not only the immediate effects suffered due to environmental degradation, but also the long-term effects, which are likely to be experienced more intensely by future generations.

Once the solidarity acts as an intergenerational bond between the present and future generations who compose the subject of the right to environment, it is important to analyse how the Brazilian Supreme Court jurisprudence has interpreted this "new subject". In other words, how the future dimension of the right of the environment has been observed through the solidarity as a legal bond.

Therefore, a search on the website of the Brazilian Supreme Court using the term "environment" was done using the offered search engine, delimiting the period between 1988 and 2008, corresponding to the first twenty years of the Constitution of Brazil. The aim was to develop the widest possible search, which was the reason for choosing the indicated expression; so that all decisions in environmental headquarters given in that period could be identified. The search resulted in 142 documents, but only 4 (four) decisions referred to solidarity, which were respectively: MS 2.2164 – 1995 (Rel. Min. Celso de Mello); ADI-MC 3.540 – 2005 (Rel. Min. Celso de Mello); STA-AgR 171-2 – 2007 (Rel. Min. Ellen Gracie); STA-AgR 118-6 – 2007 (Rel. Min. Ellen Gracie).

The first decision states:

The right to integrity of the environment - typical right of third generation - is a legal right of collective ownership, reflecting, in the process of affirmation of human rights, the significant expression of a power attributed, not to the individual identified in its uniqueness, but in a sense truly comprehensive, the very social collectively (MS 2.2164, Rel. Min. Celso de Mello, judgment on 10.30.1995, plenary DJ 11.17.1995)[5].

Here there is the recognition that the right to the environment presents itself as "transindividual", recognizing that its subject is collective. Finally, the following shows the passage in which the decision mentions the principle of solidarity:
While the rights of the first generation (civil and political rights) - which include the classic, negative or formal freedoms - emphasize the principle of freedom and the rights of second generation (economic, social and cultural) - who identify with the positive freedoms real or concrete - emphasize the principle of equality, third generation rights, which materialize collective ownership given generally to all social formations, enshrining the principle of solidarity and are an important moment in the development process, expansion and recognition of human rights, characterized as unavailable core values (MS 2.2164, Rel. Min. Celso de Mello, judgment on 10.30.1995, plenary DJ 11.17.1995)[6].

Note that once again there was the exception with regards to collective ownership of the right to the environment, identified in the decision as the third generation. However, solidarity has been identified by the Supreme Court as a principle to be highlighted between the rights of third

[5] MS 2.2164, Rel. Min. Celso de Mello, judgment on 30-10-1995, Plenário, *DJ* de 17-11-1995.
[6] MS 2.2164, Rel. Min. Celso de Mello, judgment on 30-10-1995, Plenário, *DJ* de 17-11-1995.

generation, even though the future impacts and risks involving the right to the environment have not been observed.

The Court indeed stressed solidarity as a value of fundamental rights, but did not note the intergenerational limit, as a promotional mechanism of intergenerational equity. The "new subject", presented by the right to the environment, whose main feature is the "transgenerationality", was not considered in this section of the decision.

The second decision under consideration has the following sections:

THE PRESERVATION OF ENVIRONMENTAL INTEGRITY: CONSTITUTIONAL EXPRESSION OF A FUNDAMENTAL RIGHT OF GENERAL PEOPLE. Everyone has the right to an ecologically balanced environment. That is a typical right of the third generation (or brand new ones), who watches all mankind (RTJ 158 / 205-206). It is up to the State and the community itself, a special duty to defend and preserve, for the benefit of present and future generations, the right to collective ownership and transindividual character (RTJ 164 / 158-161). The due performance of that charge, which is indispensable, is the guarantee that it will not be put in place, in the community within the serious intergenerational conflict marked by disregard for the duty of solidarity, imposed on everyone, the protection of this essential good of common use of people in general (ADI 3540-MC, Rel. Min. Celso de Mello, judgment on 01.09.2005, plenary DJ 02.03.2006)[7].

The relationship between the preservation of the right to the environment and solidarity, as an instrument of promoting intergenerational equity, was starting to be considered in the jurisprudence of the Brazilian Supreme Court. Solidarity began to be identified as a means to avoid the mentioned intergenerational conflicts. Note that ten years have passed in order for solidarity to be mentioned, once again, by the Supreme Court. Thus

[7] **ADI 3.540-MC**, Rel. Min. Celso de Mello, judgment on 1-9-2005, Plenário, *DJ* de 3-2-2006.

emphasizing the role of intergenerational bond of the right to an ecologically balanced environment. In the above transcript excerpt, solidarity is recognized as duty. Thus, in addition to the third dimension of rights, the decision recognizes the solidarity as a duty on behalf of the right to an environment, which belongs to the people in general.

This recognition confirms the thesis presented here that the transgenerational subject of the environment imposes a duty of solidarity where intergenerational equity can be allocated; the right to the environment presents a "new subject". On this decision, the court has begun to analyse of the future dimension of the right to the environment, in other words, it has contributed to the understanding, presented here, that the future of the environmental crisis has become present and the future subject is already part of this crisis.

The third decision to be analyzed pertains to the importation of used tires. In fact, two grievances were filed (AgR-STA 171-2 and 118-6 AgR-STA) which were judged in a single session, which will be analyzed here from the first text:

The due performance of that charge, which is indispensable, is the guarantee that it will not be put in place, in the community within the serious intergenerational conflict marked by disregard for the duty of solidarity, imposed on everyone, the protection of this essential good of common use of people in general (AgR-STA 171-2, Rel. Min. Ellen Gracie, judgment on 12/12/2007, Plenary, DJ 29-02-2008)[8].

The decision, therefore, affirms solidarity as a duty, indicating that if overlooked, runs the risk of provoking intergenerational conflicts. So, this is a brief mention of environmental solidarity but one that adds to the jurisprudential strength of the right to environment, which requires a caring and committed approach to future generations. It also contributes

[8] AgR-STA 171-2, Rel. Min. Ellen Gracie, judgment on 12-12-2007, Plenário, *DJ* de 29-02-2008.

to the strengthening of intergenerational equity of a balanced environment, which reinforces the need to observe the "new subject" brought by the right to the environment. The future dimension of the right to the environment, albeit discreetly, becomes observed by the Court, which could reinforce the notion that the future of the environmental crisis needs to be analysed as a present time problem.

In this sense, considering environmental protection as a current liability of duty does not imply that the present generations are in a privileged position in terms of environmental awareness and, because of this privilege, would have the condition to decide what is best for future subjects. In fact, the point is to ensure the possibility of future choice, namely to promote the quality of life for generations yet to come.

Even if the future generations were to decide for themselves that such is unnecessary or inadequate- they should still have the right to choose. For this choice to become possible, it is necessary to take on a stance of non-emergency on behalf of the "new subject", a transgenerational subject, and move from contemplation to responsibility, including the appreciation of the future dimension of the right to the environment by the jurisprudence.

The future generations are at a disadvantage. Even their choices, in the future, are limited by the decisions taken by the generations that precede them; that are on many occasions represented by legal decisions like the ones analysed in this article. Its disadvantage is a reflection of one's vocal disability. The subjects of future generations lack the capacity to speak and often run the risk of having their interests overlooked by decisions, including judicial, which prioritize immediate results. These subjects have minimal bargaining power and can do no harm or affect present generations (AGIUS, 2006).

An interpretation of the law focused on the future, considering the risks experienced by the current society (SERRES, 2001), should not deny an intergenerational responsibility, considering that to take a supportive and precautionary approach will allow better future environmental conditions. Would it be required to the present generation to preserve the conditions

for the survival of mankind? (BIFULCO, 2008) Is there an obligation to the future? (OST, 1997)

Given the fact that the implications caused by environmental degradation will be suffered by "a total subject" (SERRES, 1992), primarily by the unborn portion of this subject, the present time assumes a supportive and preventive role as well as the legal decisions taken by the Brazilian Jurisprudence. Thus, in view of the irreversibility of time, we cannot change the past and the uncertainty of the future and the present action become necessary and regenerating.

The regenerative function of this time would act against the irreversibility of individualist heritage and future indeterminacy, which is one of the roles of the legal decisions in the right to the environment. In this sense, would the right to the environment suffer a tension between the paradigms of subjectivity and solidarity? That is, would the right to the environment be among the paradigms of individuality and humanity?

The questions raised here are far from being easily answered. This emphasizes in fact, the need for a legal regime that allows the dialectical character between man and nature, as opposed to one that only recognizes the domain of one over the other. This was influenced by contractual tradition and property scenario in which the subject of law was commonly involved. Therefore, the subject would need to take on a new dimension: responsibility towards future generations and equity in access to natural resources (OST, 1997) once the future of the environmental crisis is already present and the subject of its right is marked by a transgenerational feature.

CONCLUSIONS: THE PRESENT WHICH THE FUTURE IS PART OF

Modernity ended up creating "two worlds": "human" and "non-human". If on one hand human beings took on the role of subjects that make up "one of the modern worlds", on the other, natural order was taken as an object at our disposal, a second world to be appropriated by subjects that

integrate the first. Human and non-human coexisted separately, "in different worlds", brought closer when one appropriated the other.

Thus, the modern production of domination of the natural order arises as one of the consequences of the end of the mysterious belief that magic and religion exerted on nature; the end of nature as a symbol of divine order and the end of man's quest for heaven. Regarded as a simple worthless raw substance, nature became the representation of an object to be exploited, an object for unlimited consumption. Man was not destituted of technologies.

However, it is important to stress that modern technologies changed man's way of life. Furthermore, it resulted in the analysis of what can be considered a clash between the instincts of death and life, the difficult coexistence between the impulse to destroy elements of nature and the need to protect life itself.

The process of "repositioning" human behaviour towards nature has already been theorized. Examples of this are the confrontation between anthropocentric and non-anthropocentric points of view, the systemic discussion about man's role before the complexity of natural order and the defence of rights as a social control instrument.

Regardless of the approaches raised by critical theory though time, the relationship between the subject of knowledge and its object was developed without any regard with the exchange between them. Thus, the "non-human" world was deemed to give without receiving in return, and a parasitic bond was established, deeming it necessary to rethink the possibility of a symbiosis due to the consequences of this parasitism.

The increase of so-called collective interventions was considered one of the reasons for a critical reflection about on the lack of care of our peers, as well as with non-human elements. The relationship between actor, action and effects surpasses the limits of a nearby sphere, placing ethics in the dimension of future responsibility of a new subject, marked by non-proximity and the relationship with non-human elements, which should also be reflected on the jurisprudence. When considering that there was a

shift both, in subjects and how they act, the thought of a crisis presents an ethical mission for a new concept of freedom.

This ethical challenge is bypassed by the rupture of the common relationship of exclusive care of the human world, temporality limited by immediate descendants, expanding towards a future horizon, what in legal terms assumes the form of a "new subject" in the right to the environment, a transgenerational subject, which should be considered by the Court's decisions.

The ethical debate that emerges from the crisis scenario proposes a human and non-human, where the future gains prominence along with the present. We are living in a state of crisis, where man has been driven away from the natural order. We are in a state of fear, and the results of this separation, which has been caused in the name of development, are unknown. We are living a present of which the future is already part of. This is a further understanding of the environmental crisis.

However, when the legal concern about the future and their subjects gained ground, environmental rights, consumer rights and the right to peace became part of the constitutional provisions of the second half of the twentieth century. Justified by the ideal of solidarity and the need for cooperative action, such rights, theoretically, overcame the subjectivist individual tradition.

Aware of the problem of the projection of future generations in relation to an ecologically balanced environment and following the warning about the need for supportive and cooperative behaviour, the Brazilian Constitution established the duty of environmental preservation for present and future generations. But this prediction has raised another problem, which concerns the dominant paradigms in the law.

The construction of a "new subject" in law, a transgenerational subject, not limited temporally, which brought some implications. Some of these are the proposal of sustainability, the duty of care and equity between generations, in other words, implications about the duty to the future.

In this sense, the norms of environmental law emerged as a limiting vehicle. They have, for the most part, aimed to impose limitations on

human acts in the name of preventing damage. Environmental law is a kind of right of regulation of economic ownership of environmental goods. This appropriation will enable the sustainability of resources, as well as economic and social development.

The proposed durability thus implies in transmiting to future generations the capacity and resources contributing to a vision of a world in which the human relationship with nature can be given in a rational environmental way, even in crisis and risks scenarios. In fact, the responsibility for the actions that (potentially) cause damage to the environment seems to have invaded contemporary discourse.

However, the question remains whether this presence already is recognized by Brazilian jurisprudence with regard to the long-term consequences. In other words, it should be noted that the future dimension of the right to the environment has gained ground in decisions taken by the Brazilian Supreme Court. On the other hand, there is no denying that the presence of the solidarity expression, as an intergenerational bond between the present and future generations within the jurisprudence of the Supreme Court, is still limited, according to the analysis presented.

The search done on the Brazilian Supreme Court's website used the term "environment" for a specific reason: to develop the widest possible search, delimiting the period between 1988 and 2008, corresponding to the first twenty years of the Constitution of Brazil. In this way, all decisions about the right to the environment, given in that period, could be identified.

The result was a corpus, formed by 142 decisions. After having read through all these documents, only 4 (four) were identified as decisions which had mentioned the solidarity. In this group of four decisions, the future dimension of the right to the environment was observed superficially.

It is not possible to find, on these first twenty years of Brazilian Supreme Court jurisprudence, a profound analysis about the complex subject of this right. The Court had not taken time to interpret the "new subject", brought into the law by the right to the environment. It is worth to note

that throughout these ten years, constituting the period between the first and the second decisions analysed, the Brazilian Supreme Court had not interpreted the right to the environment through the solidarity as an intergenerational bond.

Therefore, what this article aims to highlight is the jurisprudential recognition that the subject of that right is composed, at the same time, by present and future generations as a mechanism. This instrument can help in the conversion of intergenerational responsibility, or anticipation of responsibility in real actions in the transgenerational right to the environment.

The future of the environmental crisis needs to be analysed in legal terms as a problem about a transgenerational subject, a "new subject" not only in a discreet way. The Brazilian Supreme Court must confront the future dimension of the environmental law and act on it. The consequences that would be faced by the unborn subjects must be observed by the Court equally to the current ones. Present and future coexist, in terms of environmental crisis, and it must also coexist in legal terms, however, in the context of the Supreme Court this assumption seems to be an instrument under construction.

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