# The time of ecological rights

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**Marcio Bulgarelli Guedes[1], Paula Gabriela Coetti Ramos[2], Maria Cristina Vitoriano Martines Penna[3], Laise Reis Silva Guedes[4] and Lucas de Souza Lehfeld[5]**

## ABSTRACT

The article analyzes the metamorphosis of law to the end of the promotion of ecological rights. It takes as a hypothesis whether the promises of the social contract have been fulfilled in relation to the collective good of the environment in the face of the transformations of law, society and the State in modernity. To this end, first, by linking the memories of the past, the axes of individual (or private) law and the successive solutions adopted until the contemplation of collective rights in the 1988 Constitution, with the solution of global, local and radiated collective conflicts, will be rescued; second, by turning off the past to connect the future, the standardization of ecological rights in a constitutional text will give us the opportunity to list environmental principles and outline the distribution of administrative and legislative competences in environmental matters; and, thirdly, by zooming in on the main general environmental laws, confirm that the law is transformed and that it can offer means for the recovery of the environmental deficit, according to the rural environmental registry (CAR), the environmental recovery program (PRA), the protected territorial spaces, the administrative licenses, etc., with the possibility of three-dimensional responsibility of the polluter. In conclusion, we want to confirm the hypothesis of the problem of the metamorphosis of the law and its virtuous image in front of the social mirror with the commitment to preserve and protect the environment. Finally, guided by the hypothetical-deductive method, the article makes an evaluative approach to the formal sources of the environment, based on books, scientific articles, public hearings, jurisprudence and legislation.

[1] Doctoral student in Collective Rights and Citizenship
University of Ribeirão Preto - UNAERP
E-mail: m.bulgarelli@bol.com.br
ORCID: https://orcid.org/0009-0005-0522-4235
LATTES: http://lattes.cnpq.br/9233172054910808
[2] Doctoral student in Collective Rights and Citizenship
University of Ribeirão Preto – UNAERP
Email: pcoetti@unaerp.br
ORCID: https://orcid.org/0000-0002-5942-3070
LATTES: https://lattes.cnpq.br/6894083753630468
[3] Doctoral student in Collective Rights and Citizenship
University of Ribeirão Preto - UNAERP
E-mail: cris.penna@bol.com.br
ORCID: https://orcid.org/0000-0001-7826-8259
LATTES: http://lattes.cnpq.br/5938313355482773
[4] Doctoral student in Collective Rights and Citizenship
University of Ribeirão Preto – UNAERP
Três Pontas, Minas Gerais, Brazil.
E-mail: lrs_3p@hotmail.com
ORCID: https://orcid.org/0000-0001-8958-8303
LATTES: http://lattes.cnpq.br/1115780803665733
[5] Law Course Coordinator
Barão de Mauá University Center
Ribeirão Preto, São Paulo, Brazil
E-mail: lehfeldrp@gmail.com
ORCID: https://orcid.org/0000-0002-1021-0891
LATTES: http://lattes.cnpq.br/4048647397200408

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## INTRODUCTION

The article analyzes the time of law in the field of ecological rights, with the intention of linking and disconnecting the past and the future.

In methodology, it is intended to confirm or refute the metamorphosis of law, as well as its instrumentalization to recover and protect the environment.

In development, the work was structured in four phases. The first phase is the inquiry phase. The second phase is the panoramic phase. The third phase is the zoom phase. The fourth phase is the reflective phase or the final considerations.

The inquiry phase brings the motivations of the research, treading the paths to follow. To this end, the question is asked: is it possible to verify the transformations of law, society and the State in relation to the protection and recovery of the environment as a promise of the contemporary social contract?

In the second panoramic phase, to answer the previous question, the theoretical development will be carried out. As a premise, by linking the past, an attempt will be made to rescue the axes of the ideology of individual (or private) right, of the "status libertatis", basically founded on freedom and property, in order to, subsequently, by turning off the past, linking the future with the promise of collective rights in the 1988 Constitution and its new typology in the solution of collective conflicts.

Connected to the future, by regulating the chapter on the environment in the 1988 Constitution, it is intended to identify the legal provisions related to the theme and, then, to evaluate the content. From this logical and rational exercise, ecological principles will appear - prevention, precaution, polluter-pays responsibility and democratic participation - as general structuring clauses of the system, serving as inspiration, guidance and integration of the rules.

Still in the panoramic phase, in view of the responsibilities attributed to the public power, it is appropriate to present the distribution of administrative competence and concurrent legislative competence in environmental matters between the Union, States, Federal District and municipalities, in order to understand the extent of the constitutional promise and the complexity of the legal tasks assigned to each of the public entities of the three spheres in the construction of the legal system.

In the third zoom phase, by expanding the focus on environmental legislation, at the federal level, the main environmental ones will be analyzed, with the respective solutions adopted over time, to prove the existence of legal instruments for electronic registration of the rural environmental registry (CAR), the environmental recovery program (PRA), protected territorial spaces, environmental zoning, prior environmental impact study and administrative licenses for the preservation of the environment.

Still in the zoom phase, in view of the definition of constituent elements of the environment, the legislator's concern with holding the polluter, individual or legal entity, accountable in three

dimensions, will be verified, with the details of the possible legal consequences in the administrative, civil and criminal spheres, so that a better understanding of the legal duties and the regulation of the constitutional project is obtained.

The fourth phase of the final considerations will bring objective reflections on the research. With our eyes turned to the formal reality, we want to confirm the hypothesis raised about the transformations of the law and its instrumentalization for the protection of the environment as a good for common use.

## DIALECTICS OF DIVERSE: INDIVIDUAL AND COLLECTIVE

By the social contract, the entire legal order is thought of as a promise, in the sense of a norm, reciprocally establishing the obligations for the people and for the government.

The people entrust to the government the task of establishing general and permanent laws, for the public good, under the commitment of the rulers to respect individual rights and their respective inviolability according to the social contract (constitution).

The law results from the close relationship between the two elements, the people and the government, and must sanction the rights of the people based on the ideals of personal property (freedom of psychic and moral action) and real property (freedom to dispose of things). Freedom is the *"first property of man"* (SEABRA, 1850, p. 16, 31-32),

In the mirror of nineteenth-century society, constitutions, codes and laws develop on the axes of property and freedom, approaching the vision of John Locke. By the spectrum of *status libertatis,* individualism is positioned at the center of the dimensions of conflicts. These are individual disputes arising from private, subjective, divisible and available law.

Over time, however, new fundamental rights began to be conceived and other social rights emerged, detaching freedom from property to bring freedom closer to the conception of equality, according to the conception of Jean-Jacques Rousseau (ANTERO, 1979, p. 83-84).

In the twentieth century, the *"successive solutions of law"* (OST, 2005, p. 61) are perceptible, in order to, without breaking the thread that connects them, transform the liberal State into a Social State and from a Social State to a Democratic State of Law, opening the way for the solution of collective conflicts and individual conflicts.

It is the time of the *status civitatis*, a period in which the State reassumes its political promise and regulates individual and collective rights, in a *"new dialectic of diverse, not opposites"* (FIGUEIREDO, 1989, p. 20-22). Public issues are of interest to everyone and, therefore, access to information and democratic participation in decision-making in the interest of the community are guaranteed.

The right to property and its respective inviolability continue to be enshrined in the 1988 Constitution (Article 5, XXII), preserving the line of individual or private rights, but now combined by the collective promise of the social function of property (Article 5, XXIII), to limit individual freedom in the face of the socio-environmental responsibility expected in society.

Issues involving the environment, consumer relations, goods and rights of artistic, historical, touristic and landscape values and economic issues are of interest to the community. In addition, procedural instruments (public civil action, collective writ of mandamus, popular action, writ of injunction, habeas data) are made available for the effective protection of collective rights.

Collective rights transcend the individual and, therefore, are called transindividual rights. In kind, there are collective rights in the strict sense and diffuse rights. The latter bring subjects linked by circumstance of fact, the former bring certain categories, groups or classes of subjects linked by a legal relationship. Both are conceptualized in legislation along with homogeneous individual rights and all can be the object of protection in collective proceedings through adequate representation.

Although historically relevant, the concepts of diffuse, collective and homogeneous individual rights do not allow us to affirm what transindividual rights are and whose rights are. Thus, based on concrete cases, there are those who propose the reconstruction of the concepts related to the collective process by categories of global, local and irradiated collective disputes, according to the *"typology of litigation, a new starting point for collective protection"* (VITORELLI, 2020, p. 93-118),

It is not the objective to discuss the structural collective process, however, with the intention of showing the reality, in the first category, there are global collective litigations, with injuries that do not affect people directly, but affect the goods of interest to the collective (for example, global warming); then, in the second category, there are local collective disputes with injuries that specifically and seriously affect certain groups of people (for example, illicit mineral extraction in indigenous territory); and, in the third category, there are radiated collective litigations, equated to mega-conflicts, with injuries that affect people and property to different degrees and extents (for example, the disaster in Mariana-MG, with the rupture of the dam, the avalanche of mineral tailings caused work accidents, fatalities, bodily injuries, destroyed property, memories and families, etc.).

Finally, whether due to contractual liability, or non-contractual liability, or liability for an unlawful act, the fact is that injuries to the environment have practical implications in the lives of people in society and, in this context, as diffuse collective rights, they deserved a specific chapter in the 1988 Constitution, inaugurating ecological rights. Thus, it is opportune to empirically verify the articles related to the environment in the constitutional text and, based on the evaluation of the content, to list the ecological principles (prevention, precaution, responsibility of the payer-polluter and participation) and to present the distribution of concurrent administrative and legislative

competences in environmental matters in the three spheres of the federation (Union, States, Federal District and municipalities), so that a broad understanding is obtained. At the same time, it needs the constitutional promises and the plan of tasks for the recovery of environmental liabilities.

## ECOLOGICAL RIGHTS IN THE CONSTITUTION

The environment was regulated in article 225, and paragraphs, of Chapter VI, *"On the Environment",* Title VIII, *"On Social Order*", of the 1988 Constitution.

The increase in pollution and the harmful consequences to the environment associated with technological advances and the finiteness of natural resources, non-renewable or difficult to renew, are the material sources that resulted in the creation of formal sources on constitutional ecological norms and principles.

Alongside negative rights (individual freedoms), positive rights (political, social, environmental, cultural, and economic) emerge. In doctrinal classification, political freedoms and rights are first-generation rights; social, economic and cultural rights, of the second generation; and ecological rights, composing collective rights, of the third generation. It is *"the right to live in an unpolluted environment"* (BOBBIO, trans. COUTINHO, 2004, p. 9).

Replacing individualism with collective well-being, a continuous planning project is required for the use of natural resources, for the fulfillment of the requirements of the social function of property and for the definition of the parameters for the responsible use of the right to property, in search of a balance between economic development, quality of life and the preservation of the environment. translating a balance to sustainable development (article 225, "caput").

Prevention was elevated to a condition of principle, in the sense of requiring the performance and publication of prior studies on environmental impacts before granting the environmental license for the installation of a work or activity potentially causing environmental degradation, *"in accordance with the law"* (article 225, paragraph 1, IV). As a principle, prevention is transformed into a general clause, which will serve as the basis of validity for the structuring of other infra-constitutional laws.

The same occurred with the elevation of precaution to the condition of principle. In the precautionary principle, there is no scientific certainty about the impacts caused by activities or works that are potentially harmful to the environment. Thus, in the absence of scientific certainty about the adverse reactions of the activities (for example, oil exploration in an environmental preservation area), as a precaution (article 5, paragraph 3, c/c article 225), the granting or revocation of the environmental license must be denied, in addition to the possibility of liability.

The polluter-pays principle and the principle of responsibility were jointly regulated in the text of the Constitution (article 225, paragraph 3), with the possibility of three-dimensional liability

of the person who caused damage to the environment, whether an individual or a legal entity. The polluter must bear the preventive costs, to avoid environmental impacts, but if there is environmental damage, it must bear the costs for the restoration of the affected environmental area. Thus, based on the general clause, it will be perceived that there is a commitment in infra-constitutional legislation to define the legal elements that make up the environment and the responsibility of the subjects causing pollution in the administrative, criminal and civil fields.

Alongside prevention, precaution and the responsibility of the polluter pays, democratic participation was also elevated to a constitutional principle. Thus, in view of the standardization of the rational use of natural resources, the imposition of requirements for the social function of property and the creation of parameters for the responsible use of the right to property, the environment was recognized as a good for common use and, in this condition, an unavailable patrimony whose duty to act in its defense and protection is imposed on all individuals, companies, civil society actors and bodies in the *"three spheres"* (SIRKIS, 1999, 719). In other words, the *"quality of the environment is transformed into a good, a heritage, a value itself, whose preservation, recovery and revitalization have become an imperative of the Public Power"* (SILVA, 2013, p. 818).

When referring to the participation of the Public Power in the three spheres, it is meant that the administrative competence is common between the Union, the States, the Federal District and the Municipalities, that is, all of them must join efforts to protect the environment and to combat pollution (Article 23, VI).

When it comes to legislative competence in environmental matters, however, it is up to the Union, the States and the Federal District to legislate the general rules on forests, hunting, fishing, fauna, soil conservation, use of natural resources, protection of the environment and pollution control (Article 24, VI), although, in practice, "the states, in general, behave much more as licensing bodies for effectively or potentially polluting activities than as managers of environmental policies in macro sense." (MARQUES, 2000, p. 28).

The municipalities, as long as they respect the general rules of the federal and state plans, have exclusive competence to legislate on *"matters of local interest"* (Article 30, I). Thus, it is up to them to institute the licensing system for polluting or potentially polluting activities (V); prepare the municipal zoning plan, the subdivision of urban land, with environmental protection (VIII); the realization of previous environmental impact studies and awareness through education (VI); the organization, control and inspection of public cleaning services for the collection and transportation of solid waste; landfills, waste trade, incineration plants, etc. (DELGADO, 2000, p. 48).

In this sense, as long as the distribution of competence is respected, the legal duties of the Union, the States, the Federal District and the municipalities are established (article 225, paragraph 1), especially to preserve and restore ecological processes, provide for the ecological management of

species and ecosystems (I), preserve the integrity of the genetic heritage, supervise entities destined to research and manipulation of genetic material (II), define the protected territorial spaces (III), require a prior environmental impact study (IV), control the production and commercialization of substances, as well as the controlled disposal of their respective packaging, as they are harmful to the environment, the quality of the environment and life (V), promote environmental education to raise awareness for the preservation of the environment (VI), protect fauna and flora (VII) and also maintain a favorable tax regime for biofuels and low-carbon hydrogen (VIII).

There are other passages on the environment in the 1988 Constitution (MEIRA, 2008, p. 21). In addition to the possibility of protecting the environment by means of popular action (Article 5, LXXIII) and by means of public civil action (Article 129, III), the protection of the environment is elevated to a general principle of economic activity (Article 170, VI); the rational use of natural resources and environmental preservation become assumptions of the social function of rural property (art. 186, II); the environment becomes an object of interest of the unified health system (art. 200, VIII); Finally, the importance of indigenous peoples for the preservation of the environment and the importance of preserving the environment for survival was recognized (art. 231, §1).

Finally, in view of the ecological promises in the 1988 Constitution, it is now essential, as a next step, to evolve towards the empirical verification of the general environmental laws, at the federal level, which serve to regulate environmental principles and to sanction the tasks, especially with the intention of proving the transformations of the right over time and confirming whether there are advances in the definition of potregulated areas and the implementation of the rural environmental registry and the environmental recovery program, in addition to bringing elements for three-dimensional responsibility.

## THE MOSAIC OF LEGISLATION

It is the infra-constitutional laws that will define the constituent elements of the environment necessary to sanction the constitutional duties.

In the legal system, infra-constitutional laws are hierarchically located below the Constitution that gives them the basis of validity (KELSEN trans. MACHADO, 2011, p. 221).

At the federal level, environmental laws are general norms, applicable throughout the national territory and that serve as beacons for state laws and the organic laws of the municipalities, hence the intention to, at least briefly, analyze them to verify the metamorphosis of the right to sustainable development.

There are records that the first environmental rules emerged in colonial Brazil, with the Manueline Ordinances, until the beginning of the seventeenth century, and the Philippine

Ordinances, mandatory in the kingdom and in the colonies, *"to combat the smuggling of brazilwood and contain attacks on the Amazon"* (FREITAS, 2006, p. 23).

Although it is not the objective to make a detailed analysis, however, there are several environmental laws, codes and decrees on the environment (forests, mines, fauna, pesticides, environmental crimes, etc.), whose separate analysis will allow us to organize ideas and, more than that, to empirically verify the transformation of ecological rights.

## FOREST CODE

The first forest code was instituted by Decree 23.793/1.934, during the Republic, and authorized the felling of up to three-quarters of the forests on rural properties.

Subsequently, Law No. 4,771/1,965 revoked Decree No. 23,793/1,934 and brought with it the first legal restrictions on property rights, such as the prohibition of the use of fire in forests and the definition of permanent preservation areas (APP), which was revoked by Law No. 12,651/2,012.

By instituting the new Forest Code, Law No. 12,651/2,012 is the main environmental legislation for the preservation of forests and native vegetation, with the merits of disciplining the use of land and the conservation of natural resources, defining the various protected territorial spaces and implementing the rural environmental registry (CAR) and the environmental regularization program (PRA).

The rural environmental registry is a mandatory electronic registry that allows environmental agencies to know the exact location of each of the rural properties existing in the national territory and their respective situation in relation to the adequacy of the legal reserve percentages, in order to allow the verification of environmental liabilities and, from there, demand the recovery of the environment.

According to data from the "Permanent Joint Commission on Climate Change", when the new Forest Code came into force in 2012, there were just over 100 thousand rural properties with the CAR and, currently, there are seven million properties with the CAR.

There is still a deficit of native vegetation, which should be protected as a legal reserve or permanent preservation area, however, in any case, the owner, possessor or holder of the area has the duty to conserve the vegetation cover, even transmitting the responsibility to the successor.

Legal reserve areas are the areas of native vegetation that every property must maintain according to the percentage defined by law according to its location (article 12). Thus, if the property is in the forest of the Legal Amazon, the percentage of native vegetation is 80%; if it is in the Cerrado region, 35%; if it is in Campos Gerais, 20%; and if it is in the other regions, 20%. The percentages in question can be increased or reduced, provided that there is scientific data and that they respect the legal criteria.

The Forest Code also protects permanent preservation areas (articles 4 to 6), that is, the marginal strips of natural watercourses; the areas around springs and perennial water holes, the slopes, the sandbanks, the mangroves, the edges of tablelands or plateaus, the tops of hills, mountains and mountains, the areas at an altitude of more than one thousand and eight hundred meters and the paths. Only in the case of public utility, social interest or activities with low environmental impact will it be possible to authorize the suppression of vegetation.

That said, the registration of the rural property in the CAR will allow the identification of environmental liabilities and adherence to the environmental recovery program (PRA), in order to, from the signing of the term of commitment, grant a deadline for environmental recovery. However, the greatest difficulty or challenge of the Forest Code appears with the implementation of the PRA (articles 59 and 60), because, although the Union has edited the general rules, the States do not comply with the detailed duties, considering their territorial, climatic, historical, cultural, economic and social peculiarities, in addition to enormous obstacles due to insufficient equipment of the environmental inspection agencies.

## LAW OF ENVIRONMENTAL CRIMES AND EXTRAVAGANT TYPES

In 1940, the Law of Introduction of the Penal Code typified conducts harmful to the environment as types of criminal misdemeanors in its article 3.

Law No. 5,197/1,967, when providing for wild fauna, defined that animals living outside captivity constitute wild fauna, including nests, shelters and natural breeding sites, and that all are owned by the State (Article 1), prohibiting the collection, persecution, use, hunting (Article 2) and trade of wild animals (Article 3).

A few years later, with the enactment of Law No. 7,653/1,988, however, the conducts previously typified as misdemeanors were elevated to the category of environmental crimes (article 27). In addition, the law authorizes the seizure of game products and instruments used in the offense (article 33) and, finally, environmental crimes were considered non-bailable (article 34).

Law No. 9,605/1,998, called the "Law of Crimes Against the Environment", typifying crimes against fauna (articles 29 to 37), crimes against flora (articles 38 to 53), pollution crimes (articles 54 to 61), crimes against urban planning and cultural heritage (articles 62 to 65) and crimes against environmental administration (articles 66 to 69-A), in addition to administrative infractions, of which it is sufficient for the authorities to become aware of them to initiate criminal prosecution. In these conflicts, the report finding that the damage has been repaired is a mandatory condition.

There are still other criminal types in specific environmental laws. For example, Law no. **Law 14.785/2.023, called the "Pesticides Law". By way of clarification, pesticides are products and agents (physical, chemical or biological) intended for use in agricultural sectors, pastures**

**or planted forests, with the purpose of altering the composition of flora or fauna, under the pretext** of preserving the harmful action of harmful living beings. According to recent legislation, **it is considered a crime to produce, store, transport, destine, use or sell pesticides, environmental control products or the like "not authorized by law" (article 56), or even "in disagreement with the law" (article 57).**

Criminal offenses can be committed by individuals (offender, director, administrator, board member or technical body) and by legal entities, with the possibility of piercing the corporate veil and holding the partners liable. With regard to criminal sanctions, the individual offender is subject to the penalties of loss of liberty, restrictions of law and fine. In the case of legal entities, however, there is no custodial sentence, and penalties of fines, restrictions of rights (suspension of activities, temporary prohibition of establishment, work or activity and prohibition of contracting with the public authorities) and provision of services to the community (funding of environmental programs and projects, execution of works to recover degraded areas, maintenance of public spaces and contributions to public environmental or cultural entities), in addition to the loss of assets in favor of the National Penitentiary Fund after the final and unappealable sentence.

## NATIONAL ENVIRONMENTAL POLICY LAW

Without precedent in legislation, Law No. 6,938/1,981 instituted the National Environmental Policy, to preserve, improve and recover environmental quality.

It is understood that only the State is capable of curbing environmental aggressions with environmental education and the management of legal instruments (SANTOS, 1999, p.185).

Environmental zoning, prior environmental impact studies and environmental licensing – of North American origin (BENJAMIM, 2001, p. 12-14) – are instruments used by the State before authorizing the execution of works or activities that are harmful to the environment.

Based on scientific data, the State establishes the measures and limits of the *"legal standards of environmental quality and tolerated conducts"* (ZAPATER, 2020, p.7), in order to enable administrative decision-making on requests for the granting of environmental licenses; authorization of products, trade, and harmful activities; mandatory information on origin, labeling, storage, transportation and disposal of packaging etc.

It is in this context that the National Environmental Policy Law creates the National Environmental System (SISNAMA), to gather scientific data, and sets the objectives of the national policy of making economic and social development compatible with the preservation of the environment; the definition of priority areas for ecological balance, the establishment of environmental quality criteria in relation to the rational use of natural resources; the dissemination of

environmental management technologies and environmental data; environmental restoration and preservation, in addition to the responsibility of the polluter (Article 4).

## OTHER ENVIRONMENTAL LAWS

There are other environmental standards. This is the case of Law No. 9,985/2,000, which regulated article 235 § 1, items I, II, III and VII, of the Constitution, and instituted the full protection unit and the sustainable use unit, establishing which are the territorial spaces of public domain and expropriable private domains, imposing prohibitions and restrictions on access, as well as authorizing the research and exceptional permanence of indigenous peoples, extractivists, quilombolas and traditional peoples, etc.

Decree-Law No. 227/1,967, known as the "Mining Code", regulates the rights over mineral or fossil substances found on the surface or inside the earth, forming what is understood as the country's mineral resources; By defining the competence, the law established that it is the responsibility of the Federal Government to inspect mining, distribution, trade and consumption, with priority to research and license registration, provided that the requirements of environmental codes and laws are met, including to repair environmental damage and to indemnify third parties, in the case of damage caused by mining activities. with the closure of the mine and the dismantling of facilities, dams and tailings, in addition to the application of administrative and criminal sanctions (articles 1, 2, 3, 11 and 43-A).

Recently, **Law 14,785, of December 27, 2023, called the "Pesticides Law", revoked the old Law 7,802/1,989, and began to regulate the new rules on pesticides, bringing not only the legal definition of these harmful agents and products, but also providing for production, labels, trade, use, import, export, final disposal of waste, disposal, etc. (article 1). In addition,** the registration of products with a federal agency is required and registration will only be granted when the toxic action on human beings and the environment is equal to or less than the products and agents already registered for the same purpose and provided that there is the possibility of effective treatment (article 2, VIII and XXVI). Hence it is stated that pesticides transcend the diffuse rights of the environment to reach the diffuse rights of health and consumers.

## THREE-DIMENSIONAL RESPONSIBILITY

It can be seen that general environmental laws define the constituent elements of the environment necessary for the polluter to be held accountable.

Thus, whenever the normal qualities and conditions of water, air, soil, fauna, flora or human health are affected, there will be " *ecological damage" or "environmental damage"* (FRANÇA, 1996, p. 105).

Environmental damage is, in general, difficult or impossible to repair, and can affect health, safety, well-being, socioeconomic activities, the biosphere and environmental conditions. Thus, the repair of environmental destruction, when and as long as possible, is slow and costly.

Based on environmental legislation, it was possible to delineate what they call three-dimensional liability, since conducts, works and activities that are effectively harmful to the quality of the environment will subject the person of the polluter to sanctions in the administrative sphere, sanctions in the criminal sphere and sanctions in the sphere of civil liability.

Administrative power is peculiar to the Union, the States, the Federal District and the Municipalities. Thus, respecting the jurisdiction, administrative sanctions are those that result from administrative procedures and that result in the application of a warning, fine, seizure, temporary or definitive interdiction of activity, destruction of product, embargo, demolition of work, suspension of benefit, seizure, cancellation of registration, destruction, etc., as established in article 3 of Decree No. 6,514/2,008.

Civil liability is the one that imposes on the offender the obligation to compensate for the damage caused by his polluting activity or work. Civil liability can arise from a contract, it can be extra-contractual and it can be for an unlawful act (unlawful conduct) or a lawful act (risky activity). In any case, when it comes to the environment, the rule is strict civil liability, that is, there is no room for the discussion of fault or exclusion of liability.

Still on civil liability, it is worth remembering the typology of global collective litigation, local collective litigation and radiated collective litigation, respectively, with the occurrence of damages that exclusively affect the environment, damages that specifically affect certain groups of people and damages that will affect the environment and people, simultaneously, to different degrees and extents, but that, in all situations, will require the perpetrator to fully repair the damage caused.

In fact, the Federal Supreme Court, on Topic 999, admitted Extraordinary Appeal No. 654833, in light of articles 1, III, 5, V and X, 37, paragraph 5, and 225, paragraph 3, of the Constitution, to distinguish the object protected in terms of prescription. Thus, if the legal interest protected is eminently private, the normal deadlines for indemnification actions prescribed in civil legislation are followed; However, if it is found that the protected legal interest is unavailable, fundamental, preceding all other rights, since there is no life without it, the right to reparation for environmental damage is considered imprescriptible.

Finally, criminal liability occurs for the commission of a crime or misdemeanor, typified in the laws of environmental crimes and other extravagant crimes, as exposed above. These are criminal offenses against the environment that offend the interests of the community (LECEY, 2000, p. 52-53). Thus, due to the relevance of the good in the scale of social values, criminal protection

becomes necessary as a social response, as an instrument of pressure for the solution of the conflict, as an instrument of effectiveness of general norms and as an instrument of prevention.

## RESULTS

The results confirm the metamorphic state of law, as if law reflected the transformations of society and the State over time.

It was confirmed that, in view of the transformations from the liberal State to the Social State and, later, from the Social State to the Democratic State of Law, collective rights began to be contemplated in the Constitution.

It can also be empirically confirmed that ecological rights have been elevated to a category of constitutional norms and principles, serving as a basis and parameter for the creation, application and interpretation of infra-constitutional laws on the environment, in addition to a plan of tasks to the public power, with the distribution of crystalline competence of the Union, of the States, the Federal District and the municipalities.

By focusing on the infra-constitutional legislation, at the federal level, in an empirical way, the existence of several laws, decrees and codes on the environment was confirmed, highlighting the transformations of environmental law, with the revocation of one diploma by another, or, if not, new diplomas emerged, in search of the creation of legal instruments and programs aimed at the recovery of environmental liabilities, for the preservation of the environment and for democratic participation.

## DISCUSSION

It takes as a hypothesis whether the promises of the social contract have been fulfilled in relation to the collective good of the environment in the face of the transformations of law, society and the State in modernity. Thus, in theoretical contextualization, based on the analysis of the work "The Time of Law", by Francois Ost, we chose to adapt the structural ideas of the classic – that is, "Memory. Linking the past", "Forgiveness. Turning off the past", "Promise. Connecting the future" and "Questioning. Turning off the future" – to confirm the metamorphosis of law, but now focusing on the field of ecological rights in Brazil.

## CONCLUSION

In reflection, the existence of the metamorphic mode of law was confirmed, that is, that law is transformed according to the reality reflected in the social mirror.

Sometimes reflecting the dominant ideology, sometimes reflecting the static moralizing character, sometimes reflecting a more virtuous function of the right to the recognition of rights and

participatory distribution, the substitution of one form for another in successive solutions of the law has been empirically proven.

Although the first environmental laws had appeared in Colonial Brazil, criminalizing the trafficking of brazilwood, it was during the transformations of the liberal State to the Social State and from the Social State to the Democratic State of Law of the 1988 Constitution, in the Republic, that the detachment from the past to connect the future to the promise of ecological rights can be perceived.

By analyzing the 1988 Constitution, the paradigm change was confirmed, by recognizing collective and individual rights, as diverse and complementary to each other, and by disciplining the environment in its own chapter, by recognizing it as a heritage of common use, with norms of a principled nature to structure the system, to inspire the legislator in the creation of new rules, to guide the executive in the application of the rules and to integrate the rules that are lacunae by the judiciary in the solution of global, local and radiated collective conflicts.

Within a plan of legal tasks, it can be seen that each of the entities of the Federation (Union, States, Federal District and municipalities) have a very well-defined role, in terms of the distribution of concurrent administrative and legislative competences in environmental matters, for the construction and implementation of ecological promises in relation to the use of natural resources, the requirements of the social function of property and the parameters for the responsible use of property.

By looking at the general rules, at the federal level, it is possible to confirm not only the successive solutions adopted by the law, with the revocation of one legal diploma by another, but also to confirm that the environmental codes and laws sanctioned the constitutional promises to define protected spaces, to plan the rational use of natural resources, to monitor the quality of the environment, to control activities or works that are potentially harmful to the environment, to control the pesticide chain from manufacture to disposal of packaging, dissemination of scientific data and research, and three-dimensional accountability of the person who caused the damage

By focusing on points considered important, it was seen that the forest code, as the main legislation for the protection of native vegetation, defined the areas of legal reserve and permanent protection, instrumentalized the rural environmental registry (CAR) and the environmental recovery program, although it was also confirmed that the greatest difficulty is in the implementation of the environmental recovery program in view of the insufficient cross-referencing of data to define the environmental liability. Competence attributed to the States, but which have considerable obstacles.

The law of the national environmental policy, in turn, empowered the State with the functional attributions of environmental zoning, prior study of the environmental impact and

concession, suspension or revocation of environmental licenses for activities, works or products harmful to the environment.

On the other hand, after verifying the evolution from misdemeanor to crimes, the law of environmental crimes began to typify crimes against fauna, against flora, pollution crimes, crimes against urban planning and cultural heritage and crimes against environmental administration, in addition to other legal diplomas providing for extravagant crimes (for example, pesticide law), prescribing fines, restrictive of rights and deprivation of liberty.

In a condensed way, it was seen that the law that instituted the units of full protection and sustainable use, defining the areas of public domain, with access restrictions. It was also confirmed that the mining code deals with mineral resources, of interest to the Union, and that it brings the rationalization of mineral exploration in the soil and subsoil. Finally, we updated the text with the recent pesticide law, pointing out not only the concept of pesticides, but also the need for control from registration to disposal.

In the final part, by analyzing the set of environmental laws and codes, it is possible to confirm the regulation of the principle of the polluter-pays' responsibility for ecological damage, with the possibility of applying administrative sanctions (warning, fine, suspension or reregulation of license, embargo of work, prohibition of activity, product, etc.); the possibility of strict civil liability, with the obligation to repair the damage caused to the environment (global collective disputes), to people (local collective disputes) and to the environment and to people simultaneously (radiated collective conflicts), recorded by the imprescriptibility of the environmental damage under review for life; and, finally, with the possibility of criminal liability

About the "Questioning. Detach the future", it only remains for us to say that Brazilian environmental legislation is quite advanced and that, at present, more than the edition of new rules, it is necessary to enforce the legal instruments and programs for the recovery of environmental liabilities that already exist, in order to finally fulfill the constitutional promise.

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