

# PROTECTION OF RIGHTS OF NATURE AND THE POST-DEVELOPMENT PERSPECTIVE

*PROTEÇÃO DOS DIREITOS DA NATUREZA E A PERSPECTIVA PÓS-DESENVOLVIMENTO*

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**ABSTRACT:** The present study aimed to analyze the relationship between the protection of the rights of nature, especially animals, and economic development. For its elaboration, bibliographical searches were made by printed and electronic means, as well as analysis of judicial decisions and comparative law. After studying the collected material, it was possible to verify that the Kantian concept of dignity has been modified, opening space for an ecological dimension of human dignity. Also, it demonstrated that man has to be in his real position within the Earth ecosystem, which is on the same level as other non-human beings. Finally, it was concluded that economic development, for it to be truly sustainable, must be associated with respect for the rights of Nature, including the rights of animals, guaranteeing the preservation of the planet and all the beings that live on it.

**KEYWORDS:** Human dignity. Ecological dimension. Ecological economics. Rights of Nature.

**RESUMO:** O presente estudo teve por objetivo analisar a relação entre a proteção dos direitos da natureza, em especial dos animais, e o desenvolvimento econômico. Para sua elaboração, foram feitas pesquisas bibliográficas por meios impressos e eletrônicos, bem como análise de decisões judiciais e do direito comparado. Após o estudo do material coletado, foi possível verificar que o conceito kantiano de dignidade sofreu modificações, abrindo espaço para uma dimensão ecológica da dignidade humana. Além disso, demonstrou a necessidade do homem assumir sua real posição dentro do ecossistema Terra, que é no mesmo patamar dos demais seres vivos não humanos. Por fim, concluiu-se que o desenvolvimento econômico, para que seja realmente sustentável, deve estar associado ao respeito pelos direitos da natureza, neles compreendidos os direitos dos animais, garantindo-se a preservação do planeta e de todos os seres que o habitam.

**PALAVRAS-CHAVE:** Dignidade humana. Dimensão ecológica. Economia ecológica. Rights of Nature.

## 1 Introduction

The protection of the rights of Nature has gained prominence in the last decade, after the constitutionalization of the theme established in Latin American countries whose influence reached other States around the planet. Due to it, the anthropocentric vision of protecting the environment has been effusively reexamined, providing fruitful results in favor of holistic theories on the subject, such as ecocentrism, biocentrism, Earth ethics etc.

This study aims to demonstrate that respect for the rights of Nature is compatible with the theory of sustainable development or is characterized in a post-development perspective. The choice of the theme is justified based on the understanding that all living beings have the same value within the ecosystem they inhabit and that the extinction of one of them can cause harmful repercussions for the entire system, including and especially in the economic field.

The method adopted was the legal dialectic, to counter the ideas of sustainable development and post-development, to verify the framing of the rights of Nature in the theoretical scope. In this research, bibliographic procedures were adopted, with the survey of theoretical references published by printed and electronic media; as well as documentary, based on the analysis of judicial decisions.

This paper is divided into three parts. The first part deals with the rights of Nature and the shift of paradigm towards holistic conceptions. The second part analyzes the ideas of the ecological dimension of human dignity, sustainable development, and the rights of non-human animals, and their compatibility with the theory of the rights of Nature. The third part verifies whether misuse of natural resources causes damage to the world economy, delimiting the relationship between environmental preservation and the economy.

## **1 Holistic perspectives and rights of nature: New Paradigms**

The recognition of the rights of nature is not a recent movement. Founded in the paradigm shift of anthropocentric thinking, this doctrine places the human being as part of the ecosystem and not as a protagonist or owner of natural resources.

This movement, which has inhabited the aspirations of philosophers and environmentalists since the 1970s, strengthened with the Constitutions of Ecuador in 2008<sup>1</sup> and Bolivia in 2009<sup>2</sup>. Both recognize not only the existence of Mother Nature, also called Pacha Mama<sup>3</sup>, but the importance of its preservation to guarantee the survival of the Planet Earth ecosystem and, consequently, of the human race.

According to Pilau Sobrinho and Borile (2020, p. 26), the proposal to make nature a subject of rights greatly elevated environmental protection, given that the wishes of many environmental protection groups, universities, and traditional communities were met through the constitutional positivity of the rights of Nature, initiated by the Constitution of Ecuador and the Law of Mother Earth in Bolivia.

Therefore, the constitutionalization of Nature's rights, which goes beyond traditional environmental law, elevated them to the category of fundamental right, replacing the anthropocentric model<sup>4</sup>. Besides, this important change in thinking has influenced the construction of new laws and public policies by various nations around the world, as recognized by the United Nations<sup>5</sup>.

As Marco Aparicio Wilhelmi (2013, p. 280) teaches, Ecuador and Bolivia are the pioneering countries in the constitutional reaction to the global context of the ecological crisis, arguing that there can be no social justice without environmental or ecological justice<sup>6</sup>.

The important conclusion to be drawn from these constitutional texts is the recognition that human beings are part of Mother Nature, and that they are vital to its existence,

which should generate a division of protagonism, a change in the discourse about the environment.

For Alberto Acosta, cited by Antonio Carlos Wolkmer and Maria de Fatima S. Wolkmer (2014, p. 998), to recognize Nature as a subject of rights is a controversial discussion. According to these authors, this recognition means a break with the traditional paradigms built by Western culture, which established an anthropocentric conception based on the assertion that the human person is the exclusive holder of rights.

This change means, consequently, breaking with the thought defended for centuries that man is the center of the world and, as such, lord of everything. However, the maintenance of anthropocentric thinking proves to be counterproductive, since it can lead humanity to ruin once the imbalance of the biosphere is essential for the survival of the ecosystem.

The Norwegian philosopher and environmentalist Arne Naess defended, since the beginning of the 70s, the need to recognize the importance, value, and parity of living beings and Nature, insofar as he affirmed that all living elements of nature must be respected, as well as the balance of the biosphere must be guaranteed<sup>7</sup>. This philosophy developed by him was called deep ecology.

Fritjof Capra (1996, p. 17) discusses this philosophy explaining that it “does not separate human beings - or anything else - from the natural environment”, viewing the world as “a collection of isolated objects, but as a network of phenomena that are fundamentally interconnected and are interdependent.” According to the author, deep ecology understands that human beings are just a thread in the web of life, recognizing the inherent value of all living beings.

Therefore, according to this idea, there is a correlation and interdependence between the beings that inhabit the ecosystem, and the existence of everyone depends on this harmonious coexistence since they are all part of a web, interconnected to each other.

This is what Alberto Acosta (2011) defends, quoted by Fábio Corrêa Souza de Oliveira (2013, p. 11339-11340) when stating that<sup>8</sup> “these rights defend the maintenance of life systems, life groups. Their attention is focused on ecosystems, collectivities, not on individuals”.

According to Silvia Bagni (Webnar, 2020), these relations between the beings that inhabit the same ecosystem are what deserve the protection of the law and not the individuals. The existence of humans and non-humans, which implies new and distinct rules for resolving antinomy and conflicts, outside the anthropocentric paradigm, depend on this. If there is no hierarchy between humans and non-humans, rules must be applied taking into account the essential core of rights and not just the interest of one overlapping the other.

Regarding the subject, we can identify some theories. Biocentrism focuses on the protection of life, that is, all living beings individually considered would have moral value, seeking the full realization of their biological potentialities, such as growth, survival, and reproduction. Animal ethics, or animalism, is based on the premise that only certain species of living beings would be endowed with moral consideration, using sentience as a criterion (Singer and Regan). Ecocentric theories start from the holistic consideration that the integrity of natural collectivities deserves moral consideration (species, ecosystems, natural processes, biosphere etc.), highlighting the aspects of land ethics (Aldo Leopold) and deep ecology (Arne Naess) (LOURENÇO, 2019, p. 411-412).

According to Rowe (s/d, s/p), “ecocentrism is not an argument that all organisms have equivalent value. Reflecting on the ecological status of all organisms, it comprehends the Ecosphere as a Being that transcends in importance any single species, even the self-named sapient one”.

For the United Nations (UN) Harmony with Nature Program<sup>9</sup> the earth-centered paradigm that follows humanity's oldest jurisprudential traditions is peculiarly pluralistic. Harmony with Nature depends on respecting, protecting, and sustaining the diversity of ecosystems, terrestrial and marine landscapes, cultural and traditional. It also requires a deep recognition of the multiple forms of life, not only human but of all forms of life<sup>10</sup>.

All the theories addressed have positive points and are criticized. However, there is a common point between them, which is the realization of the need to overcome the anthropocentric paradigm to guarantee the survival of the planet's ecosystem, harmonizing the coexistence between human and non-human beings.

To abandon the anthropocentric conception means to recognize the human being as a part of the ecosystem. Thus, human and non-human beings must be treated on an equal basis, with the conviction that everyone has the same value and that they are mutually necessary to maintain the balance of the ecosystem and, consequently, the survival of it and the respective species. Man is not above other living species, he is not a lord and owner of natural wealth and, therefore, he cannot dispose of them in a wasteful way.

From this perspective, it is understood the need to legally consider Nature as a subject of rights, operationalizing protection in its name through dogmatic means, which is different from preserving Nature in the name and for the convenience of man himself and his well-being.

For Pilau Sobrinho and Borile (2020, p. 27), to assign rights to entities that are not human should be considered normal, as it is the case with the representation of bankrupt estate, assets, condominium, and legal entities in general that have rights and duties. Therefore, granting certain guarantees for an animal or biotic or abiotic element cannot be considered incorrect or bizarre.

If companies and other legal figures that do not exist in the physical, palpable world, can be subject to law, why cannot the same be true for other living beings, including rivers and animals? Legislation, doctrine, and jurisprudence around the world have shown that it is possible to give them rights and dignity.

## **2 Theory of the rights of nature as overcome of anthropocentric doctrines used in environmental law**

As stated earlier, to maintain the balance of the ecosystem, it is necessary to give equal value to the different living beings that belong to it. However, for this to be possible, it is necessary to change the Kantian point of view of dignity, of an anthropocentric aspect, despite its historical importance.

The importance of humanism for the historical overcoming of the medieval scene is undeniable, dominated by concerns about God, as a movement that forged the intellectual basis of the modern world. The spectacular success of rationalism and science created a danger of another kind: the belief that there is nothing that man cannot achieve, with the proper application of his efforts. Thus, the question about what is the measure and the limits for human activity arises. (RUSSELL, 2015, p. 220-222).

In modern times, Immanuel Kant stood out with his theory of duty and the categorical imperative, with repercussions on the themes of moral and ethics, consolidating the moral maxim that man is an end and never a means. According to the author (KANT, 2007, p. 59).

The categorical imperative is, therefore, only one, which is this: It acts only according to a maxim so that you can at the same time want it to become a

universal law. If from this single imperative, as from its principle, all the imperatives of duty can be derived, although we leave it to be decided whether what is called duty is not, in general, an empty concept, we can at least indicate what we think about it and what this concept means. Since the universality of the law, according to which certain effects are produced, constitutes what is properly called nature in the broadest sense of the word (in terms of form), that is to say, the reality of things, as long as it is determined by universal laws, the universal imperative of duty could also be expressed thus: Act as if the maxim of your action should become, by your will, in an universal law of nature.

The Modern Era, by instrumentalizing the meaning of things, placing man at the axiological center of the moral universe, promoted the revival of anthropocentrism, accompanied by the laicization of mentalities, devaluing diverse perspectives. (Gordilho, 2008, p. 23 and 25).

On the shocks suffered by the anthropocentric perspective over time, Heron José de Santana Gordilho (2008, p. 33) lists:

First, when Copernicus demonstrated that the earth was not the center of the universe, but only a small fragment of a vast cosmic system. Second, when Charles Darwin proved that the human species did not appear ready, as the *Bible* says, and that it has a common ancestor with the great primates. And, finally, when Freud demonstrated human irrationality and that the ego is not a master within its own home, since most of our actions are unconscious.

In the late 1960s, early 1970s, economists began to demonstrate that economic development could not be dissociated from ecology.

Rosana Icassatti Corazza (2005, p. 440-441) states that at that time there was much reflection on the relationship between the environment and economic growth, which led to the emergence of the Club of Rome. This movement, led by the Italian economist Aurélio Peccei, brought together thinkers from different areas to analyze the fundamentals of the crisis that civilization was going through. The group's conclusion is that the problem had several manifestations, including environmental damage. As they were aspects that interacted in a very complex way, they could not be treated in isolation.

As a result of this concern, the need to promote sustainable development arose. According to Gudynas (2011, p. 84), sustainable development is an old concept, which appeared in the 1970s, with the first discussions on environment and development. From the 1980s onwards, the idea that for development to be sustainable it was necessary to consider economic and social factors, but also the preservation of ecosystems, was improved.<sup>11</sup> It should be noted that this is a perspective of protecting the environment in terms of the interests of man and his right to development.

In an attempt to solve the problem of the lack of effectiveness of the doctrine of sustainable development for the protection of the environment, but still within an anthropocentric vision, Og Fernandes (2019, p. 9) affirms that ecological understanding of the dignity of the person and life, in general, is necessary.

This thought was already defended by Fernanda Luíza Fontoura de Medeiros *apud* Amanda Cesario Fodor. This author proposes a break with the anthropocentric paradigm created, suggesting the valuation of the protection of life beyond the human being, based on Habermas' thinking. (MEDEIROS *apud* FODOR, 2016, p. 27).

Fernanda Luíza Fontoura de Medeiros goes further, considering that according to this thesis, it is possible to apply the dignity of life to the protection of non-human animals

in face of the threats of new biotechnologies, guaranteeing the protection of human life even before their birth (MEDEIROS, 2013, p. 277).

Og Fernandes, citing Sarlet and Fensterseifer (2017, p. 91) shares the same opinion, arguing that the prohibition of the practice of 'objectification' or 'objectification' (that is, treatment as a simple 'means') should not be limited only to human life, but also to other forms of life (SARLET; FENSTERSEIFER apud FERNANDES, 2019, p. 10). In other words, respect for life must be an attribute of all beings and not only of human beings.

On the defense of non-human animals and the protection of nature in general, without however elevating Nature to the status of subject of rights, the 1999 Swiss Constitution foresees the protection of the creature's dignity against the abuses of genetic engineering<sup>12</sup>.

As if the constitutional provision were not enough, Switzerland disciplined the issue in several infra-constitutional laws, safeguarding these figures. CARVALHO and SOUZA (2016, p. 204) state that, to protect animals and what they called "the dignity of the creature", the Federal Law on Genetic Engineering (*Gentechnikgesetz*) and the Federal Law for the Protection of Animals were promulgated (*Tierschutzgesetz*). There is also regulation that accompanies it (*Tierschutzverordnung*), in addition to regulations from the Ministry of Food Safety and Veterinary Affairs.

The German Constitution, by means of an amendment in 1994<sup>13</sup>, included in Article 20 the protection of the natural bases of life. For Azevedo (2018, p. 1056), the German State, assuming its responsibility to future generations, protects the natural bases of life through constitutional provision, legislation, as well as through the executive and the courts, even reaching those who have not yet been born, demonstrating the state's concern for inter-generational justice.

According to Juliana Lima de Azevedo (2018, p. 1057), in 2002 the aforementioned constitutional text "started to give special treatment to the environment and animals, [...], becoming the first country in the European Union to insert in its constitutional text the protection of animals"<sup>14</sup>.

Therefore, the idea of attributing dignity to non-human living beings, despite causing strangeness to some, is a relatively old debate, being fully accepted in the legal world. Attributing dignity to Nature, however, does not necessarily mean characterizing it as a subject of law.

In Brazil, despite the constitutional provisions that protect the environment, especially Art. 225, several infra-constitutional laws<sup>15</sup> deal with environmental and animal protection. However, as Amanda Cesario Fodor points out, quoting Daniel Braga Lourenço, "the legislator's real objective was to safeguard human dignity, even if the real victims of the damage caused are non-human animals" since the national legal system does not recognize its value and dignity (LOURENÇO apud FODOR, 2016, p. 44).

This is also the understanding of Fernandes (2019, p. 13-14) when stating that "strictly speaking, what has been happening is the condemnation of certain intolerable acts of violence so that the human being himself can see his moral standards met."

Therefore, to protect the rights of animals, under the pretext of preventing animals from being subjected to cruel activities, in fact, it is seeking to meet the criteria of interest of human beings, demonstrating that there is still a prevalence of the anthropocentric view<sup>1617</sup>.

The imperative change in thinking and behavior to adopt the ecocentric vision at once goes through a deeper transformation, which goes beyond the way of thinking, but which represents a change in the beliefs and values once known. Even though the deep ecology movement has an expressive number of articulate and eloquent thinkers who could convince political and corporate leaders by changing the paradigm, this change requires an

expansion of perceptions, ways of thinking, and especially of humanity's values (CAPRA, 1996, p. 18).

Consequently, this change implies the attribution of values of the ecosystem as a whole and not just one or the other element that belongs to it.

Silvia Bagni (Webnar, 2020), defends that these rights are not just paper rights, challenging everyone to think about how to develop the ecological mandate presented by Eduardo Gudynas.<sup>18</sup> It is necessary to change the relationship between law and nature, based on scientific knowledge of the functioning of the Earth ecosystem. And adds by stating that the law should not be limited to protecting or conserving nature, but should respect its rules of operation, remembering that as human beings, we are also part of nature. Therefore, the law cannot be thought and elaborated outside the rules that allow the survival of human beings within the Earth ecosystem.

Corroborating this idea, Sarlet and Fensterseifer (2008, p. 77) state that the conceptions that they consider to be worthy of the exclusive attribute of the human person are riddled with excessive anthropocentrism, especially because they suggest that the human person occupies a privileged place to other beings living exclusively according to their rationality.

Sarlet adds by stating that it is possible to sustain the dignity of life itself in general, insofar as the preservation of all natural resources, including all forms of life on the planet, "constitutes, ultimately, a requirement of human life and human life with dignity." (SARLET, 2006, p. 34-35).

In Brazil, there are several examples of discussions involving the protection of animals against acts of cruelty<sup>19</sup>. The problem to be discussed is the conflict between the use of animals in activities considered cultural and/or sports, entertainment, and even scientific research and practices that endanger the ecological function of these animals, cause their extinction or subject them to cruelty. It is a conflict between rights considered fundamental, and the result of it will have two solutions, one from an anthropocentric perspective and the other from an ecocentric perspective.

The most recent of these was a decision of the Superior Court of Justice (STJ), of March 2019, which innovated by recognizing the ecological dimension of human dignity, maintaining the permanent custody of a parrot with its owner<sup>20</sup>. The rapporteur, Minister Og Fernandes, points out that it is essential to reflect to materialize the dignity of non-human animals, admitting the respective rights and changing the way of coexistence of human and non-human animals.

According to Alessandro Pelizzon and Mariana Ribeiro Santiago (2020, p. 482), Brazilian examples are added to the international discourse and indicate "the global desire for a universal declaration on the rights of Nature under international law capable of bypassing the limitations of domestic law".

Three Brazilian municipalities changed their laws to recognize nature as a subject of rights<sup>21</sup>. Despite the limitations of Brazilian legislation, the first step was taken towards "ecocentric paradigm that is consistent with the current demands of the global environment." (PELIZZON; SANTIAGO, 2020, p. 483).

Thus, it is concluded that it is necessary to move away from the anthropocentric notion of dignity preached by Kant and other philosophers so that the different living beings that constitute the Earth ecosystem are given the same value, allowing their recognition as a subject of right.

In the same way that inanimate beings can be subject of right, so nature and non-human animals can too. In several countries in Latin America and Europe, the ecological

concept of human dignity is recognized and applied to human beings and other elements that constitute the natural environment.

In Brazil, constitutional and infra-constitutional legislation protects the environment and animals, but without totally dissociating from the anthropocentric conception, prevailing the idea that the animal is a “thing” and that man is its owner.

### **3 Instrumentalized environmental preservation through nature's rights and their relationship with the economy and human rights**

The conception of the human as part of Nature, with a division of protagonism, elevating it to the condition of subject of right and not simply a good or means for the condition of dignified human life, implies recognizing that changes are necessary not only in the legal perspective but also, and mainly, in the field of the economy.

Economist Celso Furtado (1974, p. 75), Brazil's first Minister of Planning, teaches that the capitalist generalization of the forms of consumption observed in developed countries has no place within the apparent evolutionary possibilities of this system, showing that the lifestyle created by industrial capitalism will always be the privilege of a minority, in addition to causing strong deprecation of the physical world, putting at risk the chances of survival of the human species. (SANTIAGO; ANDRADE, 2018, p. 189-190).

Thus, according to the furtadian thought, the idea of economic development as a generalization, for the whole planet, of the forms of life of the current rich people is simply unrealizable. In this sense, it seems irrefutable that peripheric economies will never be developed, although this belief has been of great use in mobilizing the people of the “periphery” of the planet to accept enormous sacrifices, legitimizing the destruction of archaic forms of culture and the physical environment itself, to justify forms of dependence that reinforce the predatory character of the productive system. (FURTADO, 1974, pp. 75-76. SANTIAGO; ANDRADE, 2018, p. 190)

In this sense, the aforementioned author states (FURTADO, 1974, p. 76):

It is, therefore, appropriate to affirm that the idea of economic development is a simple myth. Thanks to it, it has been possible to divert attention from the basic task of identifying the fundamental needs of the community and the possibilities that open to man to the advancement of science, to concentrate them on abstract objectives such as investments, exports, and growth.

In another perspective, it is noted the ideal of sustainable development, addressed within the scope of the United Nations, initially in the Bruntland Commission, of 1987, which defined it as one that must meet the needs of the present without compromising the possibility of meeting them in the future, by overcoming poverty and respecting ecological limits, together with an increase in economic growth, as a condition for the possibility of achieving greater sustainability of global living conditions. (DELGADO, 2001, p. 113-114. SANTIAGO; ANDRADE, 2018, p. 189).

Speaking about the theories of sustainable development, Edgar Morin (2013, p. 32) says:

the idea of "supportability" (or sustainability) adds to the development of a set of actions aimed at safeguarding the biosphere and, correlatively, safe-

guarding future generations. This notion contains an important ethical component, but it could not improve the idea of development in depth. It does nothing but soften it, cover it with a soothing ointment.

In fact, it is noted that the theory of sustainable development has been distorted to serve exactly the maintenance of the status quo, which has caused so much damage to the environment, especially in the Brazilian reality. Companies adopt the sustainability discourse, which eventually gives them a gain in terms of image, but they do not subvert the internal logic of the business itself, often harmful, or even adopt an adequate ethical posture, in a kind of greenwashing.

At the same time that the idea of sustainable development was developed, the term degrowth emerged<sup>22</sup>, which has Serge Latouche as its greatest propellant. He recalls that natural resources are limited and that is why it is necessary to seek the improvement of living conditions without an unnecessary increase in consumption. The main purpose of this theory is to emphasize the abandonment of unlimited growth, the search for profit, which has disastrous consequences for the environment and, thus, for all humanity (LATOUCHE, 2009, p. 4).

Theorist of degrowth, the Frenchman Serge Latouche (2009, p. XIV) is a critic of the concept of sustainable development. According to the author, to state that infinite growth is incompatible with a finite world is a easily sharable evidence and has little meaning if the logic of systematic and unrestricted growth is not really questioned. (SANTIAGO; ANDRADE, 2018, p. 189)

In the words of the author (LATOUCHE, 2009, pp. 8-9),

development is a toxic word, whatever the adjective they wear in it. To square the circle, sustainable development has now found its privileged instrument: the "clean development mechanisms", an expression that designates technologies that save energy or carbon, under the cloak of eco-efficiency. We continue with verbal diplomacy. The undeniable and desirable performances of the technique do not question the suicidal logic of development.

The flag of degrowth would thus bring together those who make a radical critique of development based on consumption and want to design an alternative project, a post-development policy, having as goal a society that lives better, works and consumes less, opening space for inventiveness and creativity. Such a project would involve the systematic articulation of eight interdependent changes: reevaluating, reconceptualizing, restructuring, redistributing, relocating, reducing, reusing, and recycling<sup>23</sup> (LATOUCHE, 2009, p. 6 e 42. SANTIAGO; ANDRADE, 2018, p. 189).

It is in this context that the study of the Rights of Nature is proposed. Rising Nature to the level of subject of right, therefore, means recognizing that changes are necessary in terms of economy, moving beyond the proposal of sustainable development.

Therefore, unrestrained consumption brings risks to the continuity of life on Earth, given the limitation of the biosphere.<sup>24</sup> Thus, reducing the impact of the ecological footprint<sup>25</sup> that man has left on the planet for the past 300 years is fundamental for the survival of the ecosystem and the humans and non-humans that inhabit it.

Given the need to modify production models, and contrary to popular belief, the ecocentric model can increase the number of jobs. Latouche argues that a degrowth policy generates an "increase in production due to the targeted demand for environmentally friendly products and equipment and all the necessary professions." (LATOUCHE, 2009, p. 113).

It is important to remember that environmental preservation also involves guaranteeing the rights of animals, as the balance of the ecosystem depends on this.

Rowe (s / d, s / p) says that ecocentrism is a new way of thinking, which puts “Ecosphere health before human welfare. It points the way to solving questions that, within humanistic or biocentric frameworks, are virtually unsolvable: the Growth Problem, the Population Problem, the Technology Problem. It gives new and constructive direction to philosophers, economists, scientists, and engineers.

Thus, it is essential to reconcile the economy with respect for animals. The health of the planet is in critical condition. Assertively, Silvia Bagni (Webnar, 2020), points out that the pandemic numbers for Covid-19 are tragic, but that those killed by climate contamination are equally astonishing. However, they are not disclosed and therefore are not seen by the population as a problem<sup>26</sup>.

Science has proven that the emergence of infectious and pandemic diseases is closely linked to climate change and human action on the environment. According to a recent report by the United Nations<sup>27</sup>, more than 10 years ago, science detected 335 infectious diseases, of which at least 60% are diseases transmitted from vertebrate animals to humans in a natural way. Still, according to the document, doctors believe that the evolution of zoonoses, including those caused by the coronavirus, SARS-CoV-2, H1N1 in 2009, as well as the one that caused the Ebola epidemic in 2014, is related to environmental changes and with human behavior.

This is one of the reflections brought by the pandemic caused by the coronavirus, that is whether there is a relationship between the emergence of the disease and the current model of “sustainable development” that is being used.

The doubt was raised in the report by the UN Secretary-General (2020, p. 2), originated from a statement by Ecuador on the situation. For that State, disrespect for the rights of nature, especially for animals, which are subject to ill-treatment and illegal trade, has part of responsibility at the origin of the pandemic. And highlighted the need to reflect on the importance of a harmonious relationship between human beings and nature.

Thus, the global crisis resulting from the pandemic caused by the coronavirus is the demonstration that the environmental imbalance can have negative consequences for the economy. No mesmo sentido nos ensina Gomes, citada por Fernanda Medeiros, ao afirmar que “não é exagero nos tempos em que se vive e nos tempos que estão por vir, relembrar e realçar a importância da questão ambiental e dessa conscientização da proteção dos recursos naturais.” (GOMES, 1999).

Teixeira, quoted by Medeiros, adds by saying that the consequences of uncontrolled exploitation of the environment are due to the lack of ecological awareness, in addition to a destructive tendency of man to the environment in which he lives. As a result, it generates incalculable and irreversible damage, such as the extinction of species and environmental resources, which cause economic repercussions, reflecting on the importance of humanity's awareness for the protection of natural resources (TEIXEIRA, 2006 *apud* MEDEIROS, 2013, p. 3).

Thus, if there is no harmonious dialogue between human and non-human beings, humanity will certainly suffer the consequences, considering that the economic development and the very subsistence of the species will be threatened.

This occurs because it is evident that there is a relationship between economic development and environmental protection. According to Gudynas, “*esa íntima vinculación es particularmente evidente en América Latina, donde las economías nacionales siguen descansando en la apropiación intensa de los recursos naturales, y las materias primas siguen siendo las exportaciones más importantes.*” (GUDYNAS, 2011, p. 83).

Therefore, it is essential to develop awareness of the need to protect animal rights to guarantee human survival, as well as to promote sustainable development. In this sense, Fernanda Medeiros and Letícia Albuquerque affirm that "the changes brought about by the 1988 Constitution are not restricted to legal aspects only". They occur in the ethical, biological, and economic dimensions, which are the three pillars of sustainable development. For this reason, animal rights are "an alternative for expanding ethical foundations to include other animals (in addition to humans), recognizing a right inherent in the entire animal kingdom (or, at least, insentient animals)" (MEDEIROS; ALBUQUERQUE, 2013, p. 22)

Marcilene Aparecida Ferreira defends the same position that the protection of the rights of nature goes beyond the anthropocentric environmental perspective, because "it implies a paradigm shift, not only for constitutionalist thinking but for all areas of the science of law and other sciences, developed on an anthropocentric basis." (FERREIRA, 2013, p. 406).

Otherwise, environmental disasters will continue to haunt economic development. An example is the scenario of the company Ilva, the largest steel manufacturer in Italy. According to the Italian press, in 11 years 11,550 people died of cardiovascular and respiratory diseases, due to polluting emissions. Each industrial chimney polluted the equivalent of 400 incinerators<sup>28</sup>. In 2012, a court decision<sup>29</sup> determined the closure of the largest steel factory in Europe, responsible for the production of 1/3 of Italian steel because of the pollution that harmed the health of workers and residents of the region. This decision affected 12,000 workers employed at the Taranto plant, located in an economically stagnant region<sup>30</sup>. In the difficult decision taken by the Italian justice, environmental protection prevailed and, consequently, the right to life and the ecologically balanced environment in detriment of the employment of thousands of workers, sacrificing one fundamental right (employment) against another (right to environmental protection and therefore the right to life for employees and the population).

The conclusion reached is that the decision aimed at environmental protection and, consequently, the protection of the lives of thousands of people, residents of the region, and industrial workers, demonstrating that environmental preservation and economic development are intrinsically linked.

Clovis Cavalcanti (1998, p. 11) reinforces this thesis "since it cannot be admitted that economic activity continues on its collision course with nature. Something has to be done for this in terms of research, the exchange of information, in the researchers' routine." For the author, it is not enough to assume that the market and the usual instruments of economic science can solve the problems of production and consumption. "A new philosophy, of humanity as part of nature and subject to its rules, must replace the current view, of a man far from the rest of the natural world and as his master and dominator." (CAVALCANTI, 1998, p. 11).

This was the philosophy defended by Georgescu-Reagen already in the early 1970s, who was banned by economists of that time for his ideas of an ecological economy, which defended the existence of an intimate relationship between economics and the environment. For him, it was essential to wake up to the biophysical limits to growth, as well as to the inability of the conventional economy to deal with these issues. At the same time, the perception of the impacts of human activity on ecosystems began the emergence of global environmental problems and the need for new approaches to deal with new problems. "It was already crawling the perception that economic growth was no longer generating the general well-being of already rich people." (CECHIN, s / d, 2010, p. 131).

It is also important to remember that population growth, aggravated by the capitalist consumerist system, leads to an increase in the consumption of inputs, and the environment is unable to replace nutrients and natural resources at the same speed as demand.

Although it is not an easy task, changing paradigms is possible. For Pilau Sobrinho and Borile, society evolves and the law must follow in its footsteps, to guarantee life in society. According to the authors, "the human mind is capable of this feat so that Law as an austere, prudent and conspicuous science must deal with social processes in a timely manner and then treat them with appropriate devotion and solicitude." (PILAU SOBRINHO; BORILE, 2020, p. 29). And, in the face of these developments, regulate interests and emerging phenomena.

The countless advances made by the coronavirus pandemic in the context of the relationship between the ecological economy and the rights of nature indicated in the 2020 report of the UN Secretary-General (2020, p. 16) are proof of it. These advances demonstrate the diversity and number of people who are prepared to make the transition to an Earth-centered way of life.

According to the Report of the UN Secretary-General, within the scope of the Harmony with Nature Program (2019, p. 20), education is one of the aspects that must be taken into account for the transition of the Earth-centered paradigm. For him, the links between education, climate action, and civil society are deeply intertwined in a collective response to the need to implement a paradigm shift centered on the Earth, definitively rejecting anthropocentrism.

So, the adoption of the ecocentric model involves the education of the world population at all levels, not only in the legal sphere, awakening the critical sense and the understanding that the protection of the Planet Earth and future generations depend on this change.

Finally, it is important to highlight the statement by Clóvis Cavalcanti for whom "the economy cannot be seen as a system dissociated from the world of nature, as there is no human activity without water, photosynthesis or microbial action in the soil." (CAVALCANTI, 1998, p. 9).

Thus, besides being possible, it is vital to reconcile the economy with real environmental preservation, with a leading role for Nature, as a subject of right, remembering that this environmental preservation also involves guaranteeing the rights of animals, as the balance of the ecosystem depends on it. It is fundamental once science has proven the relationship between the emergence of infectious and pandemic diseases and climate change caused by human activity on the environment and wild animals.

Therefore, it is clear that the misuse of natural resources, as well as the mistreatment and abuse against animals, especially wild animals, can cause numerous fatal diseases to human beings, significantly shaking the world economy, leaving more than evident the intrinsic link between environmental preservation and the economy.

Do not forget that the change in discourse, the division of protagonism, raising Nature to the condition of subject of right also affects the creation of a new culture, in which society learns to respect Nature in another way, without which it is impossible to achieve balance for the planet.

#### **4 Conclusion**

To abandon the anthropocentric conception means to recognize the human being as a part of the ecosystem. Thus, human and non-human beings must be treated on equal conditions, with the conviction that everyone has the same value and that they are mutually

necessary to maintain the balance of the ecosystem and, consequently, the survival of it and the respective species.

It is necessary to move away from the anthropocentric notion of dignity preached by Kant and other philosophers to give equal value to the different living beings that constitute the Earth ecosystem, so that Nature may be raised to the status of subject of right, increasing the effectiveness of its protection, with alteration of laws, discourse, and division of protagonism.

In Brazil, constitutional and infra-constitutional legislation protect the environment and animals, but without totally dissociating from the anthropocentric conception, prevailing the idea that the animal is a "thing" and that man is its owner.

For the paradigm shift to occur, it is essential to recognize the equality of values of all the elements that are part of the ecosystem. Although the Brazilian legislation is not yet adapted, the jurisprudence has pronounced and recognized the ecological perspective of the dignity of non-human animals as a way of approximating it to the ecocentric thinking.

This approximation is necessary to guarantee economic development within an ecologically balanced environment and observing one of the principles of the economic order established in the Federal Constitution of 88.

Thus, in addition to being possible, it is vital to reconcile economic growth with environmental preservation, remembering that this environmental preservation also involves guaranteeing the rights of animals, as the balance of the ecosystem depends on this. This is because science has proven the relationship between the emergence of infectious and pandemic diseases and climate change caused by human activity on the environment and wild animals.

The lack of environmental awareness, as well as the indiscriminate use of natural resources, are responsible for environmental disasters, which cause more deaths than the pandemic of the coronavirus.

It is clear that the misuse of natural resources, as well as the mistreatment and abuse against animals, especially wild animals, can cause numerous fatal diseases to humans, significantly shaking the world economy, leaving more than evident the link between environmental preservation and the economy. It is possible to make economic growth compatible with environmental preservation.

For this, it is essential to recognize that nature is subject of rights and as such, deserves appropriate treatment. Without the recognition that human beings are part of Mother Nature and that it is vital to its existence, the survival of the human race is compromised, as well as that of the other species of the Earth ecosystem.

It is important to add the importance of adopting radical measures to guarantee economic development in line with environmental preservation. The current moment of social isolation and with so many restrictions imposed by the coronavirus pandemic demonstrates that this goal is possible to be achieved through the ideas presented by the theory of degrowth, which Latouche has propagated for almost two decades, in addition to proving that economic development cannot be dissociated from ecology.

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<sup>1</sup> Some of the guaranteed rights are the respect, maintenance, and regeneration of nature, as well as the possibility for people to demand from the public authorities the adoption of measures to fulfill these duties. Available at: <http://www.stf.jus.br/repositorio/cms/portalStfInternacional/newsletterPortalInternacionalFoco/anexo/ConstituicaoEquador.pdf>. Accessed on: 25 ago. 2020.

<sup>2</sup> "[...] concerning natural resources and the right to common goods, the Bolivian Constitution of 2009 recognized its relevance, as well as its necessary protection and preservation. First, it provides in the social and economic rights chapter, in its art. 33, the right that people should have to the 'healthy, protected, and balanced environment. The exercise of this right must allow individuals and collectivities of present

and future generations, in addition to other living beings, to develop in a normal and permanent manner. 'Consequently, the natural common assets of the environment (art. 342), forests, subsoil, biodiversity (art. 348, 380), water resources (art. 373), and land (art. 393) are worthy of conservation, protection, and regulation by the State and the population.' (WOLKMER; WOLKMER, 2014, p. 1008-1009).

<sup>3</sup> CELEBRANDO a la naturaleza, la Pacha Mama, de la que somos parte y que es vital para nuestra existencia [...]. Available at: <http://www.stf.jus.br/repositorio/cms/portalStfInternacional/newsletterPortalInternacionalFoco/anexo/ConstituicaoEquador.pdf>. Accessed in: 25 ago. 2020.

<sup>4</sup> J. Stan Rowe (1994, p. 106-107) explains in a simple and understandable way the meaning of ecocentrism. For the author "The "environment" that anthropocentrism misperceives as materials designed to be used exclusively by humans, to serve the needs of humanity, is in the profoundest sense humanity's source and support: its ingenious, inventive life-giving matrix. Ecocentrism goes beyond biocentrism with its fixation on organisms, for in the ecocentric view *people are inseparable from the inorganic/organic nature that encapsulates them*. They are particles and waves, body and spirit, in the context of Earth's ambient energy."

<sup>5</sup> This statement is present in the conclusions of the A / 75/150 report of the Secretary-General of the United Nations, published on 07/28/2020, p. 16. Available at <https://undocs.org/pdf?symbol=es/A/75/266>. Acesso em 29 jan. 2021.

<sup>6</sup> "Ecuador y Bolivia son, de este modo, países pioneros de la reacción constitucional ante el contexto mundial de crisis ecológica, situando en el primer lugar de la agenda la comprensión de que no puede haber justicia social sin justicia ambiental o ecológica."

<sup>7</sup> "The Deep Ecology movement: (1) Rejection of the man-in-environment image in favour of the relational, total-field image. [...] (2) Biospherical egalitarianism - in principle." (NAESS, 1972, p. 95).

<sup>8</sup> "Estos derechos defienden el mantenimiento de los sistemas de vida, los conjuntos de vida. Su atención se fija en los ecosistemas, en las colectividades, no en los individuos."

<sup>9</sup> It is a program created by the United Nations (UN) to promote, between countries, activities, exchange of opinions and views on the conditions, experiences, and principles for a life in harmony with nature (Resolution A / RES / 64/196, 2009, p. 2).

<sup>10</sup> 133. El paradigma centrado en la Tierra que sigue la senda de las tradiciones jurisprudenciales más antiguas de la humanidad es inherentemente pluralista. La Armonía con la Naturaleza depende de respetar, proteger y sustentar la diversidad de ecosistemas, paisajes terrestres y marinos, culturas y tradiciones. La Armonía con la Naturaleza exige un profundo reconocimiento de las múltiples formas de ser que la vida, y no solo la vida humana, sino toda forma de vida, ha imaginado (Programa Harmonia com a Natureza, 2019, p. 20).

<sup>11</sup> "El desarrollo sostenible es un concepto que ya cuenta con una larga historia. A partir de las primeras discusiones sobre ambiente y desarrollo, que tuvieron lugar en la década de 1970, se formalizaron las primeras referencias sobre la sustentabilidad, a inicios de los años ochenta. Por ejemplo, en 1981, la primera Estrategia Mundial de la Conservación señala que, para que el desarrollo fuera sostenible, debía considerar factores económicos y sociales, junto a la base de recursos vivos e inanimados ofrecidos por los ecosistemas." (GUDYNAS, 2011, p. 84).

<sup>12</sup> Art. 120 - Gentechnologie im Ausserhumanbereich: 1. Der Mensch und seine Umwelt sind vor Missbräuchen der Gentechnologie geschützt. 2. Der Bund erlässt Vorschriften über den Umgang mit Keim- und Erbgut von Tieren, Pflanzen und anderen Organismen. Er trägt dabei der Würde der Kreatur sowie der Sicherheit von Mensch, Tier und Umwelt Rechnung und schützt die genetische Vielfalt der Tier- und Pflanzenarten. (apud CARVALHO; SOUZA, 2016, p. 198).

<sup>13</sup> It is important to highlight that the Constitution of 1990 predicted in Art. 34 the protection of the natural bases of life since it attributed to the legislator the task of "protecting the natural foundations of human life considering the principles of prevention, the polluter pays and of cooperation and promote the uniformity of ecological living conditions at higher levels, equivalent, at least, to those achieved in West Germany." (AZEVEDO, 2018, p. 1054).

<sup>14</sup> The author explains that the expression "and the animals" was added to article 20a, among other reasons, due to "judicial decisions that excluded the application of the German Animal Protection Law in the hypotheses of confrontation between animal welfare and rights inserted in the constitutional text, which was leading to a situation of considerable reduction in the scope of application of that legal diploma." (AZEVEDO, 2018, p. 1056-1057).

<sup>15</sup> Among those worth mentioning are Law 6,938 / 1981, which instituted the National Environment Policy and defined the polluter pays principle, as well as Law 9,605 / 1998, called the Environmental Crimes Law, which establishes infractions and punishments in the case of environmental offenders. In addition to these, Amanda Cesario Fodor (2016, p. 42) mentions other laws that deal with the protection of animals.

<sup>16</sup> According to Fodor (2016, p. 43), "denoting this dichotomy of treatment between subjects and objects of right, the non-human animal is still treated in our Civil Code as a 'thing', having its definition given by

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its art. 82, as well as a mobile category.” In addition to this provision, she mentions others that “[...] reinforce the idea of the human being as the animal's owner, and not as a guardian [...].”

<sup>17</sup> Borges apud Medeiros also corroborates this theory: “The right to constitutional protection of the environment, summarized in the prerogative of enjoying it as an ecologically balanced asset, is the result of the evolution of rights, being a historical product, different from the legal protections of sparse environmental goods in previous legislation; this right arises from the needs of the human species<sup>22</sup> at the end of the 20th century, stripping the expansion of the content of human rights (BORGES, 1998 apud MEDEIROS, 2013).

<sup>18</sup> The concept was developed by Eduardo Gudynas in the work *El mandato ecológico. Derechos de la Naturaleza y políticas ambientales en la nueva Constitución*. Quito: Abya Yala, 2009. In the book, the author attributes to the Ecuadorian constitution a biocentric mission, breaking the anthropocentric paradigm of society's relationship with nature.

<sup>19</sup> An ordinary bill approved by the City Council of the municipality of Santa Penha caused controversy by foresees a fine of more than 23,000 to owners of animals that could cause disturbance of the peace. Based on the federal law of Penal Contraventions, Art. 2, II brings the definition of disturbance of the peace as being to provoke or not to prevent noise produced by an animal of which has custody. PLO 72/2020 was vetoed in its entirety by the Mayor, considering that he suffers from several vices, including the one of origin, because it is a matter of the executive. The text of the bill is available at <http://www.legislador.com.br/LegislatorWEB.ASP?WCI=ProjetoTexto&ID=2&inEspecie=1&nrProjeto=72&aaProjeto=2020>. Accessed on 08 sep. 2020. This discussion deserves to be highlighted because such a ban is a threat to dogs, which may suffer mistreatment by their owners. This is what Ana Selma Moreira warns, apud Dagmara Spautz (2020, s / p): “[...] the threat of punishment for the tutors of loud dogs can lead to situations such as the mutilation of the vocal cords, poisoning, and abandonment.”. after the negative repercussion, the councilor who proposed it asked for its rejection and said that it was all about a misunderstanding (PASSERI; TEODORO, 2020, s / p).

<sup>20</sup> The parrot Verdinho was apprehended by IBAMA on the grounds of mistreatment by its owner, who appealed to the judiciary in an attempt to annul the fines imposed, as well as to keep custody of the bird. In the decision, the rapporteur took into account the fact that the animal has lived with the applicant for more than 23 years and that the withdrawal of the wild animal after a long period of domestication also implies a violation of the rights of the animal itself, which hardly would be able to be reinserted in its natural habitat (FERNANDES, 2019, p. 7). The full judgment is available at: [https://ww2.stj.jus.br/processo/revista/document/mediado/?componente=ITA&sequencial=1806039&num\\_registro=201800312300&data=20190513&formato=PDF](https://ww2.stj.jus.br/processo/revista/document/mediado/?componente=ITA&sequencial=1806039&num_registro=201800312300&data=20190513&formato=PDF). Accessed on: 02 set. 2020.

<sup>21</sup> Alessandro Pelizzon and Mariana Ribeiro Santiago (2020, p. 481) bring the examples of the Municipality of São Paulo, Bonito, and Paudalho, the latter two located in the State of Pernambuco, which approved municipal laws in 2015, 2017, and 2018, respectively, safeguarding the rights of nature.

<sup>22</sup> According to Nascimento and Tasso (2019, p. 144), André Gorz used the term degrowth for the first time in 1972, in an article published in the French magazine *Le Nouvel Observateur*. However, it was in the works of the Romanian mathematician Georgescu-Roegen *The Entropy and the Economic Process* (1971) and *La Décroissance: Entropie – Écologie – Économie* (1979) that the theme was best developed. Environmental scientist Donella Meadows also addressed the subject in the book, which is considered responsible for influencing scientific and social thinking in the world, namely, *The Limits to Growth* (1972).

<sup>23</sup> LATOUCHE, 2009, p. 6 e 42.

<sup>24</sup> Santos apud Armada, states that “regarding the incompatibility of the relationship between the environment and economic growth, considering the understanding of endless economic growth, it is worth mentioning that the planet has operated in an ecological deficit. According to estimates made by the Global Footprint Network, operating in an ecological deficit occurs when the demand exerted by our consumption habits on nature is greater than the Earth's capacity to regenerate the natural resources used by humanity.” (SANTOS, 2016 apud ARMADA, 2017, p. 265).

<sup>25</sup> According to the WWF organization, “The Ecological Footprint is an environmental accounting methodology that assesses the pressure of consumption by human populations on natural resources. Expressed in global hectares (gha), it allows to compare different consumption patterns and check if they are within the ecological capacity of the planet. A global hectare means one hectare of world average productivity for productive land and water in one year.” (WWF-Brasil, s / d, s / p.).

<sup>26</sup> According to WHO data, in Brazil, 114,774 deaths were registered until 08/25/2020. Available at <https://covid19.who.int/region/amro/country/br>. Accessed on 25 Aug. 2020. On the other hand, natural disasters, a consequence of climate change, have killed more than 510 thousand people in 50 years in Latin America, according to data from the Economic Commission for Latin America and the Caribbean (ECLAC). Available at <https://g1.globo.com/natureza/noticia/2020/06/19/desastres-naturais-provocaram->

mais-de-510-mil-mortes-em-50-anos-na-america-latina- says-cepal.ghtml. Accessed on 25 Aug. 2020. Numerous other environmental disasters are cited in several journalistic articles, among them Top 11: the worst environmental disasters in history, available at <https://super.abril.com.br/mundo-estranho/top-11-os-piores-desastres-ambiental-da-historia/> e Main environmental disasters in Brazil and in the world, available at <https://www.unicamp.br/unicamp/ju/noticias/2017/12/01/principal-desastres-ambientais-no-brasil-e-no-mundo>

<sup>27</sup> Report A / 75/266 of the Secretary-General of the United Nations, published on 07/28/2020, p. 3-4. Available at <https://undocs.org/pdf?symbol=es/A/75/266>. Accessed on 29 jan. 2021.

<sup>28</sup> Available at <https://pt.euronews.com/2019/04/22/poluicao-industrial-mata-na-cidade-italiana-de-taranto>. Accessed on 08/25/2020.

<sup>29</sup> Available at: <http://g1.globo.com/mundo/noticia/2012/08/siderurgica-ilva-vai-recorrer-de-decisao-que-interrompe-producao-1.html>. Accessed on 25/08/2020.

<sup>30</sup> Available at: <https://www.radioitaliana.com.br/governo-italiano-procura-solucoes-para-salvar-a-ilva-a-maior-siderurgica-da-europa/>. Accessed on 25/08/2020.