

FROM THE MODERN INDIVIDUAL TO NATURE: DECOLONIAL PERSPECTIVES OF THE CONCEPT OF “SUBJECT OF RIGHTS”

ARIELLA KELY BESING MOTTER
State University of Londrina
ariellabesing@gmail.com

MIGUEL ETINGER DE ARAUJO JUNIOR
State University of Londrina
miguel@uel.br

Data de recepció: 25 de juliol de 2023 / Data d'acceptació: 31 d'octubre de 2023

ABSTRACT: This paper proposes a debate on the reinterpretation of the classical concept of "Subject of Rights" as an element intertwined with the achievement of Ecological Justice. It aims to reflect on the need for decolonial ruptures in legal theory especially in Latin American territories. It presents conceptions for Ecological Justice, with a special emphasis on the recognition of Nature as a Subject of Rights, as expressed in the Constitutional text of Ecuador (2008) and the infraconstitutional legislation of Bolivia (2010). Finally, it addresses the changes that such conceptions provoke to deal with such contemporary and complex reinterpretations. To do so, it uses Bibliographic Review, with a deductive method and a qualitative focus.

RESUMEN: Este artículo propone un debate sobre la reinterpretación del concepto clásico de "Sujeto de Derechos" como un elemento entrelazado con el logro de la Justicia Ecológica. Pretende reflexionar sobre la necesidad de rupturas decoloniales en la teoría jurídica, especialmente en los territorios latinoamericanos. Presenta nuevas concepciones para la Justicia Ecológica, con especial énfasis en el reconocimiento de la Naturaleza como Sujeto de Derechos, tal como se expresa en el texto Constitucional de Ecuador (2008) y la legislación infraconstitucional de Bolivia (2010). Finalmente, aborda los cambios que tales concepciones provocan, cuestionando su aptitud para hacer frente a

tan complejas y contemporáneas reinterpretaciones. Para ello utiliza la Revisión Bibliográfica, con un método deductivo y un enfoque cualitativo.

RESUM: Aquest article proposa un debat sobre la reinterpretació del concepte clàssic de "Subjecte de Drets" com a element entrelaçat amb la consecució de la Justícia Ecològica. Pretén reflexionar sobre la necessitat de ruptures decolonials dins la teoria jurídica, especialment als territoris llatinoamericans. Presenta noves concepcions per a la Justícia Ecològica, amb especial èmfasi en el reconeixement de la Natura com a subjecte de drets, tal com expressa el text constitucional de l'Equador (2008) i la legislació infraconstitucional de Bolívia (2010). Finalment, aborda els canvis que aquestes concepcions provoquen, qüestionant la seva aptitud per fer front a reinterpretacions tan contemporànies i complexes. Per fer-ho, utilitza la revisió bibliogràfica, amb un mètode deductiu i un enfocament qualitatiu.

KEY WORDS: Latin America – modern law – private property – natural resources – subject of rights – decoloniality – nature's rights.

PALABRAS CLAVE: América latina – Derecho moderno – propiedad privada – recursos naturales – sujeto de derechos – descolonialidad – derechos de la naturaleza.

PARAULES CLAU: Amèrica llatina – Dret modern – propietat privada – recursos naturals – subjecte de drets – descolonialitat – drets de la naturalesa.

TABLE OF CONTENTS: I. INTRODUCTION . II. THE INDIVIDUAL AS A "SUBJECT OF RIGHTS" AND THE PRIVATE PROPERTY AS A LINK AND A FOUNDATION OF NEGOTIATING FREEDOM. III. FROM PRIVATE PROPERTY TO GLOBALIZED TERRITORY: ADDRESSING THE ANTHROPOCENE ENVIRONMENTAL CRISIS THROUGH THE LENS OF ECOLOGICAL JUSTICE IV. THE NATURE AS A SUBJECT OF RIGHTS AND THE LAW THOUGHT IN A DECOLONIAL WAY. V. CONCLUDING THOUGHT.

I. INTRODUCTION

In the pursuit of ecological balance, rethinking the application of the law is an essential element in achieving an Ecological Justice that is capable of promoting harmony between human society and all other forms of life that are integrated into Nature.

In light of this context, this paper aims to reflect on the construction of the concept of Subject of Rights and the need for its revision through the lens of Decoloniality and Ecological Justice.

As taught by Walter Mignolo, Decoloniality is a concept that emerged from the Bandung Conference, which took place in 1955. Its main objective was to break away from Western narratives, while at the same time emerging as a response to the model of "development and progress" that originated from modernity, as well as its inherent colonial violence. And in this note, it draws on the Author's integrated conception, wherein modernity, coloniality, and decoloniality are intrinsic and historical elements. In other words, they can only be comprehended collectively.

In the realm of Ecological Justice, it draws from the insights of Eduardo Gudynas and José Rubens Morato Leite, synthesizing their perspectives within the context of this work. This involves the pursuit of ecological balance, grounded in a reconceptualization of Nature itself, departing from the logic inherited from modern thought.

Aware of the interconnection between social phenomenon and legal science, this exercise requires revisiting historical processes that have allowed the degradation of the common environment in order to identify shortcomings, gaps or areas that require improvement.

Based on this understanding, the note aims to reflect about the following question: does the origin of the term "Subject of Rights" have any relation with the interpretation of Nature as a resource?. This reflection is justified when considering the need to construct legal theories contextualized within the ecological crisis of the Anthropocene. Here, it is guided by the hypothesis of a reinterpretation of this concept in decolonial perspectives as a tool.

To do so, initially, it addresses the emergence of private property and contractual freedom as characteristic elements of the Modern State, while highlighting both as foundations of the very existence of the State entity. It also discusses the influence of these factors on the conception of Nature as a commodity and man as a "Subject of Rights". In these terms, it aims to demonstrate the roots of an economic model whose gears were fed back by the appropriation of the common environment and its consequent degradation.

In sequence, given the intensification of economic globalization, it is proposed to broaden the debate on the “private ownership” of the “natural resources” through the lens of the formulation of the concept of territory - what allows us to see social and environmental factors intertwined with transformations in the very conception of the State, with the emergence of the Contemporary State. It addresses the need to re-read the environmental issue in the face of these new scenarios.

This reflection aims to highlight that achieving Ecological Justice in Latin American soils, initially, requires recognizing that the degradation of Nature in these localities is intimately related to their colonial past, based on extractivism. The choice of this geographical delimitation is justified insofar as the coloniality of power is an element intertwined with the process of formation of its territory and, consequently, the appropriation of Nature.

In order to break free from the legacies perpetuated by modern legal theory, - here understood as the one that is characterized by an epistemology marked by individualism, liberalism, and the centrality of private propriety to the existence of the Law itself - as taught by Mascaro - it is proposed to reflect on the need for Decolonial ruptures for effective ecological protection.

The necessary rupture to achieve ecological balance involves a reinterpretation of the concept of the Subject of Rights, so as to include Nature in this concept, considering epistemologies constructed from the historical specificities of the territory, in a decolonial manner. In other words, this approach is in opposition to the modern conception of the Subject of Rights, marking a new historical moment in the understanding of this theme.

To do so, the normative frameworks arising from the Constitution of Ecuador (2008) and Bolivia (2009), as well as the infraconstitutional legislation of the latter, are analyzed. And by doing this, the research points that in the field of the Law, from these experiences, a decolonial approach to protecting Nature in Latin America is evolving.

However, as ecological justice remains a complex pursuit, initiatives are underway to overcome its challenges. These challenges encompass strengthening infraconstitutional and judicial mechanisms, revising environmental legal frameworks, and a new understanding of environmental policy and development itself.

II. THE INDIVIDUAL AS A “SUBJECT OF RIGHTS” AND THE PRIVATE PROPERTY AS A LINK AND A FOUNDATION OF NEGOTIATING FREEDOM

The search for legal models oriented in favor of Ecological Justice requires an understanding of how the origin of the concept of Subject of Rights has contributed to the degradation of the common environment.

Uniting both debates involves recognizing the emergence of private property, subjective rights and negotiating freedom as the foundations of the emergence of the Modern State. Studying this allows us to identify the roots of a model of social and economic relations that extends to the present days¹.

According to Boaventura de Sousa Santos “from Greek philosophy to medieval thought Nature and man belong mutually to each other”, which was disrupted by the emergence of modern science, whose formulation and interpretation “dehumanizes Nature in the same process in which it denaturalizes man”. However, this ‘man’ is not just any ‘man’, but rather the one who appropriates Nature within the new valid social dynamics, oriented towards a new economic model – making “the relationship of exploitation of Nature is the other side of the relationship of exploitation of man by man”².

In this context, while pre-capitalist modes of production date back to the conception of land as communal property, and feudalism was characterized by serfdom, the fall of absolutism - and of feudalism itself - introduced a new element into modern society: private property of land. Its emergence perpetuated pre-existing social divisions. This is because the emergence of private property of land resulted in, on one hand, the emergence of the landowners - who viewed land as a means of production - and on the other hand, those who, with the extinction of communal lands, were declared free but only possessed their labor force³. These transformations brought with them the need to recognize two key concepts to the debate proposed here: property and the Subject of Rights.

¹ Alysson Leandro Mascaro, *Introdução ao estudo do direito*, Atlas. São Paulo, 2019 (6th ed). p.13.

² Boaventura de Sousa Santos, “O estado e o direito na transição pós-moderna: para um novo senso comum sobre o poder e o direito”, in *Revista Crítica de Ciências Sociais*, num 30, 1990. p.19.

³ Prata, *A tutela constitucional da autonomia privada*, Almedina. Coimbra, 1982, p. 9.

In this new social dynamic, everyone becomes an owner, whether it be of the means of production or of their own labor. As a result, recognizing the worker's ownership of their labor requires granting them legal personality and negotiating capacity, so they can establish a contract⁴.

It is evident, therefore, the attribution of legal personality and, consequently, of negotiating capacity are closely linked to the emergence of the concept of private property (of land, means of production, and/or labor force)⁵, which, according to Mascaro, demonstrates that "when it is established, through modern law, that everyone is formally free and equal, this is the only possible way for everyone to be, indiscriminately, capitalists or workers⁶.

This modern conception of private property prevailed as an absolute, exclusive, and perpetual right, conditioning the own function of the State, which was entrusted with the task of containing any potential fragmentation in this regard – either individual (and negotiating) freedom or the right to property - which would be achieved through its sovereignty, linked to the monistic conception of determining valid law. As a result, the Modern State emerged as a political organization tasked with normative centralization, aimed at ensuring these foundations for the expanded reproduction of capital's inherent relations, as well as the predictability of production and economic relations⁷.

From this perspective, civil society emerges - opposed to the state of Nature, linked to an idea of disorder - whose consolidation comes from the conception of a social contract⁸. Alongside that, the major pillars of modern legal thought emerge: individualism, universality of rights, contractualism, and subjective rights⁹.

⁴ Prata, "A tutela constitucional...", cit, p. 8.

⁵Prata, "A tutela constitucional...", cit, pp. 7-8.

⁶Mascaro, "Introdução ao estudo...", cit, p. 9.

⁷Mascaro, "Introdução ao estudo", cit, p. 9.

⁸ Carlos Marés, "De como a natureza foi expulsa da modernidade", in *Revista de Direitos Difusos*, num. 68, 2017, p. 25.

⁹ Subjective rights are understood as the "individual's ability to act and as an attribute linked to the subject, making the right definitively connected to the person, allowing them to have or do something legally." It is connected to "the conception of an individualized subject, rational and capable of acting and possessing according to the legal faculties attributed to them. Rafael Costa Freiria. *Perspectivas para uma teoria geral dos novos direitos: uma leitura crítica sobre a biodiversidade e os conhecimentos tradicionais associados*, 2005 <<http://www.dominiopublico.gov.br/download/teste/arqs/cp026012.pdf>> [Retrieved on 24 July 2023].

The problem with what has been presented so far is evident when examining its legal effects: those who own property or work have rights, which are even guaranteed by the State. However, if Nature does not fit into this logic - since work is a human condition - its value becomes hostage to human intervention and transformation¹⁰.

Therefore, the integration of Nature into this new social dynamic is accompanied by a simultaneous change in its conception as a public good. In other words, it is no longer seen as a provider of life's necessities, but only as a condition, means, of reproducing individual capital - transformed into a commodity, whose value is tied to human activity¹¹. Consequently, it is absent of rights.

Beyond the conception of Nature as a resource, the issue becomes evident in its immediate implications, allowing the mistaken understanding that enclosing land is a blank check for the free disposal and exploitation of any biotic and abiotic elements present there - understanding these as integral parts of property¹². Moreover, and aware that in the modern world, the rational individual exercises their autonomy and subjective rights through freedoms¹³. These premises have allowed the unrestricted appropriation of Nature, disregarding its ecological cycles and resulting in ecosystem imbalance.

Although the aforementioned explanation sheds light on the roots of the problem, the private appropriation of Nature under the auspices of market logic does not fully encompass the subject, especially in the era of the Anthropocene¹⁴.

This is because, in postmodernity, with the intensification of the economic globalization process, complex negotiating relationships have emerged, accompanied by ecological injustices, which reveal the need to expand this debate under the auspices of territory formation.

¹⁰Marés, "De como a natureza foi expulsa...", cit., p. 21.

¹¹Marés, "De como a natureza foi expulsa...", cit., p. 28.

¹²Marés, "De como a natureza foi expulsa...", cit., p. 28.

¹³ Patrick de Araújo Ayala, Vitória Leopoldina Gomes Mendes, "Da sustentabilidade forte aos direitos da natureza: transformando os sistemas de direito em benefício da natureza", in *Revista de Direito Ambiental* num. 105, 2022, p.137.

¹⁴ In summary, this term is coined to refer to the beginning of a new geological era, characterized by global biophysical changes resulting from human impacts on the common environment.

III. FROM PRIVATE PROPERTY TO GLOBALIZED TERRITORY: ADDRESSING THE ANTHROPOCENE ENVIRONMENTAL CRISIS THROUGH THE LENS OF ECOLOGICAL JUSTICE

The private appropriation of Nature by the modern individual is a pivotal factor in comprehending the ongoing ecological crisis in the Anthropocene, wherein human activities on the environment and the degradation of Nature have reached irreversible levels. However, with the heightened intensity of trade negotiations and the advent of a transnational mode of production—impacting not only economic but also epistemological realms—the issue takes on new and expanded dimensions.

These dimensions can be understood through the conceptual framework of territory, here not merely interpreted not only as the geographical boundaries that define the political and administrative organization of a state. It entails recognizing that territory is shaped by power relations mediated within a specific space, where social interactions occur¹⁵. This realization allows to linked to materialistic views of Nature as well as cultural and symbolic issues ¹⁶.

The original conception of territory, as the definition of geographic boundaries, dates back to the emergence of the Modern State, whose exercise of sovereignty was linked to the defense of private property and freedom of negotiation¹⁷. So, revisions to this concept are necessary, especially in light of the emergence of new networks resulting from the intensification of globalization¹⁸.

Commonly the concept of "globalization" is interpreted as a contemporary phenomena, particularly in the economic field, where it has led to the liberalization of trade and functional integration of economic activities through an international division of labor¹⁹. However, discussing the territorial relationships that contribute to environmental degradation based on global dynamics requires more than that. It also involves recognizing that its roots date back to phenomena

¹⁵ Rogério Haesbaert, "Concepções de território para entender a desterritorialização", in Milton Santos e Bertha K. Beckner (ed.), *Território, territórios: ensaios sobre o ordenamento territorial*, Lamparina. Rio de Janeiro, 2011 (3rd ed), pp.45-46

¹⁶Haesbaert, "Concepções de território...", cit., pp. 45-46.

¹⁷Haesbaert, "Concepções de território...", cit., p. 54.

¹⁸ Milton Santos, *Território: globalização e fragmentação*, Hucitec. São Paulo, 1998 (4th ed.), p.11.

¹⁹ Floriano Peixoto de Azevedo Marques Neto, *Regulação Estatal e Interesses Públicos*, Malheiros. Rio de Janeiro, 2002, p.101.

as ancient as the emergence of the great navigations and the private property itself²⁰ within a colonial perspective of territorial domination²¹.

Taking this perspective into account, a colonial outlook on power inevitably translates into the appropriation of Nature. If colonization is to be interpreted as a phase of Europe's commercial expansion facilitated by the exploration of natural resources in Latin America²², comprehending the negotiation dynamics stemming from a global-scale productive and commercial organization within Latin American territories is inherently intertwined with its colonial history.

This is evident in the scars left by extractivism, which is rooted in the commercialization of natural elements found in the region. These scars manifest in the reaffirmation of a model of underdevelopment grounded in the exploitation of Nature²³.

By keeping in mind the colonial roots of this process, it becomes possible to understand that the dynamics of exploiting Nature, as well as economic exchanges, have long exceeded the boundaries of Nation-States. Within this context, interconnected networks have emerged, not only reshaping relationships, identities, and forms of social organization, but also led to the use of territory, rather than its delimitation itself, becomes the object of social analysis based on horizontal and vertical dimensions²⁴.

Whether through horizontal or vertical processes, territory, and the appropriation of Nature have undergone transformations driven by social, commercial, and negotiating dynamics that go beyond local interests. This is because the latter has been and continues to be influenced by decisions and relationships linked to centrifugal perspectives²⁵.

²⁰Marques Neto, "Regulação Estatal...", cit., p.101.

²¹ Anibal Quijano, "Colonialidade do poder, eurocentrismo e américa latina", in Edgardo Lander (ed), *A colonialidade do saber: eurocentrismo e ciências sociais. Perspectivas latino-americanas*, CLASCO. Buenos Aires, 2005, pp.107-130.

²²Quijano, "Colonialidade do poder...", cit., pp.107-130.

²³ Celso Furtado, *Formação econômica da América Latina*, Lia Editor S.A. Rio de Janeiro, 1969, p. 35

²⁴ In summary, horizontal dimensions are continuous local domains, gathered by territorial continuity. On the other hand, vertical dimensions are those that allow such continuity even in distant points from each other, whose connection arises from analogous and/or homologous social processes, connected through common phenomena.

²⁵Santos, "Território...", cit., p.17.

However, beyond the comprehension that the intensification of globalization and the transnationalization of the negotiating's relationships characterizes the reaffirmation of a production model which is driven by colonial dynamics²⁶, it is important to highlight that alongside this scenario, configurations of power emerge as a consequence²⁷.

The conception of sovereignty of the Modern State, as synonymous with the exclusive ability to dictate valid law loses strength²⁸. In this context, witnessing the decline of the Modern State concept—originally emerging from the need for centralized power, characterized by legal monism and the ability to govern a territory through sovereignty²⁹—the Contemporary State emerges³⁰. Its actions are marked by the dissolution of sovereignty due to multiple and complex simultaneous negotiating relationships. Simultaneously, there is the prominence of international economic orientations, the emergence of new global actors, the exacerbation of "*lex mercatoria*", and supranational decisions³¹. Considering the multitude of relationships that influence the decision-making processes that undoubtedly affect the local interest itself. And guided the discourse of the appropriation of the common environment as a natural resource. And in this point of view, Nature has only economic value. Such discourse guides to a reflection on the formation of territories, and the globalized transnational dynamics that, driven by decisions made from perspectives outside of local interests, reaffirm the mechanisms of dependent underdevelopment in the Global South, and its colonial tools and epistemologies.

So, to achieve Ecological Justice, the protection of Nature protection towards other perspectives, that go beyond the bias of its interpretation limited to the idea of a natural resource, is necessary. Surpassing the issue envisioned in interpreting it as private property, whose use and value are determined by an

²⁶ The idea of colonization refers to the subjection of Latin American territories to Eurocentric patterns of economic and power structuring. However, as a reflection of this new global power pattern, it also refers to the concentration, under European hegemony, of control over subjectivity, culture, and especially knowledge. It is worth noting that in this work, epistemological hegemony is addressed within Juridical Science, constructed under the paradigms of modernity.

²⁷ Santos, "Território...", cit., p.18.

²⁸ Marques Neto, "Regulação Estatal...", cit., p.128.

²⁹ Mascaró, "Introdução ao Estudo...", cit., p.9.

³⁰ Marques Neto, "Regulação Estatal...", cit., p.128.

³¹ Marques Neto, "Regulação Estatal...", cit., p.128.

anthropocentric economic rationality, and the interweaving between the formation of colonial territories.

Here, it is important to highlight that such discussion in Latin America is crucial, as colonialism, in addition to the degradation of nature (as previously mentioned), brought with it the dilution of local culture, the genetic erosion of biodiversity and associated traditional knowledge, demonstrating that environmental inequality and social inequality go side by side. These scars remain until these days, as productive transnationalization, by reinforcing these mechanisms, perpetuates continuous environmental degradation and, consequently, the ways of living, doing, and creating expressed in the various forms of relationship with Nature, are affected.

On the other hand, to reach an effective protection of Nature by disrupting these dynamics, necessitates recognizing that the discourse on Ecological Justice must address the core issue: ecological balance will remain elusive as long as the environment is synonymous with natural resources, susceptible to appropriation, or value attribution, by the "Subject of Rights". This understanding paves the way for the development of a perspective grounded in the ecologization of the State and the Law³², leading towards a conception of Ecological Justice.

Therefore, it implies the search for an ecological balance that contemplates all interests of life, based on new legal rationalities that encompass the recognition and respect for the Earth, while also questioning the historically constructed decisions regarding environmental protection from an anthropocentric perspective³³.

And it is based on the aforementioned, starting from an expanded conception of vulnerability existing in the relationships that permeate the environment, that the analysis in question will narrow down from the perspective of decolonizing legal

³² It refers to the pursuit of a right originating from a Rule of Law in which its formulation is conceived based on the intrinsic value of nature, contrasting with the predominant anthropocentric bias hitherto present in Environmental Law epistemology. It seeks, therefore, to disentangle from the economic-centric concept of nature management.

³³ José Rubens Morato Leite *et al*, "Estado de direito ecológico para a natureza: fundamentos e conceitos", in Flávia França Dinnibier (ed.), *Estado de Direito Ecológico: conceito, conteúdo e novas dimensões para a proteção da natureza*, Instituto o Direito por um Planeta Verde. São Paulo, 2017, p.183.

thinking, understanding that both debates are intertwined as they question the assumptions of modern law.

IV. THE NATURE AS A SUBJECT OF RIGHTS AND THE LAW THOUGHT IN A DECOLONIAL WAY

The decolonial thought emerges as a proposal of legal epistemology that implies ruptures with modern thinking. Aware that the process of coloniality is accompanied by the subordination of local knowledge to the economic dynamics based on extractivism, what is sought in the decolonial perspective, in a synthetic way, is precisely to break with such knowledge boundaries, including a territorial perspective³⁴.

In the field of legal science, although the questioning of the emergence of Law, its formulation, and application is not necessarily a new element - as exemplified by Lyra Filho thoughts – who proposes a dialectical analysis of the theme based on *praxis* inscribed in social life itself³⁵. Combining these viewpoints with decolonial perspectives prompts inquiries into the structural foundations of Law established during modernity, rooted in Western and European foundations, understanding the historical and territorial specificities of each locality.

In Latin America, considering the law through a decolonial lens necessitates breaking the historical marginalization of local populations in the decision-making process, but also includes its views about Nature and its values. Consequently, must break the appropriation of the Nature and territorial dynamics guided by an unjust social production model that lead to degradation of the local culture and the environment³⁶.

So, beyond questioning the way Law has been constructed, it requires a fresh perspective on Nature. In this approach, the value of Nature should not be confined solely to its exchange value or as an expression of ownership,

³⁴ Eloise da Silveira Petter Damázio, *Colonialidade e decolonialidade da (anthropos)logia jurídica: da uni-versalidade e pluri-versalidade epistêmica*, 2011 <<https://repositorio.ufsc.br/xmlui/handle/123456789/95973>> [Retrieved on 24 July 2023], pp. 244-250.

³⁵ Roberto Lyra Filho, *O que é direito?*, Brasiliense. São Paulo, 2000 (20th ed).

³⁶ Fernanda Frizzo Bragato e Natalia Martinuzzi Castilho, "A importância do pós-colonialismo e dos estudos descoloniais na análise do novo constitucionalismo latino-americano", in Eduardo Manuel Val e Enzo Bello, *O pensamento pós e descolonial no novo constitucionalismo latino-americano*, Educs. Caxias do Sul, 2014, pp.11-25.

appropriation, of natural elements. This implies proposing paradigmatic shifts away from the prevailing anthropocentric and utilitarian views³⁷.

And about that, notable advancements can be highlighted regarding the decolonization of Environmental Law in the Constitutions of Ecuador (2008) and Bolivia (2009), which are reflected in the field of Environmental Law.

Despite these Constitutions being part of the transformative constitutionalism envisioned in Latin America since 1980—a term coined to identify democratic processes triggered on the continent to consolidate normative texts based on sociocultural identities with emancipatory potential³⁸—the decision to analyze both is grounded in the advancements observed in the recognition of Nature through perspectives that go beyond modernity³⁹.

Considering the Ecuadorian Constitution's historical significance, it is imperative not to overlook its pivotal role. This document stands out as the first to formally recognize the rights of Nature. This acknowledgment is articulated through specific formulations designed to safeguard its intrinsic values⁴⁰.

And if Anibal Quijano's explanation of the coloniality of power, emphasizing that new subjectivities emerge with the awareness of historical shifts⁴¹, aligns with the Ecuadorian constitutional text, boldly marking the advent of these transformative beginnings. In its preamble, the Ecuadorian Constitution embraces the legacy of social struggles for liberation from all forms of domination and colonialism.

³⁷ Eduardo Gudynas, "La senda biocéntrica: valores intrínsecos, derechos de la naturaleza y justicia ecológica", in *Tabula Rasa*, num. 13, 2010.

³⁸ Armin Von Bogdandy, "Ius Constitutionale Commune na América Latina. Uma reflexão sobre um constitucionalismo transformador", in *Revista de Direito Administrativo*, num 269, 2015, pp. 13-66.

³⁹ Even though environmental protection is a common theme in Latin American constitutions, the focus here will be on those texts where the foundation of Environmental Law is not restricted to the conception of a "healthy environment." This choice is justified because this conception still provides a fragmented view of human life and Nature. In other words, it implies that natural resources are entities external to human life, whose valuation is linked to the idea of their transformation, exploitation, and consumption or the preservation of human life itself.

⁴⁰ Gudynas, "La senda biocéntrica...", cit., p. 51.

⁴¹ Quijano, "Colonialidade do poder...", cit., p. 113.

It commits to building a new form of coexistence in harmony with Pachamama⁴² - a formulation rooted in the indigenous peoples perspective and detached from the modern conception of the environment.

Within its normative scope, the constitution maintains the objective of ensuring a healthy and balanced environment, a customary formulation stemming from Western multilateral mechanisms⁴³. However the Ecuadorian Constitution recognizes in its 10th article Nature as a Subject of Rights, ensured its full respect for the existence, maintenance, and regeneration of its vital cycles and evolutionary processes. Moreover, it incorporated into Ecuadorian law the right to restore Nature, as well as prohibiting the introduction of genetically modified organisms that permanently alter the national genetic heritage.

In the case of Bolivia, assuming, equally, in its preamble the commitment to leave the colonial State in the past, the constitutional text reaffirmed the commitment to Nature, including as principles governing the international relations of the Plurinational State the defense of biodiversity, the prohibition of private appropriation of any form of living matter - including plants, animals, microorganisms - as well as the prohibition of the production and commercialization of genetically modified organisms⁴⁴.

Furthermore, it included in its preamble the recognition of Buen Vivir (suma qamaña), allowing, albeit indirectly, a reexamination of the perspective on Nature from alternative standpoints. The term materializes a "proposal of harmony with Nature, reciprocity, relationality, complementarity, and solidarity among individuals and communities"⁴⁵. It involves, therefore, the pursuit of a reconstruction of a worldview⁴⁶.

⁴² Ecuador, *Constitución de la República del Ecuador*, <<https://siteal.iiep.unesco.org/pt/bdnp/290/constitucion-republica-ecuador>> [Retrieved on 24 July 2023].

⁴³ Ecuador, *Constitución de la República del Ecuador*, cit.

⁴⁴ Bolivia, *Constitución Política del Estado*, 2009, <https://www.oas.org/dil/esp/constitucion_bolivia.pdf> [Retrieved on 24 July 2023].

⁴⁵ Alberto Acosta, *O bem viver: uma oportunidade para imaginar outros mundos*, Autonomia Literária. São Paulo, 2016. p.33

⁴⁶ Antonio Carlos Wolkmer *et al*, "Direito da natureza: para um paradigma político-constitucional desde a América Latina", in Flávia França Dinnibier (ed.), *Estado de Direito Ecológico: conceito, conteúdo e novas dimensões para a proteção da natureza*, Instituto o direito por um Planeta Verde. São Paulo, 2017, pp. 228-269.

However, without denying the importance of these advancements, it was through infraconstitutional means that the country expressly recognized Nature as a subject of Rights, as well as its sacred character, with the publication of Laws No. 71 of December 21, 2010, and No. 300 of October 15, 2012 - respectively referred to as the "Law of Rights of Mother Earth" and the "Mother Earth and Integral Development Framework Law for *Buen Vivir*"⁴⁷.

The experiences of the Ecuatorian (2008) and Bolivian (2009, 2010, and 2012) Constitutions mark the beginning of a Latin American ecological thought. In this context, anthropocentric rationality sedimented over the years is abandoned, allowing new ecocentric or even biocentric legal paradigms to emerge. These paradigms are rooted in a conception where humans are no longer at the center of legal systems and the social contract itself.

This transformation encompasses a worldview that questions the very relationship between humans and other forms of life, named cosmovision, through the idea of Buen Vivir/Vivir Bien⁴⁸.

In this sense, the recognition of Nature as a Subject of Rights is a reinvention and transformation of "distinct paradigms from those historically contemplated in the Eurocentric theoretical tradition," as it represents a break from the inherited paradigms of modernity - culminating in new legal trends and institutionalities that "encompass other subjectivities of rights beyond the modern liberal individual"⁴⁹.

Furthermore, when considering both the pursuit of breaking away from colonial legacies and the prohibitions on genetically modified crops by seeing its damages to the Nature and its living cycles - but also by seeing these as an mechanism of the economic globalization and, consequently, of the local interest erosion - it can be seen that beyond abandoning the modern conception of the "Subject of Rights," the previously mentioned texts seek to reconstruct the territory based on its historical specificities. Besides, they provide ruptures to the very conception of technical-scientific progress, redefining the historical relationship that justified

⁴⁷Wolkmer *et al*, "Direito da natureza...", cit., p.233.

⁴⁸ Liton Lanes Pilau Sobrinho e Giovani Orso Borile, "A ideia de direitos da natureza", in *Revista Brasileira de Direito Animal*, num. 15, 2020, p. 27.

⁴⁹ Wolkmer *et al*, "Direito da natureza...", cit., pp. 239-240.

human intervention over that of Nature, in favor of a supposed model of 'development'⁵⁰.

Undoubtedly, these paradigm shifts raise questions about their operability, demanding necessary and urgent reinterpretations. This is particularly true for traditionally conceived institutions built through the lens of modernity⁵¹. Such challenges are exemplified in the Judgment of the Vicalabamba River (2010) and the Los Cedros Forest (2018), both ecuatorian cases.

The Vilcabamba River case is widely regarded as a landmark case in recognizing the integration of ecological principles into law through legal precedents. Back then, the environmental harm caused by the construction to extend the Vilcabamba-Quinara road, undertaken by the Provincial Government without the necessary environmental permit, sparked allegations of violating the Rights of Nature. The legal proceedings contended that the actions taken were inconsistent with establishing a new way of living in harmony with the Nature⁵².

Only as a last resort, the judges of the Ecuadorian Court confirmed the complaint from the initial petition, among others, under the argument that “protective action was the only suitable and effective method to protect the rights of Nature” and the expansion of said road could only occur in compliance with this principle⁵³

In the case of the Los Cedros Forest, some similarities have been observed. This area is a Protective Forest and Vegetation located in Ecuador, part of the “low mountain tropical forest or cloud forest” ecosystem. The controversy stems from the Ministry of Mines of Ecuador authorizing the exploration of metallic minerals in the “Rio Magdalena 01” and “Rio Magdalena 02”, areas within the Forest⁵⁴.

In this particular case, the legal proceedings not only highlighted the importance of restoring the degraded areas, but also advanced by establishing the

⁵⁰Maria Cândida Simon Azevedo, “Entre a ecologização do direito, não antropocentrismo e anti-capitalismo: entendendo a emergência de direitos pós-humanos”, in José Rodrigo Rodriguez e Maria Cândida Simon Azevedo, *Laboratório de metamorfoses*, Editora Fi. Porto Alegre, 2022, p. 53

⁵¹Sobrinho e Borile, “A ideia de direitos...”, cit., pp. 25-34.

⁵² Marcos Augusto Maliska e Parcelli Dionizio Moreira, “O caso vilcabamba e el buen vivir na Constituição do Equador de 2008: pluralismo jurídico e um novo paradigma ecocêntrico”, in *Sequência (Florianópolis)*, num. 177, 2017, p.168.

⁵³Maliska e Moreira, “O caso vilcabamba...”, cit., p.168.

⁵⁴ Marcela Mascarello e Leticia Albuquerque, “Direitos da natureza na jurisprudência equatoriana: caso los cedros”, *Revista Brasileira de Direito Animal*, num. 18, n. 1, 2023, p.14.

aforementioned Ministry's obligation to consolidate a participatory plan for the management of the Forest. This was seen as a necessary step to enhance its protection effectively and inclusively.

And, when citing the provision of legal protection of Pachamama and the provision of the right to full reparation for Nature, the Court, emphasizes that human life is just one of the species within Nature, states that the protection of the Rights of Nature is “a transcendent observation and a historical commitment that [...], demands a new form of civic coexistence, in diversity and harmony with nature”⁵⁵.

It is noted, therefore, that in both cases, despite the constitutional recognition of Nature as a Subject of Rights, the Ecuadorian State itself did not respect it - which demonstrates that an effective ecologization and decolonization of Law must necessarily go through the same ecologization and decolonization of the State and the model chosen to the development - which is not always verified. Likewise, in both cases it was only in the last stage of the process that what was already constitutionally foreseen was confirmed, demonstrating the structural weaknesses of the courts in dealing with these demands.

With this in mind, the inclusion of Nature's Rights in normative texts does not conclude the fight for an ecocentric shift. Especially when verified the need for the recognition of these rights from the jurisprudence. So, the challenge now lies in aligning institutions and society with these advancements and disruptive thoughts. This requires not only inviting a new perspective on the Law but also integrating these new values and ideas into legal *praxis*.

The recognition of the rights of Nature through normative means does not overshadow the equally crucial need to rethink the instrumentalization of law as a whole. This is because its foundations, and also the foundations of the State itself, are still deeply rooted in modernity.

Moreover, understanding that both Decoloniality and Ecological Justice necessitate reconsidering the paths paved by modernity, it is essential to emphasize that beyond changing paradigms in the production of law, the central

⁵⁵ Mascarello e Albuquerque, “Direitos da natureza...”, cit., p.13.

concepts that facilitated its dissemination —such as modernity, development and progress— must also be scrutinized.

V. CONCLUDING THOUGHT

Given the magnitude of the ongoing ecological crisis in the Anthropocene era, it is urgent to revisit the historical and social processes that have allowed for the degradation of the common environment. This theme should be accompanied by the search for new ways of thinking about the law, with a view to achieving effective Ecological Justice.

In this context, the contributions of modern thought to the issue at hand are undeniable, particularly in envisioning the emergence of private property and negotiating freedom as pivotal markers of a conception that dissociates humans from the environment. This interpretation allowed for the perception of Nature as a natural resource, whose value depends on human intervention or economic importance.

However, with the intensification of economic globalization - whose roots date back to the colonial dynamics of structuring an extractive and socially asymmetrical model - it is clear that private ownership of Nature, by itself, cannot explain the complexity of power relations inherent in the appropriation of 'natural resources'. This is where the analysis of territory formation becomes an indispensable element to the theme, as it allows us to glimpse the instances of power formulated through vertical and horizontal structures, whose decisions regarding the appropriation of natural resources go beyond local interests.

In this scenario, aware that the historical and economic structuring of the degradation of Nature in Latin American territories is accompanied by environmental and ecological injustices, the effective protection of the common environment requires new conceptions in the formulation of Law, in order to promote its meaningful ecologization grounded in decolonial thought . And here, the recognition of Nature as a Subject of Rights emerges as an emancipatory and ecologized potentiality, breaking with the classical modern conception, as well as with Eurocentric and anthropocentric interpretations of the appropriation of natural resources.

In view of this, given the materialized difficulties and the slow steps still in place for paradigm shifts involving the Rights of Nature. However, these well-established concepts prove inadequate when applied to Nature in legal contexts. Nature operates under a dynamic distinct from human conditions, and does not depend on economic valuation for its existence—a departure from anthropocentric and modern logics.

As this paradigm shift is confronted, the inherent limitations of conventional legal theories become apparent. Recognizing Nature as a subject in legal relationships prompts a reevaluation of established notions, urging a transcendence of anthropocentrism and modern perspectives. The inadequacy of existing legal concepts becomes more evident when faced with the complexities of contemporary ecological demands. In this context, a reexamination of the modern epistemology of the Law becomes imperative for fostering a more inclusive and ecologically conscious legal framework.

However, as demonstrated in the last topic, the recognition of Nature as a Subject of Rights does not end the search for the greening and decolonization of Law. Other perspectives on the State and the application of Law are necessary, which makes the construction through these perspectives a continuous activity.

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