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Approximations between the legal-ecological views of brazilian environmental constitutionalism and eastern awareness[1]

Aproximações entre a visão jurídico-ecológica do constitucionalismo ambiental brasileiro e a consciência oriental

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Abstract: This work aims to show the need of conscience to reach a better interaction in the Society, specifically, crossing the Eastern awareness of Ying-Yang. In this article was used the indutive method through bibliographic analysis. It was developed to demonstrate how the Environmental Constitutionalism in Brazil recognizes through approximations between the legal-ecological and the Eastern awareness. Going further, to fully and securely guarantee to avoid threats from environmental, social, economic, political, human and emotional risks, the transition to sustainability through the spread of balanced awareness from the Yin-Yang perspective offers a more assertive way forward, rather than a static confrontation between *modus vivendi* and *modus operandi* of peoples.

Key-words: Brazil; Environmental Constitutionalism; Citizenship and Sustainability; Eastern Awareness;

Resumo: Este trabalho visa mostrar a necessidade da consciência para alcançar uma melhor interação na Sociedade, especificamente, atravessando a consciência oriental do Ying-Yang. Neste artigo foi utilizado o método indutivo através de análise bibliográfica. Foi desenvolvido para demonstrar como o Constitucionalismo Ambiental no Brasil é reconhecido através de aproximações entre a consciência jurídico-ecológica e a consciência oriental. Indo mais longe, para garantir, de forma plena e segura, a prevenção de ameaças e riscos ambientais, sociais, económicos, políticos, humanos e emocionais, a transição para a sustentabilidade, por meio da difusão de uma consciência equilibrada na perspectiva Yin-Yang, oferece um caminho mais assertivo a seguir, em vez de um confronto estático entre modus vivendi e modus operandi dos povos.

Palavras-chave: Brasil; Constitucionalismo Ambiental; Cidadania e Sustentabilidade; Consciência Oriental.

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INTRODUCTION

This article considers the importance of reflections on the content of the Brazilian Federative Republic Constitution of 1988 (CRFB/88), which states that human interaction is not dissociated from other forms of life at an intergenerational level with the ecologically protected environment.

Therefore, we argue that all citizens must consider their actions and the effects of this interaction as sustainability becomes recognized as a public freedom.

It is important to emphasize that improving relationships in favor of human awareness and mutual influence with ecosystems will be necessary. Thus, when encompassing the exercise of citizenship with the ecological awareness of achieved public freedoms, it will be essential to evolve the *modus vivendi* for a cohesive and fair society toward ecologically sustainable survival.

It will be ascertained whether the inclusion of sustainability as a strategy for consolidating citizenry can be used to confront the multiple threats that Brazilian democracy has been facing against post-1988 constitutionalism.

Being part of promoting free conscience, aims at an enlightened society in the face of the multiple crises in the human dimension, considering the risks to be faced and the guidelines to be applied, and mainly, to make Eastern knowledge as ecological awareness accessible to anyone, the understanding of which is very important for consolidating stability in the face of socio-biodiversity alterities.

ASPECTS OF GREENING IN BRAZILIAN ENVIRONMENTAL CONSTITUTIONALISM

This study focuses on the actors[3] seeking to satisfy their general and individual needs, which exposes the call for promoting respect for socio-biodiversity. Human behavior

[3] "[...] corporations, the financial system, business associations, shareholders [...] non-governmental social organizations, [...] the executive, legislative and judicial branches, political parties, international institutions [...] individuals". DUPAS, Gilberto. **Atores e poderes na nova ordem global:** Assimetrias, instabilidades e imperativos de legitimação. (Editora UNESP: São Paulo, 2005, p. 27).

unfolds to rights and problems in the constitution of responsibility for solving issues related to themselves, their performance within the environment, and the consequences of this relationship throughout the development of the Democratic Rule of Law.

At the same time, the human species is the only one that has cognitive awareness and uses knowledge to preserve the environment, the place where all that remains intact can be found, which implies the protection of life forms and their recovery from the damage caused by the human dimension[4].

This shows that humans, in their natural state of connection between the physical world and nature, through reciprocal interaction, are not disconnected from the environment in which they live (Miranda, 1972).

Thus, it is necessary to clarify that the right to the environment is collective, intending to improve the sectoral behaviors in contemporary societies, encouraging ecological awareness as an instrument for ensuring democracy (Carvalho, 2011), because "in Brazilian law, the ecologically balanced environment is the autonomous, unitary, indivisible, abstract, immaterial legal good, distinct from the elements that compose it, the environmental resources, or micro-environmental resources"[5] (Yoshida, 2012, p.176).

Hence, it is possible to say that the content of article 225 of the CRFB/88, in relation to the human vital context, is vast, variable and fruitful, and is divided into two large groups:

> The first includes all the natural supports of life, grouping together biotic and abiotic factors. It consists of the physical or natural environment, including

"[...] corporações, sistema financeiro, associações empresariais, acionistas [...] organizações sociais não governamentais, [...] Executivo, Legislativo, Judiciário, partidos políticos, instituições internacionais [...] indivíduos". DUPAS, Gilberto. **Atores e poderes na nova ordem global:** Assimetrias, instabilidades e imperativos de legitimação. (Editora UNESP: São Paulo, 2005, p. 27).

[4] "Social conditions (the organization and structure of human society and its artificial environment) affect both the natural environment and the quality of human experience (living conditions and biopsychic state, as the natural environment also affects social conditions and the quality of human experience)". DIAS, Genebaldo Freire. **Pegada Ecológica e sustentabilidade humana**. (São Paulo: Gaia, 2002, p. 55).
"As condições sociais (organização e estrutura da sociedade humana e seu ambiente artificial) afetam tanto o ambiente natural quando a qualidade da experiência humana (condições de vida e estado biopsíquico, como o ambiente natural também afeta as condições sociais e a qualidade de experiência humana)". DIAS, Genebaldo Freire. **Pegada Ecológica e sustentabilidade humana** (São Paulo: Gaia, 2002, p. 55).

[5] "no direito brasileiro, o meio ambiente ecologicamente equilibrado é o bem jurídico autônomo, unitário, indivisível, abstrato, imaterial, distinto dos elementos que o compõe, os recursos ambientais, ou microambientais" (Yoshida, 2012, p.176).

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> the biosphere, atmosphere, hydrosphere, pedosphere, and ecosystems, which are the products of the interaction between living things and the physical environment. The second is the artificial or sociocultural environment, created by man to survive and satisfy his system of needs. It includes urbanized areas, historical, natural, artistic and cultural heritage. (Carvalho, 2011, p. 260-261)[6].

In this sense, intending to prevail the evolution of human awareness in this model of regulation, for the importance of its existence in improving standards and the very continuity of human life on Earth, the concept of citizenry would need to be extended (Bonavides, 2015) to remote and vulnerable spaces, as he states that (2015, p. 589) "it deserves to be made aware of its importance"[7] due to the awareness of the challenges arising from the impacts on the human dimension.

To this end, the approach of the principle of non-retrogression will not interrupt these advances but leads to a more convergent stance towards protecting the right to the environment, contributing to intergenerational legal certainty. (Prieur, 2015).

Thus, Machado states that (2004, p. 08) "water, nuclear energy, deposits, protection of human health were subject of constitutional provisions"[8], announcing that the CRFB/88 recognizes the legal-holistic approach to the Brazilian nation:

> The ethical-legal advances established in it, in protecting nature, are numerous and undeniable. Without wishing to summarize them, attention is drawn to the legal automation of the environment, the legal-holistic treatment of nature, the recognition, alongside the intergenerational dimension, of the intrinsic value of other living beings and ecological balance, the greening of property rights and the establishment of the principles of the primacy of the

[6] O primeiro agrupa os fatores bióticos e abióticos e compreende o conjunto de suportes naturais da vida. Ele é constituído pelo meio ambiente físico ou natural, integrado pela biosfera, atmosfera, hidrosfera, pedosfera e os ecossistemas, produtos da interação entre os seres vivos e o meio físico. O segundo é o meio artificial ou sociocultural, que foi construído pelo homem para realizar sua vida, satisfazendo seu sistema de necessidades. Dele faz parte as áreas urbanizadas, o patrimônio histórico, natural, artístico e cultural (Carvalho, 2011, p. 260-261).
[7] “bem merece ela que se faça a respeito de sua importância” (Bonavides, 2015, p. 589).
[8] “águas, energia nuclear, jazidas, proteção à saúde humana foram objeto das disposições constitucionais” (Machado, 2004, p. 08).

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> environment and the limited exploitability of natural resources (Benjamin, 2011, p.150)[9].

However, considering those Latin American countries, specifically Brazil, still present weaknesses under the aegis of the Citizen Constitution, the risks of which derive from the format in which Brazilian society is currently organized, as the right to democracy:

> [...] composes the supreme pedestal of a legal value placed in the fourth dimension. The fact is, however, that in these countries - and this is also the case in Brazil - democracy, as a participatory form, is almost wrecked, and still remains a first generation right, or a form of government in a rudimentary state, surrounded by obstacles, transgressions, distant, very distant, therefore, from achieving, in the social context, the fulfillment of the political and legal expectations of the democratic regime (Bonavides, 2008, p. 59).[10]

Civic participation and the acceptance of democracy as a sustainable path for citizenry remain the fragility of perceiving and consolidating democratic exercise after totalitarianism, whose democratic ideas conflict with nationalism and despotism versus democratic civilization (Morin, 2003).

It can be added to this situation, in an organic and worldwide way, the fact that human experience still carries evidence of the autonomy of colonized peoples, who today tend to repeat the attitudes that were practiced against them (Morin, 2003).

Therefore, the low sense of belonging still present in Brazil, as a threat to Brazilian democracy, points out that, given how the concepts, practices, and solidarity strategies have been developed, it can be confirmed that the political, ethnic, religious, economic, historical,

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[9] Os avanços éticos-jurídicos nela estatuídos, ao proteger a natureza, são numerosos e inegáveis. Sem pretender sumariá-los, chama a atenção a automização jurídica do meio ambiente, o tratamento jurídico-holístico da natureza, o reconhecimento, ao lado da dimensão intergeracional, de valor intrínseco aos outros seres vivos e ao equilíbrio ecológico, a ecologização do direito de propriedade e a instituição de princípios da primariedade do meio ambiente e da explorabilidade limitada dos recursos naturais (Benjamin, 2011, p.150).

[10] [...] compõe o pedestal supremo de um valor jurídico posto em quarta dimensão. A verdade fática nos ensina, todavia que nos sobreditos países – e este é, também, o caso do Brasil – a democracia, enquanto forma participativa, quase naufragada, ainda permanece direito da primeira geração, ou forma de governo em estado rudimentar, rodeada de escolhos, de transgressões, distante, muito distante, por conseguinte, de lograr, na contextura social, a concreção das expectativas políticas e jurídicas do regime democrático (Bonavides, 2008, p. 59).

civilizational and globalization aspects have not contemplated the extent of the urgent capacity to protect all forms of life mutually and cohesively (Lucas, 2009). Therefore, "drafting the 1988 Constitution was a celebration of citizenship, a moment of national celebration after years of dictatorship. Now, with the text in hand, it's time to apply it" (Benjamin, 2011, p. 150)[11].

Being certain that social, economic, and cultural development is related to the satisfaction of basic living needs and sustainable democratic consolidation, respect is considered a milestone in promoting human empowerment, to be able to see citizenry as a basis for freedom and integrity of its citizens, in justice and decency of actors and institutions, in which equality must be reciprocal and compatible with these contexts (Rawls, 2001).

To this extent, there are still difficulties in adapting to the qualities and conditions of life due to development, disrupting the socio-environmental evolution of people today (Morin, 2003).

So, this mismatch could send the human species into a transgenerational crisis, whose decision-making has still been driven by anthropocentric aspects (MORIN, 2003), distancing the human capacity for empathy and the realization of participatory democracy for all responsibly and fairly, which, until now, has been restricted by constitutionalism.

TRANSITION TO SUSTAINABILITY: THE INFLUENCE OF YIN-YANG THINKING ON THE CONSTRUCTION OF CITIZENSHIP

Throughout the formation of human civilization, there have been connections and deviations between social groups, whose survival habits were understandable for purely predatory and power reasons. Among these occurrences, global culture was fragmented between the West and the East, dividing peoples, dispersing their identities and their history (MORIN, 2003), emphasizing that:

[11] "(...) elaborar a Constituição de 1988 foi uma festa de cidadania, um momento de celebração nacional, após anos de ditadura. Agora, com seu texto na mão, é hora de aplicá-la" (Benjamin, 2011, p. 150).

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> Democracy originated marginally in history, alongside the despotic empires of theocracies, tyrannies, aristocracies, and caste systems. It remains marginal, despite the universalization of the democratic aspiration. But it is the most civilized political system (Morin, 2003, p. 111).[12]

As a result, the predominant patriarchal system of recent centuries has led to a consolidated imbalance in the multiple human dimensions, whose consequences threaten the health of individual actors, ecosystems, and peoples (Morin, 2003).

Given this, a universal means of communication can be translated into understanding the changes and challenges arising within these divided spaces. Therefore, it is proposed that overcoming this situation begins by transforming the risks of humanity's *modus vivendi* on Earth and its *modus operandi* in development processes, where ecological risks arise, into skills and opportunities to transform them into resilience through ethics.

Thus, there may be a reframing of consciousness in favor of sustainable survival aimed first at the most vulnerable, to change the direction of the democratic risks that tend to arise due to the anemic experience of public freedoms.

The connection between conscious freedom and balance reflects human interaction in the environment, being able to achieve respect between people because culture is still developing. Because of this, realizing the forms of thought at the origins of Humanity, it is possible to see that awareness and balance in the Yin-Yang perspective become viable when we perceive them as sustainable proposals for the exercise of citizenship in current times for the evolution of conscience, according to Table 1:

[12] A democracia nasceu marginalmente na história, ao lado dos impérios despóticos das teocracias, das tiranias, das aristocracias, dos sistemas de castas. Ela permanece marginal, a despeito da universalização da aspiração democrática. Mas é o sistema político mais civilizado (Morin, 2003, p. 111).

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Table 1: "Cultural values and attitudes as purposes":

YIN	YANG
Female	Male
Contractive	Expansive
Conservative	Demanding
Receptive	Agressive
Cooperative	Competitive
Intuitive	Rational
Synthetic	Analytical

Source: CAPRA, Fritjof. **O ponto de mutação**: a Ciência, a Sociedade e a cultura emergente. Cultrix: São Paulo, 2006, p. 36.

According to Table 1, in Chinese culture, yin and yang are not equivalent to moral values, but rather to demystifying what is harmful or good to consider in an executable balance, where:

> [...] the rational and the intuitive are complementary ways in which the human mind works. Rational thinking is linear, focused, and analytical. It belongs to the domain of the intellect, whose function is to discriminate, measure and classify. Intuitive knowledge, on the other hand, is based on a direct, non-intellectual experience of reality, as a result of an expanded state of conscious perception. It tends to be synthesizing, holistic and non-linear. Hence it is evident that rational knowledge is likely to generate egocentric activity, or yang, while intuitive wisdom constitutes the basis of ecological activity, or yin (Capra, 2006. p.35).[13]

By this perception, it can be said that ecosystems interact dynamically, cyclically, in non-linear processes, where democracy and socio-biodiversity support each other, in which the goods of nature do not have the capacity to issue positions similar to those of men, whose conflicts and benefits of vitality also provide different ideals and debates (Capra, 2006; Morin, 2003).

[13] [...] o racional e o intuitivo são modos complementares de funcionamento da mente humana. O pensamento racional é linear, concentrado, analítico. Pertence ao domínio do intelecto, cuja função é discriminar, medir e classificar. O conhecimento intuitivo, por outro lado, baseia-se numa experiência direta, não intelectual, da realidade, em decorrência de um estado ampliado de percepção consciente. Tende a ser sintetizador, holístico e não linear. Daí ser evidente que o conhecimento racional é suscetível de gerar a atividade egocêntrica, ou yang, ao passo que a sabedoria intuitiva constitui a base da atividade ecológica, ou yin (Capra, 2006, p.35).

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Therefore, ecological awareness will only emerge when rational knowledge is aligned with an intuition of the non-linear nature of the environment (Capra, 2006), making it clear that when knowing Chinese wisdom:

> [...] the polarity of living systems is recognized; self-affirmation is achieved through Yang behavior: demanding, aggressive, competitive, expansive, and – with regard to human behavior – through analytical linear thinking. Integration is provided by yin thinking: receptive, cooperative, intuitive and aware of the environment. The Yin and Yang tendencies, integrative and self-affirming, are both necessary to achieve harmonious social and ecological relations (Capra, 2006, p. 41).[14]

This is supported by the fact that, in the scientific field, it is easier to access fundamental changes by supporting basic arguments that contribute to bringing human understanding closer to the environment in which it operates, not limited to reductionism and mechanism, but pointing out that holistic and ecological conceptions are also valid (Capra, 2006).

This idea is confirmed when the person has the power to determine integrity, respect, decency, and justice in the context of socio-biodiversity. Then, the subjects of rights will become global citizens, able to deal with any obstacles and multidimensional fears (Rawls, 2001).

This synergy allows human beings to develop an awareness of environmental protection as a *sine qua non* for their existence, and the Yin-Yang balance offers an ecological understanding of human interaction producing consequences in social spaces, confirming:

[14] [...] reconhece-se a polaridade dos sistemas vivos, onde a autoafirmação é conseguida através do comportamento yang: exigente, agressivo, competitivo, expansivo, e – no tocante ao comportamento humano – através do pensamento linear analítico. A integração é proporcionada pelo pensamento yin: receptivo, cooperativo, intuitivo e consciente do meio ambiente. As tendências Yin e Yang, integrativas e auto afirmativas, são ambas necessárias à obtenção de relações sociais e ecológicas harmoniosas (Capra, 2006, p. 41).

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> [...] the right of the individual to be made aware of the relevance of issues related to environmental protection, and, finally, as the subjective right to participate in the political-administrative decisions of the State under which they are under jurisdiction (Bulos, 2012, p.601)[15].

Therefore, access to information, based on educating people about the protection of the environment means the consequent promotion of human life within integrated Ecosystems and provides an understanding of the elasticity of the human dimension (Bulos, 2012).

It is clear that equity, expression, positivity, and achievement, in the face of the issues exposed before, remain a common and global problem, that require answers at the same level of importance, because solutions would have to go beyond cosmopolitanism and worldwide citizenship, with nations open to facing contemporary ecological challenges, especially between social relations and the environment (Leite; Ayala, 2004).

Understanding that situation, it becomes possible to achieve ecological awareness, which "is a recent social phenomenon that reached a worldwide dimension in recent decades, due to the negative effects of the development model adopted by modern society" (Carvalho, 2011, p.152)[16].

This understanding still needs to be disseminated as a perception of reality, which transcends every existing living entity and its transforming cycles and makes it possible to understand where the human being is located, its connection to the whole and its purpose as a living being and not just as if it is superior to other species.

Yin-Yang are structures of how to revive awareness historically, culturally and ecologically on a worldwide level, reinforce the importance of freedoms for the opening of

[15] [...] o direito de o indivíduo ser conscientizado da relevância dos temas relacionados à proteção do meio ambiente, e, enfim, como o direito subjetivo de participar nas decisões político-administrativas do Estado sob o qual se encontra jurisdicionado (Bulos, 2012, p. 601).
[16] "(...) é um fenômeno social recente, tendo alcançado dimensão planetária nas últimas décadas, em razão dos efeitos negativos do modelo de desenvolvimento adotado pela sociedade moderna" (Carvalho, 2011, p.152).

new understandings, reconnect the knowledge scattered to human comprehension and play new roles in a net of life (Capra, 2006).

FINAL CONSIDERATIONS

This article aimed to identify some dimensions of the affection of Brazilian democracy, from the recognition of the ecologically balanced environment to the provision of a new understanding of ecological awareness as sustainable public freedom.

In this sense, the evolution of thought provided by Brazilian environmental constitutionalism does not promote a new awareness, only confirms human interaction with ecosystems in a transgenerational, protected way.

So, legislative actors have been embracing and elevating environmental issues to constitutional status, beyond the ordinary form and scope of human dignity. However, the Constitution is not the appropriate legal instrument for testing policies of irresponsible governments that violate constitutionality, nor for the actors involved to exercise their supremacy, but which may constitute a new axis in the lives of all members of society as long as the understanding of the Nation-State has been overcome.

Going further, to fully and securely guarantee the right to life - to avoid threats from environmental, social, economic, political, human, and emotional risks, the transition to sustainability through the spread of balanced ecological awareness from the Yin-Yang perspective offers a more assertive way forward, rather than a static confrontation between peoples' *modus vivendi* and *modus operandi*.

That said, even having the Citizen Constitution, Brazilian democracy is not yet consolidated, offering threats regarding the observance of rules, whose structures are still applied in an anthropocentric way.

Thus, people will no longer consider democratic hope with a free ecological awareness that is guaranteed and protected. As long as one persists in the egocentric orbit, without there being a liberation to achieve ecological activities, the mere drafting of laws, regulations, and development instruments in general does not guarantee any survival.

If there is inertia regarding the exercise of citizenship through ecological awareness, the reflexive sustainability shown here tends to fall short of the ideals and involvement of ecological processes, concealing the risks created by this situation and having rights compromised when they are not achievable by all, breaking the intrinsic character of the ecologically protected balance, limiting the dignity of people as the central point for decision-making, due to the democratic risks of contemporary environmental constitutionalism.

Finally, Chinese understanding of egocentric and ecological involvements in contemporary societies can emerge, and all people need to do is to set free from parochialism and start exercising free conscience, in search of technical well-being for the benefit of their own lives in harmony with socio-biodiversity.

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