Solidary sustainability or sustainable solidarity? In search of a unison concept*

Sustentabilidade solidária ou solidariedade sustentável? Em busca de um conceito uníssono

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ABSTRACT

The objective of this article is to establish a conceptual integration of Sustainability and Solidarity, and the study will be carried out with the following specific objectives: to analyze the main aspects of Sustainability, focusing primarily on its social dimension; to study Solidarity mainly in

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its historical and conceptual aspects; and at the end, to understand the close correlation between the two categories. Regarding the adopted methodology, it was pointed out that the option was based on the inductive method, and the techniques of the referent, the category, the operational concepts, the bibliographic research and the file.

KEY WORDS

Sustainability — solidarity — social dimension of sustainability

RESUMO

O presente artigo tem como objetivo geral estabelecer uma integração conceitual da sustentabilidade e da solidariedade, desenrolando-se o estudo com o alcance dos seguintes objetivos específicos: analisar os principais aspectos da sustentabilidade, enfocando primordialmente sua dimensão social; estudar a solidariedade principalmente em seus aspectos históricos e conceituais, para, ao final, poder compreender a íntima correlação entre ambas as categorias. Com relação à metodologia adotada, ressalta-se que a opção se deu pelo método indutivo, tendo sido acionadas as técnicas do referente, da categoria, dos conceitos operacionais, da pesquisa bibliográfica e do fichamento.

PALAVRAS-CHAVE

Sustentabilidade — solidariedade — dimensão social da sustentabilidade

Introduction

This article analyzes the ideals and objectives of sustainability and solidarity and poses the doctrinal dialogue between their key aspects in order to determine their innate correlation.

Our overall purpose therefore is to establish a conceptual integration between sustainability and solidarity in order to develop the following more specific objectives: analyze the main aspects of sustainability, focusing primarily on its social dimension; examine the historical and conceptual aspects of solidarity to ultimately apprehend the close correlation between both categories.

Therefore, as core problems, the following questions will be addressed: What is sustainability and what are its main dimensions from a doctrinal point of view? Which are the conceptual variants of solidarity and the basis of its theoretical construction historically? How are sustainability and solidarity correlated?

The article has therefore been divided into three parts: sustainability and its social character; solidarity in its broader aspect; social justice as a result of conceptually integrating sustainability and solidarity.

As to the methodology used, note that our option was based on the inductive method and techniques for referent, category, operational concepts and literature searches.[1]

1. Sustainability and its social character

Bolssemann[2] shows that the history of environmental law did not begin in the 1960s; in fact, the sustainability concept is as old as European legal history and the idea of sustainability and its concept influenced the development of several laws on the continent.

Sustainability concepts, he writes, go back some 600 years earlier when continental Europe suffered a major ecological crisis. Between 1300 and 1350 agricultural development and timber use peaked and led to almost complete deforestation. In response to the crisis, local principalities and townships took measures for large-scale reforestation and enacted laws based on sustainability. The idea was to not clear more wood than would grow again and to plant new trees so that future generations would benefit. Hence the rise of sustainable forestry and stewardship.[3]

These laws and measures proved effective until 1800, when another environmental and food crisis struck Europe. Meanwhile traditional agricultural civilization gave way to one based on modern industry, as the Industrial Revolution profoundly transformed the use of land and natural resources as catalysts for the modern economy.[4]

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1 As per PASOLD, Cesar Luiz. *Metodologia da pesquisa jurídica:* teoria e prática. 13th ed. Florianópolis: Conceito Editorial, 2015. pg. 58.

2 BOSSELMANN, Klaus. *The Principle of Sustainability: Transforming Law and Governance*. Farnham: Ashgate, 2008.

3 Ibid., pg. 30-31.

4 Ibid., pg. 33-34.

All these changes were obviously reflected in the law, which increasingly shifted from its previous sustainability-oriented, localized and public character to a 'private free enterprise' approach so that that public environmental law had all but disappeared by the early 19th century. "The emerging system of private law and absolute property rights was largely ignorant of environmental protection, let alone sustainability."[5]

Despite all these historical episodes, it was not until the 1960s that world-wide discussions on these issues first made explicit mention of the term "environmental law", which Real Ferrer[6] described as giving rise to the "first wave" from the angle of chronological progress and political driving forces. This trend peaked at the first world conference on the environment held in Stockholm in 1972, which led to the proliferation of environmental legislation and its constitutionalization in several countries.

The "second wave" came in 1992 when the second world conference in Rio de Janeiro drew movements acting together with emerging non-governmental organizations (NGOs) and increasing numbers of new social agents involved in environmental protection. In addition, all participating countries passed plentiful modern environmental legislation giving rise to a wave of regulations and enabling the emergence of what Real Ferrer called the "photocopy generation."[7] The major highlights were discussions on the dimensions of sustainability.

The "third wave" came in with the 2002 World Conference on the Environment held in Johannesburg, also known as Rio+10, with a very strong focus on sustainable development. This conference finally saw the three dimensions of sustainability — environmental, social and economic — being integrated from a more doctrinal point of view.

However, despite acknowledging certain advances proposed by the Conference, there was also a sense of failure and apathy because targets were set but no effective means were put in place to control their implementation

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5 Ibid., pg. 33.

6 REAL FERRER, Gabriel. La construcción del derecho ambiental. *Revista Eletrônica Direito e Política,* Itajaí, v. 6, n. 2, pg. 472-505, Aug. 2011. Available at: <www.univali.br/direitoepolitica>. Accessed on: April 18, 2016; REAL FERRER, Gabriel. Calidad de vida, medio ambiente, sostenibilidad y ciudadanía ¿Construímos juntos el futuro? *Revista Eletrônica Novos Estudos Jurídicos,* Itajaí, v. 17, n. 3, pg. 310-326, Dec. 2012. Available at: <http://siaiweb06.univali.br/seer/index.php/nej/article/view/4202>. Accessed on: April 18, 2016.

7 Rules and regulations were widely copied without taking into account the social, economic, legal and environmental factors affecting projections. On this issue, see: REAL FERRER, Gabriel. La construcción del derecho ambiental. *Revista Aranzadi de Derecho Ambiental,* Pamplona, n. 1, pg. 73-93, 2002.

or efficacy. Nor were any steps taken to institutionalize effective planetary environmental governance. This sense of failure continued until the World Conference on the Environment in 2012, again in Rio de Janeiro, known as Rio+20, which has been called the "fourth wave".[8]

The stated aim of this last conference was to strengthen States' political commitment to sustainable development and identify progress made in commitments already signed in the UN context, as well as emerging challenges yet to be examined.[9] As Vieira[10] explains, it focused on two core themes: "... the transition to the green economy and global governance of sustainable development".

Cruz and Bodnar[11] note that basically three proposals came out of the conference:

> The first was to create a new UN body specifically for the environment. The second was to elevate the status of the United Nations Environment Program (UNEP) to the same level as the World Trade Organization (WTO) or other entities of this type. The third proposal was to give more powers to the UN Commission on Sustainable Development.

Milaré[12] adds that Rio+20 took place in an unfavorable international scenario and that a key factor during its preparation was the skepticism shown by both the official Governmental and Peoples' summits. Brazil once again hosted a major world conference but was still seen as "emerging", leaving internal difficulties in preparations for the Assembly apparent.

So like the penultimate conference, it led to a sense of failure in terms of making visible progress.

In Garcia's words,[13] the term sustainability has several connotations that "[...] arise from the concept of sustainability, which in turn relates to maintenance, conservation, permanence, continuity and so forth."

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8 Gabriel Real Ferrer, Calidad de vida, medio ambiente, sostenibilidad y ciudadanía, op. cit., pg. 318.

9 VIEIRA, Ricardo Stanziola. Rio+20 — conferência das nações unidas sobre meio ambiente e desenvolvimento: contexto, principais temas e expectativas em relação ao novo "direito da sustentabilidade". *Revista Eletrônica Novos Estudos Jurídicos,* Itajaí, v. 17, n. 1, pg. 48-69, apr. 2012. Available at: <http://siaiweb06.univali.br/seer/index.php/nej/article/view/3638>. Accessed on: April 18, 2016.

10 Ibid., pg. 50.

11 CRUZ, Paulo Márcio; BODNAR, Zenildo. *Globalização, transnacionalidade e sustentabilidade.* Special participation of Gabriel Real Ferrer. Itajaí: Univali, 2012. pg. 169.

12 MILARÉ, Edis. *Direito do ambiente.* 8th ed. São Paulo: Revista dos Tribunais, 2013. pg. 1572.

13 GARCIA, Denise Schmitt Siqueira. A atividade portuária como garantidora do princípio da sustentabilidade. *Revista Direito Econômico Socioambiental,* Curitiba, v. 3, n. 2, pg. 375-399, Jul./Dec. 2012. pg. 389.

Freitas[14] conceptualizes the principle of sustainability as a

> [...] constitutional principle that determines, with direct and immediate efficacy, the responsibility of the State and of society for pursuing solidary material and immaterial development, to be socially inclusive, durable and equitable, environmentally clean, innovative, ethical and efficient, in order to ensure the right to well-being, preferably doing so preventively and cautiously in the present and the future.

Briefly, Freitas goes on to argue that sustainability would entail 10 basic elements: 1. Being a constitutional principle for direct and immediate application; 2. There must be fair results rather than merely legal effects, in other words they must be efficacious; 3. In connection with efficacy, there must be efficiency; 4. Its aim must be to clean up the environment; 5. It presupposes honesty in public and private relations; 6. 7. 8. It involves prevention, precaution and intergenerational solidarity; 9. It implies recognition of the joint responsibility of State and society; and 10. All other elements must converge around the idea of ensuring long-lasting, multidimensional well-being.[15]

From the same angle, based on the principle of sustainability Martín Mateo's[16] position is that it is not a question of building some kind of utopia but of pragmatic practices that will be compatible with the economic development required for our follow humans and their descendants to enjoy decent lives while respecting an adequate biophysical environment.

Another point to be borne in mind is that sustainability is actually an ethical dimension rather than an existential question, since its aim is to ensure life not just in relation to nature but a whole relationship between individuals and the entire surrounding environment. "There is a complementary relationship between the two. By ameliorating the environment, Man is ameliorating himself."[17]

In this respect too, Real Ferrer[18] argues that sustainability entails a positive and highly proactive notion that presupposes the introduction of

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[14] FREITAS, Juarez. *Sustentabilidade:* direito ao futuro. 2nd ed. Belo Horizonte: Fórum, 2012. pg. 41.

[15] Ibid., pg. 50.

[16] MARTÍN MATEO, Ramón. *Manual de derecho ambiental.* 2nd ed. Madri: Editorial Trivium, 1998. pg. 41.

[17] SOARES, Josemar; CRUZ, Paulo Márcio. Critério ético e sustentabilidade na sociedade pós-moderna: impactos nas dimensões econômicas, transnacionais e jurídicas. *Revista Eletrônica Novos Estudos Jurídicos*, Itajaí, v. 17, n. 3, pg. 401-418, Dec. 2012. pg. 412. Available at: <http://siaiweb06.univali.br/seer/index.php/nej/article/view/4208>. Accessed on: April 18, 2016.

[18] REAL FERRER, Gabriel. Sostenibilidad, transnacionalidad y trasformaciones del derecho. In: SOUZA, Maria Cláudia da Silva Antunes de; GARCIA, Denise Schmitt Siqueira (Org.). *Direito*

the necessary changes for planetary society, constituted by humanity, to be perpetuated indefinitely in time.

That said, one must consider the multidimensional nature of sustainability, highlighting the divergence found in jurists' opinion as to the number of sustainability's underlying dimensions. However, note the there are three aspects comprising what has been called the sustainability tripod, namely environmental, economic and social dimensions.

Traditional opinions address sustainability from the point of view of these three dimensions, all integrally correlated and interdependent for the actual construction of sustainability.

Freitas[19] poses five dimensions; in addition to the traditional three, there would also be ethical[20] and legal-political ones.[21] All five taken together become highly correlated and enable the actual construction of sustainability.

There is another dimension that jurists are gradually accepting, which Cruz, Bodnar and Real Ferrer have called the technological dimension, which arises in a context of Man evolving in relation to the advances of globalization, as they note:

> Sustainability initially comprised a threefold dimension: environmental, social and economic. In today's 'knowledge society', the technological dimension must be added too, since accumulated and multiplied individual and collective human intelligence can ensure a sustainable future. From a legal point of view, all these dimensions are identified with the basis of several human and fundamental rights (environment, development, social assistance and others), each with their own peculiarities and risks.[22]

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ambiental, transnacionalidade e sustentabilidade. Electronic data. Itajaí: Univali, 2013. pg. 13. Available at: <www.univali.br/ppcj/ebooks>. Accessed on: April 18, 2016.

19 Juarez Freitas, *Sustentabilidade*, op. cit.

20 The ethical dimension puts forward *the idea that all human beings have an intersubjective and natural connection from which the concept of solidarity emerges as a universalizable right. Cooperation would then emerge as an evolutionary duty of the species, favorable to the continuity of life in the environmental system; its prime search would be producing life-long wellbeing, with recognition of the intrinsic dignity of all human beings, therefore above strict anthropocentrism, thus creating a feasible universal ethics*.

21 The legal-political dimension *establishes that sustainability determines, irrespective of regulation, the legal protection of the right to the future, presenting itself as a constitutional duty. Sustainability is seen as an immediately and directly binding constitutional legal principle that changes the global vision of the law, to which all efforts should converge, determining the efficacy of the fundamental rights of all dimensions, rendering disproportionate and anti-legal any and all omission causing intra and intergeneration unfair damages*.

22 Paulo Márcio Cruz e Zenildo Bodnar, *Globalização, transnacionalidade e sustentabilidade*, op. cit., pg. 112.

According to Real Ferrer[23] this dimension will mark the measures we may take to correct our current course headed for catastrophe, if we can do so in good time. Not to mention that technique also defines — and has determined — our social models such as the wheel, navigating techniques, the steam engine, electricity, the automobile and television, and in this respect the internet, nanotechnologies and future developments will also determine these models.

In a recent article, Cruz and Real Ferrer[24] address the fundamental aspects of the technological assumption for sustainability in all its dimensions. In analyzing the classic dimensions of sustainability, they note, the technological factor is not considered despite its crucial role in successfully acting in each of the areas and ensuring actual feasibility for sustainability.

Having added this point, some of the main characteristics of each of the dimensions traditionally considered by jurists' opinion are highlighted to emphasize that the item will conclude with a focus on the social dimension, given the basis for the present study.

The *environmental dimension* of the principle of sustainability speaks to the importance of protecting the environment and environmental law for the primary purpose of ensuring the planet's survival by preserving and enhancing physical and chemical elements that make life possible, in all cases aiming for the best quality of life for humans on Earth.[25]

It basically determines that present and future generations are entitled to a clean environment in all its aspects. On this note, the same dimension poses the idea that there can be no quality of life or worthwhile longevity in a degraded environment or in one incapable of sustaining human life, hence the notion of protecting environmental quality — otherwise there will be no the future for the human species.

The *economic dimension* focuses on developing the economy to provide better quality of life for people. It came to be part of the context of sustainability for two reasons: 1. Progress in terms of economic development that has

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[23] Gabriel Real Ferrer, Calidad de vida, medio ambiente, sostenibilidad y ciudadanía, op. cit., pg. 319.

[24] CRUZ, Paulo Márcio; REAL FERRER, Gabriel. Direito, sustentabilidade e a premissa tecnológica como ampliação de seus fundamentos. *Sequência,* Florianópolis, v. 36, n. 71, pg. 239-278, Dec. 2015. Available at: <https://periodicos.ufsc.br/index.php/sequencia/article/view/21777055.2015v36n71p239>. Accessed on: April 18, 2016.

[25] GARCIA, Denise Schmitt Siqueira; GARCIA, Heloise Siqueira. Dimensão social do princípio da sustentabilidade: uma análise do mínimo existencial ecológico. In: SOUZA, Maria Claudia da Silva Antunes; GARCIA, Heloise Siqueira (Org.). *Lineamentos sobre sustentabilidade segundo Gabriel Real Ferrer.* Electronic data. Itajaí: Univali, 2014. pg. 44. Available at: <www.univali.br/ppcj/ebooks>. Accessed on: April 18, 2016.

achieved by world society cannot be reversed; and 2. Economic development would be intertwined with the social dimension of the Sustainability Principle because it is a pre-requisite for alarming levels of poverty to be alleviated.[26]

Efficiency must be weighing against equity, which leads to a consequent balancing between direct and indirect costs (externalities) for public and private enterprises, all of which closely relates to the idea of measuring long-term consequences. On this account, sustainability would lead to a new economy and reformulate categories and behaviors for long-term planning thus ending excessive cults around positional goods and a competitive incentive system.[27]

The *social dimension* comprises the social aspect related to the qualities of human beings, also known as human capital. It is based on a process of enhancing society's quality of life by narrowing gaps between opulence and poverty and leveling income, access to education, housing and food. It is therefore closely related to guarantees for social rights set forth in Article 6 of Brazil's constitution and Dignity of the Human Person a cornerstone of the Federative Republic of Brazil.[28]

It basically embraces the protection of fundamental social rights while rejecting the idea of a development model that excludes people or is inequitable, thus posing a guarantee of intra and intergenerational equity while creating conditions for human qualities through guaranteed quality education; and with the development of guaranteed rights and dignity for all of the planet's human beings.

From the point of view of this dimension, protecting the environment directly relates to guarantying social rights, since enjoying the latter (such as health, housing, food, education, etc.) at constitutionally desirable levels will necessarily involve favorable environmental conditions such as access to potable water (through basic sanitation, which is also a fundamental social right and part of minimum existential content), food free from chemical contamination (e.g. pesticides and persistent organic pollutants), housing located in areas free of atmospheric pollution, or contaminated water or soil (such as around industrial areas) or even mudslide risk (such as on top of deforested hills or banks of silted rivers).[29]

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[26] Ibid., pg. 44.
[27] Juarez Freitas, *Sustentabilidade*, op. cit., pg. 65-67.
[28] Denise Schmitt Siqueira Garcia e Heloise Siqueira Garcia, Dimensão social do princípio da sustentabilidade, op. cit., pg. 44-45.
[29] Ibid., pg. 57-58.

The effectiveness of water supplies and sewage services directly or indirectly falls within the regulatory purview of several fundamental rights (but particularly social ones) such as the right to health, housing, the environment, the "emerging" right to water (essential for human dignity), and in more extreme cases the right to life.[30]

Bedlin and Garcia[31] rightly note that the social dimension must not be forgotten, because most developed countries rank high among the worst polluters, "[...] social development must be seen as a form of environmental protection and sustainable development because the social dimension directly affects the latter [...]".

Poverty relates not only to social criteria and insufficient guaranteed minimums but also to environmental and economic criteria

> The lower people's income and level of social development, the less will be their concern for the environment. A citizen living on the breadline will show less interest in protecting the environment and more in supporting his family, while remaining indifferent as to whether his work is or is not degrading the environment.[32]

Poverty and social inequalities are closely linked to the economic dimension of sustainability and to the protection addressed by social-environmentalism, but we must keep in mind that solidarity related criteria will be required to change the paradigm in liberal thinking about growth — a change that is essential if the future is to be at least sustainable.

From the characterization of each of these dimensions, it must always be borne in mind that they are all narrowly intertwined in order to pose a vision of sustainability as a principle-synthesis that determines the protection of human life on Earth.

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30 FENSTERSEIFER, Tiago. *Direitos fundamentais e proteção do ambiente:* a dimensão ecológica da dignidade humana no marco jurídico constitucional do estado socioambiental de direito. Porto Alegre: Livraria do Advogado Editora, 2008. pg. 75.

31 BEDLIN, Samara Loss; GARCIA, Denise Schmitt Siqueira. Dimensão social do princípio da sustentabilidade frente ao artigo 6º da Constituição da República Federativa do Brasil de 1988. *Revista Eletrônica Direito e Política,* Itajaí, v. 6, n. 2, pg. 419-441, 2. quadr. 2011. pg. 419.

32 Ibid., pg. 431.

As Irving and Oliveira point out,[33] the meaning of sustainability in a discussion must involve interaction with the environment, perception of social relations and human subjectivity itself.

The aim of sustainability studies is posited by Carvalho: "Sustainability announces the limit of economic rationality, proclaiming the values of life, social justice and commitment to future generations, pursuing an environmental rationale."[34]

All this theoretical contribution corroborates the core idea that the destiny of the human species, and here the global and transnational context of this interpretation is emphasized, remains in their own hands, being, then, the main reason to prioritize sustainability as an opportunity to ensure that all generations enjoy their fundamental right to a future.

Next, as posed in the main theme of the article, the notion of solidarity will be examined to highlight in particular its historical and conceptual aspects whilst not losing sight of the relationship between the two themes.

2. Solidarity in its broadest aspect

Before briefly looking at solidarity itself, some current doctrinal and conceptual disagreements must be outlined.

Certain theorists treat solidarity as synonymous with fraternity, including Fensterseifer[35] and Sarlet and Fensterseifer,[36] whose positions we shall proceed to examine.

There are theorists who separate solidarity and fraternity, such as Brandão and Ildete Silva[37], who states that fraternity

> [...] comprises a requirement that is revealed in horizontal relation with the other — that makes man act because he recognizes himself in the other

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[33] IRVING, Marta de Azevedo; OLIVEIRA, Elizabeth. *Sustentabilidade e transformação social.* Rio de Janeiro: Senac Nacional, 2012. pg. 36.

[34] CARVALHO, Sônia Aparecida de. Justiça social e ambiental: um instrumento de consolidação à sustentabilidade. *Revista Eletrônica Direito e Política,* Itajaí, v. 9, n. 2, pg. 755-779, 2. quadr. 2014. pg. 773.

[35] Tiago Fensterseifer, *Direitos fundamentais e proteção do ambiente,* op. cit., pg. 112.

[36] SARLET, Ingo Wolfganf; FENSTERSEIFER, Tiago. *Direito constitucional ambiental:* constituição, direitos fundamentais e proteção do ambiente. 3rd ed. São Paulo: Revista dos Tribunais, 2013.

[37] BRANDÃO, Paulo de Tarso; SILVA, Ildete Regina Vale da. Fraternidade como categoria política. *Revista Eletrônica Direito e Política,* Itajaí, v.7, n. 3, 3. quadr. 2012. pg. 2398.

> as other than himself; another self that is not me, but at the same time it is me belonging to Society — and, sensitized, conscious and motivated, starting to act in a committed and responsible manner with an attitude compatible with a member of the same uniquely human family.

Distinctly from solidarity, the above would pose the idea that one person is only solidary with another because solidarity is advantageous rather than for altruistic reasons, which would be fraternity as "[…] a fundamental rule or idea that radiates new meanings with the condition of being able to guide a new thought, a new paradigm."[38]

Finally, jurists such as Real Ferrer[39] have argued that solidarity is a genre that gives rise to certain species in which the key idea of fraternity would be involved in one of them, to be explained below. Note that this was the idea we as authors chose to develop for the present study.

The operational concept's conception and establishment for the research category are essential to develop this study, hence the initial juncture hereof. Indeed, this is an important part of any attempt to stipulate something of the evolution of the solidarity concept because several authors have confused these categories.

From the evolutionary angle of apprehending the lessons of solidarity, an outstanding Peces-Barba[40] article from the 1990s posits five historical models and his own personal thoughts on aspects of rationalizing solidarity as a value.

His study used the historical precursor of solidarity as criterion[41] to show that the evolution of human civilization featured five major historical junctures at which certain ways of conceiving solidarity were established.

The earliest juncture in which solidarity appears involved conceptions of utopia or "poems of solidarity"[42] as Peces-Barba calls them, in which this category is a utopia standing for a "general spirit of fraternity" that arose from

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38 Ibid.

39 REAL FERRER, Gabriel. La solidariedad en el derecho administrativo. *Revista de Administración Pública (RAP),* n. 161, pg. 123-179, May/Aug. 2003.

40 PECES BARBA, Gregorio. Humanitarismo y solidaridad social como valores de una sociedad avanzada. In: LORENZO GARCIA, Rafael de (Org.). *Las entidades no lucrativas de carácter social y humanitario.* Madri: La Ley, 1991. pg. 15-62.

41 Reading Gregorio Peces-Barba's article shows that his discussion of the categories solidarity and fraternity is confusing in several instances because he alternates between treating them as synonyms and different categories.

42 Ibid., pg. 19-22.

living one's life as an equal member of a community in which private property did not exist. At that time, it was supposed that the absence of property would be the only way of materializing solidarity. The basic ideas for this period were set forth in Thomas Morus' *A Utopia*[43] and Tommaso Campanella's *City of the Sun*.[44]

The second historical juncture saw the concept of solidarity come closer to ethical criteria instigated by the "discovery" of the "New World". Peces-Barba's[45] analysis is based on the Spanish response to the discovery of America, when he says the question of a historic responsibility was raised. At that time, as in other historical junctures, solidarity was seen as a value derived from Catholic-Christian roots. Solidarity was evinced as a positive action.

The third juncture relates to the origins of industrial society and how economics impacted society. The concept of solidarity moved away from a religious idea to come closer to a more political concept; this meant breaking a paradigm and using more openly stated public instruments, extending their scope from paupers to all those whose basic needs were not being met despite being in employment.[46]

This third historical juncture comprises the most terrible of periods for solidary ideals in the late 18th and 19th centuries, which may in turn be subdivided into four shorter periods: the first characterized by the generalization of fundamental rights, the active role of the working class, the origins of the social welfare state and a fierce offensive against the values of solidarity waged for the sake of "political economy" in which solidarity is seen as merely an ethical response to poverty. The second or "modern solidarity" period saw the ascent of the Enlightenment and Adam Smith's *A riqueza das nações*[47] lauding economic dualism (individualism) versus solidarity; economics was disconnected from moral values and solidarity totally excluded as a legal or political value with a minimal role for the state. The third period followed the ideas of individualistic economics as in Thomas Malthus' *Ensaio sobre o princípio da população,*[48] in which economics became a natural science while moral philosophy and solidarity is abandoned; not even the idea of charity for paupers (unemployed or part-time workers)

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43 MORUS, Thomas. *A utopia.* São Paulo: Saraiva de Bolso, 2011.
44 CAMPANELLA, Tommaso. *A cidade do Sol.* São Paulo: Martin Claret, 2004.
45 Gregorio Peces Barba, Humanitarismo y solidaridad social como valores de una sociedad avanzada, op. cit., pg. 22-26.
46 Ibid., pg. 26-35.
47 SMITH, Adam. *A riqueza das nações.* 4th ed. São Paulo: WMF Martins Fontes, 2016.
48 MALTHUS, Thomas. *Ensaio sobre o princípio da população.* Lisboa: Relógio D'água, 2014.

made sense, the only value worthy of consideration was wealth, the idea of not owning property was reversed to hail ownership of private property as a non-egalitarian natural right. Finally, the fourth (shorter) period saw a slight resurgence of solidarity after the exaggerated recognition of private property; the leading reactionaries in this period started to criticize economics from the standpoint of contrasting a relationship between ethical, political and legal dimensions.[49]

The penultimate historical juncture covers the 19th-century transition from social liberalism to socialism with the definitive crystallization of solidarity as a value and its influence on aims and functions ascribed to civil society and the State. This historic juncture saw fundamental rights generalize and become widespread; the struggle for universal suffrage and organizing rights, hence the working class gradually being assimilated into the State's political institutions. Although demarcating influences exerted by political philosophies is difficult, the following may be highlighted: a certain Christian current; a socialization of liberal sectors; the liberalization of socialist sectors; so-called reformist, democratic or liberal socialism of ethical or utopian origin; and an anarchist notion of reality. The fraternal relations within this revolutionary trilogy, ordered in the nascent law-governed social welfare state, were to usher in a second generation of fundamental rights. Solidarity as a value became a point of departure rather than arrival.[50]

Finally, Peces-Barba's[51] last historical juncture goes back to the 1990s. From the 20th century onwards, the value of solidarity as the root of social services emerges to characterize, nuance and interweave the various points of view posed as partial paradigms from previous experiences, so that all this systematic and rational analysis of solidarity as a value is posed as a way of exiting diachronicity and entering synchronicity. The possible model for the current realization of solidarity value would be the social welfare state's combining governmental authorities with civil society institutions to meet basic needs.

Peces-Barba[52] poses this problematic: the conditions arising from the introduction of information technology and other techniques replacing human labor have caused to high unemployment in all developed countries,

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[49] Gregorio Peces Barba, Humanitarismo y solidaridad social como valores de una sociedad avanzada, op. cit., pg. 35-41.
[50] Ibid., pg. 35-51.
[51] Ibid., pg. 51-55.
[52] Ibid.

so lowering jobless numbers is proving difficult. In addition, the tension between developed and underdeveloped countries is highlighted by several aspects in which the value of solidarity has taken on an international dimension, especially since decolonization culminated after World War II as well as heightened awareness of the situation, which has deteriorated in recent years, such as the foreign debt problem. Poverty affects not only individuals but whole peoples. Poverty is generalized for these nations, excepting small minorities.

Starting from a slightly more objective concept of history, Fensterseifer[53] sees the principle of solidarity being reborn Phoenix-like from the legal ashes left by the French Revolution to become a new legal-constitutional framework for the law-governed social-environmental state.[54] This rebirth in the second half of the 20th century, during the post-World War II period and thereafter, in particular saw nation-states enact constitutions — such as Brazil's in 1988 — that amounted to milestones for human dignity.[55]

1988 Constitution of the Federative Republic of Brazil declared the principle of solidarity an objective in its article 3, item I,[56] as also embodied in its preamble[57], thus establishing social and individual rights, freedom, security, well-being, development, equality and fairness as supreme values of a fraternal society,[58] while also showing the Constitution's confusion of solidarity with fraternity.

In his contextual comments on the aforementioned article of the constitution, Silva[59] actually highlights the correlation between the latter and the promises posed in the preamble:

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53 Tiago Fensterseifer, *Direitos fundamentais e proteção do ambiente,* op. cit., pg. 111.

54 This is the author's nomenclature but he points out that numerous terms are used to describe the new state community project, including post-social state, ecological constitutional state, environmental law state, environmental state, and environmental well-being state. Ibid, pg. 94.

55 Ibid., pg. 112-113.

56 Art. 3 The Federative Republic of Brazil's fundamental objectives are: I - to build a free, fair and solidary society [...]. BRASIL. *Constituição da República Federativa do Brasil de 1988.* Brasília: Poder Constituinte Originário, 1988.

57 "We the representatives of the Brazilian People, convened the National Constituent Assembly, to institute a democratic state destined to ensure the exercise of social and individual rights, liberty, security, well-being, development, equality and justice as supreme values of a fraternal, pluralist and unprejudiced society, founded on social harmony and committed, in the domestic and international orders, to the peaceful solution of disputes, promulgate, under the protection of God, the following CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL." Ibid.

58 Tiago Fensterseifer, *Direitos fundamentais e proteção do ambiente,* op. cit., pg. 113.

59 SILVA, José Afonso da. *Comentário contextual à Constituição.* 5th ed. São Paulo: Malheiros, 2008. pg. 46.

> [...] since "building a free, fair and solidary society" means a society endowed with the supreme values of social and individual rights, such as freedom, security, well-being, development, equality and fairness which is that fraternal, pluralistic society free of prejudice, based on social harmony.[60]

This corroborates Kelsen's ideas[61] by positing the people as one of the "elements" of the State in traditional theory — people here meaning human beings residing on the territory of the State, or society. A unit representing the personal sphere of validity of the nation's legal system.

Comprising the main conceptual and historical aspects required for the apprehension of solidarity, now seen as a principle, or as a value, to be summarized below as the key concept for the present study.

Real Ferrer[62] conceptualizes solidarity and solidary acts or practices as technique required to materialize the social contract — materially non-existent but latent — that is in the origin of the politically organized society of this community of interests comprising the State: "*Un pacto que se renueva periódicamente, diariamente, diría. Pacto que está en la Constitución y en las leyes, y que debe tenerse presente a diario pues es el único capaz de trasmutar la naturaliza de nuestra actividad.*"[63]

Martín Mateo[64] explains that solidarity must be not only an ethical imperative but also a practical one required by the international basis of most natural systems and by the need to restrict excessive use of resources in the field of sustainable development.

Corroborating this analysis, Bodnar[65] highlights the fact that solidarity contemplates an ethical substrate, since it is a fundamental value for the organization and harmony of relations between human beings, the environment and the future.

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60 Ibid.

61 KELSEN, Hans. *Teoria geral do direito e do Estado.* 4th ed. Translated by Luís Carlos Borges. São Paulo: Martins Fontes, 2005. pg. 334.

62 Gabriel Real Ferrer, *La solidariedad en el derecho administrativo,* op. cit., pg. 123-179.

63 Ibid.

64 Ramón Martín Mateo, *Manual de derecho ambiental,* op. cit., pg. 48.

65 BODNAR, Zenildo. Jurisdição ambiental para a solidariedade: desafios hermenêuticos. In: SOUZA, Maria Claudia da Silva Antunes Souza e Heloise Siqueira Garcia, *Lineamentos sobre sustentabilidade segundo Gabriel Real Ferrer,* op. cit., pg. 143-171.

Sarlet and Fensterseifer[66] comment that it expresses the fundamental necessity (or 'duty' in legal terms) for human beings to coexist in society, formatting the web of intersubjective and social relations outlined in the space of the state community.

As noted above, the idea argued herein is that solidarity may be assumed as a genre from which certain species would be derived, thus the aforementioned study by Real Ferrer stands out not only for the same approach but also for relating it to several environmental and administrative aspects.

Based on the abovementioned author's division, there are basically two main types of solidarity while the others shown are more directly related to the dictates of administrative law, namely self-centered solidarity and altruistic solidarity.[67]

Self-centered solidarity involves the idea of an individual acting in favor of their group to benefit in two ways: "[...] *la mejora del grupo em la que se encuentra y su mejora personal en forma de retornos"*[68] Ferrer notes that this dimension of solidarity in these terms pertains to all human groups and is shared, more or less lucidly by all their individual members. This type of solidarity may be seen as strictly related to the liberal state and the idea of pure solidarity for those who pose a distinction between solidarity and fraternity.

Altruistic solidarity on the other hand poses the idea of the individual acting in society without expecting direct or indirect benefit, and is closely related to the ideal sought by a law-governed democratic state.[69] This type of solidarity may be likened to the idea of fraternity posed by those who advocate a distinction between solidarity and solidarity.

Real Ferrer[70] emphasizes that although there will be both types in a society, altruistic solidarity should always prevail as the true nature of solidarity in the quest for a law-governed democratic state.

Even if solidarity has religious value, Peces-Barba[71] rightly considers that its current position is in the social and political sphere as an ethical impulse for the actions of society and the public powers to meet basic needs that take on legal forms as subjective rights that generate correlative duties.

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66 Ingo Wolfganf Sarlet e Tiago Fensterseifer, *Direito constitucional ambiental,* op. cit., pg. 56.
67 Gabriel Real Ferrer, La solidariedad en el derecho administrativo, op. cit., pg. 123-179.
68 Ibid.
69 Ibid.
70 Ibid.
71 Gregorio Peces-Barba, Humanitarismo y solidaridad social como valores de una sociedad avanzada, op. cit., pg. 55-57.

Solidarity expresses values contrary to those of classical economics and individualistic liberalism, which only bind individuals through contracts and posit an idea of law for two main functions: guarantor and repressive. Today solidarity expresses the values of Man in community, in relations of integration with others to achieve shared goals.[72]

Hence their values being constructed, even by means of guaranteeing the dignity of the human person, to be gleaned from Sarlet's terms as:

> [...] *the distinctively intrinsic quality recognized in every human being that deserves the same respect and consideration on the part of the State and the community, in this respect implying a complex of rights and fundamental duties that assure the person against any and all degrading or inhuman acts, and that guarantee the minimum existential conditions for a healthful life while fostering and promoting their active and co-responsible participation in the destinies of their own existence and life in communion with other human beings.*[73] [italics in the original]

The construction of this solidary vision is closely related to the empathic civilization criteria discussed by Rifkin[74], which shows the existence of global empathy in an interconnected world capable of saving Earth and avoiding the demise of civilization.

For Rifkin, empathy is expressed as the will of the observer to take part in and share the experience of another person. *"La empatía es el medio psicológico por el que pasamos a formar parte de la vida de otras personas y compartimos experiencias valiosas."*[75]

Among other aspects, all of this constructs the idea of creating a solidary global consciousness that enables an expanded human vision to tackle problems that devastate humanity as a whole and in same way impact everything around them, as in the boomerang effect that Beck augured in his risk society.[76]

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[72] Ibid.

[73] SARLET, Ingo Wolfgang. As dimensões da dignidade da pessoa humana: construindo uma compreensão jurídico-constitucional necessária e possível. *Revista Brasileira de Direito Constitucional — RBDC,* n. 9, pg. 361-388, Jan./Jun. 2007. pg. 383.

[74] RIFKIN, Jeremy. *La civilización empática.* La carrera hacia una conciencia global en un mundo en crisis. Barcelona: Paidós, 2010.

[75] Ibid., pg. 29.

[76] BECK, Ulrich. Sociedade de risco: rumo a uma outra modernidade. 2nd ed. Translation of Sebastião Nascimento. São Paulo: Editora 34, 2011. pg. 27-28.

As Armada[77] rightly emphasizes, we must assume that sustainability and solidarity are related categories. We must accept the finite character of natural resources and the possibility of jeopardizing humanity's continued survival by using them indiscriminately. Inclusion of the other in the process of protection must be borne in mind, and even more so we must include those who are not yet here, the future generations, and accept their right to enjoy cultural and environmental heritage too.

Campello notes[78] that the concept of solidarity had been clarified by Brudtland[79] for sustainable development purposes in that it highlighted environmental protection for present and future generations. Sustainability's intra— and inter-generational character has also been noted by Freitas.[80]

Moreover, a law-governed social-environmental state should be seen as one in which humankind shows respect and solidarity, while being prudent and cautious in relation to nature, as Armada notes:

> In this respect, driving society toward a paradigm shift on two levels: socially consolidating community participation in decisions on environmental issues; and environmentally consolidating more a solidary and sustainable stance.[81]

All this is intended to further support our argument that the ideal theoretical construction would be a concept of solidary sustainability or sustainable solidarity. These categories are not only closely interrelated but also inter-dependent — and the outcome of their intertwining concords with the criteria of environmental justice and social-environmentalism.[82]

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77 ARMADA, Charles Alexandre de Souza. O estado socioambiental de direito brasileiro e a concretização multidimensional da sustentabilidade. *Revista Eletrônica Direito e Política,* Itajaí, v. 10, n. 1, ed. esp., pg. 157-174, 2015. pg. 171.

78 CAMPELLO, Lívia Gaigher Bósio. Solidariedade e cooperação internacional na proteção do meio ambiente. In: Maria Claudia da Silva Antunes Souza e Heloise Siqueira Garcia, *Lineamentos sobre sustentabilidade segundo Gabriel Real Ferrer*, op. cit., pg. 219.

79 Note that use of the sustainable development category here follows that of the author cited. This author believes that sustainable development and sustainability are distinct concepts. However this is just one way of addressing this issue, as per the view consolidated by Gabriel Real Ferrer in: Gabriel Real Ferrer, Sostenibilidad, transnacionalidad y trasformaciones del derecho, op. cit.

80 Juarez Freitas, Sustentabilidade, op. cit., pg. 117.

81 Charles Alexandre de Souza Armada, O estado socioambiental de direito brasileiro e a concretização multidimensional da sustentabilidade, op. cit., pg. 163.

82 "[...] social-environmentalism and the concept of environmental justice are posed as new concepts to address the environmental issue; they aim is to combine strictly environmental

The prevailing reality is that environmental concern is inseparable from decent human life and solidarity. Sustainability focuses on guaranteeing the first two and solidarity is an indispensable means of achieving them.

Conclusion

From an overarching point of view, sustainability means concatenating the conceptual ideas discussed here and poses a conception that is primarily ethical in its addressing an existential question, since it strives to guarantee life not merely in relation to nature, but also relations between individuals and their surroundings. Its reach is unarguable and it must be seen as multidimensional in character, involving several directly interconnected dimensions to provide a vision of sustainability as a principle-synthesis that determines the protection of human life on Earth.

In the same way, solidarity must contemplate an ethical substratum, since this is a fundamental value for the organization of harmonious relations between human beings. Its values counter those of classical economics and individualistic liberalism to convey the values of humankind in community, in relations of integration with other humans to materialize shared objectives, and they may be construed as guaranteeing the dignity of humans as persons.

In this respect, in the final consideration of the proposed study, a point emphasized is that the primordial pursuit of humankind's destiny is still in our own hands and must never be separated from sustainability and solidarity as categories, hence our advocacy of a unison concept for both, be this solidary sustainability or sustainable solidarity.

We must accept the finite character of natural resources and the fact that indiscriminate use may jeopardize the continued survival of humanity. Another point to bear in mind is inclusion of the other in the process of

and technical factors with their social, economic, cultural, ethnic and political context. They acknowledge know-hows, community initiatives and their cultural constructions concerning their environment as drivers for the legal treatment of conflicts affecting social and environmental goods and as sources of renewal of Environmental Law as a step toward 'Sustainability Law." VIEIRA, Ricardo Stanziola. Justiça ambiental e a violação dos direitos humanos socioambientais: desafios da sustentabilidade na era do desenvolvimentismo. In: CRUZ, Paulo Márcio; OLIVIERO, Maurizio; BRANDÃO, Paulo de Tarso. *O direito contemporâneo e diálogos científicos Univali e Perugia.* 10-year commemorative edition of the Dual Titling Agreement between Univali and UNIPG. Perugia: UNIPG, 2016. pg. 256.

protection, which must include those who are not yet here, future generations, accepting their right to cultural and environmental heritage.

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