

PUBLICAÇÃO

89

ISSN: 0101-9562

ISSN ELETRÔNICO: 2177-7055

SEQÜÊNCIA

Publicação do
Programa de Pós-Graduação
em Direito da UFSC

VOLUME 42 ■ ANO 2021

Estudos
jurídicos
e políticos



SEQUÊNCIA – ESTUDOS JURÍDICOS E POLÍTICOS é uma publicação temática e de periodicidade quadrimestral, editada pelo Programa de Pós-Graduação Stricto Sensu em Direito da Universidade Federal de Santa Catarina – UFSC.

SEQUÊNCIA – ESTUDOS JURÍDICOS E POLÍTICOS is a thematic publication, printed every four months, edited by the Program in law of the Federal University of Santa Catarina – UFSC.

Versão eletrônica: <http://www.periodicos.ufsc.br/index.php/sequencia>

A publicação é indexada nas seguintes bases de dados e diretórios/

The Publication is indexed in the following databases and directories:

Base OJS	OJS
Base PKP	PKP
CCN (Catálogo Coletivo Nacional)	Portal de Periódicos UFSC
Dialnet	Portal do SEER
DOAJ (Directory of Open Access Journals)	ProQuest
EBSCOhost	SciELO
Genamics Journalseek	Sherpa/Romeo
ICAP (Indexação Compartilhada de Artigos de Periódicos)	Sumarios.org
Latindex	ULRICH'S
LivRe!	vLex

Ficha catalográfica

Seqüência: Estudos jurídicos e políticos. Universidade Federal de Santa Catarina.

Programa de Pós-Graduação em Direito. n.1 (janeiro 1980)-.

Florianópolis: Fundação José Boiteux. 1980-.

Publicação contínua

Resumo em português e inglês

Versão impressa ISSN 0101-9562

Versão on-line ISSN 2177-7055

1. Ciência jurídica. 2. Teoria política. 3. Filosofia do direito. 4. Periódicos.

I. Universidade Federal de Santa Catarina. Programa de Pós-graduação em Direito

CDU 34(05)

Catalogação na fonte por: João Oscar do Espírito Santo CRB 14/849

PUBLICAÇÃO	89	SEQÜÊNCIA	Estudos jurídicos e políticos
			Ano XLII Volume 42

Publicação do
Programa de Pós-Graduação em Direito da UFSC

From the ancients, to moderns and contemporary: redefining the concept of liberty according to the Ecological State

Dos antigos, aos modernos e contemporâneos: redefinindo o conceito de liberdade de acordo com o Estado Ecológico

Ana Stela Vieira Mendes Câmara¹

¹ Centro Universitário Christus, Fortaleza, CE, Brazil

Julia Mattei²

² Universidade de Fortaleza, Fortaleza, CE, Brazil

ABSTRACT: The paper aims to explain the importance of re-signifying the concept of freedom to guarantee environmental protection in contemporary democracies. To achieve this goal, it analyzes the development of the idea of freedom in ancient and modern societies, outlining a new concept of liberty, more updated and adequate to the contemporary scenario of accelerated environmental crisis and to the development of an Ecological State, ethically based on ecocentrism. The methodological approach is qualitative, pure and the source of research is bibliographical. Research findings show that freedom, in known western societies, changed from an ancient political and public freedom through modern private individual freedom, to later embrace equality in guaranteeing also groups' freedoms. The study also verified that this current concept of liberty still strengthens the autonomy of human person, emptying the freedom of being and depleting finite natural resources. Hence, the research attests the need to incorporate in the concept of liberty an interspecies solidarity derived from the awareness of man's biological nature included in the biotic complex as a whole, resulting in Bosselmann's holistic concept of freedom, foundation stone of the Ecological State.

KEYWORDS: Liberty – Ecological State – Strong Sustainability – Ecocentrism.

RESUMO: O presente artigo objetiva explicar a importância da ressignificação do conceito de liberdade para a garantia da proteção ambiental nas democracias



contemporâneas. Para isso, ele analisa o desenvolvimento da ideia de Liberdade nas sociedades antigas e modernas, traçando um novo conceito de Liberdade, mais atual e adaptado ao atual cenário de crise ambiental acelerada e ao Estado Ecológico, eticamente baseado no ecocentrismo. A metodologia utilizada é qualitativa, pura e a fonte de pesquisa, bibliográfica. Os resultados da pesquisa mostram que a liberdade, nas sociedades ocidentais conhecidas, passou de uma antiga liberdade política e pública, para uma liberdade moderna privada individual, para então passar a englobar a equidade com a garantia de liberdades de grupos específicos. O estudo também verificou que essa concepção atual de Liberdade ainda fortalece a autonomia da pessoa humana, esvaziando a Liberdade mais ampla do ser e esgotando os recursos naturais finitos. Desta forma, a pesquisa confirma a necessidade da incorporação, no conceito de liberdade, de uma solidariedade entre espécies decorrente da consciência da natureza biológica do homem incluída no complexo biótico como um todo, resultando no conceito holístico de liberdade proposto por Bosselmann, fundamento do Estado Ecológico.

PALAVRAS-CHAVE: Liberdade – Estado Ecológico – Sustentabilidade Forte – Ecocentrismo.

1 INTRODUCTION

Even though environmental policy and legislation are aimed to safeguard human life, discoveries about the complex system of life organization increasingly strengthen the need for integrative thinking.

Increasing awareness about the organizational principles of ecosystems and ecological literacy are indispensable for sensitizing ecological problems in the context of socioeconomic and political organization, proving to be indispensable for the survival of humanity in the coming decades.

The limitation of the anthropocentric model has been evidenced by the continuous tendency of pollution's growth, depletion of resources and loss of biodiversity. Although many efforts were taken until now, the fact is that environmental questions are still challenging governments and civil society.

In this sense, Klaus Bosselmann has proposed the Ecological State, a new theoretic model of political organization, ethically based on

ecocentrism. According to this author, while traditional environmental protection (Environmental State) focuses on the human well-being, the Ecological State considers, simultaneously, the relevance of the human and the nature's well-being, recognizing the latter's intrinsic value, independently from the human condition, assigning, then, to the State, the duty to protect all forms of life. Thereafter, "the difference between both models is not merely gradual, but paradigmatic (...)" (BOSELNANN, 2012, p. 23).

The ecocentrism emerged in the 1980s decade from concerns about the aggravation of the ecological crisis, being then considered that the latter's main causes derived from man's selfish and self-centered behavior – generated and propagated throughout over 2,500 years of prevalence of the European culture, philosophy, economy, production method, science and theology – and, also, from the realization that the proposals and measures based on anthropocentrism have been inefficient in reversing the complex setting of environmental damages provoked by this world view (BOSELNANN, 1995). In other words, the current environmental crisis is actually also a civilizational crisis (SANTOS, 1999).

In this context, the present work intends to bring reflections about one important assumption from the Ecological State: the necessity to resignify the concept of freedom to guarantee environmental protection in the context of contemporary democracies.

The methodological approach is qualitative, pure and the main source of research is bibliographical.

2 FROM LIBERTY OF THE ANCIENTS TO LIBERTY OF THE MODERNS

As is known, in reality, the democratic experience and the attributed idea of freedom are not merits of modernity, but there are specific semantic loads assigned to them in a given temporal and spatial context, which can significantly change its meaning in a political and social organization.

It is from the perspective of researches promoted by the founders of the methodology of “History of Concepts” (*Begriffsgeschichte*), especially Reinhart Koselleck (1992), that this research allows observe the convenience of having the analysis of these terms accompanied by explanations about their assigned meanings in relevant moments, which, in this case, refers to considering their original contexts^{1 2}.

Regarding the presently examined term, however, this concern isn't born with that school of thought. Already back in 1819, Benjamin Constant (1985) observed something that few people had realized so far: a sensible distinction between what was understood as freedom in antiquity and in modernity.

¹ Some similar considerations by this author (KOSELLECK, 1992, p. 5): “Let's take for example Aristotle with his formulation of the concept of *Koinonia politique*, later translated as *respublica* or also *societas civilis*. Certainly when formulating the concept of *Koinonia politique* had Aristotle before him, as empirical experience, the reality of the polis and its community of citizens. Therefore, he had before him a specific and concrete reality of both the city of Athens as the other city-states [sic] of Greece. It was for these citizens that Aristotle thought and conceived his politics. With the translation of the term into Latin as *societas civilis* in the form that it appears in Cicero, the framework of historical experiences that enabled Aristotle to formulate the concept of *Koinonia politique* is altered. Even though the term can also refer to the Roman citizenship, as the city of Rome remains within the political framework of a city-state, the expansion of the right to citizenship in the second and third centuries in the areas of the Mediterranean Sea set up a empirically verifiable historical data frame quite different from that which entailed the formulation of Aristotle's original concept. Now the concept of citizenship, restricted to the historical experience of a single city, acquires new meaning, designating citizens of a greatly expanded world. The word may remain the same (the concept's translation), however the content designated by it changes substantially. What is, therefore, a *societas civilis* depends on the moment in which the term is used. [...] This means admitting its temporal variation, and for that even historical, where its unique character (*einmalig*) hinged to the time of use” (free translation).

² Similarly, Simone Goyard-Fabre (2003, p. 18) manifests on the democratic ideals: “it would be a serious error of assessment to believe that democracy as a constitutional principle of a political regime has an immutable and eternal essence, whose radicalism inspired all democratic forms of governments of peoples; we will see that on relatively clear principles were grafted the concrete and diverse legal and political arrangements. [...] these observations [...] are also an invitation to the epistemological prudence” (free translation).

To differ those ideas, he used expressions which became familiar among those who studied the theme: the *liberty of the ancients*, regarding the political freedom and the direct democracy, and the *liberty of the moderns*, related to the individual freedoms and the exercise of representative democracy.

According to Constant's own words, to the moderns, freedom is:

the right to not submit oneself to anything but the laws, to not be arrested, or detained, or condemned, or mistreated in any manner, by effect of the arbitrary will of one or several individuals. It is each one's right to speak their opinion, to choose their occupation and practice it; to make use of their property, even to abuse it; to come and go, with no need for permission and not having to report their motives or their paths. It is each one's right to gather with other individuals, be it to discuss their interests, to profess the cult preferred by them and their associates, be it simply to fill their days and hours in a manner which better suits their preferences, their fantasies. Finally, it is each one's right to influence upon the government's administration, be it by nominating all or some officials, be it by representations, petitions, claims, to which the authority is more or less obligated to take into account (CONSTANT, 1985, p. 1) (free translation).

On the other hand, the liberty of the ancient:

consisted in exercising collectively, but directly, many parts of the whole sovereignty, in deliberating in the public arena about war and peace, in closing treaties of alliance with foreigners, in voting the laws, in pronouncing judgements, in examining accounts, acts, the magistrates' management; in making them appear before all the people, in accusing them of felonies, in condemning or absolving them; but, at the same time that this consisted in what the ancients called freedom, they admitted, as compatible with it, the complete submission of the individual to the authority of the whole (CONSTANT, 1985, p. 2) (free translation).

From this diagnostic, the author makes a comparative analysis between the two proposed models, by which he finds that the liberty of the ancients concerns the public sphere, combined with near slavery in the private sphere, while the liberty of the moderns is restricted to the freedom in the private life, significantly propelled by the development of trade, which inspires love to the individual liberty³.

In this direction, he goes as far as to deem praiseworthy the fact that the ancients were willing to make sacrifices in the name of their liberty. According to the author,

it is difficult not to feel nostalgia for these times in which man's faculties developed in a previously settled direction, but in such a broad destiny, so strong for its own strength and with so much feeling of energy and dignity; and, when we are carried to these reminiscences, it is impossible not to wish to imitate what we envy (CONSTANT, 1985, p. 3) (free translation).

Nevertheless, he highlights many limitations to the liberty of the ancients, mainly for the disregard of the individual rights, and also to the liberty of the moderns, which would fail in its possibility for the easy waiver of the exercise of political participation.

That is how Constant (1985, p. 5) pleads the need to combine the two models of freedom, although he clearly positions himself in favor of the modern paradigm, stating that this is, ultimately, what is primarily important to maintain: "if we live in the modern times, I want the liberty

³ To avoid any reductionist view of historical phenomena, it is important to note here that these paradigmatic distinctions between the liberty of the ancients and liberty of the moderns have didactic effect, rather than properly manifestations of existence completely belted in time and space. This is evident in Quentin Skinner's (1999) reports of the first uprisings, still in the Middle Ages, against the authority of the Roman-Germanic Empire, occurring in today's region corresponding to Italy, where some thinkers claimed, on behalf of their cities, the exercise of their fellow citizens' political freedom before external interferences of the Emperor. After all, the very movement that leads to modernity, as is known, leads to a *rebirth* of the classical culture, by which it can be inferred that the defense of freedom was also held in its traditional sense, i.e. political, which has continued throughout humanism.

which suits the modern times; if we live under monarchies, I humbly beseech [...] not to borrow from the old republics ways of oppressing us”⁴.

With that, liberalism is raised on the paradox of the scission of liberty into the perspective of the human person and of the citizen, symbolically expressed in the very title of the Declaration of the Rights of Man and of the Citizen of 1789.

Starting in 1835, Alexis de Tocqueville (2005) brings to the general public new contributions to the theme, from the publication of the first volume of his works as a result of his excursion to the United States to understand the organization and functioning of the democratic institutions in that country and compare them to the deployed attempts to implement this regimen in Europe, condition which was considered inexorable, especially in the post-revolutionary France.

The origins of American democracy were, indeed, singular. It was brought forth by a relatively small number of english emigrants without much wealth, reasonably educated and informed, and followers of puritan Christianity. With so many characteristics in common, these individuals were subscribers of a significantly homogeneous pleiad of moral and cultural values⁵ from which they would exert their freedom in an extremely favorable context, according to Tocqueville, and unite themselves to the goal of building a politically organized society in New England:

We, whose names follow and who, to the glory of God, to the development of the Christian faith and to the honor of our country,

⁴ Free translation.

⁵ Tocqueville (2005) found that the American democratic freedom would not be carried out satisfactorily without the *equal conditions* he found there, to which he attributed the characteristics of universality and durability. It is also important to highlight that when the author mentions this perfect homogeneity of conditions in the exercise of American democracy, he definitely excludes from it the traditionally inhabitant populations. This is evident in some passages of the text, especially the one considering that America was “empty” before the arrival of the Englishmen and that its implementation would have been easier because of this. Thus, the American democracy so much exalted by Tocqueville would not be so much democratic in that way. (TOCQUEVILLE, 2005, p. 328)

endeavor to establish the first colony in these remote lands, accord, in the present act, by mutual and solemn consent, and before God, to mold ourselves into the body of a politic society, with the aim of governing ourselves and working for the accomplishment of our purposes, and, in virtue of this contract, we accord to proclaim laws, acts, decrees, and to establish, according to the necessities [...], magistrates to who we promise submission and obedience (TOCQUEVILLE, 2005, p. 43-44) (free translation).

In this context, it is noteworthy that the acceptance of liberty is not understood as the possibility of unlimited exercise of individual and political rights, for it cannot break with the moral horizon of its advocates⁶.

As Tocqueville explains, there is common ground between the spirit of religion and the spirit of freedom, what can be understood from a deposition documented by him:

Let us not be mistaken regarding what we should understand by our independence. Indeed, there is a kind of corrupted freedom, which is commonly used by animals, as by man, and it consists in doing whatever one wishes. This freedom is enemy of any authority, it impatiently endures any rule; with it, we become inferior to ourselves; it is enemy of truth and peace; and God deemed right to stand against it; but there is a civil and moral freedom that finds its strength in union and it is the power's mission to protect it. The freedom to fearlessly do all that is fair and good. This holy freedom we must defend in all cases, and, if necessary, risk our lives for it (TOCQUEVILLE, 2005, p.50-51) (free translation).

Albeit praising the American political edification, Tocqueville concludes that, among the same elements that provided the democratic bliss of that time, there was also an obstacle that prevented it from generating great artists and poets, for they lacked what was called

⁶ It is for this reason that, sometime after the publication of his work, Tocqueville identifies that the idea of rights there is nothing more than “the idea of virtue introduced into the political world”. (TOCQUEVILLE, 2005, p. 277).

“freedom of spirit”, precisely due to the common religious horizon (TOCQUEVILLE, 2005, p. 300).

John Stuart Mill also developed ideas about the possibilities and limits of freedom, stating that “the danger which threatens human nature is not the excess, but the deficiency, of personal impulses and preferences” (MILL, 2001, p. 57), and also, that a “person whose desires and impulses are his own [...] is said to have a character. One whose desires and impulses are not his own, has no character, no more than a steam-engine has a character” (MILL, 2001, p. 56). In this sense, he defends the usefulness of the individuals’ freedom against the State, to the highest possible degree, in defense of the interests of man.

So presented, there is, with the triad of cited classic liberal authors, what is believed to be a straight synthesis of elements relevant to the conception of liberty in modernity.

However, it is also possible to reach for the interpretation of contemporary researchers such as Norberto Bobbio, to whom the definition of “freedom in the predominant meaning of the liberal doctrine is as *freedom regarding the State*, as the liberal State can be identified with the progressive enlargement of the individual’s sphere of liberty” (BOBBIO, 1994, p. 21-22)⁷.

In this way, it is noticeable that the existence of the idea of freedom itself is only possible with a minimal foundation of equality, i.e. *equality in liberty*.

Moreover, under certain perspectives, the extension of the sphere of liberty leads to the incorporation of new levels of equality, as a result of the very logic of action of the individuals in defense of their rights. This is also observed by Bobbio, because “no individualistic conception of society disregards the fact that man is a social being, or considers him as an isolated individual” (BOBBIO, 1994, p. 47)⁸.

⁷ Free translation.

⁸ Free translation.

In the same line, Bosselmann (1995, p. 229) equally understands that the first challenge to the liberal conception of freedom was occasioned by the very extension of the rights of freedom to groups and collectivities, what is known as the social matter of the proletariat.

Yet, the measure considered proportional between these two intrinsically related values caused – and still causes – big divergences of political conceptions, mainly the great dichotomy of the 20th century between liberalism and socialism. For the first, the “bone of contention was the economic freedom, which assumes the unlimited defense of the private property” (BOSELMANN, 1995, p. 80)⁹; however, both are based on unlimited economic growth and on industrialism.

In this sense, it is pertinent the critique made on the course of the development of ideas about freedom, because, while the economic liberalism is strengthened, political freedom is gradually left to oblivion.

That is how Marcuse (1999) pinpoints elements which thicken the discussion on what this idea of liberty of the moderns has actually become, from industrialism and mass consumption: a great alienated and homogenizer prison.

According to that author:

the process of the machine imposes on men the mechanical patterns of behavior and the competitive efficiency rules are imposed from the outside as much as the work of some hostile and external force; it renounces its freedom under the dictations of its own reason. The question is that, currently, the apparatus to which the individual has to adjust and adapt is so rational that the individual protest and liberation seem, besides useless, absolutely irrational (MARCUSE, 1999, p. 82) (free translation).

In other words, with the unceasing defense of the freedom of having, in name of the propelled autonomy of the human person, and with the convenience of satisfying their insatiable needs and desires, the freedom of being is, in substance, lost.

⁹ Free translation.

This process deepens to such an extent that, according to Roland Gori (2010, p. 121), “life itself [...] becomes a commodity which the individual consumes, after having dematerialized, virtualized, imaged it”, occasioning a big “transformation [...] in the nature of our social and psychological sensibilities”¹⁰. Thus, it is reached what characterizes a modern nihilism, an existential emptiness, a loss of the fear of losing, which is “the ethical substance of the political and intersubjective conflict of a civilization” (GORI, 2010, p. 112), leading the author and professor of the Aix-Marseille University to question:

are we not in the presence, in our culture, of a post-modern form of denial delirium of self and of the other, belying the meaning, the substance and the history of our experiences to yield, in exchange, bigger or smaller violences in relation to the others and oneself? (GORI, 2010, p. 125). (free translation)

In face of so many evidences of the modern paradigm’s saturation, the need for a reevaluation of what should be understood as freedom rises.

Thus the thoughts of José Joaquim Gomes Canotilho are here aligned, in his speculations that culminate in the defense of a model of Environmental State. By regarding the distinctions between the liberty of the ancients and the liberty of the moderns, this author speculates about the relevance they would have for a republican theory of the fundamental rights, implementing, based on some consequences/problems occasioned by modernity, an imperious reflection on the indispensability of incorporating in the modern liberty the solidarity element between human and nature’s well-being (CANOTILHO, 2008, p. 34). This is admissible in the perspective of the Environmental State, and so, under the egis of the extended anthropocentrism, securing and improving human well-being through nature’s well-being.

According to those ideas, it is visible that the pursuit of the implementation of an Ecological State will presuppose a new historical

¹⁰ Free translation.

resignification of the concept of liberty, meaning to retrieve part of the classic acceptance and, consequently, to allow the re-articulation of its bond to ethics and moral virtues, so as to enable the reparation of the excesses reached with the industrial society.

Thus, it is necessary to reevaluate concepts such as “individual freedoms” and “individual rights” and to adapt them to coexist with the notions of “intrinsic values” and “intrinsic rights”. In this sense it is noteworthy that Bosselmann (1995, p. 226–230) refers to the task of *broadening* the concept of freedom, not to restrain it.

This, because, as we cannot detach the concept of human being from its social dimension, we also cannot do that regarding its surrounding nature, to which it belongs, with which it forms an inseparable living complex, a perspective which is in line with thinkers from the most remote times^{11 12}, as it is with the most recently developed

¹¹ Although these ideas still represent a minority and strange perspective to many scientists educated in modern standards and, let alone, to common sense, it is far from being something entirely new. The perception of inseparable bonds between physical, natural and ethical-social phenomena dates back to ancient times: “the idea of an universe designed uniformly, either because the matter of which all things are made of is unique, either because all the powers that order and animate the world are generated from each other; the idea of an unique and necessary law that dominates the universe in all its aspects; the idea of a cycle of deaths and rebirths that is not only for deities of the flora (i.e. those linked to the changes of the seasons), but that includes human souls: all these are key elements of the conceptions of the world that were affirmed in Mesopotamia and Egypt and form the basis of the Greek culture since its inception” (CASERTANO, 2011, p. 29, 47) (free translation). It should also be noted, in this same line of thinking, the surviving fragment and the doxographic sources of the thought of Anaximander, a pre-Socratic philosopher who established that the “Principle of the things that are is the *ápeiron* [...] indeed, from where the things that are draw their origin, there are also the destruction as much as it is needed: as they pay to each other the sentence and the atonement of injustice according to the order of time” (CASERTANO, 2011, p. 29, 47) (free translation). From this, it can be extracted that “even the mention of justice and injustice [...], if on the one hand refers to its own law of the human world and of the natural phenomena, notwithstanding on the other hand, it expresses the idea of an *ananke*, i.e. precisely the one of a necessary law governing the entire cosmos, including the human world, and which we could inscribe into the modern principle of ‘for every action, there is a reaction’” (CASERTANO, 2011, p. 29, 47) (free translation).

¹² Interesting, also in the same vein, is John Stuart Mill’s recognition of the importance of Rousseau’s contributions against the dominant thinking of his time to this issue: “in

tendencies by Edgar Morin (2002) and scholars such as Maturana and Varela (2001), to whom it is indispensable to regain consciousness on man's biological nature and to accept the other to avoid the end of the social phenomenon. Such thinking can be applied, without further efforts, from its foundations, to all the biotic community^{13 14}.

the eighteenth century, when nearly all the instructed, and all those of the uninstructed who were led by them, were lost in admiration of what is called civilisation, and of the marvels of modern science, literature, and philosophy, and while greatly overrating the amount of unlikeness between the men of modern and those of ancient times, indulged the belief that the whole of the difference was in their own favor; with what a salutary shock did the paradoxes of Rousseau explode like bombshells in the midst, dislocating the compact mass of one-sided opinion, and forcing its elements to recombine in a better form and with additional ingredients. Not that the current opinions were on the whole farther from the truth than Rousseau's were; on the contrary, they were nearer to it; they contained more of positive truth, and very much less of error. Nevertheless there lay in Rousseau's doctrine, and has floated down the stream of opinion along with it, a considerable amount of exactly those truths which the popular opinion wanted; and these are the deposit which was left behind when the flood subsided. The superior worth of simplicity of life, the enervating and demoralizing effect of the trammels and hypocrisies of artificial society, are ideas which have never been entirely absent from cultivated minds since Rousseau wrote; and they will in time produce their due effect, though at present needing to be asserted as much as ever, and to be asserted by deeds, for words, on this subject, have nearly exhausted their power. (MILL, 2001, p. 44-45).

¹³ See Maturana e Varela (2001, p. 267-269): “[...] the main point is that taking the social and biological structure of the human being is equivalent to placing at the center the reflection on that which it is capable of and what distinguishes it. It is equivalent to seeking circumstances that allow awareness of the situation in which it is - whatever one it may be - and look at it from a broader perspective, from a certain distance. [...] What biology tells us [...] is that the uniqueness of the human being, its sole heritage, is in a human social structural coupling, which includes, among others, the phenomenon of each one's personal identities. On the other hand, to form the recursive dynamics of the social structural coupling, which produces the reflexivity that leads to the act of seeing from a much broader perspective. [...] Moreover, all this allows us to realize that love or, if we do not want to use such a strong word, the acceptance of the other next to us in living together is the biological basis of social phenomena. [...] Anything that destroys or limits the acceptance of the other, from the competition to the possession of the truth, through the ideological certainty, destroys or limits the event of the social phenomenon. Therefore, it also destroys human beings, because it eliminates the biological process that generates them” (free translation).

¹⁴ Reinhold Zippelius (2012) also tells us about the importance of not ignoring the biological characters in the research of human behavior. Although human beings appear

So, in the context of the restrictive vision of liberty of the moderns, it is necessary the *defense of the interspecies solidarity*, i.e. extending it not just to human beings, but also to all living beings, in a way that this notion is assimilated to what Bosselmann (1995, p. 315) named as a holistic concept of freedom.

3 CONTROVERSIAL ASPECTS OF THE LIBERTY CONCEPT IN AN ECOLOGICAL STATE

In the course of the theoretical construction of the Ecological State in Germany, Bosselmann found in Michael Kloepfer, developer of the concept of the Environmental Rule of Law, one of his fiercest critics.

Kloepfer (1994, p. 13) announced that Bosselmann's proposition¹⁵ is similar to what he calls "eco-state" (Ökostaat) or "eco-dictatorship" (Ökodiktatur). This is because the right to freedom would be completely or largely curtailed in the name of excessive state measures in the field of environmental policy.

This model is based on the State monopoly for making environmental decisions, for this reason termed by some as eco-fascism. Kloepfer, however, signals that the explanation of such a scenario would be highly unlikely, on the contrary of more hidden forms of an eco-dictatorship or steps towards it. According to him, it could be expected a slow and insidious growth of authoritarian and bureaucratic forms, in which the constitutional structure would, in the beginning, be maintained (KLOEPFER, 1994).

to be less rigidly fixed and pre-programmed by the instincts than other groups, there are studies that suggest behavioral similarities especially in regard to other mammals and to the primates.

¹⁵ Although the criticism is not principally granted in any passage of Kloepfer's article, Klaus Bosselmann confirmed to be their recipient in personal contact with the researchers via e-mail, when he forwarded a vast collective work dealing with the response to this topic (BOSELMANN, 2013).

Kloepfer (1994) admits that environmental protection is impossible without some restriction of freedom, but the goal is that they occur only in essential cases where they are unavoidable.

Finally, the author proclaims the need for renewal of the liberal community to internalize the environmental protection as a state goal and announces that two of the factors that threaten the emergence of eco-authoritarianism are the intensity of the ecological crisis and how quickly it will be managed, both in local and global levels (KLOEPFER, 1994). He also declares that the State's credibility crisis must be tackled, which was caused by ineffective environmental protection measures. An effective environmental protection requires, however, a preventive environmental policy, which also includes long-term responsibilities.

Bosselmann (2010), in response to that criticism, explains that the idea of a “benevolent” authoritarian government in regard to the ecological matter could even be more effective in propelling the realization of certain sustainable behaviors, but on the other hand, would not give the necessary space to bring out the popular leadership essential to its consolidation.

Because of this, there would be a vulnerable proposal for State ecologization, especially by the univocal interests of the centralized political power itself.

In addition, to better contextualize Bosselmann's response to Kloepfer, it is important to make some general considerations: first, to reaffirm the distinction between political liberalism and economic liberalism, clarifying that only the first one, resulting from the doctrines of defense of the individuals' political rights in the face of the State, is an essential requirement for democracy. This means that the economic organization under the capitalist system of free market, governed by minimal intervention, is not essential to democracy.

This position is accepted by theorists such as Hans Kelsen (*apud* MOTTA, 2011; KELSEN, 1957; KELSEN, 1988) and Norberto Bobbio (1994), where there is the possibility of existence, for example, of a socialist democracy.

Thus, based on this same premise, Bosselmann (2010) not only welcomes the possibility of co-existence of the Ecological State and the democratic regime, as he also goes further, to say that democracy is crucial to fair and sustainable human development.

Such a view seems consistent with what J. Ronald Engel (2010, p. 28) identifies as the *broad interpretation* of the democratic ideal, rather than the narrow view, characterized by expressions such as “procedural democracy”, “liberal democracy”, “representative democracy” or simply “democratic process”. Far beyond that,

democracy in its thick interpretation bears a multiplicity of goods, including the virtues of what is often called the “democratic way of life” – respect for others and respect for self, non-violence and mutual persuasion, critical reason and empirical inquiry, trust and hospitality for the stranger, and compassion for the suffering of others; as well as the distinctive political goods associated with the rule of law based on equal justice, reason and consent; universal political, civil, economic, social and cultural rights, conceived as essential preconditions of our cultivation of our common human capacities for physical, intellectual and moral development, and grounded in the right to life and security of one’s person property and community; a rich heritage of analogies between the democratic principles we employ to live together and the principles we employ in our treatment of the rest of nature, including a long debate over the rights of nature; and overall, a celebration of active citizenship that serves the common good (ENGEL, 2010, p. 29)

Moreover, Bosselmann (2010) points out that the ecological challenges cannot be addressed without democratic foundations, such as Rule of Law, open society, independent media, experimentation and low levels of corruption.

However, he also recognizes the challenges and paradoxes to which the real representative democracies are subject to: the difficulty of parliamentarians in countering immediate interests of consumers and producers, who still have the lobby and support of the mainstream

media, in the name of greater ecological interests of thousands and millions of hopeless and disempowered citizens, who do not participate effectively in the decision-making processes.

In this sense, the author proposes that citizens, politicians and even companies that have a greater awareness of the need for change unite in pursuit of the realization of an “Earth Democracy”, based on the following key issues: associate citizenship to sustainability; reformulate the idea of responsibilities linked with citizenship, considering future generations and nature as a whole; promote interaction between ethical responsibility and political activism in the context of citizenship (BOSELNANN, 2010).

This proposal is not exactly for a closed model of governance, but it draws attention to the fact that thinking of a sustainable democratic political model implies in thinking about it in a multidimensional way, in regard either to levels or methods: global and local; economic and ecological, also including particular concern for the basic health needs of people, communities and ecosystems; multicultural, including gender aspects; politic, involving democracy in the covenantal, political, deliberative, representative and participatory sense; rational; and spiritual.

Precisely for that, *the way of achieving these paradigmatic transformations would not be a revolutionary way*, much less authoritatively; but, according to Bosselmann (2010), through a *continuous and open process*. One can think of more accurate and immediate objectives, but also stimulate the pursuit of long-term goals.

It is hard not to remember, in this regard, the contribution by Michel Serres (1990) to this topic. This author notes, in face of the ecological crisis and man’s parasitic exploitation of natural resources, that it is necessary not only to rethink the social contract, but also that the latter must be combined with a natural contract, grounded on symbiosis and reciprocity, through which it is possible to balance the relations between the parties involved in the proper functioning of the biosphere. The author also goes back to the fact

that, historically, the very notion of justice, since antiquity, has been associated with the notion of balance, which now needs to make a qualitative leap.

In this context, national legal systems are important tools to instrumentalize ecological freedom as an element of an ecologically driven rule of law. In this model, nature elements are central in the legal system, “demanding special protection and attention in the court ruling-process” (LEITE, VENÂNCIO, 2017, p. 35). At national state level, the constitutionalization of environmental protection as a human fundamental right is a noteworthy step towards a legal paradigm change, already imposing the adoption of a new legal-based ethic oriented to environmental protection, although still aiming for human well-being. Among other important consequences, this new legal-ethical paradigm implies the guarantee of an ecological-environmental sustainability through adequate ecological-environmentally legal hermeneutics: it requires all citizens to take into account the preservation of life in all its forms when interpreting and implementing legal measures (PADILHA, 2011; LEITE, BELCHIOR, 2010).

Finally, it is worth mentioning that there are international documents that serve as reference and list principles and guidelines to be followed in this direction, among which are: the 1982 United Nations World Charter for Nature; Agenda 21, product of the United Nations Conference on Environment and Development in Rio de Janeiro, 1992; the Convention on Biological Diversity (1992); the Earth Charter, 2000.

4 CONCLUSION

The idea of liberty has been changing through time and space according to social and moral values from each society. This study has analyzed the development of the concept of freedom up to current decades of acceleration of the environmental crisis to outline a

more updated and adequate concept of liberty in the context of an Ecological State.

The path followed by “freedom” in known western societies indicates it started as political freedom, favoring public against private values, and evolved to a broad private, individual freedom in modernity. From a liberal view of strong individual freedom against the state, liberty has later extended to embrace equality in its core, considering the social nature of man and as a result of the very logic of individuals’ actions in defense of their rights, integrating groups’ freedom rights in the concept of liberty.

However, the unceasing defense of the freedom of having, individually or socially, on the pretext of strengthening the autonomy of the human person development, is an alleged notion of freedom which is excluding and standardizing. This not only empties the freedom of being, but it also directly affects finite natural resources, culminating in the environmental crises, only recognized in the last decades.

Even more, it is possible to say that the traditional concept of liberty, without considering the intrinsic natural limits of existence, carries serious contradictions to what liberty can really be considered. First, because the destruction of biodiversity puts at risk the capacity of making choices, and, consequently, reduces the possibilities of self-determination. Besides, it is also a challenge to explain, in the context of climate changes and many systemic environmental problems, which can lead to mass extinction, how this conception of liberty can still be invoked as a quality of a rational being, without considering the necessity of existential responsibility.

Taking this into account, some present-day authors already admit the necessary incorporation of the awareness of man’s biological nature, also in form of solidarity, in the concept of liberty. In the context of an Ecological State, this awareness shall be applied to all the biotic complex through an interspecies solidarity, resulting in Bosselmann’s holistic concept of freedom.

Liberty in a holistic view raises questions about its conflict with human classic freedom, mainly about the necessity of a strong state to safeguard it also to non-human forms of life. However, in Bosselmann's Ecological State, a strong state and democracy, free from environmental destructive capitalist free market economy, is essential to secure a fair and sustainable human development through fulfillment of holistic liberty. This shall be achieved through a continuous and open process of implementation of "Earth Democracy", revisiting from an ecological point of view some key society's concepts, especially citizens' and states' responsibilities and justice.

Therefore, a suitable conception of liberty needs to be inclusive, and seen as the possibility of making rational choices, which conducts simultaneously to natural and cultural diversity in the long-term.

REFERENCE

BOBBIO, Norberto. **Liberalismo e democracia**. 6. ed. São Paulo: Brasiliense, 1994.

BOSELMANN, Klaus. [correspondence]. Recipient: Ana Stela Vieira Mendes Câmara. [S. l.], 1 June 2013. 1 personal message.

BOSELMANN, Klaus. Earth democracy: institutionalizing sustainability and ecological integrity. In: ENGEL, J. Ronald; WESTRA, Laura; _____ (ed.). **Democracy, Ecological Integrity and International Law**. Cambridge: Cambridge Scholars Publishing, 2010. v. 1.

BOSELMANN, Klaus. Grounding the Rule of Law – In memoriam of Staffan Westerlund. In: **RULE OF LAW FOR NATURE: Environmental Law Conference**, May 2012, Oslo. **Keynotes** [...]. Oslo: University of Oslo, 2012.

BOSELMANN, Klaus. **When two worlds collide: Society and Ecology**. Auckland: RSVP Publishing Company Limited, 1995.

CANOTILHO, José Joaquim Gomes. **Estudos sobre direitos fundamentais**. 2 ed. Coimbra: Coimbra Editora, 2008.

- CASERTANO, Giovanni. *Os Pré-Socráticos*. São Paulo: Loyola, 2011.
- CONSTANT, Benjamin. Da liberdade dos antigos comparada à dos modernos. *Revista de Filosofia Política*, [s. l.], n. 82, p. 7-25, 1985. Available at: <http://caosmose.net/candido/unisinos/textos/benjamin.pdf>. Accessed on: 17 Jan. 2020.
- ENGEL, J. Ronald. Contesting Democracy. In: WESTRA, Laura; BOSSELMANN, Klaus (ed.). *Democracy, Ecological Integrity and International Law*. Cambridge: Cambridge Scholars Publishing, 2010. v. 1.
- GORI, Roland. As patologias do niilismo em nossa modernidade. *Tempo psicanalítico*, Rio de Janeiro, v. 42, n. 1, p. 107-129, jun. 2010. Available at: http://pepsic.bvsalud.org/scielo.php?script=sci_arttext&pid=S0101-48382010000100006&lng=pt&nrm=iso. Accessed on: 17 Jan. 2020.
- GOYARD-FABRE, Simone. *O que é democracia? A genealogia filosófica de uma grande aventura humana*. São Paulo: Martins Fontes, 2003.
- KELSEN, Hans. *Escritos sobre la democracia y el socialismo*. Madrid: Debate, 1988.
- KELSEN, Hans. *Teoria comunista del Derecho y del Estado*. Buenos Aires: Emecé, 1957.
- KLOEPFER, Michael. Is There the Threat from an Authoritarian Ecological State? *European Environmental Law Review*, [s. l.], v. 3, issue 4, p. 112-115, 1994.
- KOSELLECK, Reinhart. Uma história dos conceitos: problemas teóricos e práticos. *Revista Estudos Históricos*, [s. l.], v. 5, n. 10, p. 134-146, jul./dez. 1992. Available at: <http://bibliotecadigital.fgv.br/ojs/index.php/reh/article/view/1945/1084>. Accessed on: 17 Jan. 2020.
- LEITE, José Rubens Morato; BELCHIOR, Germana Parente Neiva. O Estado de Direito Ambiental e a particularidade de uma hermenêutica jurídica. *Seqüência*, Florianópolis, n. 60, p. 291-318, jul. 2010. Available at: <https://periodicos.ufsc.br/index.php/sequencia/article/view/2177-7055.2010v-31n60p291/15075>. Accessed on: 19 Jan. 2022.
- LEITE, José Rubens Morato; VENÂNCIO, Marina Demaria. Environmental Protection in Brazil's High Court: safeguarding the environment through a Rule of Law for Nature. *Seqüência*, Florianópolis, n. 77, p. 29-50, nov.

2017. Available at: <https://periodicos.ufsc.br/index.php/sequencia/article/view/2177-7055.2017v38n77p29/35700>. Accessed on: 19 Jan. 2022.

MARCUSE, Herbert. **Tecnologia, guerra e fascismo**. São Paulo: UNESP, 1999.

MATURANA, Humberto R.; VARELA, Francisco J. **A árvore do conhecimento: as bases biológicas da compreensão humana**. São Paulo: Palas Athena, 2001.

MILL, John Stuart. **On liberty**. Kitchener: Batoche Books Limited, 2001. *E-Book*. Available at: <http://www.dominiopublico.gov.br/download/texto/mc000210.pdf>. Accessed on: 21 Jan. 2020.

MORIN, Edgar. **El Método: La vida de la vida**. 5. ed. Madrid: Catedra, 2002.

MOTTA Luiz Eduardo. Direito, Estado e Poder: Poulantzas e seu conflito com Kelsen. **Revista de Sociologia e Política**, v. 19, n. 38, p. 7-25, fev. 2011.

PADILHA, Norma Sueli. Compromisso constitucional da sustentabilidade ambiental: desafios de sua concretização frente à necessidade de revisão do ensino jurídico e atualização dos implementadores judiciais da normatividade ambiental. **Pensar**, Fortaleza, v. 16, n. 2, p. 730-766, jul./dez. 2011. Available at: <https://periodicos.unifor.br/rpen/article/view/2169/1770>. Accessed on: 19 Jan. 2022.

SANTOS, Boaventura de Sousa. **Pela mão de Alice: o social e o político na pós-modernidade**. 7. ed. Porto: Afrontamento, 1999.

SERRES, Michel. **Le contrat naturel**. Paris: Flammarion, 1990.

SKINNER, Quentin. **As fundações do pensamento político moderno**. 1 reimp. São Paulo: Companhia das Letras, 1999.

TOCQUEVILLE, Alexis de. **A democracia na América: Leis e costumes – De certas leis e certos costumes políticos que foram naturalmente sugeridos aos americanos por seu estado social democrático**. 2. ed. São Paulo: Martins Fontes, 2005.

ZIPPELIUS, Reinhold. **Filosofia do Direito**. São Paulo: Saraiva, 2012.

ANA STELA VIEIRA MENDES CÂMARA

PhD in Law from the Federal University of Ceará. Professor of Law at Christus University Center.

Professional address: Dom Luís, 911 - Meireles, Fortaleza - CE, 60160-230, Brazil.

ORCID ID: <http://orcid.org/0000-0001-5676-7057>

E-MAIL: emaildastela@gmail.com

JULIA MATTEI

Post-doctorate degree from the Graduate Law Program of the Federal University of Ceará (UFC). PhD in Environmental Tax Law from the University of Cologne, Germany. Professor of the Professional Master in Law and Conflict Management at the University of Fortaleza (Unifor).

Professional address: Washington Soares, 1321 - Edson Queiroz, Fortaleza - CE, 60811-905, Brazil.

ORCID: <http://orcid.org/0000-0002-0308-5527>

E-MAIL: juliamattei@gmail.com

Received: 2020.06.05

Accepted: 2022.01.19



Este trabalho está licenciado sob uma licença Creative Commons Attribution 4.0 International License.

Autores e autoras cedem à Revista Sequência direitos exclusivos de primeira publicação, ficando o trabalho licenciado sob a Creative Commons Attribution 4.0

International License. A licença autoriza que terceiros remixem, adaptem e ou criem a partir do trabalho publicado, indicando o crédito ao trabalho original e sua publicação inicial. Os autores têm permissão para assumir contratos adicionais em separado, com distribuição não exclusiva da versão publicada na Revista Seqüência, indicando, de todo modo, a autoria e publicação inicial neste periódico.