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The Overview of Environmental Regulation – Brazil and the United States of America

By Guilherme Berndsen

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Guilherme Berndsen

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Introduction

The Brazilian Federal Constitution of 1988 had as a paradigmatic milestone the elevation of the protection of the environment as a constitutional value in the legal system. In its article 225, the Brazilian Constitution expressly provides that it is everyone's right an ecologically balanced environment and establishes to both the community and the Government the duty to protect and preserve it.

The Constitution of the Brazilian Republic, more precisely, in title VIII, called "On the Social Order", chapter VI, called "On the Environment", in its article 225, provides, that:

> Everyone has the right to an ecologically balanced environment, a good for the common use of the people and essential to a healthy quality of life, and the public authorities and the community have the duty to defend and preserve it for present and future generations.[1]

As a result, the constitutional protection of the environment was broadly and integrally attributed to all Brazilians, deserving the special attention of the legal, social, and political community on national soil, with the Federal Supreme Court, guardian of the Federal Constitution, being responsible for the last analysis of environmental cases in Brazil.

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[1] BRASIL, *Constitution of the Federative Republic of.* of October 5, 1988. Available: http://www.planalto.gov.br/ccivil_03/constituicao/ConstituicaoCompilado.Htm#adctart107i. Access: Sept. 2023.

> With the promulgation of the Brazilian Constitution of 1988, for the first time in the political history of Brazil, there was the existence of its own chapter in relation to the environment, including considering it a good for the use of the people and essential to the quality of life, imposing on the Government and the community the duty to preserve and defend it, for present and future generations.[2]

It should be noted that the environmental protection provided for in article 225 of the Federal Constitution is not isolated, since this article dialogues with numerous other constitutional provisions, such as: ecological function of rural property, provided for in article 186, II, which provides for the "adequate use of available natural resources and preservation of the environment" in rural property, among countless other cases.

In this sense, would be the communication between fundamental social rights and the fundamental right to the environment, which is also one of the central objectives of the concept of sustainable development in the horizon constituted by the Socio-environmental State of Law, to the extent that, together with the idea of environmental protection, also present in its central objective is the fulfillment of the basic needs of the world's poor and the equitable distribution of natural resources (e.g. access to water, food, etc.).[3]

The Brazilian Federation, therefore, has, as a fundamental characteristic, the definition of functions and duties to ensure the fundamental rights and guarantees of people, which meet the fundamental objectives of building a just and solidary society, promoting full citizenship and the dignity of the human person, under the exact terms of article 3, I, of the Federal Constitution.[4]

Now it is up to the entire Brazilian society, and not only to jurists who embrace environmental causes, to turn the constitutional text into true legal norms to be followed and respected, becoming a true foundation of the legal system, under penalty of turning environmental protection into just a poetic text and environmental conflicts into unresolved problems.

[2] MEIRELLES, Hely Lopes. *Brazilian Administrative Law.* São Paulo: Malheiros Editors Ltda, 2000. P. 530.

[3] FENSTERSEIFER, Tiago**.** *Fundamental Rights and Environmental Protection. The ecological dimension of human dignity in the legal-constitutional framework of the Socio-Environmental Rule of Law.* Porto Alegre: Lawyer's Bookstore. Publisher, 2008. P. 74

[4] Article 3º: The fundamental objectives of the Federative Republic of Brazil are I - to build a free, fair, and solidary society; [...]

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It is important to mention that environmental protection is going through a new moment, due to the new socio-environmental problems that humanity is facing, for example, climate change, deforestation and pollution of waters and territories, which cause direct injury to the fundamental rights of countries in general, as well as human rights in a broad and unrestricted way.

In the United States of America, although there is no express reference to environmental protection in the text of the Constitution, environmental law has begun to reflect a sense of community, in which the health and safety of individuals are as important as the economic well-being of a nation.

By the 1930s, most states had already adopted administrative programs to control pollution, but regulatory measures were generally quite ineffective. States were reluctant to impose the cost of better environmental treatment on local governments and private individuals, as they feared leading industries to flee elsewhere.

It was not until the edition of the National Environmental Policy Act of 1969 (NEPA) that a true national policy was established to ensure that all American citizens had the right to a safe, healthy, and productive environment, as included in the Clean Air Act and the Clean Water Act, two major U.S. statutes that are historic milestones in American environmental defense and protection.

The statute is implemented by the Environmental Protection Agency (EPA), several interstate agencies, fifty states (and several territories), and thousands of local governments.[5] Thus, environmental regulations have often begun to be challenged, providing a large role for the courts and litigants, as they are open not only to the regulated industry, but also to environmental groups and others who have environmental claims.

Lawsuits by U.S. citizens over the past thirty-five (35) years have had an enormous impact on improving government compliance with environmental law and encouraging government agencies to implement statutes in creative and expansive ways. In other words, American society, through its citizens, had a new expanded role in the governance of the environment.

Therefore, the use of litigation by environmentalists became increasingly common, because instead of seeking a sweeping transformation of the statutes through rules slower and more time-consuming, environmentalists increasingly began to turn to the courts to enforce and maintain the legislative victories they had won in the past.

Consequently, it can be observed that both in Brazil and in the United States of America, since the creation of environmental statutes, there have been several cases, promoting intense debates about what would be the best way to apply environmental standards.

I. Environmental Law in Brazil

It is exceedingly difficult to write a history of Brazilian Environmental Law and not bring up Article 225 of the Federal Constitution of 1988, which established the fundamental right of all citizens to an ecologically balanced environment and determined that the Government must protect fauna and flora, under the terms of the law.

By the way, to complement the constitutional text, it should be noted that Law No. 6.938/91, which provides the National Environmental Policy, was decreed by Congress and sanctioned by the President of the Republic, only 03 (three) years later, defining in its article 2, the main object of the legal norm as follows:

> Article 2 - The National Environmental Policy aims at the preservation, improvement, and recovery of the environmental quality conducive to life, aiming to ensure, in the country, conditions for socio-economic development, the interests of national security and the protection of the dignity of human life, […].[6]

If that was not enough, the National Environmental Policy act defines the word “environment” as "the set of conditions, laws, influences, and interactions of a physical, chemical, and biological order, which allows, shelters, and governs life in all its forms;" (Art. 03, I).

In the meantime, CONAMA – National Council for the Environment, a consultative and deliberative body with the purpose of advising, studying, and proposing to the Council of Government guidelines for government policies for the environment, added to the definition of the legal term above, the "cultural and artificial heritage" in Resolution No. 306 of 07/05/2002, thus defining the environment as: “a set of conditions, laws, influences and interactions of a physical, chemical, biological, social, cultural and urban order, which allows, shelters and governs life in all its forms." [7]

After these premises, it is observed that the Federal Union is the main competent to regulate environmental protection in Brazil, and there is no general codification on the subject, or even a consolidation, consequently, there are numerous sparse statutes, as will be seen below.

It should also be noted that the development of environmental standards and regulations is concurrent

[5] ALDER, Robert W. *The Clean Water Act 20 years later*. Island Press. Washington, D.C. 1993. ISBN 1-55963-265-8. p. 13.

[6] BRAZIL, *National Environmental Policy*. Official Gazette of the Federative Republic of Brazil, Brasília, DF. Available: https://www.planalto.gov.br/ccivil_03/leis/l6938.htm. Access: Sept. 2023.

[7] BRAZIL, National Council for the Environment. *CONAMA Resolution: Resolutions in force published between September 1984 and January 2012*. Ministry of the Environment. Brasilia, 2012. p. 942 Available: https://conama.mma.gov.br/images/conteudo/CONAMA-ingles.pdf. Access: Sept. 2023.

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between the Union, States, and the Federal District (Art. 24, Federal Constitution)[8]. Therefore, it is up to the Federal Government to issue general rules, which will be detailed and specified by the States, Federal District and Municipalities, according to their local and regional interests.

Regarding the cultural environment, in addition to the Federal Constitution itself (articles 215, 216 and 216-A), there is, for example, Law 12.343/2010 (National Culture Plan) and Decree-Law 25/1937 (General Law of Heritage). In relation to the artificial environment, there is a constitutional provision in article 182[9], as well as Law 10.257/2001, called the City Statute.

In the field of natural environment (Article 225 of the Federal Constitution), the most fertile ground to produce regulations, such as: Law 5.197/67 (Protection of Fauna); Law 6.938/81 (National Environmental Policy); Law 9.433/97 (National Water Resources Policy); Law 11.284/2006 (Management of Public Forests); Law 12.651/2012 (Forest Code) etc.

The Forest Code determines that the protection and sustainable use of forests will take place through government action. The country, due to its vast territory and natural resources, has a complex political-normative system for the protection of the environment, led by the Federal Constitution of 1988, with competences attributed to public entities and agencies at all levels - federal, state, municipal and district.[10]

In this context, it is incumbent on all public entities – federal, state, and municipal – to protect the environment, as provided for in article 23 of the Federal Constitution. In other words, the Union, States, Federal District and Municipalities must coordinate reciprocally to achieve the constitutional objectives of protection and promotion of the environment, by the way, an indispensable resource for human beings, as well as comply with the laws enacted corresponding to each environmental subject, for example, legal instruments for the defense of fauna, water resources and even It also combats some types of animal abuse (cattle spree / bullfighting, fighting, etc.). [11]

In addition, the Judiciary itself, through its Superior Courts, the Supreme Court, and the Superior Court of Justice, have occupied a prominent position in the national scenario of Brazilian environmental law, thus also occurring in Brazil, the phenomenon of judicialization of environmental cases, such as the Forest Code, which will be dealt with in a separate topic due to its importance to Brazilian environmental law.

So, following the idea launched in the Declaration of the United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992 (Rio/92), there is a significant step forward in this phenomenon by saying that "the best way to deal with environmental issues is with the participation of all interested citizens, at various levels".

Principle No. 10 of Rio/92 seeks to make all information available to public authorities regarding the environment available to all interested citizens. In Brazil, this opening of popular access for the defense of the environment has as its main legal instrument, the Public Civil Action, which has as legitimized and can propose: Public Prosecutor's Office, Public Defender's Office, Union, States, Municipalities, Federal District and Associations Authorized by law.

Different to what happens with the North American class action system, the Brazilian legislator did not provide the possibility of assessing the so-called adequacy of representation, that is, that the judge verifies, in the specific case, whether the active legitimacy adequately represents the collectivity, category or class. In the Brazilian system, it is sufficient that the requirements required by law are met for representatives to be configured.[12]

Based on this facts, several lawsuits related to the environment are currently on the judicial court, such as the Direct Action of Unconstitutionality (ADI) 6148, which questions Resolution 491 of CONAMA – Council for the Environment on acceptable air quality standards and the Allegation of Non-Compliance with a Fundamental Precept (ADPF) 760, which deals with the resumption of the Action Plan for the Prevention and Control of Deforestation in the Amazon (PPCDAm), which reduced deforestation in the Amazon by 83% between 2002 and 2012.

Recently, in September 2023, the Superior Court of Justice, wich gives last word in relation to

[8] Art. 24. It is incumbent upon the Union, the States and the Federal District to legislate concurrently on: VI - forests, hunting, fishing, fauna, nature conservation, defense of soil and natural resources, protection of the environment and pollution control; VII - protection of historical, cultural, artistic, touristic and landscape heritage; VIII - liability for damage to the environment, to the consumer, to goods and rights of artistic, aesthetic, historical, touristic and landscape value;

[9] Art. 182. The urban development policy, implemented by the municipal government, according to general guidelines established by law, aims to order the full development of the city's social functions and ensure the well-being of its inhabitants.

[10] LEHFELD, Lucas de Souza. *Forest code commented and annotated* (article by article) / Lucas de Souza Lehfel d, Nathan Castelo Branco de Carvalho, Leonardo Isper Nassif Balbim. - Rio de Janeiro: Forense; São Paulo: MÉTODO, 2013. ISBN 978-85-309-4425-4. p. 36

[11] Art. 23. It is the common competence of the Union, the States, the Federal District and the Municipalities: [...] III – Protect documents, works and other assets of historical, artistic and cultural value, monuments, remarkable natural landscapes and archaeological sites; IV - Prevent the evasion, destruction and mischaracterization of works of art and other assets of historical, artistic or cultural value; V - To provide the means of access to culture, education and science; V - Provide the means of access to culture, education, science, technology, research and innovation; VI – Protect the environment and combat pollution in any of its forms; VII - Preserve forests, fauna and flora; XI - Register, monitor and supervise the concessions of rights for research and exploration of water and mineral resources in its territories;

[12] DANTAS, Marcelo Buzaglo Dantas. *Public Civil Action and the Environment.* Saraiva. 1 Edition. 2010.

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national statutes, issued Theme 1,159, in a decision of repetitive appeal, understanding "the validity of administrative fines for environmental infractions, provided for in Law No. 9,605/98, regardless of the prior application of the warning penalty."[13]. It should be noted that the Law in question provides for criminal and administrative repressive measures for non-compliance with environmental legislation and activities harmful to the environment.

According to the understanding set forth by the Superior Court of Justice in Topic 1,159, Law No. 9,605/98 did not establish any hierarchy among the administrative sanctions (warning, fines, seizure, etc.) provided for in article 72 for non-compliance with environmental legislation. In other words, according to the Superior Court cited, there is no legal provision in the environmental legal norm that conditions the application of a fine to the environmental offender, the need for prior imposition of the warning penalty.

It is noted that this phenomenon of judicialization of environmental causes has been gradually giving an intense protagonist to the Judiciary and making countries of the Civil Law tradition approach the Common Law, given the inability of the executive and legislative powers to keep up with the 'time' of hyper-complex societies, carrying out an evident gradual process of pairing primary sources of law between the law and judicial decisions.[14]

Thus, in Brazil, what some scholars call the Brazilian Hybrid System is being created, because the national legal system currently has as sources of Law techniques used both by the Common Law system, as well as by the Civil Law system, by the way, the latter still being preponderant in environmental matters, although, later, the laws are usually rectified or ratified by the Judiciary.

II. The Overview of the Brazilian Forest Code

The first Brazilian forest code was launched in 1934, during the government of Getúlio Vargas, along with the codes of Water, Mines and Hunting and Fishing. Subsequently, in 1965, then-President Humberto de Allencar Castello Branco sanctioned Federal Law No. 4,771, the outdated Forest Code, which established 50% of legal reserves in the Amazon and 20% in the rest of the country (Article 16) and defined the location of permanent preservation areas (Articles 2 and 3).

Currently, the last Forest Code was launched in 2012, and all of them seek to preserve the environment, especially permanent protection areas and legal reserves, which establishes general rules on how and where areas should be preserved, respecting their native vegetation, as well as which areas can be exploited in the national territory.

> Law No. 12,651/2012, which provides for the protection of native vegetation; amends Laws No. 6,938, of August 21, 1981, No. 9,393, of December 19, 1996, and No. 11,428, of December 22, 2006; repeals Laws No. 4,771, of September 15, 1965, in. 7,754, of April 14, 1989, and Provisional Measure No. 2,166-67, of August 24, 2001. This rule brought profound changes to the legal regime for the environmental protection of the Legal Reserve (RL), the Permanent Preservation Areas (APPs) and controversial innovations such as the regulation of the Rural Environmental Registry (CAR) and the Environmental Reserve Quota (CRA).[15]

Brazil enacted important legislation on the duty of environmental protection, known as the new Brazilian Forest Code, the third and most recent being launched by the Brazilian National Congress under Law No. 12,651/12 and the subsequent amendments through Law No. 12,727, of October 17, 2012, bringing new protective provisions and updating others that existed in previous laws in relation to environmental matters.

The Forest Code describes as permanent preservation areas (PPAs), the banks of rivers, watercourses, lakes, lagoons, and reservoirs, as well as hilltops and slopes with high slopes, covered or not by native vegetation, and such areas have the environmental function of preserving water resources, geological stability, biodiversity, fauna, and flora, thus protecting and ensuring the well-being of the entire population.

The Legal Reserve, on the other hand, is the area located inside the rural property that must be maintained with its original vegetation cover, with the function of ensuring the sustainable use of the area and protecting natural resources, as well as providing the conservation of biodiversity, combined with the protection of wild fauna and native flora. The areas that consist of the Legal Reserve vary according to the region where the rural property is located, and in the Amazon, it can reach 80% of the area and in the other regions of the country it is usually 20% to 30%.

Another crucial factor expressly introduced by the Forest Code, more precisely, provided for in its article 2, § 2, is the recognition of the *propter rem nature* of the obligation of environmental reparation in relation to environmental damage. The Superior Court of Justice, the court responsible for giving unity to infra-

[13] BRASIL, *Qualified Precedents, Theme 1159 of the Superior Court of Justice*. Available: https://processo.stj.jus.br/repetitivos/temas_repetitivos/pesquisa.jsp?novaConsulta=true&tipo_pesquisa=T&cod_tema_inicial=1159&cod_tema_final=1159 Access: Sept, 2023

[14] BODNAR, Zenildo. CRUZ, Paulo Márcio. *The commolization of positive law, judicial activism, and the crisis of the State.* New Legal Studies; Vol. 21, N. 3, 2016, p. 1343

[15] BENJAMIN, Antônio Herman Vasconcelos e; FREITAS, Vladimir Passos de; SOARES JÚNIOR, Jarbas. *Comments on environmental rulings:* paradigms of the Federal Supreme Court. Belo Horizonte. Fórum, 2021. p. 290-1

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constitutional law, interpreting the provision, issued the statement of Precedent No. 623: "Environmental obligations have a propter rem nature, and it is admissible to collect them from the current owner or possessor and/or from the previous ones, at the choice of the creditor." [16]

In addition, five years ago, the Brazilian Supreme Court, through its Plenary, decided en bloc actions that questioned several points of the Forest Code and its consequent constitutionality, through the joint judgment of Direct Actions of Unconstitutionality (ADIs) 4901, 4902, 4903 and 4937 and the Declaratory Action of Constitutionality (ADC) 42.

> The STF, in the judgment of several unconstitutionality actions brought against provisions of the New Forest Code, gave a more lenient interpretation to the principle of prohibition of socio-environmental setbacks, by understanding that it is not appropriate to disqualify a certain legal rule as contrary to the constitutional command to defend the environment (CF, art. 225), or even under the generic and subjective label of "environmental setback", not fully considering the various nuances that permeate the decision-making process of the legislator, democratically invested with the function of appeasing conflicting interests by means of general and objective rules. [17]

In other words, with the current evolution of society, combined with technological and scientific advances, the new environmental statutes cannot bring a reduction or flexibility of the environmental protection already achieved, under penalty of violating the principles of non-retrogression, full reparation of environmental damage and legal certainty. It is important to continue the permanent studies and techniques of sustainable environmental promotion in our country, respecting the Federal Constitution and other environmental standards in force.

By way of illustration, it is mentioned that other countries in the world are also moving in the same direction in terms of environmental protection, creating modern environmental legislation, such as the forest codes of the Netherlands, the Scandinavian countries, Germany, Australia and the new sustainability protection frameworks that have been created by European countries in the form of green plans (Netherlands, Sweden and France) and as National Strategies of the United Kingdom, Germany, among others, Canada and the United States, which have created similar and protective environmental strategies.[18]

III. Environmental Law in the United States of America

As a preliminary point, it should be noted that the legal system concerning the formulation of U.S. environmental law was created and molded under three (3) important characteristics: 1) the continental size of the country and its great diversity; 2) the federal system has many member states; 3) the fact that there is a system of government based on the principle of separation of powers.

In this context, although there are also state and local laws, it was the American Federal Government itself that took the lead in environmental legislation, playing a large role in the development of natural resources and infrastructure through various forms of public construction and investment in the areas that belonged to it and had great landscape and economic importance.

By way of illustration, the Yellowstone National Park, located in the US states of Wyoming, Montana, and Idaho, was inaugurated on March 1, 1872, that is, 150 (one hundred and fifty) years ago, being considered the oldest national park in the world and a milestone in the history of protected areas around the planet.

The federal government was also responsible for enacting the National Environmental Policy Act of 1969 (NEPA), one of the first written statutes that established a broad and national framework to protect and develop the environment in a correct and organized way.

NEPA's basic policy is to ensure that all branches of the U.S. government give due consideration to the issue before taking any major federal action that significantly affects the environment, and that an environmental assessment procedure should be conducted for the management of public lands and resources.

The federal government also ensured that U.S. federal agencies could consider the environmental impacts of their actions and decisions. Therefore, the U.S. National Environmental Policy Act is an important, if not the most important, piece of legislation in U.S. environmental law.

Notwithstanding the above-mentioned important facts, the federal government has still carried out numerous regulations on pollution and industrial hazards to the detriment of the environment, beginning in 1970 with the Clean Air Act (CAA) and continuing since then with important statutes in the areas of Clean Water Act (CWA), control of toxic substances and toxic waste. In addition, the federal government has played a very important role in the regulation of nuclear energy, chemicals, the greenhouse effect and pesticides.

In 1990, Congress passed a significant revision to the Clean Air Act that overhauled certain key components of the Act (hazardous air pollutants), added

[16] BRAZIL, *STJ Precedents Review*. Digital Legal Library (BDJur) Available: https://www.stj.jus.br/publicacaoinstitucional/index.php/sumstj/article/viewFile/5052/5179. Access: Sept, 2023.

[17] BENJAMIN, Antônio Herman Vasconcelos e; FREITAS, Vladimir Passos de; SOARES JÚNIOR, Jarbas. *Comments on environmental rulings:* paradigms of the Federal Supreme Court. Belo Horizonte. Fórum, 2021. p. 472

[18] BOSSELMANN, Klaus. *The Principle of Sustainability: transforming law and governance.* Farnham: Ashgate, 2008. P. 107.

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new programs (acid rain title, Title V operating permit program, and the stratospheric ozone program), and continued to build upon the existing structure that was put in place by the 1970.[19]

Although all the above goals are laudable and ambitious, the implementation process has been slow and complicated since there is great diversity in the nation and in the 50 (fifty) American states that represent the federal structure of the country.

Therefore, beginning with the Clean Air Act (CAA), U.S. Congress enacted "citizen process" clauses in at least twenty (20) environmental statutes, as it was recognized by the Senate Committee on Environment and Public Works that citizens played an influential role in the enforcement activity against violators of environmental laws.

These provisions serve to fulfil two distinct and significant functions. They authorize "any person" to bring a civil action (1) against any person who is "alleged to have violated" a standard, limitation, or permission under the statute or (2) against the Environmental Protection Agency (EPA) Administrator for failure to perform a non-discretionary duty under the law.

Thus, environmental regulations have often begun to be challenged in the courts, providing an influential role for the courts and litigants, as they are open not only to the regulated industry, but also to environmental groups and others who have environmental claims.

Lawsuits by U.S. citizens over the past thirty-five (35) years have had an enormous impact on improving government compliance with environmental law and encouraging government agencies to implement those laws in creative and expansive ways. In other words, American society, through its citizens, had a new expanded role in the governance of the environment.

The use of litigation by environmentalists has once again become daily, for instead of seeking a comprehensive transformation of the law, if in passing, slow and time-consuming, environmentalists increasingly began to return to the courts for real and maintain legislative victories that they had conquered in the past. [20]

These legal disputes in the U.S. judiciary have produced important and symbolic victories. For example, in Citizens Can Preserve Overton Park, Inc. v. Volpe - 401 US 402 (1971) - when a major reinterpretation of the rules of judicial review took place to give significant protection against environmental threats to the disappeared "green havens". The case also marked the beginning of public interest litigation on environmental issues.

Another historic victory for environmentalists was Massachusetts v. EPA, 549 US 497 (2007), when it defended the urgency and priority of action on climate change and concluded that greenhouse gases are air pollutants under the Clean Air Act and can be regulated by the US Environmental Protection Agency (EPA).[21]

Not to mention the emblematic case of Chevron-Ecuador when the oil company lost a historic trial and was ordered to pay compensation of 9.5 billion dollars to farmers and Indigenous people in the South American region for allowing and/or polluting the Ecuadorian Amazon region.

Over the past four decades, “Environmental Law” has evolved into a legal system of statutes, regulations, guidelines, requirements, policies, and case-specific judicial and administrative interpretations that address a wide-ranging set of environmental issues and concerns. These laws and requirements address not only the natural environmental, including the air, water, and land, but also how humans interact with that natural environmental and ecological system.[22]

Therefore, both in the United States of America and in the world itself, the creation of normative sources of International Law and Environmental Law itself must result from Society as a whole and, cumulatively, from the capacity of its Institutions to exercise the authority they possess, strengthening the structuring foundations of the environmental legal system and consequently nature itself.

IV. Final Consideration

It is concluded that countries such as North America, traditionally known as coming from the legal system called Common Law, possess, and use as much force of law from the Legislative and Executive Branches, as a typically European or Latin American country, which are widely known as countries coming from Civil Law.

In other words, some nations that do not have the jurisdiction of Civil Law, have more codes and statutes than countries of this family and, currently, Latin American countries, for example, Brazil, have gradually increased the use of Common Law instruments through the strengthening of judicial decisions and their binding effects, including in the environmental field.

[19] BELDEN, Roy S. MORRISON, Angela R. *Clean Air Act: essential.* American Bar Association. Section of environmental, Energy, and Resources, sponsoring body. Third Edition, Chicago, Illinois, 2021. p. 09

[20] CANNON, Jonathan Z. *Environment in Balance: The Green Movement and the Supreme Court.* Cambridge/MT: Harvard University Press, 2015.

[21] LAZARUS, Richard J., *The rule of five:* making climate history at the supreme court. Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2020.

[22] SULLIVAN, Thomas F. P. *Environmental Law HandBook 23rd Edition.* Bernan Press, Maryland. 2017. ISBN 978-59888-865-2. p. 01

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This happens because the ultra-complex societies of modernity increasingly require quick answers and solutions that the Legislative Branch cannot demand in the necessary time, thus serving the Judiciary as an important legislator through its binding decisions (Precedents, Statements, Repetitive Appeals and Precedents).

In the field of Environmental Law itself, it is observed that International Environmental Law had a profound influence both in Brazil (the country where one of the most important world summits on the environment was held) and in the United States of America (one of the world's largest powers).

So, both countries have federal environmental legislation that guides the entire structure of the domestic Environmental Law of each country, with constant updating through Laws and Regulations created by the Executive and Legislative Branches, as well as Judicial Decisions issued by the Judiciary.

Therefore, the United States of America increasingly uses legal norms to strengthen the protection of the environment, without losing sight of the use of the instrument called judicial review, which is practiced by the Judiciary in the United States in relation to Laws and Regulations that may be declared unconstitutional (Marbury v. Madison) by reason of the Common Law tradition.

Brazil, on the other hand, has been gradually introducing new concepts and instruments from the Common Law system, such as Judicial Precedents, Repetitive Appeals with binding effect, etc., although it remains a nation traditionally based on Civil Law, where the authority of the national legislation is still – or should be – superior to judicial decisions.

In this way, both countries began to incorporate satisfactory results in their domestic scenario and should maintain a long participatory path of all sectors/social actors in the search for environmental protection, under the principles of sustainability, aiming at the use of the current and future generation.

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