

Payment for Environmental Services: an Environmental Zoning Guardianship Instrument

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Abstract Environmental services potentially available in nature, such as the air that we breathe, the water we drink, etc. are indispensable to assure an ecologically balanced environment and the preservation of biodiversity as elements of sustainability and assurance of human life and dignity. Since man needs and tends to occupy every space for dwelling and for the production of food, it is necessary to define and designate spaces to be preserved, aiming to guarantee fulfillment of these essential functions of nature, which we call environmental services. The instrument to organize such spaces is sought for in Law – environmental zoning – and payment for environmental services as a means of effective guardianship of the environment bounded by such zoning is described.

Keywords: *nature, environmental zoning, payment for environmental services*

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1. Potentialities in Nature Need to Be Preserved Because of the Environmental Services They Render

Human occupation on Earth is as natural as nature itself. Both mix and merge, and as time goes by they take different shapes. It is all actually fruit of one sole nature. For Aristotle, nothing can come to be from what is not, and everything is in power in nature,¹ including mankind.

According to that point of view, if everything is one only thing, that would logically lead to the assertion that environmental degradation itself, which puts biodiversity at risk, as an assumption of life and human dignity itself, is like cutting off a finger or a leg, since the whole body suffers from it. When a part is violated, the whole has been violated. Violating nature is – one way or the other – an act of human violation and degradation.

There is undoubtedly a connection that can be called natural and historical process which links all living beings.

In that sense, Otsu argues that:

When one drinks a glass of water, he doesn't drink only water, he drinks all the memories of the water and all the history of the planet. The water we drink today has already been rain, river and ocean. It was ice in the Ice Age, blood of the Neanderthal man, and it washed Pontius Pilate's hands. It has been steam of a steam engine and the sweat of a lion and of a gazelle. It has been a cloud in the Atacama and tomato sauce. It has been baby's pee and the

nectar that feeds the humming-bird. It has been an old lady's tear and the sap of a rose. Because, as the wise men used to say, there is only one water in the world.²

Therefore, there is only one life in nature, which takes on different forms and takes place in cycles, and man is part of this cycle of biodiversity of life and nature. Biodiversity is sacred. This cycle cannot be violated under the penalty of stunting its own natural process or the history of living creatures. Man, at the most, can harvest fruits from nature and shape lifeless raw material.

Just like the lion kills the gazelle to survive, men need to occupy spaces and use goods and services provided by nature to ensure their existence. The desire to take more than it is necessary, that is, to arrogate properties from nature beyond what is really necessary is man's biggest mistake.

In this context, it seems fair to say Otsu's uttering is wise:

The problem is not natural desire itself, but the unbridled consumerism and the lack of perception of what is enough. In ecological terms, the one who desires too much is – directly or indirectly – a great predator. The one who seeks only for what is enough, or close to that, contributes for a balanced and sustained world.³

Balance or sustainability of nature is not a human invention, nor is it an invention of law, but it is a principle of immanent right of nature itself, which manifests itself as a fundamental and mandatory rule, under penalty of violating its own cycle. Force and perfection of laws of nature are something that is too far away from human

1 SCIACCA, Michel Frederico. *História da filosofia*. Trad. de Luís Washington Vita. São Paulo: Mestre Jou, 1987. p. 94.

2 OTSU, Roberto. *A sabedoria da natureza*: São Paulo: Ágora, 2006. p. 55.

3 OTSU, op. cit., p. 71.

capacity to do as well. In fact, nature takes care of everything, and the best one can do is not get in its way nor try to control it, but always respect it.

Otsu states that the human being, despite his pretense, has control over almost nothing. There is no such thing as “born”, “grow”, and “age”.⁴ Nobody controls at his own will the seas, the seasons of the year, the rain, the lightning, the storm, growth and multiplication of species. All control one has over his/her day-to-day life, over nature, through science, means nothing in the presence of the power of the universe. Men are far from making balanced and intelligent laws as nature laws are. However, man has an unmatched capacity of destroying and degrading the environment.

This all leads us to the fact that man is the only living being that effectively unbalances nature, because he explores it more than what is necessary and sufficient, occupies places that are not necessary, and intervenes where one should not interfere. It so happens that environmental degradation hurts and bleeds nature and, as a consequence, man himself is hit.

Occupation of places where man will take over should be done respectfully, in a balanced way, and should not be more than enough nor in vital points for balancing life, such as hillsides, rivers, riparian vegetation, biodiversity sanctuaries, under penalty of suffering with reactions of nature itself, which very often cannot be predicted or controlled.

Man is part of nature and needs to be in tune with it for his own survival. Places for dwelling or for the construction of cities, or destined for the use of the soil, for the production of food, and to be used as raw material are inherent needs to their human condition, just as animals need and have the right to proper spaces and habitats to live in. Animals do not have legal personality, since they lack rationality, but they benefit from natural rights, ensured by legal order itself that is imposed by nature. Definition of spaces destined for human habitat and spaces that render environmental services and protect biodiversity are what we call zoning.

Disordered human occupation without protecting the spaces that ensure environmental services and protecting biodiversity is penalized, not only with sanctions imposed by man, but by force of events of nature itself, such as: thunderstorms, floods, landslides, cyclones, tsunamis, etc. It is important to note that animals are practically not affected by these catastrophes, just because they maintain a respectful relationship with nature, do not occupy inappropriate spaces and do not even degrade. The only laws they respect are laws of nature itself. Man uses and desires more than he needs, he is greedy and predatory. As Seneca said: “One should wish only for the fair measure of wealth: It is, first, to have what is necessary and, second, to have what is enough”⁵ Desire can only be leverage for development if it is balanced and sustainable.

Man, throughout history, has chosen the best places to live, eat, drink, procreate, and live in the best way possible. This search and will of living well are what our Right calls pursuit of dignity. These choices are natural because they are anthropological, but laws of nature must be respected, but there are spaces that require protection by means of specific environmental zoning.

There is no possibility of living well without respecting biodiversity and without being in tune with nature. There has to be some balance that can be both rational and natural manifestation, which in Law is known as Principle of Environmental Sustainability, which only becomes effective with the definition of spaces for human occupation and spaces for preservation of nature, that is zoning, which assure an ecologically balanced environment and biodiversity. Everything leads to the conclusion that nature is the basis for right and human dignity. There is no life without preservation of nature, without respecting natural and historical cycles, since man himself is part of them. But dignity is also a construction process of environmental, social and economical balance because unlike animals man has his intelligence to make him more demanding and able to improve his way of living, with more sophisticated homes, safer ways of surviving, and ways to communicate that had never been thought of before.

2. In Brazil, Environmental Zoning is a Guardianship Instrument for Spaces That Need to Be Preserved to Ensure Environmental Service Rendering and Biodiversity.

The Brazilian Constitution of 1988, in its 1st article, brings human dignity as a fundamental for the Federal Republic of Brazil; dignity which is assured, as fundamental rights are assured, among which what is described in the *caput* of art. 225, as follows:

Art. 225. Everyone is entitled the right to an ecologically balanced environment, an asset of common use by people and essential to a healthy life quality.

Hence, the very first concern when planning and occupying the land must be to take into consideration that an ecologically balanced environment is assured to man, which presumes an environmental zoning of protected or preserved spaces close to man and as a platform of human occupation.

The Brazilian Constitution of 1988 is imperative when it claims that the environment is “an asset of common use by people and essential for a healthy life quality”. Therefore, our Magna Carta does not prescribe the environment as something untouchable and that cannot be used by man.

From that point of view, it is necessary to bear in mind that the environment that does not lend itself to a healthy life quality is not meant to be used by people. Protecting a tree and air and water quality has in that perspective the purpose of providing man with a healthy life quality and ensure dignity for human beings. Environmental degradation also generates human degradation, what violates dignity itself.

However, at the same time, in clauses I and II of article 225, CF/88 provides on the preservation of biodiversity, as genetic patrimony; therefore, protecting life in its diversities and forms, which is also a presumption of human life. These spaces for the preservation of biodiversity should be considered in environmental zoning.

Under the perspective of Law, there is no possibility of inventing environmental Standards that are not covered

4 Ditto.

5 SCIACCA, op. cit., p. 86.

for in the Federal Constitution. Environmental radicalism, that does not even allow men to put down a tree to grow food for his survival or to dam up water for sanitation purposes of the city, cannot find support in our juridical order. Those environmental services rendered by nature should also serve mankind. Mankind has to have their space assured, at the same they must assure spaces that guarantee environmental service rendering, which means exclusive spaces of nature.

Wisely, CF/88 rules, in art. 225, clause III, that there should be a definition of the spaces to be protected, aiming at the creation of conditions that ensure an ecologically balanced environment and protection of biodiversity; that is, environmental zoning in federal, state and municipal scopes, to serve as platform for human occupation that takes place in the urban zoning, and for the production of food in the agrarian zoning.

Therefore, having determined environmental zoning over the other spaces urban and agrarian zoning can be established in the spaces that remain. The correct observation of this juridical order will assure the construction of a balanced environment necessary for human life in places men actually live in, preserving biodiversity and contributing for sustainable development.

3. Paying for Environmental Services as an Effective Environmental Zoning Guardianship Instrument

With environmental zoning defined, the greatest difficulty is its effective juridical guardianship. Traditional guardianship over certain areas, necessary to fulfill what is provided for in art. 225 of the Constitution in force, with the purpose of ensuring an ecologically balanced environment, and avoiding the collapse of ecosystems that render environmental services to society, has definitely not been enough to assure preservation of those areas.

One such example is the riparian vegetation both in urban and rural areas; areas of permanent preservation in the hillsides occupied by shanty towns; institutional public areas resulting from soil that has been parceled out; all of which, regardless any existing restrictive or interdictory legislation, have not been conserved or preserved.

It is obvious that the simple fact of there being an interdictory and punitive legislation – even when these areas belong to the State – has not been enough and has done very little in inhibiting irregular occupation and environmental degradation by man, one way or the other.

The capitalist system prioritizes the economical value of goods and services. Both principles – a paying polluter and a paying user – aim at attributing economical value to the environment, punishing monetarily those who pollute and charging those who use natural resources. But the main issue, when we refer to environmental zoning, is not just punishing, but preserving as well. What occurs is that those who preserve do not receive anything for the service they are rendering and that is why environmental services are disappearing and being replaced by other services that are more valuable economically.

More recently, we saw a new principle arise – that of the protector-recipient – which tries to value services

rendered to society by those who watch over, take care of and protect the environment.

This principle is meant for the payment of environmental services, as a more effective way of multiplying agents motivated towards preserving nature so that it can keep on rendering indispensable services.

In that sense, Fagnello states that:

According to the principle of the protector-recipient, the public or private agent who protects a natural good for the benefit of the community, thanks to practices that preserve nature, should receive benefits as an incentive for rendering service of protecting the environment. Some examples of such benefits are: compensation – transference of financial resources of those benefited by environmental services to those who – thanks to practices that preserve nature – supply such services; favoring them to obtain credit; assuring access to special programs and markets; exempting from taxes and fees, and making technology and training programs available to them, among other things.⁶

Preservation and conservation of areas, by force of legislation that imposes obligations to a few so that others can benefit has not been on the agenda of economical discussions exactly because of the inversion in the hierarchy of service values, which are not essential for society. A cell phone, for instance, can have greater economical value than the air that we breathe or the potable water we drink.

Humankind was able to live centuries without a cell phone, but it cannot live a few minutes without air or without certain services rendered by nature, since everything is compromised, including life itself, dignity and the very own possibility of manufacturing a cell phone. State himself has understood that preserving is a simply duty to be accomplished by citizens by force of law; a fact that has caused abandonment of estate and devaluation of certain spaces; consequently, some irregular occupations, invasions and environmental degradation can take place.

There is a huge number of spaces for us to build buildings, factories, shops, or to grow grapes, vegetables, etc. without compromising a large amount of other areas that need to be preserved or conserved, so that we can live with dignity. Both – whether the spaces to be occupied, whether the ones that scientifically cannot be occupied – have economical value.

Society knows that, for a long time, nature – besides providing goods – has been rendering inestimable services to man. These services, which we call environmental services, are those originated from healthy functioning of natural ecosystems. A few examples of these can be: plants producing oxygen, the capacity of producing potable water, balance of hydrologic cycle, fertility of the soil, vitality of ecosystems, preservation of landscapes and natural beauties, climate balance, thermal comfort; most of which depend on the implementation of human practices that minimize the adverse impact on these ecosystems.

In that sense, we bring what Bensusan duly notes:

6 FAGNELLO, Célia Regina Ferrari. *Fundamentação da cobrança pelo uso da água na agricultura irrigada, na microbacia do Ribeirão dos Marins*. 2007. Tese (Doutorado) – Escola Superior de Agricultura Luiz de Queiróz, Piracicaba, 2007. p. 29.

Observing what surrounds us, it is easy to realize that many things we enjoy come from nature; the wood of the table where we are working; the paper we are writing on. The food we eat; the clothes we wear; recreation in the parks, waterfalls, beaches, and much more. If we observe more closely, however, we will perceive other kind of essential facts for our survival and that are provided by nature; the adjustment of the composition of the atmosphere; the cycling of nutrients, conservation of soils, quality of water, photosynthesis, decomposition of waste, etc. This second group refers to processes of nature transferring to human processing beyond matter, energy and information, which provide conditions to maintain our species and are known as ecological or environmental services. These services do not have a price tag, but are extremely valuable.⁷

Veja magazine, n. 23, of 2010, published a research that confirms economical wealth of biodiversity, a natural capital, that is, all environmental services ever provided by Earth to men. It was estimated in 44.9 trillion dollars, the equivalent of a threefold of the Gross Internal Product (GIP) in the USA.

Spaces destined for the production of renewable natural goods, such as wood, fruits, vegetables, production of food, etc., are estimated in 24.2 trillion dollars. Spaces destined to store fresh water were calculated at 3.1 trillion dollars.

However, every year, due to a lack of rules for valuation that are scientifically correct, man generates a loss of 268.8 billion dollars,⁸ which is supported by the State or by private initiative, such as landslides on hillsides, large floods, houses collapsing, treatment of polluted water, reconstructing infrastructure, death, etc., all caused by occupations carried out without any environmental sustainability and tolerated by the State.

It is not just a matter of pedagogical thinking, aiming at the creation of awareness about the correct form of human occupation, as well as of benefits coming from environmental services; it is effectively about natural and necessary goods of great economical value, since the capitalist system itself has not yet awakened for its exploration.

Toledo points out clearly:

Every good and/or merchandise that is useful and scarce (its demand outweighs its availability) is to have market value, and is then observed as an asset by the economical system, as a production factor with marginal cost different from zero [...]. Technical arguments have been exhaustively exposed so that it seems quite reasonable that society needs additional service to preserve and recompose its stock of natural resources, in a capitalist regime of economy, and that the state may intermediate a negotiation between producer and user, provider and beneficiary. It is believed that once the good becomes scarce and is possible to be produced, the product will most certainly come to the surface, provided that its production is duly compensated.⁹

Paying for environmental services, as an instrument of preservation and conservation of the environmental zoning, as well as to its intrinsic economical value, is an issue that has been widely debated. In fact, what we need is to consolidate the existing legal instruments and develop new ones. Ones that can make it value viable in the market and make it possible to pay for environmental services, aiming to assure preservation of environmental zoning. payment possible, what will stimulate and increase its service rendering.

What we must have in mind is that, in order to render environmental services, nature must be preserve or properly managed. Many jurists understand that due to what is provided in art. 225 o CF/88, it is an imposition that civil society holds the responsibility of preserving the environment.

In that sense, Fensterseifer states that:

It has been registered that, from the constitutional command of *caput* of art. 225, defense of the environment by civil society is no longer a mere voluntarism or altruism by a few idealists, but it takes shape as fundamental juridical duty, revealing Double nature o fundamental right and duty of the constitutional approach delegated to the pretension of the environment.¹⁰

Effectively, there is an agreement that it is the civil society's duty to preserve the environment in the sense of cogent conducts, just as it is its duty to protect and watch over life. However, it is inefficient, for example, to demand that a medical professional will medicate for free, because it is the civil society's duty to watch over life. When one thinks and acts like that, they will be paralyzing the scientific process of constructing new knowledge, not stimulating and totally deactivating the exercise of Medicine and the protection of health. In the State of Law, there are two different conducts: one is the citizen's duties, imposed by CF/88, and the other one is the obligation of doing, regulated in almost all countries by the Civil Code.

Furlan states that "the principle for the protector-recipient is related to the principle of participation once stimulating a useful social behavior one is encouraging society to participate more".¹¹ And he adds that it is necessary to stimulate and not only impose obligations so that environmental issues may take place.¹²

There are situations in which it is not Just a matter of stimulating voluntary action, but where it is necessary to recognize and encourage that civil obligations be established so that there may actually be demand for them to be fulfilled.

Cogent legislation can rule that proprietors cannot destroy the riparian vegetation of the river that crosses their property; however, it is not possible, for example to impose to that very same proprietor of an area that crosses a river which supplies the city to protect, preserve, isolate the area so as to keep animals and third-parties out, and to replace the riparian vegetation with the purpose of assuring drinkable water to the population, taking the costs for that kind of preservation at his expenses, since this is an of a completely different nature.

7 BENSUSAN, Nurit. *Seria melhor mandar ladrilhar?: biodiversidade: como, para que, porque*. Brasília: Ed. da UnB; Instituto Socioambiental, 2002. p. 2.

8 VEJA, n. 23, p. 12, 9 jun. 2010.

9 TOLEDO, Paulo Edgar Nascimento de. *Cobrança do uso da água e pagamento de serviços ambientais*. São Paulo: Secretaria Municipal do Meio Ambiente, 2005. p. 11.

10 FENSTERSEIFER, Tiago. *Direitos fundamentais e proteção do ambiente*. Porto Alegre: Livraria do Advogado, 2008. p. 123.

11 FURLAN, Melissa. *Mudanças climáticas e valoração econômica da preservação do ambiente: pagamento por serviços ambientais e o princípio do protetor-recebedor*. Curitiba: Juruá, 2010. p. 213.

12 Ditto.

To demand that private people do that in attention to a constitutional duty of preserving the environment, as a mandatory obligation, without any economical compensation will not have – and will never have – any effectiveness, may that be economical or environmental results, since in addition to being unfair that is illegal. Man can neither be a slave to private people nor to the State. On the other hand, expropriation of these areas requires public investment and then hiring people to do what the proprietor is already doing, which is to keep, preserve, replace, etc. Prices for expropriating environmental zoning and its preservation by the State are always more expensive and impracticable.

Nevertheless, it seems that understanding the real juridical nature of this payment, the correct way of it to be materialized, as an effective instrument for environmental preservation, because of cultural, economical and ideological matters, is still embryonic, being restricted to voluntary actions that may or not be encouraged by Public Power.

Even national policy for environmental services, which certainly marks a new paradigm for environmental issues in Brazil, does not make that clear. Law project 5.487/09, authored by the Federal Executive Power, sent to the National Congress on June 5, 2009, is in practice recognition and valuation of environmental services, aiming at both Public Power and society to design strategies to preserve and recover the environment, being the latter recognized as a renderer of environmental services.

That will consist of a part of economical, productive, social, and cultural processes, and not only a simple raw material supplier and residue recipient.¹³ However, the funds to be raised will only have a compensatory nature for voluntary, altruistic, or idealistic actions of a few and chosen by the State's exclusive policy, what will not solve the universe of capitalist civil relations and the urgent need to preserve the environment.

Fensterseifer reckons that

it is a task upon the State, at the light of organizational and procedural perspective of fundamental right for the environment, to create institutions and adequate administrative and judicial procedures [...]. In the State of Social and Environmental Law, political decisions and actions are guided and determined from a constitutional filter of values and principles of ecological nature. However, so that such constitutional values be implemented, they should be transported from the cultural universe into the political and juridical space, carrying that responsibility of “transposing”.¹⁴

Effectively, ways of civil society participating and collaborating in preserving and protecting policies of the environment, in addition to being indispensable, once State's actions are not efficient without society's participation, they should be ruled on observance of law; however, juridical norms must be effective and efficient, something that has not been observed in matters of sustainable environmental occupation, neither have they been observed in a project that is now in transit in the National Congress.

Besides, it is necessary to recognize that there is no way the State could simply misappropriate all the areas that render environmental services that are indispensable to society and fully take over their propriety and ownership.

In practice, everything that belongs to the State culture becomes no one's and vigilance over these areas, as an effective power of watching over, preserving and conserving, is always infinitely more difficult, more expensive, exactly because no one feels responsible and motivated to do absolutely nothing, considering that an efficient environmental policy cannot do without altruism, idealism and voluntary actions alone.

The simple imposition of obligations and the wait for voluntary actions did not work in the Socialist State, but are efficient in the Capitalist State, when they are transformed into civil obligations monetarily paid for, economically viable, scientifically correct, and thus effective and efficient.

It is not about environmental services rendered by preserved nature, but about the need of human services, trying to recompose or keep nature in its original state or in its current state. Specifically, it is not just about assuring social function of property, but obliging owner or proprietor to render services to society without any remuneration.

Mere imposition of obligations and expectation for voluntary actions did not work well while they weren't transformed into civil obligations that were duly paid for, economically viable, scientifically correct, and in that manner, effective and efficient.

Social function of propriety is a reality in our juridical order. But that for itself does not assure guardianship of the environment in areas defined as environmental zoning, since there is no way how to oblige proprietors to render services to the society he belongs without any kind of payment.

In that sense, Rech and Altmann, referring to preservation of riparian vegetation claim that:

It is important to point out that it is not intended to pay to protect what by law, mandatorily, must be protected; but to pay so that private people be motivated to carry out an obligation of doing [...] according to legislation proprietor is obliged to preserve, but is not oblige to replace what has been deforested for centuries [...] neither is he obliged to do it at his own expenses, trying to preserve something that is of public interest. What is of public interest should be restored and preserved by Public Power and there is no way of obliging private people to do so.¹⁵

Antunes states that repairs are necessary in the simple institution of Units of Conservation or environmental zoning, without providing resources for maintenance, as well as the protection of the environment without taking protection of human life into consideration – life which traditionally is in its interior.¹⁷ So the obligation to conserve and preserve relies on the proprietor, without any compensation for that; this in reality has not taken place, even in face of existing inspection state structures, which have consumed enormous amounts of public money, without being very effective.

Stating that neither environment nor nature need to be paid for but to be preserved is correct since that is exactly

13 RECH, Adir Ubaldó; ALTMANN, Alexandre. *Pagamento por serviços ambientais*. Caxias do Sul: Educs, 2009. p. 81.

¹⁵ FENSTERSEIFER, op. cit., p. 76.

14 FENSTERSEIFER, op. cit., p. 123-124.

15 RECH, Adir Ubaldó; RECH, Adivandro. *Direito Urbanístico*. Caxias do Sul: Educs, 2010. p. 32.

what is regulated in our Social Environmental State. Nevertheless, because of this way of thinking, in addition to inefficiency of the norms and regulations, fortunes are spent in inspection, even without any guarantees of preservation.

In order to render environmental services, nature has to be preserved, which implies in valuating human action, and trying value human action, with the goal of assuring that nature will keep on offering man with its environmental services.

Therefore, we are not dealing with payment for environmental services rendered by nature, but with the need of valuing human action, trying to assure that nature keeps on disposing environmental services to man. The State prefers to call it as indemnificatory nature, without any concerns regarding effectiveness of environmental policies of sustainability in the future and the costs that this way of acting may cause to society.

There is no interest from the State and neither from the economical society that environmental services kept by human action be characterized as service rendering subject to civil liability or payment by force of a service rendering contract that is established, when that is nature or, in case of continued, permanent service rendered to one only juridical or physical person, with employment bonds, upon a working contract.

So that we can define a more efficient juridical nature and that it may effectively not only assure what is provided for in CF/88, that is, the right to an ecologically balanced environment or present and future generations, it is necessary to assure, in fact, that this takes place in a capitalist society.

Thus we cannot mistake environmental services rendered by nature itself with services rendered by man, to keep, maintain, restore and assure environmental potentialities of collective interest and indispensable to the rendering of environmental services, which assure life itself and human dignity.

In that sense, Aristotle says that nothing can come to be from what is not. Everything is in power in nature and man needs only to practice his actions to shape what already exists in power in nature.¹⁶

Aristotle already used to refer to the existence of goods and services potentially existing in nature, such as the air that we breathe, the water we need to drink, raw material we use in industries, etc., and that constitutes fundamental natural rights. However, to preserve and assure them, human actions are necessary and it is not enough that they be in power in nature, it enforces man to render certain services regarding keeping, preserving, conserving or using correctly.

We can verify, therefore, that environmental services have two distinct natures: the first one, theoretically available, does not need to be paid for, since it exists in power or has been given by God, which are environmental services provided by nature itself; the second one, comes from human work or actions. It is necessary to protect and watch over this existing potential, what imposes an obligation of doing things in a controlled way and being charged for by certain public or private institutions or by society, through State itself.

The Social and Environmental State, assured by our Constitution, undoubtedly, in face of the picture of environmental risks that compromise fundamental rights themselves and human dignity, should regulate and adjust economical activities according to their social sustainability and importance. This inversion in the value of services and goods rendered and produced by man is what needs to be acknowledged by the State and social sustainability.

In that sense, Sarlet claims that

the Social Environmental State of Law, far from being a “Minimal” State, is a State regulating economical activity, able to guide it and adjust it to constitutional values and principles, aiming at human and social development in a sustainable environmental way. The principle for sustainable development established art. 170 (clause VI) of CF/88, confronting with the right of private property and free initiative (*caput* and clause II of art. 170), can also help demystify the perspective of a liberal individualist capitalism in favor of its reading at the light of social and environmental constitutional values and principles.¹⁷

The State, therefore, in addition to being a regulator of economical activities, needs to fundamentally value which activities are essential to assure life in its most diverse forms and human dignity. Degradation of the environment generates degradation of life quality. In fact, we need to draw goods and services from nature; however, in a complete inversion of the real economical value of these goods and services, we ignore who renders them and who spends efforts so that they can keep on being rendered.

Environmental function of propriety authorizes restrictions and determines ways of human intervention and occupation in the property, with the purpose of avoiding environmental degradation.

Sarlet teaches us by saying:

As for the structuring of the capital system, that is, private property, interests of its owner should adjust to the interests of society and of the State, in the course of social and ecological functions that are inherent to it.¹⁸

Being private property the structuring stone of the capital system we undoubtedly are not adjusting interests of its owner to the interests and needs of society when we do not value environmental service rendering of certain properties and do not create compensatory and valuing instruments that motive and oblige proprietors to guard, take care of, preserve, and maintain natural environments that render essential environmental services to this very same society.

In fact as Pilati points out, “in the presence of inadequate juridical order, we are creating juridical blanks, socially irresponsible”.¹⁹ And the jurist concludes:

Post-industrial (privileging services and information) and financial (speculative) capitalism places propriety in a crises as a system and as juridical order: it loosens on the protection of proprietor merit, at the same time that it is connivent with unruly speculation and accumulation, and it offers false juridical safety to collective interests.²⁰

17 SARLET, Ingo Wolfgang. *Estado socioambiental e direitos fundamentais*. Porto Alegre: Livraria do Advogado, 2010. p. 22.

18 SARLET, op. cit., p. 22.

19 PILATI, José Isaac. *Propriedade e função social na pós-modernidade*. Rio de Janeiro: Lumen Juris, 2011, p. 40.

20 Ditto.

At the same time that we need to conciliate proprietor's interests with social interests, assuring both with legal safety in the name of a new paradigm for occupying sustainable social and environmental property, we need to change the capitalist culture that tends to always value more industrialized products and necessities and services that were created.

This inversion of the real economic value of goods and services has to be reviewed by society so that the paradigms of modern society can reflect post modernity. There is no way of talking about a Social Environmental State without inverting this logic and without establishing a new paradigm of what goods and services can be economically important for society.

Capitalist and individualist logic, which prefers having a dead bird in its hand to having thousands of them flying, is – in addition to being short-termism – not very intelligent because without preserving nature there is no guarantee of a sustainable future.

We are not taking an anthropocentric or bio-centric position, nor is it capitalist or socialist, but we are only seeking for fundamentals to define nature of environmental services as a form of guaranteeing that spaces defined as environmental zoning be effectively guarded for. and its importance as a new paradigm of preservation and conservation of the environment, especially environmental zoning.

These areas, exactly because of the protective legislation, stop having much economical significance and, for that reason, are abandoned by their proprietors or, when they are public property, become object of illegal occupation, because of the lack of inspection or of proper management.

Keeping the areas defined as environmental zoning with their proprietors and paying for environmental services is the least expensive and most effective way of offering guardianship to the environment.

4. Conclusion

Nature renders environmental services that are indispensable for the life of the planet. So that these services can be guaranteed it is necessary to preserve spaces that we call environmental zoning.

Environmental zoning is the foundation to be respected and to be considered when defining human occupation on the planet in a sustainable way.

And at last, preserving these spaces depends on human actions that should be acknowledged upon payment for environmental services.

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