

BETWEEN FUNDAMENTAL RIGHTS AND LEGAL SUSTAINABILITY: PROTECTING THE FUTURE AS AN INTERGENERATIONAL DUTY <https://doi.org/10.63330/aurumpub.015-002>**Igor Clem Souza Soares¹ and Thiago Maciel de Paiva Costa²****ABSTRACT**

This article analyzes the constitutional basis of the right to a future and its connection to the conduct of individuals within the Brazilian legal system. The investigation begins with the notion of the fundamentality of the right to a future, understood as a normative vector that ensures the protection of present and future generations from an intergenerational perspective. The article examines the factual basis and normative effectiveness of this right, highlighting its impact on private relationships and the necessary balance against other constitutional principles. The text argues that the binding of individuals to the right to a future is not limited to a negative duty of abstention, but includes a positive commitment to conform economic and social activity to parameters of legal sustainability. Thus, the right to a future is conceived as a constitutional clause of structural protection, capable of guiding legislative, judicial, and private practice, reaffirming the role of law as a guarantor of the continuity of a dignified life.

Keywords: Right to the future; Legal sustainability; Fundamental rights; Intergenerational effectiveness; Binding of private actors.

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INTRODUCTION

Sustainability has become a central theme both nationally and internationally, permeating political, social, and legal debates. Environmental issues, in particular, occupy a prominent position in legal discussions, especially when confronted with major economic interests. The 1988 Federal Constitution recognized sustainable development as a guiding principle of the economic order, and in this context, the right to a future emerges as its facet most directly linked to intergenerational protection, ensuring present and future generations the preservation of an ecologically balanced environment conducive to a dignified life.

Understanding the right to a future is essential for the proper interpretation and application of the normative statements that incorporate it, avoiding excesses or deficiencies. The precise identification and configuration of this norm are therefore of significant legal relevance, as they allow for the delimitation of responsibilities, obligations, and limits of public power and private initiative in the protection of natural and social heritage.

This work employs the deductive method to define, both connotatively and denotatively, the right to a future, systematizing its characterization and promoting a critical debate on this dimension of sustainable development. Without the intention of exhausting the topic, the study seeks to encourage new reflections on the legal protection of the future and deepen the understanding of the application of this fundamental right norm.

The first section of the article aims to identify the right to a future as a fundamental right, qualifying and delimiting its legal contours. Based on this qualification, the consequences of this classification are analyzed, as well as examples of normative statements that materialize such a right.

Next, the investigation focuses on the factual basis of the right to a future, exploring the elements that comprise its sphere of protection, what constitutes an intervention in this sphere, and how the constitutional legitimacy (or lack thereof) of such interventions influences the qualification of conduct as a restriction or violation of a fundamental right. At this point, a distinction is made between the “prima facie right” to a future and “definitive rights” to a future, offering examples of their practical application.

The third section of the study addresses the effectiveness of norms related to the right to a future, analyzing the possible emergence of fundamental legal relationships when the factual basis of this right is fulfilled. It discusses who may be subjects of these relationships—encompassing holders and recipients, natural and legal persons, and the “not yet born”—and how the constitutionalization of the right and the horizontal effectiveness of fundamental rights influence its interpretation and application. Finally, the right to a future is examined as a formal and purposive limit to normative production, both of state norms and private acts in the exercise of autonomy of will, consolidating its preventive and structuring function in the protection of intergenerational sustainability.



IDENTIFICATION OF THE RIGHT TO A FUTURE AS A FUNDAMENTAL RIGHT

To identify the “right to a future” as a fundamental right, it is first necessary to clarify what is meant by a fundamental right. Once this classification is established, it becomes essential to exemplify which deontic commands are expressed by the norms of fundamental rights that make direct reference to the right to a future. Fundamental rights can only be understood in accordance with the constitutional frameworks in which they are embedded (Sarlet, 2014, p. 53). In this vein, the inquiry into what constitutes a provision of fundamental rights will be based on the Constitution of the Federative Republic of Brazil of 1988.

Thus, we bring to the Brazilian context the question posed by Alexy (2008, p. 66): what makes a provision of the Brazilian Constitution a provision of fundamental rights?

Ingo Sarlet (2014, p. 11) argues that fundamental rights are characterized by combining formal and material fundamentality. The latter arises from the fact that fundamental rights contain essential decisions about the basic structure of the State and society; the former refers to specific qualities granted to them by the positive constitutional order.

The attributes listed by Sarlet (2014, pp. 67–68) — which must be present for a right to be formally fundamental — are: a) fundamental rights are part of the written Constitution and therefore possess supralegal hierarchy; b) the modification of these rights must respect both the formal (*lato sensu*) and material limits of constitutional reform; and c) fundamental rights are disseminated through norms that, in accordance with Article 5, §1 of the 1988 Federal Constitution (CF/88), immediately bind public and private entities.

At this point, it is necessary to understand the right to a future and verify whether the norms that mandate its realization conform to the above framework of a “fundamental rights provision.” The 1988 Constitution marked a period of Brazil’s redemocratization. Countless social demands were addressed and incorporated into the constitutional text; during this moment of strengthening social and environmental issues, the protection afforded to fundamental rights was substantially reinforced to also encompass diffuse and collective spaces.

It is important to emphasize that “positivization allows for the establishment of communal meanings within the Constitutional Text, which are transformed into internal elements and later (re)utilized within the legal system” (Almeida; Teixeira, 2017, p. 632). The inclusion of these normative statements regarding fundamental rights — although not always accompanied by material effectiveness — significantly impacted the scope of Environmental Law, particularly concerning sustainable development. This scenario is especially evident in the guarantee of an ecologically balanced environment, ensured for present and future generations, and in the defense of the environment as one of the guiding principles of Brazil’s economic order (Bölter; Derani, 2018, pp. 212–213).

The right to a future is one of the facets of sustainable development, as it simultaneously demands the fulfillment of current needs and — in doing so — ensures that future generations can also enjoy the environment in pursuit of their own goals (Principle 2 of the Stockholm Declaration). The right to a future must be viewed from the perspective that human action upon nature has the power to severely alter it, potentially leading to its complete destruction; likewise, humans have a normative duty to prevent such environmental degradation, since maintaining a healthy environment is a condition for the existence of both human and non-human life (Morais; Saraiva, 2018, pp. 15–16).

In this context, the right to a future can be understood as the prospective aspect — although it issues commands for the present — of the right to an ecologically balanced environment. That is to say, the right to a future — inherently transindividual in nature — mandates that both current and future generations deserve an environment capable of providing a healthy quality of life (for both human and non-human beings).

It is about instilling in dominant human thought the idea that humans are not separate from nature. All people — both those living today and those yet to be born — share in the damages and losses suffered by the environment. Humans must care for the Earth and live on it responsibly, for the life of this planet conditions our own and that of all other beings around us (Morin, 2015, pp. 103–105).

The recognition of an ecologically balanced environment as a fundamental right (although not expressly included within Title II) demonstrates that the Constitution assigns special value to the protection of this transindividual good. Moreover, the normative statement in the caput of Article 225 of the CF/88 reinforces the idea that individuals are, simultaneously: a) holders of the right to a balanced environment; and b) recipients of the fundamental duty to preserve it.

Before identifying the norms that convey provisions regarding the right to a future, it is necessary — even if in simplified form — to understand the concept of “norm” intended for use. A preliminary distinction is essential: a norm is not to be confused with a normative statement. “Norms are not texts nor their collection, but the meanings constructed from the systematic interpretation of normative texts” (Ávila, 2013, p. 33). Thus, a normative statement is the linguistic provision that, once interpreted, may result in legal norms³. Eros Grau (2018, pp. 39–41) explains that the text is the linguistic sign, while the norm is what is designated/revealed from this set of signs.

The text of Article 225 of the Constitution (normative statement) is the source of various norms involving the right to a future. When the signs therein state that everyone has the right to an ecologically

³ It is important to emphasize that the relationship between norms and normative statements is not necessarily one-to-one: there are norms that do not require specific provisions to grant them physical support; provisions from which legal norms do not immediately derive; provisions that result in more than one norm; and norms that result from the combination of more than one provision. (ÁVILA, 2013, pp. 33–38)



balanced environment — a common good and essential to a healthy quality of life — and impose on the Public Power and the community the duty to defend and preserve it for present and future generations, the interpretation of this object may give rise to numerous norms.

By way of example, and in alignment with Alexy's descriptions (2008, pp. 69–71), and respecting the purpose and limits of this work, we now proceed to reconstruct basic deontic statements from the aforementioned text.

The transcribed statement essentially determines that “the right to an ecologically balanced environment for present and future generations is guaranteed” — this statement will henceforth be referred to as [A].

The right to a future is expressly inscribed in the Constitution, but it is semantically and structurally open.

It is semantically open due to the constitutional indeterminacy of the concept of “ecologically balanced environment.” The norm in Article 3, items I and II, of Federal Law No. 6.938/81 helps mitigate this indeterminacy by clarifying that the environment is “the set of conditions, laws, influences, and interactions of a physical, chemical, and biological nature that permits, shelters, and governs life in all its forms,” and that environmental degradation is “the adverse alteration of the characteristics of the environment.”

Thus, by filling in the definition of an ecologically balanced environment with the dictates of the law, “the set of conditions, laws, influences, and interactions of a physical, chemical, and biological nature that permits, shelters, and governs life in all its forms will be ecologically balanced when there are no adverse alterations to its characteristics” — statement [B].

By combining statements [A] and [B], we can establish the following: “the right of present and future generations to the set of conditions, laws, influences, and interactions of a physical, chemical, and biological nature that permits, shelters, and governs life in all its forms, without any adverse alteration to its characteristics, is guaranteed” — statement [C].

This represents the most basic version of the legal norm that provides for the right to a future. It is necessary to determine whether this norm is indeed a norm of fundamental rights. For this analysis, it is essential to verify whether this norm conforms to the previously mentioned concepts of formal and material fundamentality.

The normative statement that provides textual support for the norm encompassing the right to a future is found in Article 225 of the Constitution, and therefore outside Title II of the CF/88. Hence, the formal fundamentality of the right to a future can only be understood through a norm reconstructed from Article 5, §2 of the constitutional text, whose meaning clarifies that the list of fundamental rights is not exhausted in Title II.

That is to say, the norm that stipulates the right to a future possesses all the attributes necessary for the characterization of formal fundamentality, as it is expressly part of the written Constitution, and its normative configuration is not subject to the discretion of ordinary legislators.

Regarding material fundamentality, it is imperative to assert that the right to a future, from the perspective of sustainable development — capable of ensuring enjoyment of the environment by future generations — is “a value inseparable from the very conception of the Brazilian State” (Coutinho; Morais, 2016, p. 192). In light of this, there is no doubt that it constitutes a crucial determination of the national legal order, with the capacity to be included within the material scope of fundamental rights.

Having established that statement [C] is a provision of fundamental rights (as it encompasses a legal norm of this nature), it is now necessary to address the structural indeterminacy it contains. For example, must the right to a future be realized through some positive state conduct, or does it require state abstentions? Can these actions and/or abstentions also be directed at private individuals?

The plain text of statement [C] is not sufficient in itself to answer the structural questions posed above. Although it contains a normative statement, its grammatical format does not immediately allow for answers to questions regarding the scope of application of the right to a future.

To answer these questions, it is necessary to interpret statement [C] and reconstruct legal norms from it. These norms, resulting from interpretation, may also be expressed in the form of direct normative statements containing deontic commands of permission, prohibition, order, etc. As examples of such responses, we formulate statements [D] and [E] below:

[D] All entities and individuals have the duty to preserve and protect, for present and future generations, the set of conditions, laws, influences, and interactions of a physical, chemical, and biological nature that permits, shelters, and governs life in all its forms, employing all legitimate means to prevent any adverse alteration to its characteristics;

[E] Any entity or individual has the right to defend against any adverse alteration that harms, for present and/or future generations, any of the characteristics of the set of conditions, laws, influences, and interactions of a physical, chemical, and biological nature that permits, shelters, and governs life in all its forms.

Statements [D] and [E] refine statement [C]. It has already been demonstrated that [C] encompasses a norm of fundamental rights. In turn, [D] and [E], by substantiating [C], maintain a foundational relationship with it. Thus, [C] functions as an established norm of fundamental rights, while [D] and [E] are treated as attributed norms of fundamental rights, as they can be correctly grounded in reference to fundamental rights (Alexy, 2008, pp. 72–74).



Having addressed these initial considerations and identified at least two deontic commands related to the right to a future, it is now necessary to examine the factual basis of this right and the legal consequences that may arise from improper interventions within the scope of protection of these norms.

THE FACTUAL BASIS OF THE RIGHT TO A FUTURE

For a norm to produce its legal consequences, all its conditions must be satisfied; the factual basis of a norm is, therefore, the set of conditions that, when fulfilled, authorize the realization of the norm's legal consequences (Alexy, 2008, p. 307).

Given the normative and structural configuration of fundamental rights provisions, the definition of the factual basis of these rights is carried out in a particular manner. Virgílio Afonso da Silva (2010, p. 74) indicates that four criteria must be observed in identifying the factual basis in such cases: a) what is protected; b) against what it is protected; c) the legal consequence that the fulfillment of the factual basis may trigger; and d) what is required for that consequence to also occur.

What is protected is referred to as the scope of protection of the fundamental right. However, to configure the factual basis, another element is essential: the intervention (generally, by the State). Both the scope of protection (what is protected) and the intervention (what it is protected against) form part of the factual basis of the fundamental right, since the legal consequence provided for in the norm will only occur if there is an intervention in this scope. Nevertheless, according to the theory adopted by Virgílio Afonso da Silva (2010, p. 76), these elements alone are insufficient for a complete definition of the factual basis; another component must be added: the (non)existence of constitutional justification for the intervention in the scope of protection.

Thus, in a logical formalization of the complete structure of the factual basis, we have:

$x (AP_x \wedge \neg FC(IE_x) \leftrightarrow OCJ_x)$. From this perspective, for the legal consequence (OCJ) of a fundamental rights norm to occur, the factual conduct/event x (action, state, and/or legal position) is inserted into an analysis that encompasses the scope of protection (AP), contrasted with the State intervention (IE), and subjected to the scrutiny of constitutional justification (FC). Once it is verified that the factual basis is the set of conditions that authorize the realization of a legal consequence, such consequence will not occur if the intervention in a fundamental right has constitutional justification, as this would constitute a legitimate restriction of the fundamental right, rather than an unconstitutional violation. Therefore, it is correct to define the factual basis of a fundamental right not merely as the sum of the scope of protection and the State intervention; it is also necessary to include the absence of constitutional justification (SILVA, 2010, pp. 74–75).

Broad theories of the factual basis include within the scope of protection of each fundamental right everything that may abstractly support its safeguarding. Likewise, the concept of intervention must be



viewed broadly, encompassing all interferences, restrictions, regulations, violations, etc., of actions and positions abstractly included in the scope of protection of a fundamental right (BOROWSKI, 2003, p. 187).

Considering these initial traits of the factual basis theory to be used in the analysis of the right to a future, it becomes evident that a distinction is adopted between “*prima facie* right” and “definitive right.”

The *prima facie* protection of a fundamental right encompasses any action, state, or legal position that contains some element which, abstractly considered, is part of the “thematic scope” of the respective fundamental right. It is important to emphasize, from the outset, that this overly broad concept is a distinctive feature of broad factual basis theories, since this *prima facie* right may still undergo (and likely will undergo) modifications — resulting from factual and legal interventions that are constitutionally justified — until it reaches the applicable status of a definitive right (Alexy, 2008, p. 322).

The thematic scope of the right to a future is conceived through the ecologically qualified environment (statement [C]). Thus, the *scope of protection* of this fundamental right consists of the entire set of actions, positions, states, relationships, and legal situations that, in some way, relate to the existence, creation, maintenance, restoration, promotion, or expansion of an ecologically balanced environment capable of providing a healthy quality of life (human and non-human) and meeting the needs of present and future generations.

It is important to note that, in line with what has been stated above, the scope of protection of the right to a future encompasses much more than just the natural elements of the environment (water, air, soil, flora, fauna, etc.); it also includes its artificial and cultural aspects. The environment must be understood from anthropocentric, biocentric, and ecocentric perspectives, representing an autonomous legal good whose protection is not limited to the direct interests of human life alone (Krell, 2013, p. 2062).

In turn, *interventions* in the right to a future may be understood as the set of actions (omissive or commissive), carried out by the State or private actors, that prevent, confront, hinder, empty, burden, or in any way harm the abstract and isolated breadth of the scope of protection of this fundamental right. That is, any activity that implies a reduction in the initially foreseen scope of protection of the fundamental right may be considered an intervention.

From this broad perspective, the scope of protection of the right to a future includes, for example, the complete preservation of the Amazon Rainforest, given the richness of its fauna and flora, whose protection is of great value so that future generations may enjoy the benefits arising from the maintenance of this healthy environmental *status*. Likewise, any activity, whether by the State or private actors, that in any way threatens the full preservation of the Amazon will be understood as an *intervention* (in the broad sense).

This intervention may be legitimate or illegitimate, depending on the (non)existence of constitutional justification. If there is constitutional justification for the intervention, it constitutes a constitutional restriction of a fundamental right. Conversely, if there is insufficient constitutional justification for the intervention, it constitutes a violation of a fundamental right.

In this latter situation (violation of a fundamental right), the legal consequences of the right will be enforced. As an example of an immediate consequence of the factual basis of the fundamental right to a future, we may cite the need to cease the constitutionally illegitimate intervention, along with the duty to restore the environmental damage caused, without prejudice to any civil, criminal, and administrative liabilities that may also apply to the case.

Broad factual basis theories are linked to the existence of a “relative” essential content of fundamental rights; this relativity of essential content rejects the existence of a “core” with fixed and predefined contours for each fundamental right. The definition of what is essential here depends on the submission of the case to the principle of proportionality: a situation, position, or legal relationship will only be considered essential according to the factual conditions and legal collisions of the various rights and interests weighed in the concrete case (Silva, 2010, pp. 51–55).

The legislator, in opting for legal reserve protection at the level of 80% of the property area, conducted an analysis of the collision of principles involved: on one side, the right to a future, with all the environmental preservation consequences associated with it; and on the other, the right to economic development, reinforced by the rights to individual freedom and property. It is important to note that sustainable development does not imply stagnation of the economic facet of development, but rather demands a balanced formula, simultaneously evaluating issues of social and environmental development (Pissaldo; Sanches, 2015, p. 110).

The legislative branch understood that: a) the imposition of an 80% legal reserve is an appropriate measure to promote sustainable development in these areas of essential natural diversity; b) this measure was necessary, as there was no less burdensome way to promote sustainable development — equally effective — respecting both principles; and c) the degree of satisfaction of the protected rights — in the realization of sustainable development — is greater than the degree of “non-realization” of the colliding rights. Based on these premises, it is evident that the infraconstitutional legislator considered this intervention to be proportional and, therefore, constitutionally legitimate, constituting a justified restriction of the fundamental right to a future.

This type of restriction (based on the principle of proportionality) performed an “alchemy” on the right to a future. The *prima facie* right of this norm (scope of protection) aimed to fully safeguard the forest areas mentioned. After the intervention, the resulting definitive right was the protection — through



legal reserve — of part of the initial claim, reducing it by 20%. Therefore, the factual basis of the right to a future was not fulfilled in this case.

However, if the situation were different (e.g., a federal law protecting only 3% of the property area as legal reserve), this would constitute a violation of the fundamental right to a future, because the environment would not be sufficiently protected for future generations (perhaps not even for the present ones). In this case, the factual basis of the right would be fulfilled, and the appropriate consequences could be imposed to cease this violation of fundamental rights.

Based on this broad factual basis framework, several considerations can be listed: a) the norm that mandates the protection of a healthy environment for present and future generations has the nature of a principle, as it requires that a goal be achieved/maintained; b) the achievement/maintenance of the ideal state of affairs determined by the norm depends on the concrete situation in which the norm is applied, as factual and legal circumstances may limit the incidence of the principle of the right to a future; c) given that every right has an essential content that cannot be emptied — although this core is identified in each concrete case through verification of the limits to the norm — the circumstances that contrast with the scope of protection of the right to a future cannot completely prevent the production of effects of this principle; and d) if the interventions made in the right to a future lack proper constitutional justification, this constitutes violations of fundamental rights, configuring a sufficient situation to trigger the factual basis of this norm, which will result in the implementation of actions capable of ceasing such intervention.

Having established these premises, it is necessary to observe, from this point forward, how the “principle of the right to a future” may influence legal relationships between private individuals.

EFFECTIVENESS OF THE RIGHT TO A FUTURE

In contemporary legal theory, fundamental rights are recognized as having both subjective and objective dimensions, representing “value-laden decisions of a legal-objective nature within the Constitution, which project themselves throughout the entire legal system” (Sarlet, 2013, p. 180). That is, fundamental rights possess a subjective dimension and an objective one; the latter denotes a radiating effectiveness of fundamental rights, in the sense that they serve as guiding principles and basic values for the interpretation and application of infra-constitutional norms (Silva, 2011, pp. 47–48).

If fundamental rights can be understood as subjective rights, it is necessary to identify who their holders (titulares) are and against whom these rights may be exercised (destinatários). In this subjective function of fundamental rights, the holder is the active subject of the legal relationship; the recipient is the passive subject of this legal relationship, that is, the one against whom respect, protection, or promotion of a right is demanded (Sarlet, 2013, p. 183).



By the very structure of the legal relationship of fundamental rights, holders exercise this active role in relation to some rights, while occupying the passive role — as recipients — in relation to others. In other words, the existence of a fundamental right often corresponds to a fundamental duty.

Therefore, to identify who is the holder and who is the recipient of a fundamental right, it is necessary to analyze each right specifically. This analysis of the right to a future will be conducted using the legal position expressed in statement [E] — previously presented — and focusing, in particular, on its aspect as a defensive right.

This deontic statement initially provides that “any entity or person has the right to defense.” The conception of a fundamental right as a defensive right means that it can be invoked against illegitimate interventions perpetrated by public authorities (Bonavides, 2003, pp. 562–564). Likewise, this defensive characteristic enables the assertion of claims for abstention, annulment, and/or revocation to be used by the holder of these rights or by those with the capacity to represent or substitute them.

The exercise of the defensive right becomes actionable when an undue intervention occurs in the legal protection sphere of the fundamental right holder. The active subject holds positions, states, situations, and legal relationships of advantage — whether personal, collective, or diffuse — that cannot be infringed upon without triggering the consequences contained in the factual basis of the right.

Any person, natural or legal (including public entities) — as well as certain unincorporated entities — may be related to the right to a future, either as a holder or as a recipient. This right safeguards the maintenance of a balanced and healthy environment for present and future generations. That is, everyone has the right to enjoy a healthy environment, while also bearing the duty to preserve it for future generations. This does not disregard the need for economic, technological, and scientific development of peoples and nations, but it asserts that no development is legitimate unless it is sustainable (Morin, 2015, pp. 129–140).

The consolidation of these environmental rights and interests, of a diffuse nature, in postmodern society reinforces the understanding that solidarity, in addition to being accepted as a principle, must be understood as a value that guides the law, recognizing that human dignity is the means of preserving life and liberty with equality (Cardoso, 2012, p. 14).

Likewise, as affirmed by the Federal Supreme Court (STF) in the judgment of Writ of Mandamus (MS) No. 22.164-0/SP, this diffuse right may be enjoyed by the entire human group, regardless of gender, age, nationality, citizenship, etc.; it is a right grounded in fraternity and solidarity, whose thematic scope transcends the individual sphere.

Legal entities may be holders of certain fundamental rights. In the context of the right to a future, it is essential to emphasize that the State is one of the holders of this right, given its immediate legal interest in maintaining a healthy environment, since only with this environmental balance can it



satisfactorily fulfill its purposes. Furthermore, private legal entities may also — in certain cases — hold these rights, because the Constitution guarantees them the exercise of economic activity, but conditions this enterprise on sustainable development. Once it is established that the right to a future is one of the facets of sustainability, companies may also occupy the active role in these fundamental legal relationships.

A central question is whether “future generations” can be included in the concept of holders of these fundamental rights. These generations consist of people who have not yet been born, so it is necessary to determine at what point a natural person acquires the capacity to be part of a legal relationship or to hold a legal status.

Traditionally, a person is understood as “a physical or collective entity capable of holding rights and obligations, being synonymous with a legal subject” (Diniz, 2009, p. 518). Every person, natural or legal, is endowed with legal personality and, consequently, will have the capacity to participate in legal relationships according to the capacity granted by the legal system. Thus, for a natural person to participate in legal relationships, they must possess legal personality (Diniz, 2009, pp. 519–524). Therefore, determining whether future generations hold the right to a future necessarily involves analyzing the moment at which legal personality is acquired.

Although the issue of the beginning of personality is directly linked to fundamental rights — especially those immediately related to the condition of being human — the 1988 Federal Constitution does not contain an express provision on this matter. The normative act that addresses the issue is the Civil Code, which provides in Article 2 that “civil personality begins at birth with life; but the law safeguards, from conception, the rights of the unborn.” The interpretation of this article is the subject of doctrinal divergence.

According to natalist theories, personality begins at birth with life; for adherents of this theory, before birth with life, the unborn has no legal personality. In contrast, for those who adhere to conceptionist theories, personality begins at conception (Nader, 2014, pp. 270–271). Distinct from these two theories, Maria Helena Diniz (2009, p. 524) argues that the unborn (intrauterine life) and the embryo conceived in vitro (extrauterine life) possess *formal legal personality* with respect to personality rights; they acquire *material legal personality* after birth, when they begin to hold patrimonial and obligational rights.

Thus, having personality depends on the legal fact of “being born alive” or “being conceived,” depending on the theory adopted. Accordingly, understanding the holder status of the right to a future involves integrating this fundamental rights norm with the theories of the beginning of personality.

If a pure natalist theory is adopted, only living persons are holders of fundamental rights; thus, the preservation of the environment for future generations would merely be characterized as a fundamental



duty of the current generation. In this view, with respect to future generations specifically, there would be no qualified (or even qualifiable) natural persons as holders of this right — only recipients of this fundamental constitutional decision.

However, if a conceptionist theory is adopted, the unborn may be understood as holders of the “right to a future,” since they possess personality and, therefore, may occupy the active role in legal relationships, especially those involving fundamental rights. From this perspective, the current generation would continue to be the recipient of the fundamental duty to preserve the environment for future generations, but qualified holders of this fundamental rights provision would already be foreseeable.

Nevertheless, under both theoretical approaches, those who have not yet been conceived lack personality and, therefore, the capacity to be holders of rights. That is, someone who will be born fifty years from now can certainly be included in the context of the “future generation” of the fundamental rights norm; however, this person yet to come cannot, under any conception, be understood as a holder of this fundamental right.

Thus, these future generations can only be apprehended as “potential legal subjects”; however, the present generation has the duty to ensure that future generations are able to enjoy a balanced environment and make decisions in a context of freedom of choice. This fundamental duty is based on an ethical question of responsibility, which mandates the safeguarding of conditions for a future human life in dignity, prohibiting irreversible changes to the ecosystem and the depletion or unavailability of essential natural resources (Krell, 2013, p. 2064).

Having completed this analysis of the holder status of the defensive right represented in statement [E], we now proceed to a more in-depth examination of who is the recipient of this norm.

RECIPIENT OF THE FUNDAMENTAL RIGHT

The traditional recipient of fundamental rights is the public authority. However, the phenomenon of the constitutionalization of law — particularly through its aspect of “reinterpreting the law” — has significantly altered this landscape. The consequences of this new legal perspective include the recognition of the direct horizontal effectiveness of fundamental rights in private relationships (Souza Neto; Sarmiento, 2014, p. 43).

Thus, both public authorities and private individuals are recipients of the fundamental duty to protect and ensure a healthy and ecologically balanced environment for present and future generations, since solidarity is also a matter of social responsibility aimed at establishing a just order (Cardoso, 2012, p. 21).

Being a recipient of this fundamental duty imposes a series of material and procedural constraints on the passive subject (State or private entity) to ensure that their actions conform to the right to a future.



These constraints are present in numerous activities of the subject. The following analysis explores how these parameters influence the creation of legal norms by the recipients of this duty.

The validity of a legal norm can be assessed as a matter of one norm being immunized by another. That is, a legal norm will be considered valid, from a pragmatic standpoint, if it complies both procedurally and teleologically with the superior norm(s) — the immunizing norm(s) (Ferraz Junior, 2018, pp. 190–196).

In this context, the process of creating a legal norm must be observed under these premises. Therefore, for a legal norm to be valid, it must respect procedural limits (conditional conformity) and aim to achieve the goals intended by the norms that form part of its immunization relationship (teleological conformity).

Public authorities are bound by fundamental rights, especially by the constitutional clause of the Democratic Rule of Law. Thus, the State's process of norm creation must always be guided by fundamental rights, since the Constitution regulates both the procedure for forming normative acts and the material limits of their content (Streck, 2018, pp. 109–110). This binding of norms to fundamental rights is guaranteed by constitutional jurisdiction, understood as the interpretation and application — direct or indirect — of the Constitution by judicial authorities (Barroso, 2016, pp. 232–233).

Until now, it has been emphasized that the creation of norms must be subject to the formal and teleological content of fundamental rights. However, it is important to remember that norms are not created solely by public authorities: there are also private contractual sources of legal norms. Acts of exercising autonomy of will can create binding legal norms for those participating in the agreement (Ferraz Junior, 2018, p. 257). This creation of norms is not exempt from respecting fundamental rights; due to the horizontal effectiveness of these rights, the process of creating private norms is subject to the parameters of the Constitution.

Following this line of reasoning, two individuals may enter into a contract (a private source of legal norms) that creates binding norms between the parties. The validity of these norms depends — among other factors — on compliance with the imperatives arising from the norms related to the right to a future.

Consider the situation in which a farm owner enters into a rural lease agreement with a company that wishes to plant soybeans on the land. In the negotiated agreement, the parties stipulate that the lessee may use any means deemed appropriate for the cultivation and maintenance of the crop. The lessee begins using pesticides in large quantities; although the agricultural chemicals used are permitted by law and by the contract, they are extremely harmful to human and non-human life. A brief analysis of this proposed case follows.



The contract in question is a private source of legal norms for the parties, based on the fundamental right of autonomy of will. Despite being grounded in a constitutional principle, the actions of the parties may be configured as an intervention in the scope of protection of the aspect of the right to a future provided in statement [E]. Understood as a defensive right, it is necessary to determine whether the conduct described above constitutes a restriction or violation of this constitutional right. This final assessment involves examining the (il)legitimacy of the private legal norm, to be conducted through weighing the concrete weight of each of the colliding principles.

It should be emphasized that the social and solidarity function of the company requires not only compliance with legal commands and consideration for the community as a whole, but also collaboration in the sustainable development of society. The company is socially responsible for adopting practices that contribute to improving the quality of life in the community in which it operates (Santiago; Medeiros, 2017, pp. 114–117).

If it is understood that, in the concrete situation, the weight of individual freedom to contract is greater than the need to safeguard a healthy and ecologically balanced environment for future generations, then we are faced with a constitutionally legitimate restriction, representing a typical clash of fundamental rights. Thus, the private norm would not have violated the right to a future and would remain as the result of the balancing of colliding principles.

Conversely, if it is understood that the concrete weight of the principles related to the right to a future is greater, and that economic development must necessarily be sustainable, then we are facing a violation of a constitutional provision. From the perspective of the defensive right in this legal situation, it would be possible for the Union, for example — acting as a holder of the right to a future — to file a lawsuit to halt the environmental damage and demand the restoration of the degraded environment, in addition to any civil liability arising from these acts.

In this context, it becomes clear that the norms that provide for the right to a future possess effectiveness — understood as the capacity of a norm to produce its effects (Ferraz Junior, 2018, pp. 207–213) — in relation to acts of both public authorities and private individuals, due to the horizontal application of fundamental rights norms. The intensity with which this fundamental right affects legal transactions depends almost entirely on the specific circumstances of the concrete case.

Despite this dependency, it must be established that the execution of legal acts, even private ones, is bound to comply with the norms governing the right to a future. However, it is essential to emphasize that, to avoid excesses or deficiencies in the application of these norms, the correct procedure for verifying the factual basis of the right to a future must be carried out, with a broad analysis of the scope of incidence and the intervention, subjecting the latter to the test of constitutional legitimacy to confer validity on the legal act. That is, there is horizontal effectiveness of the norms concerning the right to a



future, but this does not dispense with the proper distinction between *prima facie* right and definitive right.

RIGHT TO A FUTURE AND LEGAL SUSTAINABILITY

The right to a future, understood as a fundamental right, emerges as an essential vector of legal sustainability, requiring the legal system to self-regulate in the face of environmental, social, and economic degradation risks. This right is not confined to the individual sphere but projects its effectiveness over the entire collectivity, linking the present to future generations and imposing a preventive and strategic vision on both public and private actions.

The notion of legal sustainability, in this context, goes beyond the mere formal maintenance of norms, consolidating itself as a normative capacity to ensure dignified and equitable living conditions for all — present and future (Sarlet, 2014).

As Sarlet (2014, p. 180) emphasizes, “fundamental rights radiate effectiveness throughout the system, projecting values and guidelines that shape the interpretation and application of law.” This radiating effect of values reveals that legal sustainability is not limited to the observance of rigid rules, but demands normative instruments capable of preventing irreversible damage to the environment and society, thereby guaranteeing intergenerational justice.

In this sense, the protection of the future is inseparable from the recognition that legal and political decisions made today directly shape the horizon of possibilities for future generations.

An ethical and ecological perspective is also fundamental to understanding the right to a future. Morin (2015, p. 105) observes that “its life conditions ours,” reinforcing that humanity bears an intrinsic responsibility for the preservation of the planet. This principle of responsibility is central to legal sustainability, indicating that the law cannot exempt itself from protecting the future, binding both public authorities and private actors. Thus, legal normativity must incorporate criteria of environmental and social sustainability, aligning contractual freedom, the social function of the company, and the preservation of natural resources in a balanced manner (Santiago; Medeiros, 2017).

Moreover, legal sustainability implies rethinking the role of the State and the judicial system. It involves conceiving the legal order as a dynamic, preventive, and adaptive structure, capable of dealing with contemporary uncertainties and risks. Recent environmental jurisprudence has demonstrated this function by recognizing the need to protect diffuse and collective rights, ensuring the effectiveness of norms in accordance with the right to a future. In this framework, civil, environmental, and social liability ceases to be merely corrective and begins to play a preventive role, consolidating the integration between law, ethics, and sustainability (Sarlet, 2014; Santiago; Medeiros, 2017).



Therefore, legal sustainability is configured as a normative paradigm capable of consolidating the binding nature of both public and private conduct to the right to a future. It is not merely about avoiding violations, but about promoting the construction of stable and coherent conditions for the preservation of life, biodiversity, and social, economic, and cultural relations. This approach reaffirms the need to rethink legal interpretation from the perspective of intergenerational responsibility, integrating environmental protection, social justice, and economic efficiency into a holistic vision of legal governance (Morin, 2015).

In summary, the right to a future acts as a structuring axis of legal sustainability, guiding normative production and the application of laws so that the interests of future generations are incorporated into present-day decisions. Legal sustainability, by becoming a guiding principle of law, ensures that the normative order not only regulates behavior but also promotes effective conditions for dignified life, environmental balance, and social equity, making the legal system an active instrument of intergenerational protection.

FINAL CONSIDERATIONS

The 1988 Federal Constitution expanded the scope of fundamental rights and sought to ensure the effectiveness of norms that establish the purposes pursued by the constituent power. Environmental Law has been strongly influenced by the constitutionalization of law: environmental norms were incorporated into the constitutional text, and the protection of the environment was elevated to the status of a legal-objective value within the constitutional order.

This prominent position granted to environmental norms, combined with the growing societal appreciation for diffuse rights and interests, has led to the rise of sustainability as one of the pillars of environmental protection. Within this framework of ensuring sustainable development, the concept of the “right to a future” emerges, mandating the preservation of a healthy and ecologically balanced environment for both present and future generations.

The right to a future thus stands out as a fundamental right that expresses various deontic commands aimed at environmental protection. This constitutional norm safeguards life in all its forms and ensures that future generations will have conscious access to preserved essential environmental resources, allowing them to enjoy the benefits derived from such preservation.

The thematic scope of this right is occupied by the promotion and, once achieved, the maintenance of an ideal state of affairs. It seeks to guarantee the existence of a healthy environment for current generations, while also requiring that economic, technological, and scientific development be conducted in a sustainable manner. Sustainability is the indispensable element of this diffuse right.



Any intervention that is not constitutionally justified within the scope of protection of the right to a future may trigger the legal consequences contained in the factual basis of these norms. Among these consequences are the cessation of the intervention, environmental restoration, and the imposition of liability on those responsible for degradation.

Given the constitutionalization of this right, it gives rise to subjective legal positions that its holders may invoke — including through judicial means — to assert claims for the protection of a healthy environment. Furthermore, due to its objective dimension, the right to a future serves as a guiding principle for the interpretation and application of other norms, demonstrating its radiating effectiveness within the legal system.

Another significant consequence of the constitutionalization of law is the recognition that even private legal arrangements must respect constitutional norms. Thus, the right to a future has the power to shape legal norms, even those arising from private contractual acts, by ensuring that no undue interventions occur within its protective framework.

It is essential that the application of the right to a future be preceded by its correct interpretation, as an excessive application of this norm may unjustifiably hinder economic development, while an insufficient application may allow irreversible environmental damage, depriving future generations of the enjoyment of a healthy quality of life.

It must be emphasized that the right to a future is an ally of progress, for only through sustainable development — capable of ensuring the continued existence of natural resources, abundant fauna and flora — will humanity be able to thrive in a symbiotic relationship with the environment that surrounds and sustains all its aspirations and dreams.

Having examined these characteristics of the right to a future, it is clear that it constitutes a fundamental right, possessing all the formal and material qualities of norms of this nature. Moreover, given the horizontal effectiveness of fundamental norms, it can be applied to private relationships to support a variety of legal claims.



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