

THE RIGHT TO COMPETENCE IN THE DEMOCRACY AND SUSTAINABILITY RELATION

O DIREITO À COMPETÊNCIA NA RELAÇÃO DEMOCRACIA E SUSTENTABILIDADE

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ABSTRACT: This article deals with the relation between democracy and sustainability in the context of an ultra-complex global society in which environmental problems are placed and, on the other hand, there is a political weakness (incompetence) to confront them. In this investigation, an approach is made about the complexities of environmental decisions in the face of a democratic crisis, as seen in recent events in some countries. It is questioned to what extent "Sustainability" and "Democracy" can converge in the political sphere, especially through the feasibility of the delivery of sustainable results in terms of sustainable development, through the competent political exercise in the political decision making of a deliberative body. It is concluded that the convergence between Sustainability and Democracy will not occur in a scenario of incompetence in decision making, although the Right to Competence is a normative element able to offer a solution to this problem. The methodology is theoretical, in order to use the dialectical method, referent techniques, documentary and bibliographic research.

Keywords: Sustainability; Democracy; Right to Competence.

RESUMO: No presente artigo trata-se da relação entre democracia e sustentabilidade no contexto de uma sociedade global ultracomplexa em que os problemas ambientais estão postos, por outro lado, há uma debilidade política (incompetência) para enfrentá-los. Nesta investigação realiza-se uma abordagem acerca das complexidades das decisões ambientais frente a uma crise democrática instalada, vide os eventos recentes em alguns países. Questiona-se em que medida a "Sustentabilidade" e a "Democracia" podem convergir na esfera política, especialmente mediante

a viabilidade da entrega de resultados sustentáveis em termos de desenvolvimento sustentável, mediante o exercício político competente na tomada de decisão política de um corpo deliberativo. Conclui-se que a convergência entre Sustentabilidade e Democracia não ocorrerá em um cenário de incompetência para a tomada das decisões, embora, o Direito à Competência, seja um elemento normativo capaz para oferecer solução para este problema. A metodologia é teórica, de forma a utilizar o método dialético, as técnicas do referente, da pesquisa documental e bibliográfica.

Palavras-chave: Sustentabilidade; Democracia; Direito à Competência

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INTRODUCTION

The themes of democracy and sustainability have in common the complexity of conception, conceptualization and perception. These prerogatives permeate the two institutes, as the tension between political decision-making, governance practices and public policy for sustainability had been observed since the early days of the environmental movement in the middle of the last century.

Aware that tension continues to worsen and the impoverishment of the scenario for sustainability, the challenge of the present is constituted by the degree of complexity, sophistication and refined justification of the established power to camouflage the levels of sustainable development, the alarming planetary situation. For example, China is currently the world champion of climate change mitigation actions, however, according to Anita Engels, 'this Chinese movement is not the result of a sustainable political proposition, but rather a proposal of identity as a 'player' "In the world leadership, that is, China uses the advertising of the theme of sustainability to make propaganda of itself, facing its competitors in leading to a leading country position' (ENGELS, 2018, p. 6).

As a rule of law policy, democracy, taken in a broad sense in both a procedural and substantive bias, consists of a system of govern and essential governance for the achievement of the ends of the State backed by Human Rights and the Right to Sustainability. In the process of decision-making, regulation and implementation of public policies for sustainable development, however, there is widespread incompetence in sustainability, blatantly justified in the complexity involved in environmental decisions. It is possible to affirm that the exercise of democracy in the context of a modern (or even postmodern) State of Law has reached a critical and questionable point regarding its authority to manage on sustainability¹.

It is a fact - widely portrayed by scientists from all areas and specialized literature, including environmental law - that we know the environmental problem and we already have well-balanced solutions for them, however, what would be the point to effectively see the sustainability implemented as a result sustainable development, the answer is: Policy; The political exercise, regardless of the form, traces its strategies in the opposite direction to the sustainability and the sustainable development.

1 See: US President Donald Trump does not believe in his own government's report that warns of the impacts of climate change (https://brasil.elpais.com/brasil/2018/11/27/internacional/1543283242_634443.html)

From this approach and to understand the complexity of environmental decisions are considered characteristics that shape the decision making in environmental matters. For example, future reflections on the long-term effects of sustainability decisions will be noted; the invisible successes of the good results of the environmental decisions that often go unnoticed by the population; the need to endure an immediate sacrifice, including economic and freedom; the transformative impact on the lifestyle, with a significant cultural impact to the point of producing transformations in the identity of people, that is, how they are seen and how they would like to be seen from what is consumed or produced.

Another characteristic to be pointed out is the repercussion of environmental decisions before the diverse and powerful interests of an irresponsible capitalism, in which the maximization of the immediate profit of a company is the only significant purpose that it must pursue as a policy of its institutional design. Another peculiarity of environmental decisions is their obedience to complex issues. Environmental decisions are shaped by values of scientific technical knowledge, in which not all people have critical legitimacy to infer what it represents.

From these properties that focus on environmental decisions the result it an intentional lack of political interest on the subject, a reflection, perhaps, of the very machinery driven by a democratic system of governance, in which the desire of certain groups is to conserve power, the vast majority of citizens are not sensitized to the environmental problem, therefore, not demanding any exigencies from their governments on the issue. The population does not value the existence of environmental commitments, for example, present in the programs of governments of certain candidates in an election. Democracy fails with sustainability.

And it fails, because it is standardized in an old social model, of a society in the entrance portico of modernity in which sustainability was not a problem, so that, in an inconsistent way, there is a call for an improvement of democracy as a system of government, so that it does not run the risk of deterioration or elimination.

Due to incompetent democratic execution, the question arises: is the democratic system fit or not for the implementation of sustainable development? The answer to this article is negative, however, there are outputs that will be addressed and can be adopted.

One of the hypothesis of feasibility of the exercise of democracy for the purposes of sustainability is the institution of innovations in the democratic system aiming at sophistication. This paper will present three opportunities for improvement so that the democratic system becomes more competent to execute sustainability: (1) the right to vote in the electoral process must be exercised by the people, however, under criteria that foster a more rational participation and less emotional; (2) in ultra-complex subjects, such as the environmental theme, the democratic system should be oriented so that authorities in scientific technical knowledge in the environment have a decisive and binding participation (plebiscite and referendum of specialists); (3) sustainability as a political value based on the right to competence.

This opportunity for improvement for the democratic system is oriented towards the proposal of a competent democracy breaking the stereotyped idea, in the face of a historical moment, that representative democracy would be for all. The fact that it is for all does not mean the absence of limits and relativisms, given the scope of a complex social disruption and averse to the tendency prognostics in modern society in transition to a postmodernity.

For this investigation the dialectical method is used, mainly in the reference of searches in articles and books. In the development of the article, the documental and bibliographic research procedures linked to the study object are used.

1 PROBLEMATIC FACTORS OF SUSTAINABILITY

In this chapter, present problematic sustainability factors will be presented, considered as elements of a human relations architecture that is currently fragile or under attack. It is a

presupposition of this work, the occurrence of a political perception that some actions are essential in the global community, regarding the coexistence between individuals, considering the fight against concentration of wealth, the extinction of hunger, the extinction of any type of cruelty against anyone, the ultimate solution to climate change, and the implementation of a truly sustainable development.

Means to deal with these problems are placed, for example, in the definition of a global agenda for political action, in this case the Sustainable Development Goals – SDG²; or as Paulo Ferreira da Cunha discusses, on global constitutionalism "development of a theoretical and scientific perception of constitutional globalism from a natural chain of fundamental rights and human rights forming a global system of rights and values" (CUNHA, 2010, p. 246) strongly widespread in Western global culture.

However, although initiatives such as these are possible solutions, there is a concrete and legitimate political scenario with a clear intention to limit and prevent these problems from being solved. A crystalline example, according to HAVERCOFT *et. Al.* is the announcement made by President Donald Trump informing about the withdrawal of the United States of America from the Paris Agreement putting the future of his country and the world at risk, even though US states, cities and companies have reaffirmed the terms of (HAVERCROFT *et al.*, 2018: 2), on the same path, Donald Trump, as President of the United States, refuted a report of his own 1656-page by three hundred (300) scientists and thirteen (13) federal agencies of the American government - that made him known about the devastating effects of climate change on the economy, the environment and health, with the justification of "I do not believe it"³.

It is undeniable that a political leadership is under way that seriously undermines the maintenance of planetary ecosystems, alongside current robust scientific evidence - see, for example, the IPCC report on global warming risk of 1.5 - which has been developed for more than fifty (50) years, although at the time with little public repercussion, but widely known and disseminated in the scientific community, in this case, the first report to the Club of Rome, carried out by a team of the Massachusetts Institute of Technology (MIT), entitled "The Limits of Growth" which already warned about the problems of environmental degradation (TURNER, 2008).

With this unsustainable scenario, the economic system (supported by political connivance) is still afraid and timid in its decision to change the perspective of the deterioration of the environment in the face of the impressive increase in the demands for natural resources in the last decades. Nevertheless, some paths can be traversed. Ramón Martín Mateo says that 'if there are no changes in the rules of the economic system from two dimensions - Social Organization and Scientific Innovation - the predictable unfolding is catastrophic' (MATEO, 2017, p. 23).

In summary, as a presupposition of this work, technical scientific innovation exists to adjust this framework of environmental degradation. What is needed is a change in social organization, that is, politics, understood as democracy, we must innovate to be able to make environmental policy decisions are implemented and we can reverse this trend to an environmental catastrophe.

1.1 The Complexity of Environmental Decisions

In addition to these few but representative examples, we have enough information and knowledge to conclude that it is known perfectly well the causes of environmental degradation and, consequently, the solutions that we should adopt. The problem is the necessary articulation through political decisions. It should be noted that there are initiatives, such as those of the United Nations, through the United Nations Development Program (UNDP), which promotes the Sustainable Development Goals (SDG) and structures them in seventeen (17) the environmental,

2 See it on: <https://sustainabledevelopment.un.org/?menu=1300>

3 Available at: https://brasil.elpais.com/brasil/2018/11/27/internacional/1543283242_634443.html

the social, the economic and the institutional. In the institutional dimension, SDGs sixteen (16) and seventeen (17) constitute a clear call for political responsibility for solving environmental problems, such as tackling global warming. However, in spite of this, it must be asked, so why does the course that leads us to a catastrophic collapse is not corrected? Why the necessary decisions are not made? No doubt one of the factors is the complexity of environmental decisions. They are complex because of some characteristics.

1.1.1 Future Effects

The result of environmental decisions does not produce results in the short run, at least in those with global impact. If today we began to devote efforts and resources to removing plastic that threatens global ecosystems, we should certainly consider many years, perhaps centuries, to make this possible. Just to highlight the term "microplastic" that illustrates the small fragments of plastics converted into one of the main threats to the environment by impacting the sands of the beaches and contaminating the water we drink, the sea salt we eat and the affected animal organisms, was considered the word of the year by Fundéu BBVA (Foundation of Urgent Spanish)⁴ for being one of the great environmental problems currently faced by humanity. Also, since the Montreal Protocol (1987)⁵ a ban on the manufacture and use of chlorofluorocarbons (CFCs) that caused the hole in the ozone layer over Antarctica in the atmosphere has been established and generates several harmful effects of various genetic alterations, skin cancers, global warming and climate change instability. The complete ban on the use of CFC has virtually eliminated this compound and protected the ozone layer. The problem is that this gas takes approximately twenty (20) years to make the journey between the surface of the earth and the atmospheric limits, so that the effects take time to produce. In the 2000s some years after the ban, the ozone hole reached its maximum extent (approximately the territory of South America or thirty-five (35) percent of Antarctic territory)⁶. Currently, the ozone layer can be considered reclaimed, however, it has taken thirty (30) years for this result to be possible, so some experts believe that only in two thousand and seventy (2070) will we have completely recovered the ozone layer.

Environmental decisions have systemic effects, characterized by not being punctual and short-term. They employ long-term effects and are often not even clear and objective. They carry a complexity because they break with reductionism, mechanicism and classical determinism. For environmental decision-making it is necessary to move linear thinking away from simplistic solutions of cause and effect by seeking a belief that everything unfolds in a given sequence of phases (SANTOS, 2002).

1.1.2 Invisible success

In addition to the late result, in light of future effects of environmental decisions, these results can also go unnoticed by society. At the local level, actions to protect the environment and reduce contamination are perfectly visible to affected citizens. The cleaning of a river and the management of waste, for example on the River Thames in the city of London and the surrounding area, made it possible to return to fishing where polluted and contaminated water once existed. Likewise, measures to reduce traffic in the centre of cities make air quality improve rapidly and ostensibly. However, on a global scale, which is where the future of humanity is being played, the results are not as obvious as in the aforementioned ozone layer in which the few inhabitants of the southern zone of Chile and Argentina may have perceived the decrease in the production of mutation in some plant species and that has reduced the incidence of skin cancer, however, for the

4 Available at: <https://www.fundeu.es/recomendacion/microplastico-palabra-del-ano-2018/>

5 Available at: <https://ozone.unep.org/index.php>

6 Available at: <https://www.bbc.com/portuguese/geral-45558884>

immense majority of the inhabitants of the planet, nothing has changed. If today we were to allocate, as we should, and following the recommendations of the IPCC experts, the enormous efforts and massive investments that would be needed to stop climate change, would not be perceived by the citizens at all, everything would remain the same.

Failure in global environmental management translates into an evident deterioration and a sensitive loss of quality of life, in addition to jeopardizing the future of all humanity, success is imperceptible, invisible.

1.1.3 Instant sacrifices

Whether in terms of economic efforts or in the form of prohibition or limitation of certain products, services, activities or conducts, environmental measures require sacrifices for the citizens today. At the political level these efforts come in the form of prices and taxes, the treatment of contaminated water and the adequate disposal of solid waste reflect this situation well, as the appearance of the new contaminants derived from our way of life makes the current installations to become obsolete because they are unable to dispose of them⁷. Among the new contaminants (pesticides, compounds used in the production of resin and plastic, pharmaceuticals) the pharmacists (inflammatory, antibiotics, analgesics and others) and the endocrine disruptors - ED only obtain efficient treatment with the adoption of new systems (considered tertiary) which implies new investments⁸.

The use of water, as a resource that is freely provided by nature, will be increasingly expensive, not because of distribution challenges, but because of the constant need to return it to the environment in conditions that do not compromise its future use and nor the stability of ecosystems. We will have to get used to paying for environmental services, even if they cannot be solved solely with money.

A big part of environmental decision-making implies opposing the immediate interests and desires of citizens who perceive their liberty and property as a sacrifice, which is widely reflected in them in an unjustified way. It is worth remembering that the movement of the yellow jackets in France started because of an increase in the taxes applied to Diesel in order to discourage its use in order to improve the environmental quality⁹.

From this context, commitment to the cause of sustainability involves a feeling and the adoption of a set of values broadly oriented towards solidarity. The sacrifices and of course, their size, should be seen and discussed in a very open and participatory manner. Difficult to escape from this rhetoric, since facts must be faced with courage.

1.1.4 Changes in lifestyle

Some environmental decisions may imply bans or occasional limitations, as well as affect the way of life of all of us in a representative way, inserting a significant permanent cultural change. It sensibly affects the Western lifestyle and, perhaps, the Eastern too, because it impacts on how we consume and how we produce, even with a strong recovery in the paradigm of innovation. Money is the conductor of lifestyle, since whomever has it, an unlimited "right" to possession and use is obtained, as if it were a factor of life absolutely unavailable to others beyond the possessor. Defining limits based on environmental protection or for social reasons contradicts an ideal deeply rooted in our society, increasing and opposing fierce resistance to the theme. This resistance is

7 Although investments are made directly by water management concessionaires, the costs of these improvements are passed on to users.

8 Available at: <http://www.scielo.br/pdf/esa/v18n3/1413-4152-esa-18-03-00187.pdf>

9 Available at: <https://www.nytimes.com/2018/12/23/world/europe/france-yellow-vests-future.html>

based on reasons, however unconscious and not rationally justified, since the advantages, often undoubted and evident, are not objectively valued given the induction that changes can produce in the quality of life.

It can be said that there is no way to halt and reverse environmental degradation without changing the patterns of consumption and production. It is necessary to deal, for example, with the modelling of advertising that imposes a constant and omnipresent bombardment in the desires of consumption of the whole society. Here the focus is on the citizen with the power to choose products and services, since it is this citizen who contributes in a representative way to environmental degradation, considering unnecessary consumption and unlimited production.

1.1.5 Tackle powerful interests

In order to be able to change our lifestyle, whether we like it or not, we live in a capitalist society whose liberal and ultra-liberal profiles are increasingly being reinforced in recent years, even by the increase in professional qualification that indicates a trend towards a less interventionism view of the state in the empire (BRENNAN, 2018). In any case, some indicatives seem to lead to a new perspective, as is the case of collaborative economics, which advances rapidly with the adherence of traditional companies that are internalizing the values of social and environmental responsibility, realizing that their natural willing to profit is not incompatible with a favourable social action toward sustainability. Not creating illusions, corporations generally pursue only the maximization of immediate profit, with total contempt for everything that does not represent the financial retribution of its shareholders and the consolidation of the privileges of its directors. They act as kings - powerful - in a kingdom that is not their own, moving away and fomenting aggressively so that paradigms not aligned with their interests are destroyed, even though fully justified and rationally constructed contexts. These guys ignore actions without the slightest respect for the real situation, creating fantasies to justify their interests for the fast profit. They practice the old savage capitalism.

It is understood that any measure perceived as a threat is fought with all the power that money offers. The success of these pressure groups is to make them decay before they produce their effects, including using their penetration of political power, which they often simply control.

1.1.6 Obedience to complex questions

Environmental decisions are closely related to scientific knowledge. It differs from traditional political decisions that affect the social order and are based on the predominant moral values of a given society, while the environmental ones have foundations based on scientific evidence. If we want to know if a society considers it desirable to legalize homosexual marriage or to change the age for criminal and even electoral purposes, it is sufficient to verify in an adequate way how citizens value these measures, that is, whether they like it or not. The legitimacy of the decision adopted will be given by its harmony with predominantly moral values and, in any case, its effects will be limited to influence the coexistence of this particular society. Nothing like what happens with regard to environmental decisions where their legitimacy is in connection with the objectives of sustainability, their effects are, by definition, global and the opinion of citizens (in the moral context of their values) should be irrelevant, because, in fact, it is irrelevant.

If a particular environmental policy, for example, prohibits the use of lead in gasoline and the use of certain types of cosmetics, these decisions must be highly justified in a strictly rational and scientific way, since what society will see and what will impact in the citizens is the fact that they will not be able to buy a certain product that in their eyes was seen as good and in some circumstances will increase its price.

These necessary explanations are not always provided and are often not simple, however, a previous pedagogical activity is essential for the recipients of these measures to understand it and internalize it in their daily lives.

1.1.7 Lack of political interest

In part of what has been said up to now and in part of the very logic of the democratic system that is adopted throughout the Western world, it is a fact that environmental decisions do not interest politicians because of the negative repercussion in the generality of citizenship. One example is the necessary measures that should accompany the energy transition to a low carbon economy which, among other measures, should include a ban on the manufacture of new vehicles powered by petroleum fuels, as is known, with the progressive increase in the price of such fuels¹⁰.

The political class is aware of the price to pay for these unpopular decisions because they know of little or almost no political capital gain from it. In fact, the reverse is true, since politicians are usually moved by politicized decisions aimed at a desire to achieve and retain power in a purely electoral logic and totally contrary to the sustainable interests that society and humanity urgently need to pursue.

This "electoral logic" is conditioned to political projects of a temporal scope of four (04) or five (05) years, which causes the adoption of short-term projects that "buy" the votes of the voters. However, no explanatory delay is necessary, since programs and projects for sustainability presuppose a time scale that does not respect a handful of a few years, perhaps decades.

Here it is necessary to be hard on the conclusion, the whole of the citizenship is not apt and neither sensitized to the contemporary environmental exigencies what reflects in a very timid collection to political leaderships that govern the States to face the challenges of the sustainability.

The voting citizenship does not value and even knows the environmental commitments in the government programs of its chosen ones, being able to affirm that they are dead letter in these documents without producing any consequence.¹¹

2 DEMOCRATIC PROCEDURES AND ENVIRONMENT

Since Agenda 21 - document resulting from the International Conference on Environment and Development in Rio - 92 - principle 10 is what is known as that of democracy. This principle proposes citizen participation in environmental governance decisions, access to environmental information and environmental justice. However, since 1992, that is, almost twenty-five (25) years later, it has timidly impacted on the political governance of most countries' signatories of Rio - 92.

Also, the 1998 Aarhus Convention concluded within the framework of the United Nations Economic Commission for Europe (UNECE)¹² established the objective of guaranteeing citizens' rights regarding access to information, public participation in decision-making processes and access to justice. This convention innovated by establishing clear links between environmental law and human rights, proposing that sustainable development be put in place with the involvement of citizens in a democratic context. However, we are far from this possibility, since, even in countries with a global leadership for sustainability, such as France, the norms for universal popular participation are formulated in a mistaken and uncertain way, making the participation of the population enormously difficult (MONEDIAIRE 2010).

10 As seen with the manifestation of the yellow vests in France from the courageous decision of its President.

11 There is space here for an opinion: government programs in election time should be binding, so that a change in a proposal should be accompanied by a reasonable and proportionate justification, under penalty of applicable liability crimes.

12 Available at: <http://www.unece.org/mission.html>

But why did this happen? And why is it so hard to come to pass? The answer is simple: citizenship in general, in the order of seventy-five (75) percent of voters has no interest in civic issues, perhaps because of complex and scientific issues such as the environmental issue, Jason Brennan states that in one test of political knowledge, the first 25% of voters are well informed, the following 25% is misinformed, the next 25% knows nothing and the last 25% is systematically uninformed (BRENNAN, 2018, p. 85).

Added to this, civilization as a historical reality faces representative paradigm breaks in the most diverse sectors of individual and community life. Work relations, personal relations, the way of dealing with spirituality, the search for knowledge, the search for self-knowledge, finally a set of circumstances that make social reality completely different from what it was, making the civilizing process a complex process and opening a myriad of unanswered questions in common sense, which the latter gain importance from treatment in the scientific field. Changing world perceptions can be very well read in the transition from modernity to postmodernity, as Charles Lemert, 'who hates beasts, frogs, postmodern aberrations, and other gloomy things of the kind, may at some point have overreacted, but It's not wrong to worry how you worried. The modern world is undergoing some kind of change. Even those who wish to the contrary admit this' (LEMERT, 2000, p. 3).

It is a fact and presupposition of this study that democracy is in crisis, which also contributes to the necessary decisions in terms of sustainability being avoided. It is a finding indicated by continuous occurrences in national governance at the global level. Whether in Spain, in Brazil or in the United States, evidence of these crises confronts democratic political systems for a change of route that may end up with an autocratic system (and, later, why not, when implementing a totalitarian regime) which already occurs in Venezuela, Turkey and Russia.

Democracy is shaped in the historical circumstances in which it is being adopted. In the performance of the functions of a State, since it plays a fundamental role in decisions, it is very sensitive to the available means of communication. That is why democracy in ancient Athens was shaped according to the culture of the spoken word. For this reason, the representative democracy of the nineteenth and twentieth centuries prospered during the period of the printed word (the newspaper and other means like radio and television). On the other hand, nowadays, due to a permanent period of interactivity, hyper-brief and decentralized communication, it leads to a pretended empowerment and a supposed emancipation, the question is: What democracy fits this new reality? (REYBROUCK, 2017).

Traditional representative democracy no longer offers optimum results in complexity, such as sustainability, so, surely, when democracy is used in the nineteenth and twentieth centuries, it ends up being designed for an arrangement in which it is not up to date. The democratic system, as much as any system, needs to be updated, that is, democratic platform demands an "up-grade".

Some positions may be noted on characteristics that lead to the subversion of democracy, for example, legal measures to improve democracy (increase in the number of judges of a supreme court, for the purpose of bundling it with allies; improper sector constitutional changes, legal innovation from post facto facts, others); (popular participation), from a reality distorted by the very communication of "extremist demagogues", or in the use of data and information sharing through social networks (currently the use of WhatsApp and Facebook); Disqualification of science and experts (including imposing religious dogmas on basic scientific knowledge); subversion of the aims of the institutions (state persecution of the opposition, see use of the fiscal public apparatus to detect possible deviations in this sense) (LEVITSKY et al. 2018, p. 14).

In addition to these characteristics, democratic retrogression begins in the ballot box, on the electoral route, as opposed to a classic *coup d'état* (as in Chile on 9/11/73, with the use of force, death of the president, burning the presidential palace, suspension of the Constitution). The contemporary destruction of the democratic system is silent, there are no tanks, no deaths, institutions continue to function. Many people still believe that they live in a democracy, they do

not immediately feel what is happening. And perhaps the most classic of all to give a democratic appearance, people keep voting (LEVITSKY et al. 2018, p. 13).

It is interesting to note that one of the modern concepts given to democracy converges as a set of rules (which are supposed to be valued) that have been procedural for popular decision-making, predicting that popular participation should be feasible in the widest possible way.), that is, a free interpretation on the post by BOBBIO, there is a recognition in the concept that in the absence of the decision-making process in democracy, it would be possible to restrict popular participation. But what would this broad impossibility of popular participation be for decision making? In addition to issues involving maturity (for example, age), or the legal status of the subject (prevented by law or by court decision), it must be recognized that the interpretation of reality is a complex action on certain issues, such as by example, in what concerns sustainability.

In terms of sustainability, the complexity that surrounds the theme and the great disinterest of the population on the most diverse topics of political science symbolize the need to make changes in the electoral process when the polls are held, as there will be an impact on how it will be addressed the environmental policy, from a formed government.

Beyond the ecological crisis is the concrete possibility of the destruction of democracy. Democracy is not free from the danger of destruction - self-destruction. This is because Democracy paradoxically finds itself in contradiction with the need for this feeling of belonging to the community. Modern Representative Democracy is a cold system. It consists of principles, rules and institutions. But their existence depends on the effort and engagement of the citizen. Thus, the deadly enemy that threatens Democracy is the indifference and passivity of the citizen, the impotence of individuals facing the *kafkaesque* universe of the transverse power of the Modern Constitutional State and the insensible power of the market and the economy (FERRER et al., 2009, p. 12).

The democratic system of government in the solution of authoritarian regimes was established as a beacon to guarantee freedom, to enable equality and to create bonds of solidarity. The conjuncture that led to the constitution of the Modern Constitutional State and Representative Democracy would perhaps be the greatest realization of this statement. However, fortunately or unfortunately, it does not matter, this is past, one must accept the reality of the facts that humanity and its different societies, as a rule, have changed significantly.

It must be realized that democracy as any system operates a given reality (BERTALANFFY, 1977), in the case of the democratic system, its reality is the society in which it is employed, so that it cannot be refuted the idea that democratic system as it was thought in Greece and resulted in the Modern Constitutional State operates in a society in brutal mutation, year after year, which can be well evidenced by technological innovation. Today's social reality is not the same as it was ten (10) years ago. Moreover, because of a global, communicational and technological dynamic of society, reality cannot be conformed to the local, evident that it must start from there, but it must be treated in the global and global scope.

The change is perceptible, even in the legal constitutional context, where it is a fact that the national level continues to be the most important source of law within this "global mosaic", however, national law, far from being independent and self-sufficient, is increasingly dependent on the catalyst, guidance, support, moderation or challenge of regulatory forms that are located outside national jurisdiction, whether they are sites of legal rules or international decision forums (FIERKE, 2017, p. 167-183).

Today's reality has already imposed on us a serious financial crisis with thousands of lives cut off and a fall in the quality of life of millions of people. The environmental crisis in this scenario is an ongoing perspective, FERRER and CRUZ note that 'The global ecosystem and the future evolution of life on Earth are in serious danger and may well result in a large-scale ecological disaster, as is now the case with the global economy'. (CRUZ et al., 2011, p. 15).

From all this, a Democratic State has to be constituted, its basic premise is the expectation that it will deliver fair and therefore sustainable results. However, this is not the case, most modern democracies insist on subjecting their citizens to alarming levels of contamination and contamination, as well as constantly endangering the health and life of everyone by referring, for example, warlike actions such as war. In fact, democracy in the way it is employed has not been a competent system on several issues such as economic inequality, hunger, peace and the environment.

Therefore, considering democracy as a political system, which presupposes the principles of freedom of expression and opinion, public transparency (FERRER et al., 2011) and democratic accountability (OLSEN, 2017), there is a dynamic of political management that goes beyond a mere system of procedural choice, since the democratic system demands an institutional competence so that it can guarantee the effectiveness of the demands of a Democratic State, that is, different functions must be organized and integrated in order to assert their goals.

Thus, the basis for the exercise of power in Democracy is formed as a rule in the electoral process, in the midst of democracy, when government leaders are chosen. These candidates then have the power of decision-making authorized by the citizens who will be treated and managed by the executive and the public administration (GAILMARD 2014), so, in order to illustrate, it is possible to formulate the following equation (A is the democratic system; LL are only Legislative Leaders and PI are to the Public Institutions), in which the maximum final result (considering an optimal democracy) is one hundred (100) or the minimum final result is zero (0,0), that is, democracy is annihilated ; it is nothing:

$$A: \frac{LL \times PI}{PE}$$

$$\begin{aligned} & \text{Electoral process} - PE (0 - 1) \\ & \text{Legislative leaders} - LL (0 - 10)^{13} \\ & \text{Public Institutions} - PI (0 - 10)^{14} \end{aligned}$$

From this equation it is necessary to make some considerations, since it is a crude proposal, not lapidated, but that reflects part of the theoretical strategy of this work, in which the whole process of degeneration of democracy begins in the vote, so that there is no (real and true) there will be a false reality which reflects in an annulment of the democratic system. But what would a legitimate democratic process be? For this answer we would have to start from some assumptions that conform the political reality of today, that is to say: Elections must be operated in an environment of rationality, political parties must assume the commitment of containment and tolerance (both in the electoral process , when the exercise of power), universal suffrage must be relativized considering that some subjects are for the citizens, others for their representatives and others for the specialists (sustainability is one of these subjects, need for a license for experts to vote) , that is, if there is a correspondence of facts to these characteristics, there would be a legitimate electoral process, otherwise the electoral process is only apparent, that is, an account.

As for Legislative Leaders, the equation proposes a valuation of zero to ten, considering at least five items, giving weight 2, to each of them, are: commitment to democracy; legitimate competence (basic knowledge of politics, law and economics); tolerance to the opponent and real political agenda (binding government program); Regarding Public Institutions, the five items, also weighing 2 for each, in order to assess them, would be as follows: accountability regime; position in the face of crises (real or artificial); inserted in a system of control and balance of power;

13 Value from 0 to 10, depending on the variable number and the assigned weights.

14 Value from 0 to 10, depending on the variable number and the assigned weights

institutional mission also declared in legal values; respect for unwritten rules of coexistence, tolerance and non-toxic partisan positions; institutional restraint.

Democracy is exercised on the basis of universal suffrage, so that starting from citizen decision-making (elections) in the choice of its representatives, a cycle of governance developed by the state institutional fabric begins, considering a legal history built of a normative set that offers a base to the institutional function. This functioning of the institutions is based on a basic rule of valorisation of the current system (democracy) and political limits of tolerance and containment. That is, the new elected representativeness accepts the "system" and commits itself to it. For sustainability the dismantling of these basic "standards" imposes a severe blow to the universal prescriptions of environmental protection.

Democratic decision-making on sustainability runs at least three paths: the legislative when it is a normative conception on the subject, the judiciary when it handles the problem, solving conflicts that affect sustainability and the executive in the creation and implementation of public policies for sustainability.

Decision-making is reflected in the institutional performance of state and non-state entities and in popular participation, considered the people's action in various means of choice (elections, referendum, plebiscite, seat on councils and committees, social "courts" etc). In institutional action, the legal obligation, in most countries, for a motivation of public executive acts, reinforces a technical and legal character that shields institutional action, in theory, from the effects of certain moral understandings often divergent or deviant from the necessary decision-making on sustainability. In the decision-making process of popular participation, this technical and legal obstacle does not occur.

Popular participation is largely based on moral values, nevertheless irrational, with respect to issues submitted to eventual decision-making. The greatest example is the electoral process of universal suffrage in which voters vote without basic knowledge of what public policy, public budget, fundamental rights, and so on means. Participation in the vote is blatantly in the emotional context in which voters are driven by personal and selfish feelings without any civic commitment. The general idea is that one votes to improve "things", that is, the thought is uncritical which motivates a superficial decision, seeking a dubious finalistic result and, why not, a nonsense one.

It is almost a unanimous point (classical democracy) that the quality of a democracy depends on the degree of understanding that citizenship has over the normative standards to which it is or may be submitted, nevertheless, this perspective of singular form - in a representative democracy - in the reality of social life today does not meet the needs of social coexistence and the maintenance of life. For FERRER *et al.*, there is room for an asymmetric democracy, taking into account a balance of powers between those legitimated by the votes, those legitimized by their grassroots initiatives and those legitimized by their technical-professional knowledge. None of them, alone, can intend to have the truth of the democratic will (FERRER *et al.*, 2012, p. 88).

Asymmetric democracy is a point of development of the democratic system, because it recognizes the need for certain themes to be attributed to technically competent citizens. This is not a meritocracy / technocracy, since personal and moral repercussions remain in the attribution of the will of a universality of citizenship and its representatives, however, the democratic will also have legitimacy when implementing the technical knowledge and scientific as a safeguard for decision-making on complex issues where competence is required.

3 COMPETENT DEMOCRATIC SYSTEM FOR SUSTAINABILITY

Considering the serious environmental problem, at both local and global levels, in a failed democratic context, it is undeniable to realize the need for opportunities for improvement to be proposed so that the future of humankind can be tackled in a minimized risk and danger regime

even though the perception of normality is a common aspect, since the characteristics of the sustainability crisis.

Three proposals are put forward for the purpose of imposing a democratic march that results in sustainability and that reduces the risks of unsustainability, first, that the electoral process must be improved, especially in what represents decisions on sustainability, with a debate of these themes in a more rational and less emotional space. The people are not prepared to decide on such a complex subject. Even when universal popular participation is called upon to participate, through referendums or plebiscites, the results are completely random in without any coherence, and may have good or bad results. For example, in Mexico the population was consulted¹⁵ on the construction of a new airport, considering the risks to the environment of the work and there was victory of the "no" to the airport, that is, the people decided for the environment. However, there are many criticisms of the process, including the scrutiny itself and the influence of the new government's position on the work (the new government would be against, the government of another party it is replacing is in favour), this it is probably the citizens who participated in these plebiscites with a more emotional than rational motivational charge. In another example, in the state of Alaska, in the United States of America, the city of Fairbanks is the most contaminated county in the United States and through a referendum, citizens approved the proposition that: "Citizens of Fairbanks reserve the right to heat the place they inhabit in the most economical way and any question related to air quality is subordinated to the issue of heat". The big problem is the amount of wood in natura (untreated) that produces microparticles that contaminate the air. Faced with the economic difficulty of the region, they chose to continue polluting the air and self-contaminating¹⁶.

The second proposal is that participation in democratic procedures for sustainability, both in direct and representative democracy, should be exercised by citizens with recognized technical and scientific knowledge in the environment, since the reality imposed on sustainability is an ultra-complexity of difficult cognitive perception for the laity. This proposition is based on the fact that, by permitting universal participation in electoral processes (democratic decision-making), we are being governed by the incompetent, on the subject of sustainability, and yet, as BRENNAN notes, in all the themes of political science (BRENNAN, 2018, p. 238).

The third proposal is an asymmetric democracy based on competence, constituting a norm in which there are spaces for universal suffrage and restricted suffrage. The right to democracy is a right that must be implemented contrary to a generally incompetent performance of the electorate. In this scenario, says Jason Brennan, it is unfair that a citizenship is violated in its rights - and also exposed to representative risks - life, liberty, property and here, the right to sustainability, based on the decisions taken by an incompetent deliberative body. A Right to Competence is a minimum corollary in which we have the right to demand the replacement of incompetent decision-making methods by a more competent method. It's only fair that this is implemented (BRENNAN, 2018, p. 285).

In Law, these processes of transformation, in the words of BITTAR, Law presupposes a certain stabilization of majoritarian or consensual values for the norm to exercise its power to choose normative contents, the question, in a transitive moment, ends up being: what consensuses possible in a changing world? So, they become current debates: cloning people or forbidding scientists to perform genetic experiments on humans? authorize marriages between homosexuals or prohibit the constitution of these marital societies? reduce the age of criminal responsibility and recognize society's inability to attract new generations to social conscience or leave relatively unpunished atrocities committed by minors? Contrary to how law was conceived as the centre of

15 Available at: https://www.eldiario.es/politica/Futuro-aeropuerto-Mexico-referendo-verificacion_0_828718425.html

16 Available at: https://www.eldiario.es/internacional/contaminacion-aire_limpio-frio-madera-democracia_0_823468887.html

speculation in the bourgeois and enlightenment ideology of the eighteenth and nineteenth centuries, one begins to conceive it, in the midst of so many socio-cultural transformations, as a process in transformation, permeable to new demands and adapted to the new social actors (BITTAR, 2008, p. 132).

The foundation for these proposals is the right to competent environmental governance. The principle of competence to achieve an environmentally balanced environment aligned and based on the basic principles of environmental law, such as the principle of prevention and precaution.

3.1 The Right to Competence

In various realities of social life there is a call for legal regulation. Water pollution, tax collection, the provision of public services, the license to direct, in short, various themes of daily social life are subject to objective and technical standards to define the rights and duties of any person in the exercise of their citizenship. All these criteria aim to make the facts of these realities more just and safer, in order to avoid harmful and disproportionate results.

The Right to Competence presumes that all decisions that affect the lives of citizens are constituted by a deliberative body in a competent way. Jason Brennan points out that the principle of competence - which underpins the Right to Competence - would have the following connotation: It is presumed unjust, and that violates the rights of a citizen, forcibly deprive a citizen of his life, his freedom or his property, or significantly damage their life prospects, as a result of decisions taken by an incompetent deliberative body, or of decisions made in an incompetent manner or in bad faith. Political decisions are presumed legitimate and authoritative only when they are generated by competent political bodies in a competent manner and in good faith. (BRENNAN, 2018, p. 312)

In addition, the principle of competence converges to the Right to Competence, however, in modern democracies, as voters are systematically incompetent, most electoral decisions occur outside the principle of competence, which implies in the choice of legislative leadership with the potential to make incompetent decisions. If we say potential, because there is no absolute relation of "contamination", since sometimes the incompetent can choose political agents by means of the vote that can-do competent things, entertain, there is a very significant vector of luck in this equation.

However, we cannot underestimate the risks of a wrong vote, that is, incompetent vote, because in deciding badly, the government will have the power to manage economic policies, educational policies, security policies, foreign policy, agrarian policies, territorial policies and environmental policies. Yet an incompetent government fosters war, hunger, hatred, social backwardness, poverty, sadness, pollution, and environmental insufferably.

3.2 The Right to Competence in Sustainability

The idea of regulation is supported by the premise that certain criteria should be offered as a standard to make a fairer and more environmentally sustainable reality. At various levels, certain obligations are stipulated in order to normalize a given reality in order to avoid damages, risks of losses and conflicts. Regarding the process of deliberation anywhere in the world, Jason Brennan, says that there are already aspects considered to make more competent the results of a decision making of a deliberative body. For example, children are prohibited from voting, tourists are prohibited from voting, patients suffering from a disease that impairs their judgment are prohibited from voting. These prohibitions are reasoned on some grounds, the circumstance of mental fitness (children), belonging (tourists) and dependency (sick). These reasons are determined by reason of

a great purpose, the incompetent vote of these subjects affects everyone negatively (BRENNAN, 2018, p. 295).

With this in mind, the Right to Competence is not something new in the legal system, since there are legal criteria to justify the restriction of suffrage. In electoral laws and in the state constitutions of several countries there are criteria that establish means to restrict and organize the deliberative process in order to implement an organization to the process so that there is the election of a government for a group of people settled in a certain geographic space.

In these terms, competence is directly related to the rational capacity to analyse the facts from a methodological and substantial angle, including the benefit of the doubt. This means doing a more in-depth analysis of the facts, making reflections, analyses, listening, formulating ideas and considering contrary arguments and aiming to develop multiple perspectives. It is worth remembering the notorious idea that Darwin already knew that "ignorance often generates more confidence than knowledge".

However, this Right to Competence is currently positive, generally considering that all the facts of social life are pending the same value load, not recognizing, for example, that the realities imposed by technology today (CRUZ *et al.*, 2015) make a change, even in the system of political, economic and social power.

Consider the principle of competence would only apply to transcendent decisions, that is, those decisions that can cause significant damage to people, such as violations of the right to life, freedom, property, to the environment. It would not apply to less complex decisions, such as naming a street or avenue. (BRENNAN, 2018)

And the technological reality by its complex intent imposes a complex value load, in which an assembly body, if not endowed with competence to decide, is subject to a wrong suffrage with serious repercussions in the dynamics of social life. Incompetent deliberation brings risks and violations of fundamental rights such as life, liberty, property and the environment. This is a fact that cannot be refuted.

An environmental decision, such as new environmental legislation, a new environmental regulation, or even a vote in a plebiscite on the environment, taken by a person with little idea of what is happening, incurs a lack of legitimacy, due to the justifications in which such decisions are based to the point of these people decide, that is, they are decisions based on incompetence and an emotional feeling.

Competence needs to be considered in the exercise of environmental policy, since, otherwise, the status quo is maintained, the risk of unsustainability is high, since most of our fellow citizens are incompetent, ignorant, irrational, and morally poor regarding environmental policy and nonetheless have a great deal of political power, including because they can work for institutions that have great power and execute the State coercive authority to the detriment of sustainability.

The premise of "competence" is associated with the quality of a particular person in face of their ability to receive, treat and position themselves on a given subject, including pointing out possible solutions to a given problem. Synthesizing, in practice, competence is the ability, aptitude and ability to solve problems. Competence presupposes an action that adds value to new situations, that is, it is the junction of the equation knowing, making and choosing.

The right to competence refers to the idea that for the political resolution of complex and technical issues in decision-making, there is an environmental and social right that these decisions are taken by capable people, given the sum of knowledge or skills that these people have. Thus, the expected result of expert decision-making is the reduction of the risk of error in the environmental policy orientation, since the competence for the environmental policy exercise places decision-making at a level of excellence for sustainability that the incompetent environmental policy - as can be seen from the previous chapters - has not offered to society.

It is worth mentioning that a characteristic attributed to competence as value is the person's desired ability to make decisions on complex issues such as the environment and sustainability.

The need of society for these types of competence comes from the recognition that environmental needs are and will become increasingly extreme, especially designed in an urgent and immediate manner. In general, society in the context of a requirement of an environmental policy seeks this qualified political environmental decision-making, because, in the background, it knows and manifests, from time to time, the need for effective action, so that sustainable development is in fact set in motion.

Due to the high complexity of sustainability issues, it is not enough to have a formed opinion¹⁷ on a specific theme of importance in the areas of environment, sustainability and sustainable development. It is necessary that the political agent also presents some technical and behavioural skills considered essential for the environmental policy decision making.

The Right to Competence, as Diffuse Law, that everyone must be subject to a competent deliberative body (that is, formed by people with the knowledge and skills to do so) who will make decisions in a competent manner in good faith, that is, legitimate and specialized authority decisions.

Everyone has the right, as a reasonable minimum, to have a conclave of experts for environmental decision-making, that is, to be aware that we will be subject to political decisions that transcend our interests, but that were taken by a qualified deliberative body. The environmental complexity - already demonstrated above - requires, as a sine qua non, that the environmental policy exercise be done by a deliberative entity with the capacity, ability and technical quality to decide on the direction of any environmental policy.

Therefore, the right to competence requires skills and attitudes compatible with the complex requirement for environmental decision-making. Even these people who would participate in this deliberative body should pass an evaluation, a test in which it is possible to gauge if they are up to date, endowed with knowledge and references for the delivery of their value judgment on the environment. If they are people with availability and who are willing to help in the best way possible. If they are people who are prone to dialogue, able to understand what the other says, that is, knowing how to listen and knowing how to make a dialogue for productive speech. Also, these people must be committed, they must know how to work in a team, they must have the skills to communicate, they have the flexibility to discern the themes and they also have persuasiveness, being able to negotiate.

3.3 Asymmetric Democracy Based on Competency

The right of subjection to a competent deliberative body, recognized in a democratic obsolescence for sustainability, in the context of a presupposition in which transnationalism overcomes nationalism, that the culture of peace surpasses the culture of war, which will require the management of public spaces of international governance over world interests, legitimizes a proposal for asymmetric democracy.

There would be a restriction of participation in electoral suffrage for sustainability, since the aspect of competence would be a guide to participation in decision-making processes, on the other hand, there would be a gain in results, in which decisions on new laws, new procedures, new policies for sustainability, would be set in motion at greater levels of security and effectiveness in view of the skill, knowledge and technical discernment of those participating in this asymmetric democratic exercise.

Asymmetric democracy recognizes the legitimacy of the dilution of power in the choice of various agents, being civic, scientific / technical and social-based, from the demands of nature originating from some spectrum of the social fabric. Asymmetric democracy is the direct

17 It is legitimate to say that 99.9% of people have a moral opinion about the environmental bias, being that morality has no attribute of value on decision making for environmental quality, and this is specifically an assessment that must be loaded with technical values, even decontextualized moral values.

involvement of those interested in democratic procedures for deliberative decision making because of an intrinsic characteristic that, in matters of sustainability and the environment, would be competence, given the capacity and technical ability that the deliberative body would have to deal with and decide on the subject.

This competence of each citizen to participate in decisions on sustainability issues could be assessed in a variety of ways, either through a curriculum analysis, an interview, or even a letter of recommendation, however, it seems that the creation of a test to evaluate the knowledge of each one and that allows to verify its ability to evaluate the data, information and knowledge that conform a certain scenario, in an impartial way or consubstantiating a hypothesis in which the technical premises are prioritized.

Another key point in the justification of asymmetric democracy is that there is a lack of information and knowledge management for sustainability, that is, in the definition of public environmental policies, there is an asymmetry of information and power among the actors involved, causing the delivery of the results of these policies are linked to the stronger groups, precisely because they are more empowered to defend the interests they defend.

Take the case of cities as a rule, these are transformed much more by market pressures than by planning guidance. Few investors in a given economic segment of impact in a region, establish arrangements to their shallowest interests, there being in the representative (immediately symmetrical) democracy a proportion of knowledge and competent choices on the same level. Summarizing, for those who have more resources the purchase of competence is an initiative of imbalance for environmental decision-making. The development of a city is a complex process that demands the involvement of all sectors interested and affected by political and economic actions. It requires planning and rules that provide for the constant revision of strategies, that is, it must be directed by competent people.

CONCLUSION

The social transformation is brutal. Defining new means of governance in the design of improving decision-making processes is not perceived, by those who resist change, or because they are afraid to face the challenges that are already on the agenda, such as the tendency of strong demand for water and energy as contemporary circumstances.

More acute global deadlocks are on the political agenda of this century, in the environmental issue, as far as climate is concerned, science indicates in a peremptory way that human activity is changing the chemical composition of the atmosphere. The steady increase in greenhouse gas emissions is radically strong each year, which will boost greenhouse gas emissions by more than 2C by the year 2050. And the solution is by no means in the hands of a country and even the global community. This problematic dynamic has because of the obsolescence of democracy in dealing with issues of representative complexity.

Democracy needs competence. The speed of transformations is deep and rooted in the social, cultural, political, technological and environmental fabric. Areas such as cybernetics, biotechnology and artificial intelligence have built-ins, huge obstacles that govern the governance of the great problems of the 21st century.

All this transformation is absurdly recent - Google was created in 1998 - so it is very naive and not very preventive to attribute education as a factor that can transform the obsolescence of the representative democratic system - in view of the necessary symmetry of information and knowledge to be an actor who moves competently in this process - to face, for example, a demand for more than 60% of food by the year 2050; the increase of overpopulated cities from 31 to 43 by the year 2030; the replacement of the labour force by up to 50% by 2030 (more optimistic expectations link this figure up to 2020); increasing pressure for safe food; significant increase in water and energy use; life expectancy may reach 100 years in view of the evolution of science; in

short, there are many factors that ignite the alert for a change in the democratic decision-making structure. And the change must be disruptive in the sense of giving effectiveness to public policies, local and global, that competently face the environmental unsustainability.

The Right to Competence in an asymmetric democratic system is a necessity stemming from a political weakness to deal with fast issues - in the course of time - and complex in inference and understanding of the directions to be put in place with the probability of successful results.

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