

**BIENVENIDO PASOLINI: ANDEAN CONSTITUCIONALISM AS AN ANSWER TO
CORSAIR HEDONISM**

Bruna Adeli Borges¹
Priscila Zilli Serraglio²
Silvia Helena Arizio³

ABSTRACT

This study aims to evaluate the Andean Constitutionalism as a critical alternative to the crisis of modernity in consonance to Pasolini's thought in "Corsairs writings, Lutheran Letters - an anthology", a book in which the author criticizes the social values and the organizational model of Italian society in the 1960s. His texts have had, and still has, a decisive importance for the contemporary legal and social thought, so that his critics warned us about the need for restructuring the hegemonic values and models, especially with regard to consumerist mass models verified in the paradigmatic crisis we experienced today, affecting the individual and the artifices created by him, which has been suffering from uneasiness and insecurity, as a result of a immediate, mechanical, instrumental, pragmatic and hedonistic bourgeois culture, essentially anthropocentric in nature. This new Andean constitutional paradigm that emerges from the South American original indigenous worldview, enables the production of specifically communitarian rules based on the horizon of *buen vivir*, portraying the reality of the different nations in which live several identities that complement each other, developing new relationships, not more an individualistic relation with others, but a communitarian one. The proposed analysis is carried out through deductive method, utilizing the techniques of bibliographical research, referent, book report, category, and operational concept.

Keywords: Pasolini; Consumism; Buen vivir; Andean constitucionalism.

INTRODUCTION

This article analyzes the criticism of Pier Paolo Pasolini to social values and the organizational model of Italian society of the 1960s, in the book "Corsairs Writings, Lutheran Letters - An Anthology", consisting of a selection of author's texts, in which it addresses the paradox of corsarism. This research observes the changes introduced by Pasolini and his denunciation of the consumerist and falsely tolerant model deployed in Italy. Controversial,

¹Lawyer. Student of Master in Law, Democracy and Sustainability by Faculdade Meridional-IMED. E-mail: brunadeli@ibest.com.br

²Lawyer. Student of Master in Law, Democracy and Sustainability by Faculdade Meridional-IMED, PROSUP-CAPES colleger. E-mail: pris_zs@hotmail.com.

³Lawyer. Student of Master in Law, Democracy and Sustainability by Faculdade Meridional-IMED. E-mail: sharizio@yahoo.com.br.

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but determined in his criticism, emphasized even already at that time, the skepticism about sexual behavior, carried by one sexual (in)tolerance.

Pier Paolo Pasolini was born, raised and died in Italy during the period from 1922 to 1975. He was communist, homosexual and graduated in Literature; he was university professor, poet, filmmaker, writer, literary, social and political critic; but, above all, he was a visionary ahead of his time. He was an intellectual believer that his duty as an artist and writer was to put into crisis and subvert the models, standards, dictates and dominant and exclusive representations, exploring the unspoken, questioning certainties and truths and highlighting controversial issues of social and cultural consensus, never giving in to what he called "conformism of the progressives".

His texts have had, and still has a decisive importance for the legal and contemporary social thought, since his criticism warned of the need for the restructuring of hegemonic values and models, especially with regard to mass consumerist models. His lexis constituted a kind of resistance to the unifying new, oppressive, shaper of identities and values, blind to the glow of the metal that gives meaning to the market.

So it is that Pasolini's speech is somewhat prophetic. The relevance of the thought of Pasolini is seen in his opposition to a world where modernity is equal to barbarism, especially identified in the paradigmatic crisis we experienced today, affecting the individual and the devices created by him, as Law, which is also suffering from a malaise, insecurity, the result of a consumerist culture based on the immediate, mechanical, instrumental, pragmatic and hedonistic bourgeois model, that has an essentially anthropocentric nature.

Alienation is vertical. The media promotes the desecration of cultural differences and the capital of culture of sacredness, which, in turn, preaching consumerism and the transformation of citizens into consumers of a reality that is tolerant with all the scandals because it is an hedonistic one, and shapes behaviors. Everyone dreams of dancing the same mesmerizing music, about to put away the specifics and be ashamed of old codes. The "center" depersonalizes all as it imposes a single model, using a totalitarian leveling. The combined power of media and market operates what fascism failed to perform, thereby eliminating the people in the uncritical, submissive, indifferent and standardized social mass.

The description and pasolinian contextual rereading is of a harrowing realism, without losing its accuracy, even forty years later. Currently, the deepening of this reality is still occurring and, as well pointed by Pasolini, the only form of resistance and attempt to change this increasingly terrifying situation must be from the politics, through both lexis and practice, asserting the uniqueness, the bypass, the traditional ethical and cultural values.

The Italian crisis, also an European one in a regional dimension, is no different from the experienced crisis in Latin America, as this is necessarily a metamorphosis of the modern paradigm. Indeed, given the crucial need for a new ethics and a new legal model, in some Latin American countries a new paradigm has been developing, called Andean Constitutionalism, based on the ethics of "Buen Vivir", which aims to restore the connection between all members of these societies, human and nonhuman, forming a community able to self-organize and self-regenerate.

In this sense, this study aims to evaluate the Andean Constitutionalism as a critical alternative to the crisis of modernity in line to Pasolini's speech. For this, it uses as a methodological criteria for the reporting of the results, the deductive method, as well as the techniques of bibliographical research, category, operational concept, book report, and referent.

This new Andean constitutional paradigm, emerging from the South American original indigenous worldview, allows the design of specifically communitarian rules based on the horizon of buen vivir, portraying the reality of the different nations in which live several identities which complement each other. These new constitutions are inspired by a profound concept of culture and life that involves the reconstruction of knowledge and old knowledge, a sovereignty and national identity policy, and opening up new ways of living relationship, not individualistic but communitarian ones.

1. FOR A PASOLINIAN REFUNDATION OF SENSE: THE FALLACY OF CAPITALIST-CONSUMERIST FASCISM

The centrality of capitalism and the economy in the contemporary world is unquestionable. The consumerist paradigm has become the new way of life pursued by individuals; everything, including subjectivity, has become liquid, commodity, currency trading, ephemerality. The logic of consumption arising from the capitalist thinking, caused a false tolerance, permissiveness and conformity.

The economy, the way conceived, managed and currently held, directly geared to the accumulation of more power (now symbolized by money and its immediate consequence, the influence), trivializes life, reifies being, removing all his humanity when turning it in the product also to be consumed insofar as it consumes. In the logic of unbridled consumption, which has support for tripod "advertising-credit-planned obsolescence of products," the world

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breaks up and is stratified on the economic advantages and quality of life of the majority in charge, as opposed to a minority politically suppressed fighting for the same concrete guarantees of the majority, but which is not given the same opportunities to reach them.

Cultural identities formed from this dichotomy should also be seen as a form of discrimination and inequality bold, as violations of the social imaginary of the people directly affected. The disadvantaged minority, then, while idealizes the conditions of the most benefited ones, seeks to achieve the same level of human development following the same path traced by the second, which creates a vicious circle, because this behavior consolidates the status and the position of the most in power, impeding or making more difficult the revolution of that minority struggling to survive and resisting to be consumed. Development and economic growth shape up, as well as ethnocentric concepts of exclusion, combined with the violence of colonization and imperialism that reach this minority - which is a majority in terms of quantity of human contingent that falls into this social layer.

Because the excessive growth that stands today deconstructs the human being, undermining his physical and mental health, and making him become an addict's unlimited consumerist of nature, of humanity, and of all things, happiness, as the goal of life, is distorted by the vicious cycle of unbridled economic development, which does not include limits, nor even those of the shortage of common goods. The concrete well-being dilutes and breaks in the abstract and impersonal "well-have", carefree of the others and aimed at maximum profitability of business lined in their own interests.

In his essays, Pasolini indiscriminately attacked a development based on absolute consumption of ideology and the cultural vacuum generated by a stupid development that moved the young residents of the urban neighborhoods off their own culture, made up of own values adjusted to their real conditions of life, even that this world was made up of poverty and social injustice. Pasolini, in the 1960s, describes an Italy where technological and industrial advancement contained special features, sometimes unacceptable in relation to the Italian social and cultural reality, passing thus to the era of consumption and subculture.

The hedonistic and consumerist culture has become widespread with maximum technological efficiency, contaminating thus all social stratus, as their own and different cultures represented forms of opposition to bourgeois ideology. The new era of consumption and subculture invaded the Roman periphery, removing away the culture of its own. These transformations in the world of the excluded gained prominence in the work "Lutheran Letters, Corsairs Writings", in which Pasolini contemplates new trends in consumer behavior and actions.

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The cultural void, occasioned by consumerism that has established itself as a model of life, runs through all the work of Pasolini in his voracious criticism of the bourgeois hedonistic model, comparing this new consumerist culture to a new form of fascism, more ruthless and merciless than that Nazi one, because, he said, the traditional Italian center was able to quickly destroy all peripheral cultures, which was assured an essentially free life in the poorest and most miserable suburbs. One of the biggest barbarities that occurred in Italy is due to the construction of a dominant reason shaped for the economic interests by cultural industry, changing customs and different Italian cultures, so that they were suited to the needs of the ruling class.

Pasolini did not want to offend the consumerist bourgeoisie, knowing that it would have eaten up even the scandal. His provocation was aimed at intellectuals resigned because they could not help but believe his reason. The emergence of this "new fascism" which thanks to the new media and information imposed(imposes) models of obedience and conformity, manifests itself in the form of an "anthropological mutation" transforming the cultural differences in a mass culture and imperatives of the consumerist society, causing a totalitarian leveling, homogenizing the world, a true "cultural genocide" in the words of Pasolini.

The study of Pasolini's writings denotes the actuality of his critique; his texts could no better portray the crisis of the modern paradigm in which now we live, from the disintegration of an instrumental, mechanic reason, that objectifies, absolutizes and empty everything from ethical and cultural value. As flows the reading of his work, the reader feels to experience a kind of déjà vu.

Just as in contemporary times, Pasolini argues that the social imaginary, the collective consciousness of a society, especially the Italian, was deeply and terribly affected and shaped according to the dictates of capitalism and consumerist way of life. The mass media propagated the bourgeois ideal for the people, promoting assimilation of values for the subordinate class. Products suggested by these cultural instruments stimulated consumption and promoted a frightening alienation.

Television advertising was the new kind of hedonistic life that determined a triumph of acculturation, bringing a life model touted effectively through television, this representative of an opportunistic time of new hedonistic ideology of consumption and therefore extremely effective. In this sense, there is the anthropological degradation of the Italians, backed by mass culture and mass media, which corresponded the criminal stupidity of television; this was the traumatic and oppressive way of a society that has come to be scandalized in the pages written by Pasolini.

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Pasolini was marked by a controversial and revolutionary character, with resistance speech to the world of advanced capitalism, critic acid in relation to the culture of their home country in the 1960s and following: the Italian culture. His essays revolutionized the bourgeois capitalist culture, marked by major conflicts and social movements, in which the issue of freedom was fundamental and youth questioning traditional ways of life, proposing a new aesthetic, a new behavior and new attitudes.

However, despite the pasolinian premonitory warnings, social movements and struggles did not achieve the desired success, and cultural changes marked by consumerist homogenization masked a new globalization that invaded society by advanced capitalism, anthropologically transmuting contemporary man. It is true that the critical voice of Pasolini echoed in Italy as antagonistic evils of a catholic bourgeois society infested by masked values before an aesthetic without ethics, without morals and a changing society directed to a cultural emptying.

Pasolini, visionary for his time, heralded the ethical, socio-political, legal and cultural necessary changes so that one can live a life increasingly close to the ideal of justice estimated by mankind. Pasolini portrays the antithesis of bourgeois society that still today gives meaning to the world's cultural questions, opposing the late capitalism. The crises taking place on the world stage are a picture of the failure of paradigms currently in vogue.

In all aspects, it is urgent a rebuilding of the meaning of human artifices, human systems (to invoke the luhmannian theory), so that they can regain and preserve their independence, serving the purposes for which they were created, without losing sensitivity to the influence of external factors, thus striving for a joint work by an inter-trans-disciplinarity. Aware of this scenario and the need for transformation, this seems to be the proposal for a new movement emerged in Latin America, called "Andean philosophy and Andean constitutionalism", explained below.

2. ANDEAN PHILOSOPHY: THE “BUEN VIVIR”

Historically, the man has known himself as an agent capable of modifying the environment that surrounds him and mastering it according to his will. The man as a contemplative being, that respects the environment, acting in accordance with the environmental limits of their freedom, became the dominant man, acting out by the reason that instrumentalizes it all as reifying the human itself as well. This was one of the legacies of

modernity.

The scientification of the world fragmented knowledge and legitimized only some knowledge as valid to understand and interpret "truths", preventing the understanding of reality as a dynamic and interconnected whole, mutant according to the time and space lenses. Such fatalities, based in anthropocentric individualism, exalted by modernity, today, in this happening interstice between two periods of history, causes perplexity to the eyes of the one whom is faced with a palpable finitude of environmental resources and understand that the wounds caused by reckless and short-sighted action of the individual are irreversible.

The awe intensifies before verifying that the resources, even around the globe, are not equally distributed in the world geography. This means that, at the time the shortage is a fatality in certain regions of the world, the other locations run serious risk of suffering not sanctioned intervention in the scope of supply human needs unable to be met by the saturated regions.

Such risks are latent and will not wait to occur if the approach to the treatment of the environment dispended by human action do not change. In this sense, largely as a result of historical changes offered by the post-war constitutionalism, the legal pluralism and inclusive democracy, the social imaginary has changed the way of facing such dilemmas and has been seeking alternatives to the human experience, whether in relation to the nature or to society as a means of self-fulfillment.

Such statements, relatively new in human history, have occurred since the 1970s, when the term sustainability has emerged, which has since been refined and deepened to suit the reality of time that of it appropriates himself. Currently, it concerns the importance of preserving the environment and its resources so that future generations, essentials to the perennial construction and consolidation of historical human identity, can live a dignified and qualified life, providing the same freedoms - or, perhaps, other more and better - that favor the exercise of autonomy to current generations.

Intrinsic to the notion of sustainability is the idea that the human species has an expiration date on Earth, regardless of their will, contrary to what occurs with the planet, which, due to its self-regulatory capacity, resilience and adaptation, can recover from climate-related disasters, preserving some of its essential functions vital to the renewal of life. The immediate dilemma resulting from this data is the one that questions if humanity intends to shorten its life time living luxuriously in a short period of time or is willing to curb consumption and mediate the use of environmental resources with a responsible act concerned with the quality of life of its possible offspring.

The problem also refers to another, referring to that which claims to be the man a rational being, and therefore not only patient with regard to his needs, but also agent and, as such, responsible for the power at his disposal to anticipate consequences of his actions and the impact on the lives of other living beings and this living organism that is Earth, so he has the duty to preserve the environment, concerned not only with their survival, but also with the other organisms that suffer, directly and indirectly, influence of human transformation.

Awareness of this otherness logic, the more solid as time passes and as the human freedoms develop, has caused shy - but no less courageous and promising - changes with regard to the care of nature. Among many, a very clear example comes from the treatment given to preserving the environment by UNASUR (Union of South American Nations), which intends to establish itself as a high level of integration block and, therefore, it has held, among others, activities in order to unify a common understanding on the preservation of the environment by the nations of Latin America based on Andean traditions of exaltation of nature as Pachamama, "Mother Earth", the one from which all descend and depend and to which all will return in death.

The Andean philosophy, under such a perspective, is quite advanced and can provide a much broader understanding of the world not yet shared by Western knowledge. It follows the transition from anthropocentric to biocentric model of sustainability paradigm as it perceives the world as an organic network of which the human being is part and from her he depends, being the Pachamama, and not the individual, the starting point of understanding of life and things.

The Andean Philosophy restores the bond of human and nonhuman, a proposal based on mutual respect, ensuring a more harmonious coexistence. This balance of beings, sets up a Sustainability by the Andean Philosophy, manifesting itself in the expression "Pacha", known as the union of two forces. According to Huanacuni⁴ “[...] All forms of existence come to the synthesis of both energies, the bridge, the center of the cosmic and telluric forces. The word Pacha has this conception, is the joint of both forces; PA coming from Paya; Dos and CHA coming from CHAMA: Force.”.

For the Andeans, "Pachamama" is not only a reference of time and space, but implies a way of life and how to understand the universe; this is affirmed by Sergio Aquino who claims to be "the impression Pacha, polysemic and multidimensional, being so also in the

⁴ In the original: “[...] todas las formas de existencia vienen hacer la síntesis de ambas energías, el puente, el centro de las fuerzas cósmicas e telúrica. La palabra Pacha tiene esa concepción, es la unión de ambas fuerzas; PA que viene de PAYA; Dos y CHA que viene de CHAMA: Fuerza.”. HUANACUNI, Fernando. **Buen vivir/ Vivir bien: Filosofía, políticas, estrategias y experiencias regionales andinas**. Peru: CAIO, 2010, p. 71.

angle of time to the West and the Andean Culture. To the first, time is linear, progressive. Past, Present and Future are distinct. To the latter, the time is circular, ie those referred time periods are continuous and merge at the end".

The Andean philosophy, therefore, based on the indigenous world view originated in the region, takes up a culture of life to "live well and well living" (vivir bien y buen vivir), which supports the daily practice of respect, harmony and balance with everyone and among all existing beings, realizing that life is interconnected, interdependent and interrelated. It appears that the paradigm of buen vivir (well living) unveils an idea of community, a new relationship of the individual with the Pachamama, based on a harmonious coexistence, in which individualism is abandoned, human integrating nature, thus converging to a change in Law, this hitherto denied to any non-human.

In this sense, Sérgio Aquino⁵ observes that

[...] Life is not a human privilege, but it is an abundant gift to all beings coexisting with people. For this reason, every community expression which encourages new responsibilities, changes the relationship of domination between humans and nature, decolonizes knowledge and broadens varied and different worldviews in order to make sustainable development a project in constant restlessness and metamorphosis.

Thus, buen vivir (well living) is presented in a global vision, offering everyone a different way of life in the pursuit of an ethic and egalitarian society in the development of the dignity of all persons, peoples, races and nature in a bond of solidarity. It also implies the reformulation of the current project, accepting the inequalities and differences.

In the words of Huanacuni⁶, "To live well (vivir bien) is living in community, in brotherhood and especially in complementarity. It is a communal, harmonious and self-sufficient life. To live well means completing one another and share without competition, live in harmony between people and nature. It is the basis for the defense of nature, of life itself and of all humanity".

⁵In the original: "[...] a vida não é um privilégio humano, mas é uma dádiva abundante para todos os seres que coexistem junto às pessoas. Por este motivo, toda expressão comunitária a qual estimula novas responsabilidades, modifica a relação de dominação entre os seres humanos e a Natureza, descoloniza saberes e amplia variadas e diferentes cosmovisões afim de tornar o Desenvolvimento Sustentável um projeto em permanente inquietação e metamorfose". AQUINO, Sérgio Ricardo Fernandes de. **A idéia de Justiça na Filosofia Andina**. Available on: <emporiododireito.com.br/a-ideia-de-justica-na-filosofia-andina-por-sergio-ricardo-fernandes-de-aquino/>. Acesso in: 30 maio de 2015.

⁶In the original: "Vivir Bien es vivir en comunidad, en hermandad y especialmente en complementariedad. Es una vida comunal, armónica y autosuficiente. Vivir Bien significa completarnos y compartir sin competir, vivir en armonía entre las personas y con la naturaleza. Es la base para la defensa de la naturaleza, de la vida misma y de la humanidad toda". HUANACUNI, Fernando. **Buen vivir/ Vivir bien: Filosofía, políticas, estrategias y experiencias regionales andinas**. Peru: CAIO, 2010, p. 22.

Also, Leonardo Boff⁷ highlights that

A care ethic is imperative to be lived in all instances. It imposes a humanity re-education so you can simultaneously meet your needs with the exuberance of the Earth and come to a peaceful coexistence with it. We are not mere inhabitants of the earth. We are your sons and daughters. In a radical perspective, we are the Earth itself, which in her process of evolution reached, by means of the human being, the ability to feel, to think, to love and worry about herself.

Thus, the Andean philosophy teaches us how to live and get along well with all beings and nature, noting that Law is not intended only to humans but to all forms of life on Earth. This balance that Andean philosophy teaches us brings the tune of Well Living.

Therefore, and based on these convictions, legal systems, such as Bolivia's and Ecuador's ones, consecrated in their constitutions, "Mother Earth" - nature - as an individual with rights to be protected and repaired for damages arising from the breach of its guarantees, such as the right to life and existence, the right to be respected, the right to follow their cycles and vital processes free from human alteration, etc., subject to be better explained in the following topic.

The central idea of Well Living, therefore, integrates the most recent Constitutions promulgated in Latin America, in a timidly incipient way in Ecuador (2008) and Bolivia (2009), bringing the element of the Latin American Communitarian democracy, having as source the solidarity of the original peoples of these regions in relation to nature.

The implications brought about by the treatment of nature as a subject of rights can be somewhat troublesome to Law, giving rise to a wide debate on the legal framework relative to the environment, however, the fact is that Law cannot avoid to give protection to this collective good that matters in the realization of human dignity in both the biological and the civility aspects. Nature conservation matters in the dignity of the self, the other, the organic community linked by the invisible thread of life, fragile in the essence and tough on the whole act of facing adversities.

Solidarity thus appears as a fundamental means of survival in this interdependent system that is life on Earth, since beings are finite and incomplete, needing another and the nature to overcome their difficulties and adversities of living in the world. It is the nature

⁷ In the original: "é imperativo uma ética de cuidado a ser vivida em todas as instâncias. Ela impõe uma re-educação da humanidade para que possa ao mesmo tempo satisfazer suas necessidades com a exuberância da Terra e chegar a uma convivência pacífica com ela. Não somos meros habitantes da Terra. Somos seus filhos e filhas. Numa perspectiva radical, somos a própria Terra, que, em seu processo de evolução alcançou, por meio do ser humano, a capacidade de sentir, de pensar, de amar e de preocupar-se consigo mesmo". BOFF, Leonardo. **Ética da vida: a nova centralidade**. Rio de Janeiro: Record, 2009, p.58.

communion and participatory requirement of life for the present is always and ever more desirable, strengthening understanding and objectives arising from a common life project, the more tangible as the narrowing of the common anthropological bond.

3. ANDEAN (NEO)CONSTITUCIONALISM: A LIVING IN HARMONY

Constitutionalism passed, over the years, several major reforms, always in search of the limitation of power, represented historically by the thesis of separation of powers, by Montesquieu, but always being influenced by the history of economics.

Modern constitutionalism, which began in the late eighteenth century, underwent two significant phases, the liberal phase, with the emergence of the first written constitutions - the US (1787) and the French (1791) ones - formal, rigid, endowed with supremacy and of judicial review, thus phase characterized because positivized rights of freedom and sought to contain the activities of an absolutist, vertical state and impeditive of the exercises of the individual rights; and a social phase, which began in the twentieth century to meet social demands and inequalities aggravated by the end of the first war and the crisis of liberalism, is marked by the social rule of Law, under the premise of private property limitation, the exaltation labor rights and a strong state intervention in the economy, represented by Mexican constitution (1917) and Weimar constitution (Germany, 1919).

The modern Rule of Law was based on a strong attachment to the legal text and therefore the paradigm of legality. However, the belief in instrumental reason and the promises of modernity did not realized the reality experienced by political communities of European states in that historical period, resulting in the end of modern constitutionalism and the advent of a new model of constitutionalism in the post World War II. Since then a new stage is lived in constitutional history - Law keeps its roots, but suffers significant metamorphosis with the jurisprudence of values, German trend originated from the judgment of the "Lüth case" which was imported to Latin America, especially Brazil, by the Constitutional Courts, but that instead of solving the problem of discretion, eventually intensified it.

Currently, this new historical period of Rule of Law has received several registered designations, the most usual "post-positivism" and "neoconstitutionalism". However, none of them proved to be adequate enough to find consensus among legal experts who study the issue, as there remain countless terminological inaccuracies and differences to characterize

the constitutional state established by policy documents promulgated after 1945. Although there is no unitary chain, is presented a series of coincidences and common trends that point to the formation of a new legal culture in an attempt to explain the changes in the field of law of the post-2nd-war.

By either of the routes, the neoconstitutionalism points to the need for a theory of law compatible with it, since positivism was not able to explain the changes that have occurred, and demand the establishment of a new legal practice to press for the realization of fundamental rights, because the contemporary law goes through a revolution: as a central point, the constitutional jurisdiction gained prominent role as a guarantor of fundamental rights and democratic regime.

In fact, considering this new movement called "neoconstitutionalism" and the problems arising of this phenomenon, as the role of jurisdiction and judicial activism, many renowned authors point out the legal contradictions that this implies, critically rethinking the contemporary constitutionalism from other important prospects.

Latin America, precisely because of the importation of European constitutional models and the "crossconstitucionalism" practice - technique that consists in the use by Courts and Constitutional Courts of doctrine and jurisprudence of foreign jurists and courts in solving cases - is not normally known for its legal originality; however, despite having a late neoconstitutionalism, breaks new ground in this regard by establishing the refunding of Latin States from a new legal movement called "Andean constitutionalism" basically checked in the countries of Venezuela, Ecuador and Bolivia⁸.

As refers Guido Aguila Grados⁹:

It is not just a turn of political model. It is much more than that: it is the return to their native roots and the vindication of their pre-Columbian culture. [...] This would

⁸ “Pero también va surgiendo el neoconstitucionalismo andino – básicamente en Venezuela, Ecuador e Bolivia – como una forma distinta de concebir la justicia constitucional caracterizada por que se busca superar el conflicto entre el principio democrático del cual se emana la legitimidad de las nuevas asambleas o congresos con el principio de supremacía constitucional, por cuanto la legitimidad de los jueces constitucionales no es suficiente para convertirse en árbitros que decidan las cuestiones centrales en estos países que atraviesan procesos políticos de refundación de Estados.”. LANDA ARROYO, César. *Tribunales constitucionales latinoamericanos y perspectivas actuales*. In: **Hacia la construcción del Tribunal Constitucional Plurinacional**. Perú: Editorial presencia, 2010.

⁹ In the original: “No es solo un giro de modelo político. Es mucho más que eso: es el volver hacia sus raíces autóctonas y la reivindicación de su cultura precolombiana. [...] Estaríamos ante un cuarto constitucionalismo, lo que PECES-BARBA, apoyándose en BOBBIO, denomina “Etapa de especificación o concreción” de los derechos fundamentales, pero orientado hacia algo desconocido en Europa: el reconocimiento indígena, el reclamo sobre la mediterraneidad, la autonomía y la organización territorial y la administración de la tierra y el latifundio.”. GRADOS, Guido Cesar Aguila. *Hacia un (neo) neoconstitucionalismo?* In: CAZZARO, Kleber; GRADOS, Guido Cesar Aguila; STAFFEN, Márcio Ricardo. **Constitucionalismo em mutação**. Reflexões sobre as influências do neoconstitucionalismo e da globalização jurídica. Blumenau: Nova Letra, 2013, p. 41.

be fourth constitutionalism, which Peces-Barba, relying on BOBBIO, called "Stage of specification or realization" of fundamental rights, but facing something unknown in Europe: the indigenous recognition, the claim of being landlocked, the autonomy and the territorial organization and management of land and estates.

This new constitutionalism, long before constituting a re-foundation of democratic rule of law in countries where it stands, is primarily the result of the need to re-foundation of the values upon which it stands societies in Andean Latin countries, since the social imaginary in such communities no longer entailed a consumerist model of life, homogenizing and excluding indigenous cultures and the ancient and traditional knowledge of much of the population.

The resumption of an Andean philosophy of *buen vivir y vivir bien* is due, among other things, mainly to the modern paradigm crisis and the crisis of instrumental reason, which had in the advent of the economy as determinant factor shaping the human life its state of art. Latin America, geographic region of abundant nature and that its economic strength comes mainly from the exploitation of the environment, of plowing land, planting seeds and agribusiness, has felt with great intensity the harmful effects of secular and intermittent human environmental exploitation.

In fact, the whole planet Earth is experiencing in a long time an accelerated context of technical and scientific changes, influenced by intense, permanent and excessive man action against the environment, threatening life as a whole. This reality implies the imbalance of ecosystems and consequently the lives of living beings, human and nonhuman, shortening the existence of most species throughout history.

Before these findings and because cultural and economically dependent of nature as source of livelihood and indigenous worldview, the Andean society was concerned with the pursuit of a compass between human rights and the rights of nature, recognizing the importance of environmental preservation and human dependence on interrelationships with other living beings and with a balanced green space.

In this sense, sensitive to this reality, some Latin American countries have been developing new philosophies of life to be guiding human actions, both in private life, as in other aspects related to the living in society, spreading even to the Law and politics, as it is clear from the constitutional reforms arising from this paradigm shift in the Andean thought.

As well as other parts of the world today live a new constitutional period, as previously discussed, in Latin America could not be otherwise; however, the Latin constitutional law, although deriving from the European constitutional model has been

innovating the legal scenario with the adoption of the Andean philosophy as foundational paradigm of legal order.

From this evaluative refunding, this new constitutional contribution recognizes nature as a subject of rights in the Andean Constitutions. Therefore, this article highlights the preamble of the Republican Constitution of Ecuador, 2008¹⁰: "Celebrating the nature, La Pacha Mama, from which we are part of and that is vital for our existence [...] a new form of citizen life sharing, in diversity and in harmony with nature, to reach a well living - the *sumak kawsay*". Apprehended from the preamble is the notion that there is a right of Nature, so that nature is not a mere object, thereby acquiring a legal personality, to legitimize any interested party to protect the environment, that when attacked, has its self-defense guaranteed.

The exploratory system, so widespread by economic development, sustains the environmental abuse, not recognizing due value to nature and without limiting such abuses, allowing the emergence of the need for constitutional rule to curb depreciation and disproportionate appropriation of man in relation to nature.

In this context, Zaffaroni¹¹ teaches that what is prohibited is the desmesured and useless abuse, and we can no longer consider Earth an object of free disposal of man, inviting individuals to recognize themselves part of it. This is a challenge to preserve life and its possible existence in harmonic conditions, thus corresponding to the reworking of the relationship between humans and nonhumans.

Hence, Zaffaroni¹² he transcribes the preamble of the Constitution of Bolivia: "Fulfilling the mandate of our peoples, with the strength of our Pachamama and thank God, refunding Bolivia".

From this new constitutional vision, Bolivia approves a new category of legal subject, a framework of a conscious society, explicitly clarifying the respect for nature as a whole. As said by Sergio Aquino¹³, "The Well Living emphasizes a harmonious Sustainability between human and nonhuman worlds. The significance of this perennial

¹⁰In the original: "Celebrando a la naturaleza, La Pacha Mama, de la que somos parte y que es vital para nuestra existencia[...]uma nueva forma de convivência cidadana, em diversidade y armonia com La naturaleza, para alcanzar el buen viver, el *sumak kawsay*". ZAFFARONI, Eugenio Raul. **La pachamama y el humano**. Buenos Aires: Colihue, 2012, p. 108.

¹¹ ZAFFARONI, Eugenio Raul. **La pachamama y el humano**. Buenos Aires: Colihue, 2012, p. 66.

¹² In the original: "Cumpliendo com el mandato de nuestros pueblos, com La fortaleza de nuestra Pachamama y gracias a Dios, refundamos Bolivia". ZAFFARONI, Eugenio Raul. **La pachamama y el humano**. Buenos Aires: Colihue, 2012, p. 109.

¹³ In the original: "O Buen Viver enfatiza uma Sustentabilidade harmônica entre o mundo humano e não-humano. O significado perene dessa harmonia não pode ser compreendido pela sua atemporalidade, mas na adversidade que proporciona os ires e vires desse convívio nem sempre claro para o gênero humano". AQUINO, Sérgio Ricardo Fernandes de. **Sustentabilidade, Direito e Filosofia** Andina. Available on: <emporioidireito.com.br/sustentabilidade-direito-e-filosofia-andina-2/>. Access in: 30 mai. 2015.

harmony cannot be understood by its timelessness, but in adversity that provides the “comes and gos” of this interaction which is not always clear to mankind ”.

In this perspective, the legislations shift the view of man as the center of the universe, applying a living union between the living beings inhabiting the various parts of Pachamama. A new legal treatment to nature in the Andean philosophy stimulates mechanisms in the constitutions of Bolivia and Ecuador, which ensure participation of all in its preservation and care.

The actual Constitution¹⁴ of Ecuador she robust, in his seventh chapter, these rights:

Art. 71- Nature or Pacha Mama, where it reproduces itself and creates life, has the right to have fully respected its existence and the maintenance and regeneration of its vital cycles, structure, functions and evolutionary processes. Any person, community, people or nationality may require the public authority to enforce the rights of nature. To apply and interpret these rights, the principles established in the Constitution are observed, as appropriated. The State will encourage natural and legal persons and groups, to protect nature, and promote respect for all the elements that form an ecosystem.

These values are rescued of indigenous peoples and other ethnic and racial minorities traditions’ knowledge, which stand out in respect for nature giving priority to life. The rights of nature and Pachamama put the Ecuadorian proposal inside sustainability as being the one who defend its own values or the ones intrinsic to nature, independent of human conception.

Although there are constitutional enforcements, Bolivia approved the Bill of Rights of Mother Earth, on which stands Cademartori¹⁵: "The law establishes Mother Earth as the 'dynamic living system formed by the indivisible community of all living systems and living beings, interrelated, interdependent and complementary, sharing a common destiny.'" This legislation is short, with only three chapters and ten articles, and has as its principles: harmony, the collective good, the respect for the defense of Mother Earth’s Rights.

¹⁴In the original: “Art. 71 - La naturaleza o Pacha Mama, donde se reproduce y realiza la vida, tiene derecho a que se respete integralmente su existencia y el mantenimiento y regeneración de sus ciclos vitales, estructura, funciones y procesos evolutivos. Toda persona, comunidad, pueblo o nacionalidad podrá exigir a la autoridad pública el cumplimiento de los derechos de la naturaleza. Para aplicar e interpretar estos derechos se observan los principios establecidos en la Constitución, en lo que proceda. El Estado incentivará a las personas naturales y jurídicas, y los colectivos, para que protejan la naturaleza, y promoverá el respeto a todos los elementos que forman un ecosistema.”. CADEMATORI, Daniela Mesquita Leutchuk, Germana de Oliveira; CESAR, Raquel Coelho Lenz; CADEMATORI, Sérgio Urquhart. **A construção jurídica da UNASUL**. Florianópolis: Editora da UFSC; Fundação Boiteux, 2011, p. 326-345.

¹⁵In the original: “a lei estabelece a Mãe Terra como o ‘sistema vivo dinâmico formado pela comunidade indivisível de todos os sistemas de vida e os seres vivos, inter-relacionados, interdependentes e complementares, que compartilham um destino comum’”. CADEMATORI, Daniela Mesquita Leutchuk, Germana de Oliveira; CESAR, Raquel Coelho Lenz; CADEMATORI, Sérgio Urquhart. **A construção jurídica da UNASUL**. Florianópolis: Editora da UFSC; Fundação Boiteux, 2011, p. 326-345.

Thus, it is demonstrated that the Bolivian law imposes actions to the State, which should be aimed at balancing standards, to instruct duties in their implementation, which should guarantee the rights of Mother Earth, what is vital for better quality of life on the planet as living beings are the ones who suffer more the environmental detritions.

These new constitutions implement sustainable policies, guided by respect for Pachamama, promoting a new vision of essential values to the preservation of balance and ecosystems. Thus, sustainability is measured as a self-regulation and self-preservation mode of the Earth, which is independent of human actions.

According to Sérgio Aquino ¹⁶, when talking about sustainability, he says: "Sustainability, in this conception, cannot be an anthropocentric expression, but a biocentric understanding. It is the symphony sung, according to the Andean tradition, by Pacha Mama to take care and preserve all living beings inside of her".

Rises in all these teachings a predominant model of Well Living, ie the harmony of humans and nature, the authentic revolution of a paradigm for a balance to ensure a common future of everybody's survival.

FINAL CONSIDERATIONS

Pasolini in his writings "*Corsair Writings, Lutheran Letters*" brought a response to their concerns in a growing anthropological and cultural change, via the Italian society trivialize, because the Italians were not the same. Emerging a new cross-language, coated development and progress, known for capitalist-consumerist fascism that empties cultural values and gives them a purely economic value. The author brought up the company's image in its most visceral and dissident under which until then was masked by the bourgeoisie, its collaboration refers to a new story, enlightening what was completely dark, because as a visionary, his realism and his warning still relevant, as in Latin America today the consolidation of Well-Living and the pasolinian thought are positivized the Andean Constitutions. In this sense, it is necessary to say: *Bienvenido Pasolini*.

The time currently experienced by humanity is a time of transition, bankruptcy of a face to a new paradigm and therefore is a period of profound uncertainty, justifiable

¹⁶ In the original: "A Sustentabilidade, nesta concepção, não pode ser uma expressão antropocêntrica, mas de compreensão biocêntrica. É a sinfonia entoada, segundo a tradição andina, pela Pacha Mama para cuidar e preservar todos os seres vivos no seu interior". AQUINO, Sergio Ricardo Fernandes de. **O Direito em busca de sua humanidade**: diálogos errantes. Curitiba: Editora CRV, 2014, p. 31.

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insecurities, revision of values, shattering truths and cultivation of many doubts. So to be such context has numerous disagreements about its beginning and end, nomenclature and characteristics, but it is certain that denounces the fallacy of the modern paradigm, and the deification of progress and development of human, time-based instrumental reason, through which it is justified to resource depletion, natural and artificial, to its scarcity. Modernity, in this view, converted all product to be consumed to become dust, waste unable to be reused. Objectificou nature, human needs and to the person, pricing the possible and the impossible.

This crisis affects all dimensions of human in them included the law. By also be cultural, the entire core of the legal issues is also affected and suffers changes due to the core of cultural issues. In this sense, the law requires certain stabilization of values dear to the political community with which it interacts. The law translates historically the search for balance between freedom and power, and therefore requires consensus so that the standard takes effect.

One of the main fields of law that has been affected by the post-war changes is that of constitutionalism. Much has been written and discussed about the constitutional rule of law and the changes and transformations that have marked this area as decisive for the legal science. Currently, constitutionalism is going through a new phase, characterized by the revocability of the legal standard set out at the constitutional enshrining express and implied fundamental rights and bind the powers to adhere to them.

This new phase, precisely because distinct from previous stages - liberal and social - has been coined as "neoconstitutionalism" - move back to the study of new constitutional phenomena and their consequences - and has won more supporters among the lawyers, national and international.

In this sense, sensitive to this reality of paradigm crisis and constitutional change, some Latin American countries has been developing new philosophies of life to guide human actions, both in private life, as in other aspects related to living in society, permeating, as well, law and politics, as it is clear to the constitutional reforms arising from this paradigm shift in the Andean thought.

As well as other parts of the world today live a new constitutional period, as previously discussed, in Latin America could not be otherwise; however, the Latin constitutional law, although deriving from the European constitutional model has been innovating the legal scenario of the adoption of the Andean philosophy as foundational paradigm of paternal order.

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From this evaluative refunding, is constituted a new constitutional contribution, called andean neoconstitutionalism, from which the constitutions that were enacted on Ecuador (2008) and Bolivia (2009), assign in their texts an innovative recognition of nature as subject of Law, thus understood as the one to whom the law, in an ample way, grants rights and obligations.

This new constitutional movement originated from Latin America is based on the Andean philosophy, founded in ancient indigenous traditional knowledge, of respect for nature and all beings, to each other and between humans and nonhumans, believing that life is a web, a network to interconnect all, being necessary to live from a culture of otherness and solidarity in order to perpetuate the survival of each through joint cooperation in the world.

This cultural and legal mutation of the Andean countries, perhaps belatedly, is a response to Pasolini's aspirations in combating capitalist-consumerist fascism, based on the recognition of the fallacy of capitalist, homogenizing, consumerist culture, falsely tolerant and conformist to injustice and exclusion of nonsense and cruelty, which empties cultural values and gives them a purely economic value, turning everything in currency trading, in unimportant commodities which can be priced and sold according to a short-sighted and floating market.

Consumerism and the cultural industry, faithful servant of capital, transformed the development synonymous with economic progress, regardless of the risks and related consequences of this constant quest for enrichment. In pursuit of this unlimited and unrestrained progress brought to front blindness to the destruction of nature and consequently the human condition.

With great effort he realized that this is the negative side of modernity, laid bare by the cultural revolution that fills this post-modern period: the irreversibility of return annihilator of the environment and of individual autonomy, limited by the depletion of your space natural enabler freedoms - to which he himself gave cause. This is the consequence of civilization, alienates as it expands, tolerating the degradation, hunger and violence, and shocks while meeting and clarifies.

Pasolini never lost its actuality, it was a visionary; its realism and its warning still relevant: progress must therefore be reviewed as a phenomenon limited to human finitude, extension of the biological process of the earth itself, the limitation of natural resources, and the irreversibility of the results caused by human activities in space and in time. The notion of progression as development must be guided not an instrumental reason, which objectifies

everything, turning in the middle and not at the end, but on human dignity as a foundational value of historical experience, permeating politics, culture, economy, right, and the social.

The movement of the Andean constitutionalism thus serves as an alternative to capitalist ethics, refunding economic and empty value so far given to things, by cultural values that go beyond the market, transcending it and seeking its legitimacy in otherness, in line with the pasolinian thought, still present after four decades.

There is therefore essential to be constant revision of moral values and the more necessary cyclical approach these the right, according to the Andean philosophy, since, without it, the result is the gap beaten viewed daily between formal order (unreal) and social (real) establishing principles and guarantees based on equality and equity, but arbitrary and unlawful practices and effective intolerance and inequality. That same step, the recognition of the other and the practice of otherness are indispensable for the remodeling of ethical behavior, both in space that take place private relations, as - and especially - those that take shape public relations.

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