

Socio-environmental Constitutionalism and Authoritarian Regressions: Indigenous Rights and Judicial Resistance in Brazil

by Estefânia Maria de Queiroz Barboza
and Thalison Daniel Dullius

TABLE OF CONTENTS: 1. The rebirth of the indigenous peoples in law: historical background of environmental protection in Brazil. – 2. Constitutional promises and normative architecture: the socio-environmental framework of the 1988 Constitution. – 3. Between resistance and limits: the Supreme Federal Court in the trenches. – 4. Where constitutional jurisdiction cannot reach: indigenous peoples' knowledge as resistance to the neoliberal paradigm. – 5. Concluding remarks.

1. *The rebirth of the indigenous peoples in law: historical background of environmental protection in Brazil*

For a long period – especially during the military dictatorship (1964–1985) – economic development prevailed over ecological concerns and the rights of traditional peoples. Government projects aimed at the “integration” of the Amazon, the construction of highways, and the expansion of agribusiness advanced with few environmental constraints. It was only in the 1970s and 1980s, alongside growing global ecological awareness and domestic mobilizations (such as the rubber tappers’ movement led by Chico Mendes), that environmental issues began to gain traction on the national agenda.

A crucial turning point came with the country’s re-democratization and the promulgation of the 1988 Constitution, the result of broad popular participation. This moment marked the rebirth of socio-environmental concerns and the rights of traditional communities. As noted by Carlos Frederico Marés¹, the 1988 Brazilian Constitution represented a true “rebirth of Indigenous peoples into the Law,” after five centuries of invisibility, witnessing the emergence of new social rights – not only for themselves but also for quilombola and other traditional communities. After centuries of marginalization, these rights were formally recognized, bringing to the center of the legal order, at least potentially, a worldview grounded in respect for nature.

¹ C. MARÉS, *O renascer dos povos indígenas para o Direito*, Curitiba, 1998.

In practice, there has always been a profound connection between environmental protection and Indigenous ways of life. Indigenous peoples and traditional communities – such as quilombolas, riverine, and extractivist groups – have for centuries acted as guardians of forests, rivers, and biodiversity. The Indigenous worldview does not separate community well-being from the health of the environment: land, water, and forest are integral to their identity and survival.

Therefore, the struggle for Indigenous rights has always gone hand in hand with the struggle for environmental protection, although there is an ongoing debate – reflected in public policies – about whether nature should be protected by isolating it from human presence or by integrating it with traditional ways of life. With re-democratization, critical voices against the model of conservationism detached from socio-environmental integration gained strength, advocating the importance of human presence for conserving both biodiversity and cultural diversity. The 1988 Constitution marked a turning point by recognizing, for the first time in Brazilian law, the social organization, customs, languages, beliefs, and traditions of Indigenous peoples. This shift, though contested in practice, signaled an acknowledgment of the country's ethno-cultural plurality and the need for a more integrated approach linking ecology and social justice.

In recent decades, Brazil has experienced significant institutional progress in environmental protection and Indigenous rights, largely driven by the normative framework of the 1988 Constitution. However, this trajectory has not been linear. More recently, particularly during the government of Jair Bolsonaro (2019–2022), a regressive agenda took hold, marked by climate denialism, the militarization of politics, and the instrumentalization of crises as opportunities for institutional dismantling. The setbacks assumed dramatic proportions during the COVID-19 pandemic, when deliberate neglect of Indigenous lives was exposed in the case *ADPF 709*, revealing the failure of an authoritarian and asymmetric mode of governance. At the same time, the then Minister of the Environment notoriously suggested that it was time to “let the cattle herd through,” signaling an explicit strategy of environmental deregulation amid a society already suffocated by a public health emergency.

In this environment of institutional dismantling, Indigenous peoples were portrayed as obstacles to “progress” and discursively constructed as internal enemies of a supposedly homogeneous nation. The authoritar-

ian logic that permeated this period exposed the profound gap between constitutional promises and the reality imposed on Brazil's biomes and traditional populations, once again positioning the country not as a protagonist of solutions, but of the global environmental crisis. From this diagnosis, the article critically reflects on the tensions between the constitutional order, environmental constitutional jurisdiction, and the advance of an exclusionary developmentalist model.

It examines the role of the Supreme Federal Court (STF) as a central actor in the effort to give concrete meaning to the constitutional promises of socio-environmental protection amid rising authoritarianism and recurrent institutional backlash. The tension between constitutional advancement and political resistance becomes particularly visible in the interaction between judicial enforcement of environmental and Indigenous rights and subsequent legislative responses aimed at neutralizing those gains. This dynamic is exemplified by the enactment of Law No. 14.701/2023², through which Congress sought to revive the *marco temporal* thesis even after its incompatibility with the Constitution had been affirmed by the Court. A similar pattern can be observed in the approval of Law No. 15.190/2025³, which consolidated the deregulation of environmental licensing previously proposed in Bill No. 2.159/2021 by reducing procedural safeguards, weakening preventive controls, and expanding exceptions to prior environmental impact assessment. The statute thus exemplifies the growing tension between the Legislative and the Judiciary, as Congress advances regulatory regression even in areas subject to constitutional environmental protection and ongoing judicial oversight.

Within the field of constitutional jurisdiction, this dispute reveals the structural limits of a system which, though centered on the STF, does not operate within a dialogical architecture and fails to provide stable resolutions to interpretive conflicts over the meaning of the Constitution – especially when confronted with majoritarian political forces that continuously strain its normative foundations. The Court thus finds itself in the trenches of a struggle between the normative force of the Constitution and the regressive agenda advanced by sectors of the National Congress, particularly those aligned with agribusiness interests. The analysis that follows seeks to demonstrate how these tensions shape the contours of

² Law 20 October 2023, no. 14.701.

³ Law 8 August 2025, no. 15.190.

environmental protection and Indigenous rights in contemporary Brazil – between judicial resistance and the limits imposed by majoritarian politics.

Accordingly, understanding socio-environmental protection in Brazil requires moving beyond institutional and legal analysis to encompass the epistemological and political dimensions that structure the very contours of the conflict. Judicial achievements, although significant, are not by themselves capable of transforming the economic and cultural structures that sustain environmental degradation. It is at this juncture that Indigenous knowledge and ways of life emerge not merely as assets to be protected, but as foundations for a civilizational alternative to the neoliberal paradigm – an ontology that rejects the commodification of nature and affirms the interdependence between territory, community, and biodiversity. This perspective, explored in the following section, shifts the issue beyond the immediate reach of constitutional jurisdiction, inviting a rethinking of both the concept of development and humanity's relationship with nature.

In this context, Eduardo Galeano's reflection on Latin America's environmental challenges remains deeply relevant. He observed that Latin America was "condemned to humiliation" by an unequal global system: "we Latin Americans are poor because the land we walk on is rich, and the places privileged by nature have been cursed by history".⁴ This statement resonates powerfully in the Brazilian case, where the abundance of forests, minerals, and water has paradoxically become a source of dispossession and violence. Environmental wealth has turned into a curse, captured by predatory extractive logics oriented toward the global market. Consequently, the issue must be situated within the expansion of the neoliberal capitalist model which – by radicalizing the modern divide between humanity and nature – transforms natural goods into mere inputs for the satisfaction of ever-growing material demands, feeding a cycle of consumption that perpetuates destruction.

Thus, the study concludes that socio-environmental protection in contemporary Brazil cannot be fully understood – or effectively realized – without confronting the structural foundations of degradation and inequality. More than a normative or institutional dispute, it constitutes a clash of paradigms: between models that continue to subordinate nature to the logic of accumulation and consumption, and models that propose forms

⁴ E. GALEANO, *As veias abertas da América Latina*, Rio de Janeiro, 1978, 187.

of existence grounded in interdependence and respect for territories. The articulation between environmental justice and social justice is therefore not only necessary but inescapable. The following sections explore these tensions through the lens of Brazil's recent experience, between constitutional promises, setbacks, and the Supreme Federal Court's central role in this field of dispute. The guiding question of this work, therefore, is: what are the limits and possibilities of environmental constitutional jurisdiction in the face of advancing authoritarianism, expanding neoliberalism, and the ongoing struggle over the meaning of the Constitution?

2. *Constitutional promises and normative architecture: the socio-environmental framework of the 1988 Constitution*

The 1988 Constitution represented a historical turning point by establishing, for the first time, a robust normative framework for socio-environmental protection in Brazil. As Marés observes, Brazilian legislation from the colonial period up to the 1988 Constitution was characterized either by silence or by attempts to assimilate Indigenous peoples. Only with the 1988 Constitution did a real advance occur, through the recognition of Indigenous peoples' collective rights to their social organization, customs, languages, beliefs, and traditions. However, the author emphasizes that this same Constitution lacked the courage to declare Brazil a multiethnic and pluricultural nation.⁵ As a result of the demands for fundamental guarantees that emerged during the process of redemocratization, the constitutional text incorporated new diffuse and collective rights, most notably the right to an ecologically balanced environment (Article 225) and the recognition of the original rights of Indigenous peoples (Articles 231 and 232).

Article 225 is paradigmatic in affirming that "everyone has the right to an ecologically balanced environment, a common good of the people and essential to a healthy quality of life," imposing upon both the State and society the duty to defend and preserve it for present and future generations. This provision enshrines the principle of intergenerational solidarity, endowed with clear normative force: the State's obligation to ensure that future generations may enjoy a healthy planet. Such a principle

⁵ C. MARÉS, *O renascer dos povos indígenas para o direito*, cit., 186.

challenges short-term, growth-oriented economic visions and demands long-term planning – still rare in governmental practice.

Article 225 also innovates by detailing the State's duties for its effective implementation, such as preserving essential ecological processes, maintaining biodiversity, controlling harmful substances, and requiring prior environmental impact assessments. Its paragraphs possess full normative efficacy and bind all branches of government, enabling the accountability of both the State and private actors for omissions and environmental harm.

Among the principles derived from this article are the *polluter pays* principle – which compels those who cause damage to repair it, thereby internalizing the costs of degradation – and the principle of full reparation, which prioritizes the restoration of ecological balance whenever possible. These principles have been repeatedly applied in jurisprudence, including by the Supreme Federal Court (STF), which has also recognized the imprescriptibility of environmental damage – a landmark precedent that will be analyzed in Section 4.

Paragraph 3 of Article 225 likewise represents a decisive advancement by providing for civil, administrative, and criminal sanctions for conduct harmful to the environment, including acts committed by legal entities. This provision breaks with Brazil's historical tradition of corporate impunity and gave rise to normative instruments such as the Environmental Crimes Act (Law No. 9,605/1998)⁶.

In the same movement of rights expansion, Articles 231 and 232 granted unprecedented recognition to Indigenous peoples as subjects of rights, acknowledging their social organization, cultures, traditions, languages, and original rights over the lands they traditionally occupy. The Constitution guarantees them permanent possession and the exclusive usufruct of the natural resources of the soil, while assigning to the federal government (*União*) the duty to demarcate and protect these territories. This represents a multicultural and pluriethnic shift in how the Brazilian State must relate to its original peoples.

Another structural element lies in the federative design of environmental protection. Under a system of concurrent competencies, the federal government enacts general norms, while states and municipalities may supplement them with more protective rules. This decentralization

⁶ Law 12 February 1998, no. 9.605.

allows for localized responses to environmental issues but requires inter-governmental cooperation to prevent gaps or regressions. In the Indigenous context, the competence to demarcate lands belongs to the federal government, and these territories are federal public property – a status that reinforces their constitutional protection.

Within the federal administrative structure dedicated to socio-environmental protection, three institutions play strategic and complementary roles: the Brazilian Institute of Environment and Renewable Natural Resources (*Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis* – IBAMA), the Chico Mendes Institute for Biodiversity Conservation (*Instituto Chico Mendes de Conservação da Biodiversidade* – ICMBio), and the National Foundation for Indigenous Peoples (*Fundação Nacional dos Povos Indígenas* – Funai). IBAMA is responsible for environmental monitoring, licensing, and enforcement, acting to prevent and repress infractions and to control potentially polluting activities. ICMBio manages federal conservation units, promoting their preservation, research, and sustainable management. Funai's mission is to protect and promote the rights of Indigenous peoples, particularly through the demarcation, regularization, and supervision of traditionally occupied lands. Cooperation among these institutions is essential to fulfill the Constitution's mandate of protecting traditional populations and biodiversity, although their operations are often constrained by budget cuts, political pressure, and attempts at institutional weakening.

Despite the strategic importance of these agencies, their performance has frequently been limited by fiscal restrictions, political interference, and deliberate efforts to undermine their institutional capacity. This scenario of administrative fragility has amplified the relevance of the Judiciary as a key arena for the protection of socio-environmental rights. Indeed, the 1988 Constitution not only created specialized administrative bodies but also strengthened procedural instruments capable of activating constitutional jurisdiction whenever the other branches of government act negligently or regressively.

At the procedural level, the 1988 Constitution also reinforced the instruments of constitutional review, which are fundamental for ensuring socio-environmental rights. The model is hybrid: there is *concentrated review* (via Direct Actions of Unconstitutionality – ADI, Declaratory Actions of Constitutionality – ADC, and Allegations of Breach of Fundamental Pre-

cept – ADPF) before the Supreme Federal Court (STF), and *diffuse review* exercised by lower courts, with the possibility of appeal to the STF. The Public Prosecutor's Office (*Ministério Público*) was also strengthened, with standing to file public civil actions in environmental matters. This institutional architecture allows the Judiciary to be mobilized against omissions or regressions by the other branches of government.

In this context, the Supreme Federal Court has consolidated its position as the guardian of Brazil's so-called "Green Constitution." The Court has acted both in abstract review and in concrete cases, reaffirming principles such as the prohibition of environmental regression and the principle of the effectiveness of environmental norms. Through this active role, structural and strategic litigation has gained prominence, with significant participation from the Public Prosecutor's Office, civil society organizations, and associations.

Within this framework, it is important to highlight the principle of the prohibition of environmental regression (*princípio da vedação ao retrocesso ambiental*), which, although not explicitly stated in the 1988 Constitution, is considered a fundamental guarantee within the Brazilian legal order. Its existence is inferred from a set of constitutional foundations, including the principles of the Democratic and Social State governed by the rule of law, human dignity, the maximum effectiveness of fundamental rights, and legal certainty. This principle prohibits the suppression or weakening of norms that give concrete effect to the essential core of rights such as the right to an ecologically balanced environment, binding the legislature, the executive, and the judiciary. However, the principle is not static; it allows for the evolution and improvement of environmental legislation in an "ascending spiral," as environmental law must aim at the continuous enhancement of environmental quality.

Another relevant aspect of the Brazilian legal system in the environmental sphere is the *imprescriptibility* of environmental damage reparation, as recognized by the Supreme Federal Court (STF). In 2020, in its ruling on *Extraordinary Appeal* (RE) 654.833/AC⁷, the Court held that civil claims for environmental damage are not subject to limitation periods, affirming that the diffuse and intergenerational nature of the right to a healthy environment requires continuous protection. As highlighted by Ayala

⁷ Supreme Federal Court (STF), Recurso Extraordinário (Extraordinary Appeal – RE) No. 654.833/AC, virtual judgment of 17 April 2020.

and Morato Leite, this decision consolidates an *ecological turn* in Brazilian constitutional jurisprudence by recognizing that the function of tort law, when applied to environmental matters, must be guided by constitutional principles such as human dignity, intergenerational solidarity, and sustainability.⁸ According to the authors, the imprescriptibility of environmental damage is justified by the very nature of such harm, which is often latent, long-term, and characterized by cumulative and irreversible effects. This makes the application of traditional limitation periods inadequate and calls for a new constitutional hermeneutic grounded in the principle of comprehensive environmental protection.

Decisions such as the one recognizing the imprescriptibility of environmental damage demonstrate the Supreme Federal Court's central role in shaping Brazil's so-called "*Green Constitution*." This role, however, has fueled the broader debate surrounding the phenomenon known as the *judicialization of politics*. Although widely disseminated in both public and legal discourse, the expression is often criticized for its conceptual imprecision. In many cases, it functions merely as a generic label used to describe the Judiciary's involvement in matters of high political and social relevance, without distinguishing between the legitimate exercise of constitutional review and undue interference in the domain of ordinary politics.⁹

According to authors such as Débora Maciel and Andrei Koerner, the expression is often used in a generic and imprecise manner, as a label that conceals distinct institutional phenomena without properly distinguishing between the exercise of constitutional review and undue interference in matters belonging to ordinary politics. Moreover, in certain contexts, the term acquires a normative connotation, laden with criticism of judicial decisions that, in fact, merely fulfill their constitutional duty to safeguard the supremacy of the Constitution.¹⁰ The authors therefore propose a shift in focus: rather than asking whether there is a "judicialization of politics," it is more fruitful to examine how institutions operate within a constitutional architecture that both authorizes and requires the judicialization of certain issues – particularly those involving fundamental rights,

⁸ P. de A. AYALA; J. R. M. LEITE, *A transformação ecológica do Direito de danos e a imprescritibilidade do dano ambiental na jurisprudência brasileira* in *Revista de Investigações Constitucionais*, vol. 8, no. 3, 15–45, Sept./Dec. 2021.

⁹ D. ALVES, A. KOERNER, *Os sentidos da judicialização da política* in *Lua Nova*, no. 57.

¹⁰ D. ALVES, A. KOERNER, *Os sentidos da judicialização da política*, cit.

legislative omissions, or threats to the constitutional order. In such cases, judicial activism is not a distortion of the system but an integral component of the institutional design aimed at protecting minorities and diffuse rights.

In Brazil, this model is reinforced by the existence of a broad system of constitutional review that allows the Supreme Federal Court (STF) to act both through diffuse and concentrated mechanisms. Particularly significant are *Direct Actions of Unconstitutionality* (*Ações Diretas de Inconstitucionalidade* – ADIs), *Allegations of Breach of Fundamental Precept* (*Arguições de Descumprimento de Preceito Fundamental* – ADPFs), and other procedural instruments that have been used to address omissions or regressions by the other branches of government. The STF's centrality is further intensified by its capacity to issue binding interpretations and by its engagement in landmark cases such as *ADPF 709* (protection of Indigenous peoples during the pandemic) and *ADPF 760* (combating deforestation in the Amazon)¹¹, which will be analyzed in Section 3.

The Public Prosecutor's Office (*Ministério Público*), in turn, plays an essential role in this context as an autonomous institution responsible for defending the legal order, the democratic regime, and social and individual interests of an inalienable nature. In the environmental field, it has been a leading actor in public civil actions, inspections, and administrative recommendations, serving as one of the main coordinators of collective litigation in defense of the environment and traditional peoples.

Therefore, although the concept of “judicialization” remains a controversial and often insufficient category to capture the complexity of interactions among the branches of government, it is undeniable that both the Judiciary and the Public Prosecutor's Office occupy central positions in the implementation of the 1988 *socio-environmental Constitution* – especially in contexts marked by omission, regression, or institutional collapse. The doctrine of judicial self-restraint is viewed as inadequate within the framework of the 1988 Constitution, which requires a renewed role for the Judiciary in the realization of fundamental rights.¹²

Moreover, this framework encompasses the growing use of climate litigation as a strategy to pressure governments into fulfilling their

¹¹ Supreme Federal Court (STF), ADPF No. 760, judgment of 1 March 2024.

¹² E. BARBOZA; K. KOZICKI, *Judicialização da política e controle judicial de políticas públicas* in *Revista Direito GV*, vol. 8, no. 1.

environmental commitments. This global movement is reflected in the Supreme Federal Court's (STF) so-called "*green docket*," which represents a new frontier in the political judicialization of environmental issues.

Finally, one cannot overlook the influence of international law: Brazil is a signatory to key treaties such as the Paris Agreement, the Convention on Biological Diversity, and the International Labour Organization's Convention No. 169. Although not always fully implemented, these instruments shape the domestic agenda and reinforce obligations related to environmental protection and the recognition of the rights of Indigenous peoples and traditional communities.

In sum, the 1988 Constitution established a normative architecture that interlinks environmental protection and Indigenous rights as expressions of a broader socio-environmental paradigm. However, the realization of these constitutional promises requires institutions willing to resist regression and to interpret the 1988 Charter as a project of a shared future. As will be seen in the following section, it is precisely this tension between constitutional promises and authoritarian resurgence that defines the contemporary struggle over socio-environmental law in Brazil.

3. *Between Resistance and Limits: the Supreme Federal Court in the trenches*

Since the promulgation of the 1988 Constitution, the Supreme Federal Court (STF) has played a decisive role in shaping Brazil's constitutional order in socio-environmental matters. Acting as the guardian of the so-called "*Green Constitution*," the STF has confronted, on one hand, the resurgence of authoritarianism – particularly evident during the Bolsonaro administration – and, on the other, the structural impacts of neoliberalism in the environmental sphere, whose most visible expressions lie in the institutional dismantling of environmental policies and the weakening of Indigenous peoples' rights.¹³¹⁴ Both dynamics converge in an attempt to dismantle the constitutional commitments to socio-environmental justice, demanding from the Court an active stance in the face of nor-

¹³ M. R. STAFFEN, "O Supremo Tribunal Federal como garantidor do estado de direito ambiental no governo do presidente Jair Bolsonaro", in *Revista Brasileira de Direito*, vol. 18, no. 3, 2022.

¹⁴ O. V. VIEIRA; R. GLEZER; A. L. P. BARBOSA, *Supremocracia e infralegalismo autoritário: o comportamento do Supremo Tribunal Federal durante o governo Bolsonaro* in *Novos Estudos CEBRAP*, vol. 41, no. 3.

mative regressions and state omissions. The set of decisions analyzed in this section illustrates how the Supreme Federal Court has oscillated between institutional resistance and the limits imposed by the prevailing political balance of power, revealing both its protagonism and its vulnerabilities in times of ecological and democratic crisis.

Over the past decades, the Supreme Federal Court (STF) has developed a rich body of jurisprudence on socio-environmental matters and the rights of Indigenous peoples. The Court has been the stage for emblematic battles both for environmental preservation and for the affirmation of the rights of traditional populations. One paradigmatic case was the demarcation of the *Raposa Serra do Sol* Indigenous Land in Roraima, inhabited by the Macuxi, Wapichana, Taurepang, Ingarikó, and Patamona peoples. In 2009, in its judgment of Petition No. 3.388/RR, the STF recognized the original territorial rights of these peoples and upheld the continuous demarcation of the Indigenous territory, ensuring the removal of non-Indigenous occupants and preventing its fragmentation into separate “islands.” The decision strengthened Article 231 of the Constitution and was celebrated as a historic victory, recognizing land as a condition for the physical and cultural existence of Indigenous peoples.¹⁵

However, the decision also established the so-called “19 conditions,” setting parameters for future demarcations and limiting Indigenous usufruct rights over subsoil and mineral resources.¹⁶ Such restrictions were criticized for imposing limits on the full usufruct rights guaranteed by the Constitution. One of these conditions, by prohibiting the expansion of demarcated lands after 1988, ultimately provided the interpretive basis for the so-called “*time frame thesis*” (*tese do marco temporal*), which began to be invoked by public administration bodies and agribusiness sectors as a criterion for land demarcations.

This thesis, which asserts that Indigenous peoples would only be entitled to lands physically occupied on October 5, 1988, gained traction in the following years but was definitively addressed in *Extraordinary Appeal* (RE) No. 1.017.365/SC, involving the Ibirama-Laklanõ Indigenous Land of the Xokleng people.¹⁷ In September 2023, by a vote of nine to two,

¹⁵ Supreme Federal Court (STF), Petition (Petição) No. 3.388-4 (*Raposa Serra do Sol*), judgment of 19 March 2009.

¹⁶ Supreme Federal Court (STF), Petition (Petição) No. 3.388-4 (*Raposa Serra do Sol*), judgment of 19 March 2009.

¹⁷ Supreme Federal Court (STF), *Recurso Extraordinário* (Extraordinary Appeal – RE) No. 1.017.365/SC, judgment of 21 September 2023..

the Supreme Federal Court (STF) declared the thesis unconstitutional, reaffirming that the traditional connection to the land – rather than physical occupation in 1988 – is the constitutionally relevant criterion. The decision prevented a devastating regression and reaffirmed the Court's commitment to original rights and historical justice.

However, the institutional reaction was immediate: the National Congress passed Law No. 14.701/2023, which reinstated the *time frame thesis*. The statute became the subject of five actions before the Supreme Federal Court (STF) – *Direct Actions of Unconstitutionality* (ADIs 7582, 7583, and 7586), *Omission Action* (ADO 86), and *Declaratory Action of Constitutionality* (ADC 87) – all under the rapporteurship of Justice Gilmar Mendes, who convened a conciliation table with various social and political sectors. The proposed mediation, however, was criticized by the *Articulação dos Povos Indígenas do Brasil* (APIB), which denounced the emptying of the decision-making process and an attempt to undermine the Court's previous ruling.¹⁸ The continued enforcement of the new law generates legal uncertainty and hinders the effective realization of Indigenous territorial rights, leaving the Supreme Federal Court (STF) with the challenge of reaffirming its jurisprudence and declaring the law's unconstitutionality.

The episode surrounding Law No. 14.701/2023 constitutes an emblematic example of what the literature has termed *legislative backlash* – an institutional reaction by the Legislative branch to the Judiciary's action in matters of high political sensitivity. As analyzed by Leal, Mallmann, and Santos, the Supreme Federal Court's judgment in *Extraordinary Appeal* (RE) No. 1.017.365/SC¹⁹, by declaring the *time frame thesis* unconstitutional, triggered a movement of legislative resistance that sought, through the enactment of the new law, to reestablish the previous interpretive framework – a clear attempt to neutralize the Court's decision. According to these authors, this type of reaction should not be understood as a mere episodic conflict between branches of government, but rather as a symptom of a moment of democratic erosion, in which institutional structures are strained by reactive forces operating from organized political and

¹⁸ *Apib exige suspensão da Lei 14.701 em última sessão da Câmara de Conciliação do STF* in APIB OFICIAL, de 23 de junho de 2025, disponível em: <https://apiboficial.org/2025/06/23/apib-exige-suspensao-da-lei-14-701-em-ultima-sessao-da-camara-de-conciliacao-do-stf/>.

¹⁹ Supreme Federal Court (STF), Extraordinary Appeal (RE) No. 1.017.365/SC, judgment of 21 September 2023.

economic interests. The case thus reveals the fragility of constitutional rights protection when subjected to regressive cycles driven by legislative coalitions resistant to the STF's counter-majoritarian function.²⁰

As demonstrated by Portela, Menezes Júnior, and Silva, this legal counteroffensive is part of a broader political project orchestrated by agribusiness, aimed at subordinating the original rights of Indigenous peoples to the productivist logic of territorial exploitation.²¹ Since 1994, the *Ruralist Caucus* (*Bancada Ruralista*) has exerted significant influence over agrarian and environmental legislation. Beginning in 2015, its legislative initiatives aimed against environmental law and nature itself gained systematic momentum within the National Congress.²² Their objectives align with a Western worldview that regards nature as a resource to be managed and exploited, disregarding the spirituality and the sacred relationship that Indigenous peoples maintain with the land.

The institutional confrontation surrounding Law No. 14.701/2023 subsequently reached the Supreme Federal Court through abstract constitutional review, notably in Declaratory Action of Constitutionality No. 87 (ADC 87), alongside related direct actions of unconstitutionality. Beyond the substantive dispute over Indigenous territorial rights under Article 231 of the Constitution, the case also raised a structural question concerning the limits of Congress's authority to reenact, through ordinary legislation, norms substantially equivalent to those previously declared unconstitutional by the Court. Although a conciliation commission was established during the proceedings, the initiative failed to produce normative consensus and was criticized by Indigenous organizations for the absence of effective participation. In December 2025, the STF reaffirmed its settled understanding that the *marco temporal* doctrine is incompatible with the Federal Constitution, declaring unconstitutional the provisions of Law No. 14.701/2023 that instituted a fixed temporal cutoff for the demarcation of Indigenous lands. The Court further acknowledged an

²⁰ R. L. LEAL, J. K. W. MALLMANN, L. F. F. DOS SANTOS, *Ativismo judicial, backlash e marco temporal de ocupação indígena no Brasil: resistência e repercussões* in *Revista de Ciências Jurídicas e Sociais da UNIPAR*, v. 30, n. 1, 279–298, 2023.

²¹ R. C. PORTELA, E. E. MENEZES JÚNIOR, S. D. SILVA, *Marco temporal: o projeto político do agronegócio e a ameaça aos direitos dos povos indígenas* in *Serviço Social & Sociedade*, v. 147, 126–145, 2024.

²² R. C. PORTELA, E. E. MENEZES JÚNIOR, S. D. SILVA, *Marco temporal: o projeto político do agronegócio e a ameaça aos direitos dos povos indígenas* in *Serviço Social & Sociedade*, cit., 9–10.

unconstitutional state of delay in demarcation processes and imposed transitional obligations on the Federal Government, aimed at safeguarding the effectiveness of Indigenous territorial rights pending the enactment of legislation consistent with constitutional standards. This sequence illustrates a cyclical pattern in Brazilian socio-environmental constitutionalism, in which judicial affirmation of rights is followed by legislative attempts to reintroduce regressive standards through ordinary lawmaking.

Taken together, Raposa Serra do Sol and the later rejection of the marco temporal thesis reveal a persistent ambivalence in the Court's jurisprudence: while affirming the original character of Indigenous territorial rights, the STF has simultaneously generated interpretive openings that later facilitated political and legislative backlash.

There has been an advance of what can be described as "legislative and territorial violence," aimed at transforming natural goods into commodities and subordinating nature to market dynamics and economic exploitation.²³ The *Ruralist Caucus* aligns itself with governments that share its *anti-environmental animus*, as evidenced by the statement of then-Minister of the Environment Ricardo Salles during the Bolsonaro administration. The "let the cattle herd through" (*passar a boiada*) strategy sought to deregulate and simplify environmental norms, taking advantage of the media's focus on other events, such as the COVID-19 pandemic. These actions directly attacked socio-environmental protection laws, reflecting a political commitment to agrarian interests at the expense of Indigenous and environmental rights. In this sense, the *time frame thesis* – and its reincarnation in the new law – represents not merely a legal threat to Indigenous peoples, but a structurally organized regression in Brazil's environmental protection policies.

Another significant moment in the STF's action occurred during the COVID-19 pandemic, with *ADPF 709*²⁴, filed by the *Articulação dos Povos Indígenas do Brasil* (APIB). The case denounced the Bolsonaro government's omission in protecting the health of Indigenous peoples, particularly those in isolation or of recent contact. Justice Luís Roberto Barroso ordered the creation of the *Situation Room* (*Sala de Situação*), a

²³ R. C. PORTELA, E. E. MENEZES JÚNIOR, S. D. SILVA, *Marco temporal: o projeto político do agronegócio e a ameaça aos direitos dos povos indígenas* in *Serviço Social & Sociedade*, cit., 10.

²⁴ Supreme Federal Court (STF), ADPF No. 709, judgment of 5 August 2020.

space intended to ensure intercultural dialogue and the implementation of emergency measures. However, the experience proved deeply distorted: under the command of the Institutional Security Office (*Gabinete de Segurança Institucional* – GSI), led by military officials, the *Situation Room* became militarized – marked by intimidation, silencing, and a lack of genuine engagement with Indigenous leadership.²⁵ Meetings were sporadic, undocumented, and devoid of effective deliberation, often held through digital platforms with limited accessibility.²⁶ APIB itself denounced the emptying of the forum and its conversion into a mechanism for legitimizing executive decisions already taken. As noted by Godoy, Santana, and Oliveira, the STF's response was largely confined to procedural reaffirmations, without ensuring the effectiveness of its rulings or Indigenous protagonism in the process. Thus, the sanitary tragedy also revealed itself as a political one – symbolized by the *Situation Room* and by the high rates of Indigenous mortality in the Amazon region.

Furthermore, during the Bolsonaro administration, the Supreme Federal Court (STF) was repeatedly called upon to curb environmental regressions enacted through decrees and administrative acts. In *ADPF 747*, the Court declared unconstitutional the alteration in the composition of the National Environmental Council (*CONAMA*), on the grounds that it violated participatory democracy and the principle of non-regression.²⁷ In *ADPF 748*, it annulled the revocation of resolutions that protected mangrove forests and coastal sandbanks (*restingas*).²⁸

Even with the change of government in 2023, the judicialization of environmental policy remained a central mechanism for constitutional enforcement – and *ADPF 760* stands as the clearest example. In the judgment concluded in March 2024, the Supreme Federal Court (STF) recognized structural deficiencies in Brazil's anti-deforestation policy and,

²⁵ R. VALENTE, *Sala no Planalto sobre os povos indígenas enfim sai do controle militar do GSI*, in *Brasil de Fato*, 25 aprile 2023, disponibile su: <https://www.brasildefato.com.br/2023/04/25/sala-no-planalto-sobre-os-povos-indigenas-enfim-sai-do-controle-militar-do-gsi/> (ultimo accesso: 13 ottobre 2025).

²⁶ M. G. GODOY, C. R. SANTANA, L. C. de OLIVEIRA, *STF, povos indígenas e Sala de Situação: diálogo ilusório* in *Revista Direito e Práxis*, v. 12, n. 3, 2174–2205, 2021.

²⁷ Supreme Federal Court (STF), *Arguição de Descumprimento de Preceito Fundamental* (ADPF) No. 747, judgment of 15 April 2021.

²⁸ Supreme Federal Court (STF), *Arguição de Descumprimento de Preceito Fundamental* (ADPF) No. 748, judgment of 4 August 2022.

although it declined to declare a “*state of unconstitutional affairs*” (*estado de coisas inconstitucional*), it imposed on the federal government a duty of “*meaningful commitment*” to reduce illegal deforestation. The Court affirmed that omissions, deficiencies, or insufficient state actions are unconstitutional in light of the principles of prevention, precaution, and non-regression.²⁹ Among its orders, the Court required the federal government to present a plan with specific targets, timelines, and indicators for the effective implementation of the *Action Plan for the Prevention and Control of Deforestation in the Legal Amazon* (or an equivalent instrument); to strengthen the institutional capacity of IBAMA³⁰, ICMBio³¹, and Funai³²; to ensure the periodic and transparent publication of results; to authorize extraordinary budgetary allocations without contingency restrictions; and to notify Congress – measures aimed at transforming abstract constitutional mandates into verifiable deliverables. In doing so, the STF reaffirmed that the intergenerational protection enshrined in Article 225 is not exhausted by programmatic commitments: it authorizes (and indeed requires) continuous judicial oversight of governmental performance, including in contexts of administrative reorientation, until substantial and sustainable reduction of deforestation in the Amazon is achieved. While earlier decisions focused on containing specific administrative and normative regressions, ADPF 760 marked an inflection toward a more structural form of judicial intervention, addressing systemic state omissions in environmental governance.

Across these cases, the STF emerges not merely as an episodic veto player, but as an institution struggling to stabilize a socio-environmental constitutional project under constant pressure from legislative backlash,

²⁹ Supreme Federal Court (STF), *Arguição de Descumprimento de Preceito Fundamental* (ADPF) No. 760, judgment of 26 June 2024.

³⁰ IBAMA (Brazilian Institute of the Environment and Renewable Natural Resources): a federal agency created in 1989 responsible for implementing Brazil’s national environmental policy. IBAMA oversees environmental licensing, inspection, and enforcement, and monitors the use of natural resources in coordination with state and municipal authorities.

³¹ ICMBio (Chico Mendes Institute for Biodiversity Conservation): a federal public agency established in 2007, in charge of managing Brazil’s federal protected areas and promoting biodiversity conservation policies. It is named after the environmental activist Chico Mendes, who was assassinated in 1988.

³² FUNAI (National Foundation for Indigenous Peoples): a federal agency created in 1967 that serves as the main governmental body responsible for formulating and implementing policies related to Indigenous peoples in Brazil. FUNAI works to protect Indigenous rights, territories, and cultural autonomy.

executive omission, and neoliberal policy frameworks.

In summary, the set of decisions examined confirms the Supreme Federal Court (STF) as a significant barrier against socio-environmental dismantling, while also exposing the contours of its limitations within an environment marked by diffuse authoritarianism and the neoliberalization of environmental policy. The legislative backlash surrounding Law No. 14.701/2023 – viewed in light of the diagnosis that the *time frame thesis* forms part of a broader agribusiness-driven political project – demonstrates that the judicial expansion of rights (such as the recognition of Indigenous peoples' traditional connection to their lands) triggers organized counter-movements that seek to reestablish, through alternative channels, the same horizon of territorial dispossession and normative regression.

At the same time, the Court's structural response in *ADPF 760* – by rejecting the declaration of a “state of unconstitutional affairs,” requiring “meaningful commitments,” and transforming constitutional duties into concrete targets, timelines, indicators, and institutional reinforcement – reveals both the power and the insufficiency of constitutional jurisdiction: power, insofar as it converts principles (such as precaution, prevention, and non-regression) into verifiable mandates; insufficiency, because effectiveness remains contingent upon the cooperation of the other branches and the resistance of economic coalitions operating within sub-constitutional legality to neutralize constitutional advances³³.

In other words, the STF is capable of containing socio-environmental regressions – serving as a remedy against authoritarian decay – but it cannot reach the root of the problem, which is structural and perhaps beyond its institutional scope: the very way in which society relates to the environment. Read together, the cases examined above show that constitutional jurisdiction operates mainly as a reactive and corrective device: it blocks some regressions and forces minimal institutional performance, but it remains structurally exposed to cycles of backlash and regulatory erosion. This is not merely a contingent weakness of adjudication; it reflects the broader neoliberal rationality that reorganizes environmental governance around extractive imperatives. The following section advances the argument by confronting this deeper layer and by presenting Indigenous cosmologies as a counter-paradigm.

³³ Supreme Federal Court (STF), ADPF No. 760, judgment of 1 March 2024.

4. *Where constitutional jurisdiction cannot reach: indigenous peoples' knowledge as resistance to the neoliberal paradigm*

Environmental constitutional jurisdiction faces structural limits in the context of the global ecological crisis and the advance of neoliberalism. No matter how robust the legal framework may be, the judicial power alone cannot reverse the systemic dynamics that degrade nature. The main reason is that the current crisis does not stem from isolated failures to be corrected by law, but from a neoliberal economic and political paradigm that colonizes all spheres of life, eroding the autonomous capacity for action of public institutions.³⁴ As Brown observes, neoliberalism operates a discursive and practical integration between market logic and the political-legal sphere, eliminating the “ethical gap” that once separated constitutional principles from the demands of capital.³⁵ In other words, when nothing remains outside economic calculation, fundamental rights – including environmental rights – become filtered through criteria of efficiency and profit, eroding their emancipatory meaning. In this context, constitutional jurisdiction, no matter how committed it may be to ecological protection, finds itself constrained by the neoliberal capture of both the State and society.

Neoliberalism transforms humanity's relationship with nature into one of commodification, extraction, and risk management. Critical authors point out that the hegemonic idea of sustainable development, rather than representing a rupture with the predatory logic of capitalism, was constructed in alignment with the prevailing neoliberal order. In this regard, Vizeu, Meneghetti, and Seifert demonstrate that the *Brundtland Report* (1987) consolidated sustainable development as a new strategy for capitalist expansion, positioning the market as the manager of the environment and the State as the regulator of economic compensations.³⁶ Within this arrangement, instruments originally designed for prevention – such as the precautionary principle – were reinterpreted by the business sector as opportunities for profitable investments to overcome environmental risks. Not coincidentally, corporate leaders asserted the need for

³⁴ P. DARDOT, C. LAVAL, *A nova razão de mundo*, São Paulo, 2016.

³⁵ W. BROWN, *Neoliberalism and the end of liberal democracy*, Princeton, 2005.

³⁶ F. VIZEU, F. MENEGHETTI, R. SEIFERT, *Por uma crítica ao conceito de desenvolvimento sustentável* in *CADERNOS EBAPE*, vol. 10, no. 3, 569-583.

open and competitive market systems that internalize environmental costs into prices. In other words, the idea that only the market could “save” nature became naturalized – by commodifying it.

This paradigm commodifies and financializes the ecological crisis itself. In recent decades, we have witnessed the proliferation of carbon markets, payments for environmental services, and other mechanisms that treat environmental devastation as a new frontier for business. As Acosta points out, global capitalism seeks to commodify nature to the greatest possible extent – shifting, for instance, forest conservation into the corporate logic, and privatizing the air, the forests, and even the land itself.³⁷ The resulting green economy does not prevent environmental destruction; it merely postpones solutions while creating new financial assets for capital accumulation. In short, it is about “doing business with disaster,” in Acosta’s words – turning even the atmosphere and the climate into commodities managed by the very actors who caused the crisis.³⁸ The perverse effect is that the “capitalist serpent” continues to devour its own tail – an unrelenting exploitation that threatens the very natural foundations of human life. Moreover, under the neoliberal ideology, social inequalities deepen: ecological risks and climate impacts are disproportionately concentrated upon the most vulnerable peoples and territories, thereby amplifying historical injustices. This simultaneous overburdening of ecosystems and “social functioning systems” means that society itself becomes an ecological risk, aggravating authoritarian tendencies and the “civilization of inequality”³⁹ characteristic of capitalism.

Under these conditions, the dominant rhetoric of sustainable development falls into disrepute. It has become an ideological and contradictory concept – one that conceals rather than resolves the tensions between capitalism and ecology. As Vizeu *et al.* argue, the notion has been transformed into “an automatic, instrumentalized idea, something to be disseminated without questioning or deep reflection,” disconnected from its historical origins and useful only to legitimize superficial “green” corporate practices.⁴⁰ Beneath the unanimous discourse of sustainability, the

³⁷ A. ACOSTA, *O Bem Viver, uma oportunidade para imaginar outros mundos*, São Paulo, 2016.

³⁸ A. ACOSTA, *O Bem Viver, uma oportunidade para imaginar outros mundos*, cit., 208.

³⁹ P. DARDOT, C. LAVAL, *A nova razão de mundo*, cit.

⁴⁰ F. VIZEU, F. MENEGHETTI, R. SEIFERT, *Por uma crítica ao conceito de desenvolvimento sustentável*, cit., 580.

destructive model persists: “sustainability becomes ever more important precisely as the economic and environmental destruction intensifies.”

Ultimately, the salvific myth of sustainable development has served to dissuade public opinion and to prevent structural change, offering modest patches that fail to confront the root causes of the crisis. This critique is reinforced by Acosta in his analysis of the contemporary “green economy”: far from reorienting the civilizational course, much of it represents a regression to the same developmentalist assumptions, ensuring new mechanisms of accumulation even as “ecological deterioration continues to spread”.⁴¹ In other words, the neoliberal paradigm has co-opted environmentalism, transforming the protection of nature into yet another market sector and emptying concepts such as sustainability of their transformative potential.

In this context, the role of constitutional jurisdiction, though necessary, proves insufficient to reverse such structures on its own. At certain moments, the Judiciary has adopted an assertive stance in environmental protection, as demonstrated in the previous section. On the normative level, therefore, constitutional jurisdiction seeks to fill the gaps left by state omission, reinforcing principles such as the duty of effective protection, precaution, and sustainable development in its original sense. However, the very need for such rulings reveals the institutional limits of the judiciary: they constitute reactive responses to environmental policies dismantled by neoliberal agendas, and their implementation depends on a political will that is often absent.

In governments committed to expanding extractive frontiers, environmental rulings and regulations tend to encounter structural practical barriers. As Dias observes, the corporate capture of environmental agencies, the chronic insufficiency of state resources, and the subordination of environmental policy to structural economic interests transform legal protection into an obstacle that can be easily circumvented.⁴² Acserald deepens this critique by showing that, under neoliberal rationality, environmental institutional frameworks themselves are redesigned to manage

⁴¹ A. ACOSTA, *O Bem Viver, uma oportunidade para imaginar outros mundos*, cit., 208-210.

⁴² L. OLIVEIRA, *A CONSTRUÇÃO DO “DESENVOLVIMENTO SUSTENTÁVEL” SOB A ÉGIDE DO NEOLIBERALISMO: UM ESTUDO SOBRE A ECONOMIA POLÍTICA DA “CRISE AMBIENTAL*, disponível em: https://www.unicamp.br/cemarx/anais_v_coloquio_arquivos/arquivos/comunicacoes/gt3/sessao2/Leandro_Oliveira.pdf, 2007.

and facilitate the expansion of extractive frontiers – treating socio-environmental conflicts as technical problems to be managed rather than as political and structural issues to be confronted.⁴³ Within this arrangement, the legal apparatus does not function as a substantive restraint, but rather as part of a mechanism for reconciling environmental norms with growth-oriented projects – ultimately reproducing the very logic that sustains environmental degradation.

It is precisely within this sphere – the realm of worldviews, values, and daily relations with the land – that constitutional law cannot fully reach, and from which the knowledge and practices of Indigenous peoples emerge as a force of resistance to the neoliberal paradigm. While the latter is grounded in the separation between humanity and nature, treating the latter as an object of appropriation, Indigenous peoples affirm radically different, holistic, and spiritual conceptions that subvert the logic of commodification. In many Indigenous cosmologies, nature is not an external “environment” to be managed, but a living being, a subject of relationships and rights, and an integral member of the moral community. For example, in the Guaraní worldview, expressed through the concept of *teko porã* (or *ñandereko*), “living well” means living in harmony within the community and with Nature – recognizing that we are part of it, not apart from it.⁴⁴ Alberto Acosta notes that the *teko porã* of the Guaraní in Brazil is essentially equivalent to the Andean *Sumak Kawsay* (*Buen Vivir*) – a philosophy of good living that rejects consumerism and unrestrained exploitation, proposing an existence grounded in coexistence, reciprocity, and respect for the natural world. These principles, derived from Amerindian cosmologies, inspired the enshrinement of *Buen Vivir* in the constitutions of Ecuador and Bolivia, introducing into state law the notion that human well-being is intrinsically dependent on the well-being of *Pachamama* (Mother Earth).

In this sense, authors such as Gudynas emphasize that this entails recognizing Nature as a subject of rights – a biocentric turn that transcends the anthropocentrism typical of Western law.⁴⁵ While classical liberal constitutionalism guarantees a “right to a healthy environment” only as an

⁴³ H. ACSELRAD, *Dimensões políticas do negacionismo ambiental – interrogando a literatura* in *Desenvolvimento e Meio Ambiente*, vol. 60, 26-42.

⁴⁴ A. ACOSTA, *O Bem Viver, uma oportunidade para imaginar outros mundos*, cit.

⁴⁵ E. GUDYNAS, *La ecología política del giro biocéntrico en la nueva Constitución del Ecuador* in *Revista de Estudios Sociales*, no. 32.

extension of human rights (centered on the individual), constitutionalism influenced by Indigenous knowledge proposes rights of Nature itself, affirming that non-human life possesses intrinsic value and must be preserved regardless of its utility to humankind. This epistemic shift – from environment-as-object to Nature-as-subject – represents, as Gudynas argues, a genuine biocentric turn in both legal and ecological rationality.

Beyond the formal recognition of the rights of Nature, Indigenous peoples contribute concrete practices of resistance and territorial stewardship, articulated through spiritual bonds that connect the sacred to the relationship with the environment and point toward paths beyond the modern dichotomy between “society” and “nature.” This notion has been explored within the field of spiritual ecologies, where spirituality, ethical values, and environmental perception are reconnected.⁴⁶

From an ethnographic perspective, studies on Indigenous cosmologies show, for instance, that the relationship between the cultivated field and the forest is grounded in an ontology in which humans and non-humans share an underlying “common humanity.” This makes agriculture an emblem of collective living itself and of reciprocity with the surrounding environment.⁴⁷ Among the Xukuru people of Ororubá, traditional agriculture is understood as a sacred practice, deeply intertwined with the *Encantados* – ancestral spirits who dwell within the territory. As one Xukuru leader explains, the standing trees serve as the “anchor” that upholds the spiritual world. When the forest is felled, not only are ecosystem functions lost, but the vital connection with the *Encantados* is severed, causing the cosmological order that sustains collective life to collapse. “We must preserve Nature and care for the trees,” the elder concludes, “because beyond being our dwelling, they are the foundation that holds our world together.”⁴⁸ This Indigenous perception of Nature as living and inhabited by spiritual entities imposes clear limits on exploitation: the forest cannot be reduced to raw material or commodity, for it is a subject of reciprocity and part of the people’s extended family.

⁴⁶ T. AMADEO, A. SOLÓRZANO, *Ecologias Espirituais: Relação entre Espiritualidade e Conservação da Sociobiodiversidade in Fronteiras: Journal of Social, Technological and Environmental Science*, vol. 11, no. 3, 98-117.

⁴⁷ M. ARAÚJO, LIMOLAYGO TOYPE: *território ancestral e agricultura indígena dos Xukuru do Ororubá em Pesqueira e Poção, Pernambuco*, Recife, 2021.

⁴⁸ M. ARAÚJO, LIMOLAYGO TOYPE: *território ancestral e agricultura indígena dos Xukuru do Ororubá em Pesqueira e Poção, Pernambuco*, cit., 167.

Moreover, as studies on Guarani spirituality and Amazonian peoples demonstrate, community life is intrinsically bound to the integrity of the land, the waters, and the beings that inhabit them. This relationship is guided by spiritual, ethical, and social values that preclude any separation between environmental justice and social justice.⁴⁹ To care for the territory is, at the same time, to care for the people and their culture – a system of reciprocity and respect that governs the traditional use of natural resources. It is therefore not surprising that many Indigenous territories remain areas of high environmental conservation, resisting devastation precisely because they are governed by these ethics and practices of care.

It is important to emphasize that Indigenous resistance to the neoliberal paradigm is not merely symbolic or local, but has gained growing political and legal prominence. Contemporary Indigenous leaders such as Ailton Krenak have become influential voices in critiquing predatory development and proposing new civilizational narratives. The theorist denounces the developmentalist model that devastates territories and communities, advocating for the need to “postpone the end of the world” through the reestablishment of the ancestral bond with the Earth – conceived as mother, provider, and living being.⁵⁰ In the thought of the Krenak people, rivers, mountains, and other natural elements are not resources but relatives with whom one maintains a relationship of reciprocity and respect – as in the case of the Watu River (the Doce River), regarded by the Krenak as their grandfather. This understanding expresses a relational way of thinking in which nature is endowed with subjectivity and agency, breaking with the modern worldview that reduces it to an object of exploitation. Such a perspective entails concrete ethical responsibilities – care, recognition of limits, and harmonious coexistence – principles that challenge the mercantile logic and inspire proposals for new civilizational pacts rooted in cultural and ecological diversity.

These ideas have inspired ecosocialist movements, networks of environmental spirituality, and struggles for territorial rights, forming what Dardot and Laval might describe as “counter-conducts” in the face of neoliberal reason. Indeed, Dardot and Laval argue that the only path to overcoming neoliberalism lies in new practices and shared values, emerging from present struggles, that establish another *raison du monde* – one

⁴⁹ E. BRITO, *O reconhecimento da subjetividade indígena*, in *Espaços*, vol. 8, no. 2, 155-164.

⁵⁰ A. KRENAK, *Ideias para adiar o fim do mundo*, São Paulo, 2019.

grounded in the common use of goods, democratic self-governance, and cooperative solidarity, as opposed to universal competition and commodification.⁵¹

Indigenous cosmologies align precisely with this counter-rationality, privileging the collective over the individual, the common over exclusive property, and harmony with nature over unlimited accumulation. Ultimately, this constitutes a project of *re-existence*: not merely resisting the dominant model, but existing otherwise – affirming alternative paradigms of good living.

From this dialogue between ecological justice and Indigenous knowledge emerges an invaluable contribution to a new normative and civilizational horizon. While traditional state law tends to separate environmental and social agendas – treating conservation as a technical issue and environmental conflicts as isolated problems – Indigenous experience demonstrates that there can be no environmental justice without social justice, nor human well-being without healthy land. The Indigenous perspective naturally integrates both: the struggle for territory (demarcation, autonomy, cultural rights) is simultaneously a struggle for clean water, standing forests, and a stable climate. This is reflected in concepts such as “socio-environmental justice” and “integral ecology,” increasingly present in contemporary legal and political discourse and profoundly shaped by the influence of traditional peoples.⁵²

Moreover, the incorporation of Indigenous worldviews into these debates expands the very understanding of democracy and citizenship. Gudynas proposes the idea of “ecological meta-citizenships” – forms of expanded citizenship that include the participation of not only human communities but also respect legal and cultural plurality.⁵³ In practice, this means institutionally recognizing Indigenous peoples as collective subjects of rights, with their own jurisdictions and forms of environmental management, within a truly plurinational and intercultural State. Some steps in this direction are already underway: in Brazil, through initiatives of shared environmental governance involving Indigenous and quilombola communities; and internationally, through cases recognizing

⁵¹ P. DARDOT, C. LAVAL, *A nova razão de mundo*, cit., 386-392.

⁵² A. ACOSTA, *O Bem Viver, uma oportunidade para imaginar outros mundos*, cit.

⁵³ E. GUDYNAS, *Cidadania ambiental e metacidadanias ecológicas: revisão e alternativas na América Latina* in *Desenvolvimento E Meio Ambiente*, no. 19.

the legal personality of sacred rivers or establishing parks co-managed by Indigenous peoples.

Such arrangements point toward pathways for decolonizing the relationship between State, nature, and society – something decolonial theorists regard as crucial to addressing the socio-ecological crisis⁵⁴. In sum, Indigenous knowledge systems and cosmologies offer both epistemological and practical foundations for challenging the neoliberal paradigm and imagining new ways of living and legislating. They place the interdependence between humanity and Nature back at the center of the debate and, in doing so, open avenues for transforming not only environmental policies but the very foundations of law and the economy.⁵⁵ If constitutional jurisdiction alone cannot reach such depths, it can – and must – engage in dialogue with these sources of resistance, absorbing their principles of reverence for life and interspecies cooperation, thereby expanding the frontiers of what is possible within our legal order.

In this context, the STF's *green jurisprudence* is a necessary but not sufficient condition: without a reorientation of policies and budgets, and without breaking the cycle of institutional capture, judicial victories cannot become lasting. It is precisely here that the centrality of Indigenous peoples emerges not merely as the exercise of rights, but as an alternative normative horizon to the hegemonic model. Indigenous territories function as true infrastructures of conservation – characterized by lower deforestation rates, greater ecological integrity, and measurable contributions to climate mitigation. To attack these rights, therefore, is to weaken one of the most effective mechanisms of environmental protection that exists. Yet beyond empirical effectiveness lies an entirely different political ontology. Viewed through this lens, the constitutional duty of intergenerational protection (Article 225) aligns itself with Indigenous cosmology – rather than the other way around – offering the STF an interpretive framework that transcends damage management and is oriented toward the maintenance of the conditions of life itself.

Thus, the judicial defense of the *Green Constitution* is only complete when it dialogues with political and economic transformations capable

⁵⁴ As previously discussed in this article, drawing on the works of Acosta, Gudynas, and Acserald.

⁵⁵ M. ARAÚJO, *LIMOLAYGO TOYPE: território ancestral e agricultura indígena dos Xukuru do Ororubá em Pesqueira e Poção, Pernambuco*, cit.

of dismantling the mechanisms of regression and neoliberal capture of environmental governance. The STF can and must continue translating constitutional principles into verifiable public obligations – protecting Indigenous lands, rebuilding institutions, and blocking “herd-passing” deregulation. However, consolidating these victories requires, on one hand, State policies that recognize the strategic role of Indigenous Lands in climate stability and socio-biodiversity, and on the other, a shift in rationality that incorporates Indigenous knowledge and ways of life as guiding references for ecological justice. Between resistance and limitation, the Court stands in the trenches; the crossing, however, depends on a democratic coalition capable of contesting the very meaning of development and, together with the forest peoples, rejecting the equivalence between nature and commodity.

5. *Concluding remarks*

Throughout this study, we have critically examined the limits and potentialities of environmental constitutional jurisdiction in contemporary Brazil in light of the ecological crisis and neoliberal predominance, articulating this analysis with the perspective of Indigenous peoples. The four sections developed reveal a landscape of profound tension between, on the one hand, normative and jurisprudential advances in environmental protection and, on the other, the structural barriers imposed by an unsustainable model of development.

On the one hand, the 1988 Federal Constitution and the actions of the Supreme Federal Court (STF) have provided important instruments – principles such as the prohibition of environmental regression, decisions demanding effective climate policies, and the recognition of state duties of ecological protection. This demonstrates the potential of constitutional environmental law: it can halt setbacks, hold negligent governments accountable, and affirm that the protection of Nature is a legal and ethical imperative, not a matter of political discretion. On the other hand, this potential collides with the profound limits imposed by the neoliberal logic that dominates both the State and the economy. The market rationality that commodifies nature and subordinates public policy to the pursuit of profit undermines the effectiveness of environmental norms – whether

through pressure to relax regulations in the name of “development,” the chronic underfunding and loss of autonomy of environmental agencies, or the persistence of inequalities that ensure the costs of degradation always fall upon the most vulnerable. In adverse political contexts, Brazil has witnessed the dismantling of environmental policies and a dramatic increase in deforestation, demonstrating that law alone cannot alter the course of a system that feeds on the ecological crisis itself.

Faced with this dilemma, the study emphasized the need for a paradigmatic shift in the relationship between humanity, nature, and the State. This transformation requires moving beyond conventional legal responses and engaging with forms of knowledge historically marginalized – notably, Indigenous knowledge systems. Within these epistemologies, we identified the contours of an alternative horizon in which environmental and social justice are inseparable and in which the very notion of development is reimagined. Indigenous peoples, through their integrative cosmologies and sustainable communal practices, emerge as epistemic and practical protagonists of resistance to the neoliberal paradigm. Their struggles for territory, cultural recognition, and autonomous ways of life do not represent a return to the past, but rather point toward possible post-neoliberal futures – futures in which the value of Nature is not dictated by the market, but by respect for the web of life; in which the State is conceived not as a managerial enterprise, but as a guardian of the commons and a facilitator of local autonomies; and in which “development” gives way to *buen vivir*, understood as living well within planetary limits.

We therefore conclude that environmental constitutional jurisdiction in Brazil plays a crucial yet inherently limited role in responding to the ecological crisis. Its effectiveness depends on convergence with broader political, institutional, and cultural transformations. This entails embracing epistemic plurality – particularly Indigenous knowledges – in the formulation of laws and public policies, as well as promoting reforms capable of rendering the State truly plurinational, democratic, and ecological. It also requires recognizing that the rights of Nature and the rights of Indigenous and traditional peoples are complementary and interdependent: both challenge the dominant economic rationality and call into question the foundational premises of contemporary society. Ultimately, the transition toward sustainable coexistence demands transcending the neoliberal paradigm and forging a new pact between humanity and Nature.

re, in which law ceases to operate merely as an instrument of resource management and becomes an expression of collective care for the Earth.

In this sense, the STF's "Green Constitution" jurisprudence functions as a necessary defensive line within Brazil's socio-environmental constitutionalism, safeguarding the normative commitments of the 1988 Constitution when majoritarian politics and administrative choices push toward regression. However, constitutional adjudication is not a self-sufficient engine of socio-ecological transformation: the durability of constitutional promises depends on political coalitions, institutional rebuilding, and budgetary commitments beyond the Court's reach. A sustainable future therefore requires coupling constitutional enforcement with a paradigmatic reorientation – one that treats Indigenous territorialities and epistemologies not merely as objects of protection, but as normative benchmarks capable of reorienting development away from neoliberal extractivism and toward the constitutional duties of ecological integrity and intergenerational solidarity.

This is the call that emanates from forests and rivers, from Indigenous voices and socio-environmental movements – a call for paradigmatic renewal, without which both justice and the very viability of dignified life are at risk. Reaffirming the central findings of this study, we contend that the future of environmental protection necessarily depends on the conjunction of two forces: the normative strength of constitutionalism, capable of halting abuses and guaranteeing rights, and the transformative power of traditional ecological knowledge, which can inspire a genuine ecology of the State. Only by integrating these dimensions can we envision a post-neoliberal model of development grounded in ecological solidarity and social justice – one capable of responding to contemporary political challenges, including the resurgence of authoritarianism.

Abstract

This article examines the limits and possibilities of constitutional environmental jurisdiction in Brazil by tracing the interaction among the 1988 Constitution's socio-environmental framework, the Supreme Federal Court's (STF) jurisprudence, and Indigenous epistemologies in a context marked by neoliberal hegemony and ecological crisis. Historically, authoritarian developmentalism marginalized traditional communities and rendered ecological concerns invisible; the 1988 Constitution reversed this trend by recognizing environmental protection (art. 225) and Indigenous peoples' original rights (arts. 231–232) as interconnected constitutional mandates grounded in intergenerational solidarity, the prohibition of environmental regression, and the imprescriptibility of environmental damage. The article analyzes the STF's role "in the trenches" against authoritarian and deregulatory backlashes – ranging from landmark decisions such as *Raposa Serra do Sol*⁵⁶ and the rejection of the *marco temporal* thesis to structural climate litigation exemplified by ADPF 709⁵⁷ and ADPF 760.⁵⁸ While these rulings translate constitutional principles into verifiable public obligations, their effectiveness remains vulnerable to political resistance, institutional capture, and legislative counter-movements (e.g., Law 14.701/2023). The deepest constraints arise from the neoliberal paradigm, which commodifies nature and reframes environmental governance to facilitate resource extraction. In contrast, Indigenous knowledge and cosmologies articulate alternative normative horizons that reject the human–nature divide, affirm the intrinsic value of non-human life, and couple environmental with social justice. Framing Indigenous territories as infrastructures of conservation and epistemic resistance, the article argues that a transformative socio-ecological future depends on aligning the constitutional force of the "Green Constitution" with post-neoliberal development models inspired by Indigenous worldviews and sustained by a renewed democratic coalition.

⁵⁶ Supreme Federal Court (STF), Petition No. 3.388/RR (*Raposa Serra do Sol*), judgment of 19 March 2009.

⁵⁷ Supreme Federal Court (STF), ADPF No. 709, judgment of 5 August 2020.

⁵⁸ Supreme Federal Court (STF), ADPF No. 760, judgment of 1 March 2024.

Constitucionalismo Socioambiental e Retrocessos Autoritários: Direitos dos Povos Indígenas e Resistência Judicial no Brasil

O presente artigo examina os limites e as possibilidades da jurisdição constitucional ambiental no Brasil, a partir da análise da interação entre o marco socioambiental da Constituição de 1988, a jurisprudência do Supremo Tribunal Federal (STF) e as epistemologias indígenas, em um contexto marcado pela hegemonia neoliberal e pela crise ecológica. Historicamente, o desenvolvimentismo autoritário marginalizou as comunidades tradicionais e tornou invisíveis as preocupações ambientais; a Constituição de 1988 reverteu esse quadro ao reconhecer a proteção do meio ambiente (art. 225) e os direitos originários dos povos indígenas (arts. 231 e 232) como mandados constitucionais interligados, fundamentados na solidariedade intergeracional, na vedação ao retrocesso ambiental e na imprescritibilidade do dano ambiental.

O artigo analisa a atuação do STF “na linha de frente” contra ofensivas autoritárias e desregulatórias, que vão desde decisões paradigmáticas como o caso Raposa Serra do Sol e a rejeição da tese do marco temporal até o litígio climático estrutural, exemplificado pela ADPF 709 e pela ADPF 760. Embora tais julgados traduzam princípios constitucionais em deveres públicos verificáveis, sua efetividade permanece vulnerável à resistência política, à captura institucional e a contramovimentos legislativos, como a Lei nº 14.701/2023.

As restrições mais profundas decorrem do paradigma neoliberal, que mercantiliza a natureza e reconfigura a governança ambiental para facilitar a extração de recursos. Em contraposição, os saberes e cosmologias indígenas formulam horizontes normativos alternativos, que rejeitam a cisão entre ser humano e natureza, afirmam o valor intrínseco da vida não humana e articulam a justiça ambiental à justiça social. Ao enquadrar os territórios indígenas como infraestruturas de conservação e de resistência epistêmica, o artigo sustenta que um futuro socioecológico transformador depende do alinhamento entre a força normativa da “Constituição Verde” e modelos de desenvolvimento pós-neoliberais, inspirados em cosmologias indígenas e sustentados por uma renovada coalizão democrática.