THE DECLARATION OF THE ATRATO RIVER AS A SUBJECT OF RIGHTS, THE DISCUSSION BETWEEN BIOCENTRISM AND HUMANISM IN THE COLOMBIAN CONSTRUCTION OF THE CONCEPT OF SUBJECT OF RIGHTS.[1]

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Summary
Since the birth of the 1991 Constitution, the Colombian legal system has been responsible for developing a whole construction of fundamental rights around the concept of human dignity, which serves as the central core of the legal system. Through sentence T 622 of 2016 the Colombian Constitutional Court recognized the Atrato River, the main river tributary of the department of Choco as a rights-holding entity; the present research seeks to analyze said figure and its legal basis to verify whether or not this represents an expansion of the concept of human dignity through the legal and political Biocentric trends of Latin America in the last 20 years or if it rather represents the
application of the criterion of human dignity in an extensive manner.
***Key words**: Dignity, subject of rights, Atrato River, Colombian Constitutional Court, State*
Introduction

In Colombia, a long struggle for the recognition and dignification of the life of the river communities of the Atrato River bore fruit in 2016, through judgment T 622, where the Colombian Constitutional Court, the main authority in terms of the interpretation of the norm and the Political Constitution, decided to grant the plaintiffs the protection of their fundamental rights to life, health, water, food security, healthy environment, culture and territory, and also declared the existence of a serious

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violation of these fundamental rights especially to population groups of ethnic and rural communities that inhabit the basin of the Atrato River and its tributaries, imputable to the Colombian State entities involved for their omissive conduct in not providing a suitable, articulated, coordinated and effective institutional response to face the multiple historical, socio-cultural, environmental and humanitarian problems that afflict the region and that in recent years have been aggravated by intensive illegal mining activities, and finally recognized the Atrato River, its basin and tributaries as an entity subject to the rights of protection, conservation, maintenance and restoration by the State and the ethnic communities[i].

This decision was openly applauded by the legal community at the time, since it represented the entry of the Colombian State into the process of guaranteeing fully recognized rights that would materialize through full and expeditious protection of a nonhuman entity, in this case the Atrato River. Consequently, giving Colombia a leading role before the international community within the discussions of legal guarantees and in the multicultural and ethnocentric policies that have gained strength in Latin America in the last 30 years.

Despite this, it leaves many questions regarding the theoretical implications of this decision with respect to the concept of human dignity that in Colombia is developed as the central core of constitutional guarantees and how this decision affects the materialization of the fundamental rights of the river communities and given the recognition in the ruling of the river itself[ii], doubts that are not necessarily solved within the considerations of the sentence in question and that therefore make it evident that by creating new categories of interpretation within a constitutional system, space is opened for the emergence of new questions of a procedural type, that execute the abstract determinations of the constitutional system and that sufficiently explain the adequate methodology to meet the needs of the so-called subjects of special protection[iii].

It is worth clarifying from the outset that the purpose of this analysis is not to attack the position of the Constitutional Court in recognizing the rights inherent to the Atrato River, much less to question the importance of recognizing the communities that live along its banks or its tributaries; On the contrary, we seek to analyze the implications of the Court's decision making in creating this new legal figure and whether it modifies or oxygenates the functioning of the Colombian legal system by contemplating changes in some of the figures that make it up, given its autopoietic nature in consequence of which the identity of the system changes if the subsystems that compose it are varied.

1. The problem of human dignity and human rights

The Political Constitution of 1991 and the construction of human dignity in Colombia represents the materialization of a series of postulates that were previously presented as ethical norms, often of a clerical nature, from which cultural definitions of dignity were given, a concept or category in any case constituted from the traditional Eurocentric imaginary[iv] which is usually traced back to Pico de la Mirandola and which, passing through Kant and Rousseau, influenced the development of the liberal revolutions of the 18th century, thus forming the European criteria around which the nations that emerged as a consequence of the social struggles in Europe and America would be created.

In spite of this, in the Colombian case, the process of dignity in normative terms was only fully referenced until the Constitution of 1991, through which a general recognition of the indigenous communities, blacks, groups with diverse sexual identity and other human groups that account for the true ethnic and social conformation of our country was made; Predictably, a large number of confrontations arose within the legal framework, given that it represented the passage from one state of affairs to another, one in which all the inhabitants of the national territory were considered worthy, regardless of their ethnic, economic, linguistic or any other kind of conditions.

As mentioned above, the concept of dignity corresponds to the construction of the category that has been developed in Western civilization since the sixteenth century, through the aforementioned referents, who would be responsible for putting it in the place where it is located as a central point of the idea of development that would shape the world in European modernity, and for the specific case in the central core of legal science in the current late modernity[v]

. In view of this, it is necessary to point out that this definition is in any case that of a category that describes the value of human life, thus configuring the philosophical umanism that allows the passage from a theocentric society to an anthropocentric society, and that as a consequence should be called with its full name "human dignity", since historically it has been recognized in this way; It represents a construction that humans have made for themselves, both to isolate themselves from other beings in nature, given the conditions that are particular to them, and to recognize their own value, which would later lead Western society to concern itself with the construction of individual life and subjectivity.

It is inevitable to analyze the contents that make up human dignity from a Kantian position, since it gives shape to the ideal of development that we can observe in his work: Answering the Question What is the Enlightenment? a defining discourse of the Enlightenment, from which we can trace the social and political trends that led to the current conception of subjectivity in Western society and within this to Colombia, defining the individual being as a subject possessing dignity made up of three concepts that account for the inherent capacities of the human person: freedom, reason and moral capacity[vi].

In this regard Dorando J. Michelini points out:

As a being endowed with reason and free will, the human being is an end in himself, who, in turn, can propose ends to himself. He is a being capable of asking himself moral questions, of discerning between what is just and what is unjust, of distinguishing between moral and immoral actions, and of acting according to moral principles, that is, of acting responsibly. Morally imputable beings are ends in themselves, that is, they are autonomous beings and deserve unconditional respect. The value of the person does not refer to the market or to merely subjective appraisals (of convenience, utility, etc.), but stems from the dignity inherent to free and autonomous rational beings[vii].

Consequently, moral autonomy is the central concept with which Kant characterizes the human being and constitutes the foundation of human dignity: "Autonomy, then, is the foundation of the dignity of human nature and of all rational nature"[viii] . This moral characterization marks a difference between animals and human beings, and at the same time, leaves open a space for the respect of other beings that could be morally imputable. Definition that in its legal form, as discussed by Andrés Cano Franco[ix] , depends within the Colombian legal system on the meaning given in the Civil Code (Law 57 of 1887) in its article 73 and in article 633for the legal person, both definitions encompassing the capacity to be the holder of rights and obligations, concept that from the beginning is placed in the head of all natural persons, i.e. all beings belonging to the human species, who possess such capacity intrinsically by their biological condition but to which are added the legal persons, "A fictitious person, capable of exercising rights and contracting civil obligations, and of being represented judicially and extrajudicially, is called a legal person"[x].

In this understanding, it is important to emphasize that in any case there is in both definitions a reference to the intervention of the human as executor of the rights, both in the head of the natural persons who would make the representation of their interests in a personal capacity and in the legal persons who exercise such process through the representatives that are appointed for these purposes, which allows us to point out that in reality the declaration made by the Colombian Constitutional Court in the sentence T 622 of 2016 is not, in legal terms for Colombia, a novel process, at least in what refers to the declaration of a subject of special protection, which consequently seems to be nothing more than a novel and interesting name used by this highest body, to draw attention to the declaration of the existence of one more legal person, given that recognizing the dignity of a being implies, as previously reviewed, understanding that the individual being is so because of his inherent capacities, which allow him to observe the world and have positions regarding it, opening space to the evaluation of the conditions of the world from a moral position, so that a being that is capable of understanding its impact on the world and the implications that the decisions taken, makes its acts imputable to it, which differentiates it from other biological forms and turns it into a subject, an end in itself.

Consequently to the decision that frames the importance of the Atrato River for the sustenance of the fauna and the economy of the region and its importance for the development of the different

communities around it, it is recognized the need to place the administrative responsibility of watching over the interests of the river and the sustenance of the necessary conditions to guarantee its existence in sufficient ecological terms, in the head of the Colombian State, responsibility that would remain in the hands of the Ministry of the Environment and Sustainable Development. This condition, as has been explained, although sometimes understood as a milestone in the recognition of the State's obligations and the role of nature in human life, in reality represents just a modification in the concepts through which the State system administers and protects its resources, than an effective creation of a full subject of law.

Accordingly, it can be inferred that when it is understood that dignity is an inherent characteristic of the subjects of law, it represents a superlative value that beings possess by their mere existence as part of the human species, for whom it is an inalienable characteristic, which implies its inalienability, since currently there are few valid penalties in the world that involve the dehumanization of an individual or his total separation from the human race, actions that will undoubtedly be criticized by the international community in any case, evidencing that this characteristic exists in all human beings indistinctly, although it does not develop in the same way in all individuals, nor in all categories. In this sense Antonio Millán Puelles (2014)[xi] differentiates between ontological dignity, as that which is found in all human beings regardless of their characteristics and forms as a consequence of their intrinsic capacities; and acquired dignity, which is much more similar to honor and refers to a value obtained as a consequence of the work or acts of a particular person, which consequently does not necessarily exist for all persons[xii] , being the second denomination the one that seems applicable in the sentence in question, which is problematic because it implies that although the Colombian State recognized the importance of the Atrato River, it did not generate the necessary changes in administrative terms so that it could effectively exercise its individual identity.

Consequently, human dignity or ontological dignity is the central guiding principle of the Colombian constitutional system and, as Orlando Pardo Martínez points out, it finds its formal basis in Article 1 of the Political Constitution of 1991, which explains that the Colombian State is based on respect for human dignity, highlighting the ontological concern of human beings for the recognition and respect of their condition, and concomitantly Article 5, which makes this concern extensible to all persons without any discrimination, which is also complemented by Article 12, which states that the State will promote in all its actions respect for the quality of human beings[xiii] , thus reiterating the link that exists between the human species and dignity as its most representative characteristic.

The above leads us to ask ourselves: Do new subjects arise within the Colombian legal state as a consequence of the recognition of the Atrato River? To sum it up, the concept of legal subject, within the Colombian legal system, is defined through the capacity to demand rights and acquire obligations, being valid both for individual subjects, i.e. human beings, and for collectivities that make up legal persons, which implies as an inherent characteristic of such subjectivity an individual governance, i.e. the execution of the freedom that to some extent accounts for the interests and purposes of the subject in question, which in execution of such freedom manifests itself as a subject of law demanding certain conditions for its existence or is obliged to third parties for a specific purpose.

These characteristics are not evident through the determinations made by the Constitutional Court and on the contrary, as we will see below, the absence of a structural identity within the special subject of protection that transcends over time, leaves concerns to the good will of each government in office, opening space for effective governance from the communities to contribute to meet the needs of the riparian population of the Atrato River, given that, as Tirado and Pachón explain:

although the jurisdictional process supposes a superimposition of the constitutional legal order over the natural norm of the communities, this is not based on the premise of the inferiority of the communities, but rather as a result of the State's duty to guarantee minimum rights to the indigenous communities and their forms of organization. Territory cannot be understood separately from the forms of governance of the same, the jurisdiction and recognition of the authority of the cabildos within a territorial space involves in a general way the recognition of the indigenous territory, not from an alterity lacking civilization, but from a series of characteristics of a community that involve

an ancestral history, and therefore, must be protected from the premise of ethnic and cultural diversity.[xiv]

2. The importance and ineffectiveness of the subject of special protection

Given the arguments put forward, it is evident that at least in appearance the recognition process carried out by the Constitutional Court was felt at the time as an important contribution to the biocentric conception of law and to the construction of a legal system that can understand and validate the existence of human beings in conjunction with their biome and the other beings that inhabit it, joining the contributions made by other Latin American countries as explained by Nelson Castañeda et al (2019)[xv]

As important precedents in the defense of these rights are, the case of some animals that have been issued in favor of the habeas corpus request such as, for example: a chimpanzee in Brazil (2007), an orangutan in Argentina (2014) and a spectacled bear in Colombia (2017), there are also cases regarding the defense of the rights of ecosystems such as the case of the Whanganui River (2017) and the Ganges River (2017) (A. Sagot Rodriguez, 2014)[xvi].

All of which, together with references such as the Ecuadorian Constitution of 2008, where a direct recognition is made of the way in which the system of government and the Constitution have a very close link with nature by deciding to build the so-called *sumak kawsay,* understood as:

A new form of citizen coexistence, in diversity and harmony with nature, to achieve good living (...) A society that respects, in all its dimensions, the dignity of individuals and communities; A democratic country, committed to Latin American integration[xvii].

The above highlights the political and legal changes that in recent decades have allowed Latin America to develop its constitutional identity by protecting different versions of social reality, allowing and validating the multicultural identity that characterizes the region, this being the process that Colombia apparently joined through the aforementioned judgment T622 of 2016. The problem lies in the fact that the decisions taken in the case of the Atrato River by the Constitutional Court have not only been insufficient for the fulfillment of its purposes at the date of presentation of this research -a reality also referred to by the media[xviii] , but lack in any case sufficient strength to change the legal and political paradigm that implies a truly Biocentric conception within the Colombian legal system. This affirmation is based on the following arguments

2.1 The concept of a rights-holding entity does not create new participants within the Colombian legal system.

In spite of what the term " rights-holding entity " may suggest, the figure created by sentence T 622 a posteriori, has been presented as a determination that despite its content wrapped in principles and analysis of the dignity of persons, communities and how this has a superlative importance that must be protected, in the legal reality, what it did was to make the State recognize a subject of rights that like the other legal persons of the legal system cannot represent itself and therefore must exercise its legal capacities through its representatives. This is the point where the resolution of this case loses its initial function, since, if as a consequence of the sentence the existence of some type of representative body for the interests of the indigenous river communities of the Atrato River and its tributaries, and other human groups affected by the serious situation of the river, had been recognized, and that from that body an effective and real protection of the situations that were analyzed within the sentence would be executed, we could talk about something that would be more similar to what the term suggests, condemning the indigenous communities and other human groups affected by the poor state of the river, to live under the same conditions of abandonment that have historically occurred, to which it is worth mentioning what Tirado and Pachón (2023) described when they say

To speak of Colombia as a territory is to name it on the basis of the imposition of the colonization that established a form of homogeneous identity and blurred the native languages to speak Spanish. The need to contemplate the indigenous as legal and political subjects and not simply as historical objects on the basis of their The legislation that has been legislated from the rule of power establishes the starting framework proposed in this text, it is not only an academic exercise of This is not only a

normative compilation that seeks to establish another state of the art regarding indigenous conditions, but also to add decolonial critiques to the ways of understanding dignity and law in the framework of the Colombian social rule of law[xix].

This shows that, despite the supposed innovation of the sentence, it only represents one more episode in the administrative processes of the State, as the representation of a hegemonic ethnic majority, which does not allow even when it recognizes the Atrato River as a subject of special protection, to foresee a governance system that allows expressing the intentions and needs of the minority communities affected by the situation; Leaving everything in the hands of the central government, in this specific case the Ministry of Environment and Sustainable Development, leading to the fact that although the importance and the needs of the communities were sought, and to make the State's obligations effective in a better way, the responsibility of the environmental sustainability processes and the decisions to be taken are at the mercy of the governments in power, who will decide whether or not to give importance to this function within the many others that the Political Constitution endorses.

Although full recognition is given in appearance to a rights-holding entity, by not having determined structural processes that positively affect the situation, guaranteeing the necessary governance to make real decisions on the effects of the Atrato River and all its river communities, no methodologically viable solution is provided that would allow for a structural improvement of the aforementioned situations and therefore, although a legal entity is created or recognized, it is born with its decision-making, governance and critical capacity vitiated by not being able to exercise them.

3. Latin American Biocentrism and Colombian Humanism

Finally, regarding the way in which the existence of a" rights-holding entity " is argued and whether or not this makes reference to "biocentrism" in order to check whether the arguments developed by the Constitutional Court are really Biocentric or whether they have some other type of foundation, it is necessary to attend to a definition of the concept, to which Maximiliano Reyes Lobos (2019), points out:

when we speak of a Biocentric system of environmental ethics we are not referring only to the fact that man should reorient his morality towards nature to the detriment of his own potentialities, nor to the discussion on the criteria to be applied in the definition of human being and his sense of belonging to a biotic system, but that he, as a living organism, also possesses a valuation as an end in itself and that he should preserve his existence as a living part of a coherent system of ecologically and genetically related entities.[xx]

Thus, it is evident that according to the terms of the sentence T 622 of 2016, the Colombian constitutional system still understands the importance of objects or entities in terms of their impact on human communities, either as a means of economic or environmental sustenance, which although it is true that it has been responsible for creating an ecological concern around the protection of natural resources, maintains the economic perspective of exploitation on the biome, which does not necessarily represent a sensitization around the need to respect the existence of other beings where the sense of individual good and pain is a concern that applies and is recognized in each biological entity[xxi] , in Taylorian terms.

The above shows that while it is true that for Colombia the last 30 years have represented a largely experimental period where we have been able to reconstruct much of our ancestral past, seeking to create a legal system that recognizes and validates the identity of the different human groups that are part of the identity of our country and that within these discussions have been able to link environmental concerns as a milestone for the maintenance of the conditions that allow human existence, these concerns still have a constitutional support of a humanist nature given that it is not a matter of representing the entities themselves, but of protecting the conditions that allow human survival and development, a perspective in which the environment remains in any case a thing and not a fully configured subject of law, a different logic from that of the indigenous peoples where water is the whole in relation to nature, institutions (earth, air, fire) and the elements (trees, forests, lagoons, rivers, mountains, etc.), which gives us the possibility of protecting the environment as a

whole and not as a fully configured subject of law.), which gives us the possibility of thinking biocentrism from a law of origin or a law of our own that we have not necessarily taken into account from the Western world, in the so-called legal and cultural pluralism.

An effective protection process cannot be summarized to the emergence of mere concerns through the modification of pre-existing concepts, if the sentence T 622 of 2016 has not been able to fulfill the purposes it raised, it is not because its theoretical considerations are not enough but because the mere statement of a series of facts that agglomerate social issues around a biome entity. This is not enough, and it lacks a methodological process that accounts for the procedures and actions necessary to fulfill these purposes, allowing an intercultural dialogue from the different cosmovisions, cosmologies, cosmogonies or knowledge systems of the indigenous peoples and that transcend in public policies that arise from them and are maintained over time.

CONCLUSIONS

Having analyzed the concept of subject of special protection, its foundations, the way in which the legal system understands and develops the concept of subject and how this depends directly on the identity and individual freedom for its execution, we find that the position adopted by the Colombian Constitutional Court in judgment T 622 of 2016, although it develops a "refined" argumentation that through axiological concepts defines and explains the importance of the Atrato River with the purpose of fully recognizing it as a subject of rights, and whose considerations link some conceptions of the indigenous and river communities of the Atrato River, in the materiality such figure has not generated a representative change of the situations that negatively affect the river, on the contrary it is evident how the situation has worsened under conditions of violence, mining and industrial exploitation, which are not attacked by the policy developed by the governments in office since 2016, turning this category only into a salute to the flag that through extensive argumentation ends up leaving actions that were the responsibility of the State, again in the hands of the same bureaucracy that does not materialize the action of this norm of jurisprudential origin, added to the omission of the legislative and control bodies. Although it is important to recognize the communities and the different levels of affectation of the multiplicity of factors that affect the Atrato River, it was not decided to make decisions in terms of governance, which like any legal person would give an identity to the supposed rights-holding entitythat they were in charge of bringing to legal life, the possibility of really involving the ethnic peoples and communities in these processes was avoided, since although their role as caretakers of the river is recognized, these functions are not decentralized, nor do they attend to a figure representing the interests of the community, but are administered by the Ministry of the Environment, becoming yet another tool of a State that has abandoned the Chocó for decades.

The non-recognition of the aptitudes that would highlight the dignity of the rights-holding entity, such as its freedom impaired by reason and its moral capacity, the dignity granted by the Constitutional Court to the river as a rights-holding entity seems to be acquired dignity instead of ontological dignity, thus calling into question the birth of such entity "subject of law" beyond the formality that any other legal person could have, minimizing it to one more resource for the Western hegemonic State.

Furthermore, the positions presented cannot necessarily be interpreted as biocentric ideas that are valid within the rulings of the Colombian Constitutional Court, given that their arguments, while recognizing the importance of indigenous peoples and minority communities of various kinds, seem to bring us back to anthropocentric versions that considered that, given their capacities, human beings functioned as a kind of administrator of the ecosystem, only now seeing it from an ecological perspective, seems to bring us back

to anthropocentric versions that considered that given their capacities, human beings functioned as a kind of administrator of the ecosystem, only now seeing it from an ecological perspective of such administration, which in any case is called to generate responsibility in human beings since, as Reyes lobos explains

It is man as a being possessing a greater dividend of value given his sensitivity, who would hold a robust *telos* that would empower him both to watch over the good of all living beings, and to make use of subjectivity in the application[xxii].

The above allows us to say that, although the Political Constitution of 1991 was a great step in the development of our constitutional evolution and our concerns for nature, this Document is written for people and in any case, written in the key of human dignity as a Western construction. If the sentence had recognized some kind of governance to the ethnic or riverine communities and constituted some form of collective government, surely a new rights-holding entitywould have been born, but as the one in charge is the government through the Ministry of Environment, the sentence ends up entrusting the government with an obligation that it already had and that can be observed in chapter 3 of the same Political Constitution of 1991 and that in consequence at least for now, Colombia is not a Biocentric legal system, we are not there yet, and so far we are beginning to build an ethical consideration of human existence in the biome.

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