

# THE CHALLENGES OF THE PANDEMIC DUE TO THE “APARTHEIDS” IN *TERRA BRASILIS*: A VIEWPOINT FROM THE PERSPECTIVE OF SOCIAL SECURITY FOR THE POST-COVID-19 ERA

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- **ABSTRACT:** This paper aims to analyze the main consequences of coronavirus disease 2019 (Covid-19) for the legal world and point out ways to mitigate them. As central questions of the research problem, it is asked what are the impacts of the multifaceted inequalities in our homeland in facing the pandemic and what are the solutions for mitigating the procedural hecatomb in the post-Covid-19 era. The research method was hypothetical-deductive and, as a methodology, exploratory bibliographic research and qualitative analysis were used. It is concluded that the way to avoid the procedural pandemic necessarily passes through the adoption of alternative techniques, as a priority, extrajudicial resolution of conflicts, in which the parties involved assume the leading role in solving their own problems. The solidarity institute should be rewritten in that dimension of a State that should not be so strong as to exude freedom, but it should not be so languid as to strike down those who are already vulnerable. It is time for everyone to help develop a new model of capitalism: humanist capitalism, in which development is not the opposite of well-being, economy is not the enemy of health, and profit is not the emulator of people.
- **KEYWORDS:** Covid-19; solidarity; coronavirus; inequality; Judiciary.

## OS DESAFIOS DA PANDEMIA DIANTE DOS “APARTHEIDS” EM *TERRA BRASILIS*: UM OLHAR SOB A ÓTICA DO DIREITO PREVIDENCIÁRIO PARA A ERA PÓS-COVID-19

- **RESUMO:** Este trabalho tem como objetivo analisar as principais consequências da *coronavirus disease 2019* (Covid-19) para o mundo jurídico e apontar caminhos para mitigá-las. Para atender a essa demanda, procurar-se-á elucidar as estratégias a serem utilizadas para enfrentar a brutal judicialização que se avizinha na era pós-pandêmica, mormente sob a ótica do direito previdenciário. Como questionamentos centrais do problema de pesquisa, indaga-se quais os impactos das multifacetadas desigualdades em solo pátrio no enfrentamento da pandemia e quais as soluções para a mitigação da hecatombe processual na estação pós-Covid-19. O método da pesquisa foi o hipotético-dedutivo e, como metodologia, utilizaram-se a pesquisa bibliográfica exploratória e a análise qualitativa. Conclui-se que o caminho para evitar a pandemia processual passa,

necessariamente, pela adoção de técnicas alternativas de resolução, prioritariamente, extrajudicial dos conflitos, em que as partes envolvidas assumem o protagonismo das soluções dos seus próprios problemas. O instituto da solidariedade deverá ser reescrito nessa dimensão de um Estado que não deve ser tão forte, a ponto de exinair a liberdade, mas também não deve ser tão lânguido, a ponto de fulminar todos aqueles que já apresentam vulnerabilidade. É instante de todos ajudarem a desenvolver um novo modelo de capitalismo: o capitalismo humanista, em que desenvolvimento não é antônimo de bem-estar, a economia não é inimiga da saúde, e o lucro não é o êmulo das pessoas.

■ **PALAVRAS-CHAVE:** Covid-19; solidariedade; coronavírus; desigualdade; Poder Judiciário.

## 1. Introduction

This paper aims to analyze certain impacts of the coronavirus disease 2019 (Covid-19) pandemic within the context of the Brazilian Social Security and its State, which is currently and manifestly neoliberal and that, on several occasions, in the course of this devastating social, economic, and health crisis, has refrained from its obligation to grant its citizens the most essential social rights, for instance, satisfactory health care, and other rights, such as essential emergency financial aid, which was only granted after intense pressure from society.

Whether for the great difficulty in carrying out social distancing, because of the lack of a roof over their heads so they could rest, or the need to remain employed – either formally or informally, their only source of livelihood –, whether for their precarious basic sanitation conditions or the lack of access to reliable information regarding the risks of the pandemic, or due to the lack of money to buy basic protective equipment, such as hand sanitizers, gloves, and masks (Davis, 2020), it is almost unquestionable that the poorest Brazilian inhabitants were the most affected by the Covid-19 pandemic – and its new strains –, which frighten the entire planet, and this will be demonstrated here.

Bodies on the sidewalks and vultures flying over Guayaquil, Ecuador, triggered the warning signs of the catastrophic consequences that the pandemic could bring to the poorest countries on the planet, and even to the least privileged people in rich countries (Macedo, 2020).

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Families living in a single room, in which six, seven, eight people, or even more, slept together, among them, children and elderly individuals, healthy and ill, are part of the Brazilian reality. Brazil presents the highest socioeconomic inequality on the planet right after the African continent (Gomes, 2020), as pointed out by the 2017 Gini coefficient (Bermúdez; Rezende; Madeiro, 2019).

Regardless of one's view on Covid-19, there seem to be three major questions to be answered: 1) How can we avoid a tragedy in the Judiciary Branch after the pandemic? 2) How can we build a world in which "progress" is not the opposite of "welfare"? 3) How can we protect humankind not only from eventual pandemics and catastrophes, but also from the state of famine, which devastates the poorest people on the planet?

Tough measures never seen before by this generation had to be implemented, such as mobility restrictions – social distancing, quarantines, restrictions on entering and leaving the country, closure of schools, restaurants, museums, movie theaters, shopping malls, and commercial businesses in general, suspension of visitation at prisons and shelters –, in order to curb the spread of the virus (Pochmann, 2020).

Everyone is called upon to have discipline and set limits for themselves, for wherever there are limits, there is also freedom; and wherever there are no limits, there is certainly no freedom, because if everything is allowed, then, certainly nothing is allowed (Fachin, 2020).

It was well known that it would definitely be difficult to temporarily keep athletes away from gyms, religious people away from churches, children away from their grandparents, and grandparents away from their grandchildren, but it takes discipline to ensure freedom in the future.

History is not only the consequence of a person's will. It is built with small drops of water that each person, in their own way and at their own time, throws to put out the fire, but it is also built, as paradoxical as it may seem, by adding fuel to whatever needs to give vitality and movement to life itself (Fachin, 2020).

It is by harmonizing these practices that possibly lies the means to confront the four major emergencies that Brazil and the world are currently facing: the first one is health care; the second one is economic, with its disastrous impacts on the personal and collective circumstances of the most vulnerable segments of the population; the third one, how to coordinate and manage local, state, regional, national, and planetary actions as soon as possible (Fachin, 2020); and the fourth one, the legal pandemic in the post-Covid-19 era.

When one thought of a slow and tiresome solution for the pandemic, a serious danger was presented: forgetting about those who were left behind. It should be kept in mind that the novel coronavirus must not and cannot bring to us an even more lethal and divisive "virus": the virus of "indifferent selfishness". This "virus" is transmitted from the notion that "life gets better if it gets better for me" and that "everything will go well if it goes well for me", without a collective, diverse, and solidarity perspective on human life (Bergoglio, 2020).

From this standpoint, constitutional legality is an essential, indispensable principle, it is a *conditio sine qua non* for these and other issues to be addressed and resolved in this emergency caused by Covid-19 (Rátis, 2020). What people do or fail to do nowadays is a kind of plunder against the future or hope that favors the future, it is either one thing or the other (Fachin, 2020).

The triad that comprises social security – health care, social assistance, and social welfare – is one of the most powerful weapons for materializing human rights, as its main purpose is to safeguard the protection of human dignity, ensuring the well-being of individuals with social justice.

The effective implementation of social security rights by the State ensures the maintenance of an existential minimum for individuals who are affected by situations that impact their income (Tavares, 2020), such as the one faced by us now, which required social distancing due to the novel coronavirus (Sampaio, 2020).

Through social security, it was possible to grant emergency aid to workers, so that they and their families could survive during the pandemic while carrying out the necessary social distancing stipulated by the State.

In pandemics, there is no room for governments with a social, liberal, neo-social, neoliberal, or any other ideology. There must be harmony between the various spheres of government, with their diverse concepts of economy and public policies, so that we can think about the Democratic Rule of Law, avoiding ideological discussions and focusing mainly on technical and scientific debates.

The current scenario consolidates the need to strengthen the Democratic Rule of Law, regardless of the government in office, whether it is left-wing, right-wing, center, or with any other political view. This is not the time to prioritize ideological views, no matter what their bias is, wherever they may come from. This is the time to prioritize solidarity, and social security is an excellent wagon to transport this perspective along the rails of the most multifaceted societies on the planet.

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Fighting against social exclusion is one of the most arduous challenges for humanity this century (Canotilho; Correia; Correia, 2010). It is the most perverse inequality feature that is currently being experienced in several countries around the world (Soares; Rodrigues, 2021). Among them, we can mention Brazil, and the Covid-19 pandemic wants to charge a high price for this individualistic indifference, as evidenced herein.

This country is still a place where political contacts, personal relationships, or informal hierarchies make it possible to circumvent the law, usually by using the “little Brazilian fix or way” and by saying “Do you know whom you are talking to?”, or “I will talk to Mr. so-and-so” (Barroso, 2019, p. 495-499).

However, that is not all. This immense inequality takes its toll every single day, with increased violence, people sleeping on the streets and living under subhuman conditions, children being co-opted into the drug trade, among many other inauspicious consequences. In times of Covid-19, the consequences double, and human beings are selected to live or die, something similar to *Sophie's choice*, because of the lack of intensive care unit (ICU) beds.

The concentration of wealth in Brazil is brutal. In 2014, only 0.36% of the Brazilian population owned 45.54% of Brazil's gross domestic product (GDP) (Salvador, 2016).

Figures from the 2013 National Health Survey (*Pesquisa Nacional de Saúde* [PNS]) reveal that among the poorest 20% of the Brazilian population, 94.4% have no health insurance. In turn, among the richest 20%, only 35.7% do not have health insurance (Instituto Brasileiro de Geografia e Estatística [IBGE], 2014).

These data are very relevant for the analysis performed herein, because, as it has already been widely reported, one of the main causes of death during the Covid-19 pandemic is the collapse of the healthcare system, the lack of ICU beds for patients whose medical condition had gotten worse, either because of the patient's age or due to pre-existing illnesses.

In order to have a better notion of what will be discussed in this study, the Brazilian Unified Healthcare System (*Sistema Único de Saúde* [SUS]) has almost five times fewer ICU beds per 10,000 inhabitants (1.04 beds per 10,000 inhabitants) than the private sector (4.84 beds per 10,000 inhabitants) (Canzian, 2020).

In some Brazilian states, the inequality is even greater, according to data from the Federal Council of Medicine (Conselho Federal de Medicina, 2021). In the Federal

District, for example, SUS only has 0.89 beds per 10,000 inhabitants, while the private sector has 8.78 beds per 10,000 inhabitants<sup>1</sup>, that is, wealthy people in Brasília have access to almost ten times (1,000%) more ICU beds than the city's impoverished population.

Using a study with 7,162 individuals diagnosed with Covid-19 carried out in the United States as a parameter, the hospitalization rate in ICUs among those who did not have any morbidity precondition was 2%. These numbers rose to 15% for individuals with pre-existing diseases, such as diabetes, chronic kidney diseases, neurological diseases, chronic pulmonary diseases, cardiovascular diseases, and high blood pressure (Pires; Carvalho; Xavier, 2020).

According to the PNS (IBGE, 2014), 6.2% of the Brazilian population aged 18 years or older were diagnosed with diabetes, which represents a group of 9.1 million people. As regards high blood pressure, the proportion of individuals diagnosed with hypertension was 21.4%, which corresponds to 31.3 million people. In terms of cardiovascular diseases, 4.2% (6.1 million people) were diagnosed with heart disease. In addition, 1.5% of the population has been diagnosed with cerebrovascular accidents (CVA), or strokes, corresponding to approximately 2.2 million people. Furthermore, 4.4% of the people interviewed mentioned having been diagnosed with asthmatic bronchitis, and 1.4% mentioned a medical diagnosis of chronic kidney failure (IBGE, 2014).

Just to have an idea of the size of the challenge Brazilians had to face, with only the diseases mentioned above, all of them part of higher risk groups, 39.1% of the country's population are in a higher risk group, that is, more than 82 million Brazilians were at risk, not to mention, due to the lack of official data from the PNS, those with immunodeficiency or neurological diseases, both of which are risk factors for Covid-19 as well.

Due to this worrying scenario, it seems essential to have the legal principle of solidarity as a vector, which should be rewritten in this dimension of a State that cannot be so strong as to suppress freedom, but also that cannot be so weak as to exterminate all of those who are already vulnerable (Fachin, 2020), as set forth by the Constitutional Charter itself (Brasil, 1988, arts. 5, XXXII, and 175, V).

Using Pope Francis's words, this pandemic reminds us that there are no differences or borders between those who suffer, we are all fragile, we are all equal, and we

1 Available at: <https://portal.cfm.org.br/noticias/pandemia-derruba-quase-30-milhoes-de-procedimentos-medicos-em-ambulatorios-do-sus/>. Accessed on: 4. 21. 2020.



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are all precious. It is time to ward off inequalities and correct the injustice that uproots all of humankind's health (Bergoglio, 2020).

It is time for altruism, and large corporations have already started to participate<sup>2</sup>. It is time for 4.0 technologies to be used and serve global health care, guiding technology to help human beings in their most essential needs and not in superfluous ones.

It is time for everyone to help develop a new model of capitalism, humanist capitalism, in which “development” is not the opposite of “well-being”; in which the economy is not the enemy of health; in which capital is not the adversary of labor; in which coexistence between different social classes is not misunderstood as accepting subhuman lifestyles, with people living on the streets, starving, deprived of a minimum level of dignity; in which profit is not people's adversary.

The time has come when an international treaty to assist extremely poor peoples, with the specific objective of combating possible pandemics and catastrophes and perennial world hunger, is needed, jointly with the creation of a universal social security system, so that humankind's misery will never again be seen as something normal or acceptable.

The conflicts that will arise from this pandemic are inevitable, especially in a pluralistic society such as the one we live in, and this makes us question the responsiveness of traditional mechanisms to solve them. Therefore, new paths open up, including for those who see conflicts as an opportunity for personal and social transformation.

Social benefits to support people at these challenging times go through procedures carried out by the National Institute of Social Security (Instituto Nacional do Seguro Social [INSS]), with minimum social security benefits or even social assistance, such as the Social Welfare Benefit (*Benefício de Prestação Continuada* [BPC]) set forth by the Organic Law on Social Welfare, among other social aids.

All procedures and processes have been slow and complex. At times, the INSS denies requests, which impacts this public policy. In addition, in certain cases, these dismissals are based on different interpretative reasons. In Brazil, whenever the INSS dismisses a claim, the beneficiary has the opportunity to go to an administrative court named Social Security Appeals Council (*Conselho de Recursos da Previdência Social*

2 Itaú Unibanco, a major Brazilian bank, *exempli gratia*, announced a BRL 150 million donation for the acquisition of equipment, hospital infrastructure, food, and personal hygiene kits. Gerdau and Americas' Beverage Company (Ambev) corporations have joined efforts to build a hospital with 100 beds to exclusively serve patients through the Unified Healthcare System (*Sistema Único de Saúde* [SUS]) (Empresas, 2020).



[CRPS]). It has existed since 1939 and is responsible for judging appeals in three administrative appeal levels.

The CRPS has a very small administrative structure and little hierarchical support, thus, it has started offering poor administrative jurisdiction. European administrative procedural relations coexist with more modern conflict resolution solutions as, for example, mediation, arbitration, among others. Perhaps, this would be a great way to solve these issues in Brazil, especially in the case of benefits and social protection.

In order to explore such approaches, an exploratory bibliographic research methodology was adopted, and a review of the relevant literature related to the Covid-19 pandemic, socioeconomic inequalities, and Social Security Law in the Brazilian context was done. To support this study, quantitative and qualitative data were collected from reliable sources, such as government institutions and academic research. The data were analyzed to better understand the magnitude and nature of the most diverse disparities that affect the country, which were exacerbated by the pandemic, verifying how crucial it is to foster and develop new standards, new formulas, and strategies to resolve the conflicts that are looming because of the pandemic, through alternative techniques – such as mediation, conciliation, and arbitration – in which the parties involved take the lead in solving their own problems, giving absolute priority to out-of-court dispute resolution in all fields of law, in order to avoid, with this, an excessive amount of lawsuits in the Judiciary Branch. To this end, the relationship between social security's *jusfundamentalidade* and the Covid-19 pandemic will be addressed below.

## 2. Social security's *jusfundamentalidade* and the Covid-19 pandemic

The challenges that lie ahead due to the Covid-19 pandemic, whether in the administrative or judicial sphere (Santos, 2020), must be understood under the principle that social security rights – including health care, social assistance, and social security – are fundamental rights.

Fundamental social rights date back to the 1917 Mexican Constitution and to the 1919 German Weimar Constitution. The creation and consolidation of social rights in these charters accelerated the decadence of the State's exclusively liberal and individualistic model (Barroso, 2019).

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Fundamental rights are nothing more than human rights incorporated into the Brazilian legal system. This incorporation occurs expressly or implicitly in the text of our Constitutional Charter, or in the so-called constitutionality section, in which we can find the international treaties and conventions on human rights (Brasil, 1988, art. 5, paragraph 3).

Fundamental rights are subjective rights, that is, they are protected by the Law, being, therefore, judicially enforceable. In other words, fundamental rights are binding and susceptible to judicial review by the Judiciary Branch (Barroso, 2019).

Social security rights are linked to the fight against poverty and the promotion of social justice, essential purposes in any era, especially during a pandemic, such as this one, aiming at guaranteeing dignified lives to everyone by ensuring them the minimum necessary for their survival.

Right at the beginning, the 1988 Brazilian Federal Constitution established in its title II (“On fundamental rights and guarantees”) which human rights would be incorporated and, consequently, which would be considered fundamental human rights.

In chapter II, art. 6, title II, health care, social welfare, and social assistance – the three main pillars of social security – are set forth as fundamental rights, which is why these social rights, besides being materially constitutional, for obvious reasons, are also formally constitutional.

Thus, social security’s *jusfundamentalidade* within its three pillars (health care, social assistance, and social welfare) is verified, that is, as this human right was integrated into the internal legal system by the 1988 Political Charter and, consequently, acquired the status of a fundamental right, a condition granted by the original constituent power, being, therefore, a quite powerful instrument to mitigate the damages caused by Covid-19.

Hence, there is no room to question whether social security is a fundamental human right since it is present as such in the Brazilian legal system by express determination of the original 1988 constituent power.

Once this principle is established, we should bear in mind that the scope of fundamental rights is always the subject of important debates and many controversies, especially because of the always alleged State’s budgetary limitations. In this intense and eternal debate, social security, assistance to the destitute, and health care are always in the spotlight.

Fundamental rights are rights inextricably linked to human dignity, not only do they ensure the rights related to individuals' personal lives – the right to life, religious and cultural freedom, physical integrity, privacy, their image, education – but also to their social lives – the right to peaceful assembly, freedom of association, join a trade union, go on strike (Periandro, 2020). Their relationship with social security impacts individual rights, especially the right to life, to physical integrity, and to human dignity, allowing for the protection of these rights. If health care, social assistance, and social welfare were not covered, these fundamental rights would become devoid of content.

The triad that comprises social security is one of the most powerful weapons for the materialization of human rights since its main purpose is to guarantee individuals' well-being with social justice.

A person's dignity is not only the foundation of the legal system but also the core aspect for recognizing and protecting human rights, it is the ultimate goal of these rights (Barroso, 2019). Human rights and social security are always moving dynamically, being transformed as society develops economically and socially.

The effective implementation of social security rights by the State ensures the maintenance of an existential minimum necessary for individuals who are impacted by a harmful situation, such as the crisis faced recently, to continue having an income.

Social security is one of the most relevant social protection instruments ever sought by humankind, becoming a valuable mechanism to combat social inequality.

As previously mentioned, it was possible to grant emergency aid through social security. Even though the amount was lower than what was needed, it served as a real relief, and Brazilian workers and their families were able to defend themselves from absolute poverty during the pandemic, while social distancing as stipulated by the State.

The emergency legislative option mentioned above was beneficial but insufficient. According to art. 2, paragraph 3 of Law no. 13,982/2020, the "woman provider in a single-parent family shall receive 2 (two) quotas of the emergency aid" (Brasil, 2020), i.e., BRL 1,200.00. What would be the reason for a man who is the provider in a single-parent family not to receive the two quotas as well, thus, being left with only BRL 600.00?

There is definitely no reason for that. It is a clear breach of the principle of equality, because just as women providers in single-parent families need to feed their children, which is not being denied here, so do men, which is why the law erroneously differentiated a person who was in exactly the same situation.

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In this scenario, social security presents itself as having great potential for transforming the lives of people and any society in a dignified manner. Therefore, it is a driver for internationally recognized human rights to be totally complied with. A protective shield against social exclusion presents itself as one of the most laborious obstacles for humanity this century (Canotilho; Correia; Correia, 2010, p. 20), which is why the stark inequalities that dominate the country and how they have made the consequences of this nefarious pandemic worse for the most disadvantaged will be analyzed below.

### 3. The Brazilian “apartheids” and the novel coronavirus

Social security guarantees the observance of equality in its most positive version, mitigating situations in which there is no social protection. Equality is a fundamental right and part of the core of the concept of democracy.

Everyone is an end-in-themselves<sup>3</sup>, they have the same value, and, for this reason, they deserve the same deference and equal respect (Dworkin, 2002), all this under the mantle of solidarity, of human dignity. Equality protects people from undue discrimination and from being hierarchized. It also neutralizes historical, social, and economic injustices, as well as enabling respect for people’s differences.

Currently, equality is revealed especially in three dimensions: formal equality, which protects people against privileges and discriminatory behavior; material equality, which represents the demands for the redistribution of income, power, and social welfare; and equality as an acknowledgment, which sets forth compliance with the respect for minorities, whether sexual, racial, religious, or any other (Osório; Barroso, 2020).

The 1988 Political Charter stipulates these three equality dimensions. Formal equality can be found in art. 5, *caput*: “all are equal by law, without any kind of distinction” (Brasil, 1988). In turn, material equality comes from the Republic’s main goals, such as “building a free and just society that is filled with solidarity” (Brasil, 1988,

3 This is one of Kant’s categorical imperatives: “... man, and in general every rational being, exists as an end in himself, not merely as a means for arbitrary use by this or that will” (Kant, 2009, p. 68-71).

art. 3, I) and “eradicating poverty and marginalization, and reducing social and regional inequalities” (Brasil, 1988, art. 3, III).

Equality as an acknowledgment is provided for in one of the Republic’s main objectives: “to promote everyone’s well-being, without any prejudice of origin, race, gender, color, age, or any other form of discrimination” (Brasil, 1988, art. 3, IV).

As previously pointed out, social security’s three main pillars represent fundamental human rights and are possibly the most powerful mechanisms for material equality, since, on one hand, they are aligned with the construction of a more fair society that is filled with solidarity. On the other hand, they are powerful instruments for eradicating poverty and marginalization, besides significantly helping reduce regional, social, and economic inequalities through social security/assistance benefits and healthcare services.

Nevertheless, these three equality dimensions are not independent from one another. This is because effective equality implies equality by law, acknowledgment, and redistribution. Women, black people, indigenous groups, and rural workers, e.g., cope with injustices whose origins can be found both in the economic and cultural-value frameworks, requiring both types of remedy (Osório; Barroso, 2020).

Aristocratic and not very republican ideals have always coexisted within the Brazilian society. Up until the Citizen Constitutional Charter, *verbi gratia*, military personnel and magistrates were exempt from paying income tax (Torres, 2009).

In this context, formal equality is extremely important, but far from enough. In nations with high levels of social and economic inequality, such as Brazil, it is not enough *de per se* (Tosi; Torelli, 2020).

The principle of equality has been included in Brazilian constitutions since the 1824 Imperial Constitution. Therefore, when it was in effect, Brazil coexisted, without major perplexities or introversions, with the right to vote based on a person’s economic status, women not being allowed to vote, and the abominable slavery regime (Barroso, 2019).

Without any distress, equality for all by law coexisted with the exclusion of the poor, black people, homosexuals, women, and even female rural workers, who, for centuries, were deprived of their fundamental social welfare rights. In fact, it was precisely this discrepancy between rich and poor, black and white people, men and women, urban and rural workers that led, during the course of the last century, to the realization that only having purely formal equality is not enough.

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From this observation, the concept of material equality arises, related to demands for the redistribution of income and power and for social justice. In addition to equality by law, equality before life must be ensured by creating social protection mechanisms and strengthening income redistribution instruments, such as social welfare, assistance to the destitute, and access to health care, in view of the appalling socioeconomic inequality that stubbornly insists in existing in our country.

In 2017, the Brazilian Gini coefficient, which measures inequality and income distribution, was the same value obtained by Botswana, in Africa. Brazil is more unequal than countries like Nicaragua and Paraguay, being the seventh most unequal country on the planet, only behind countries on the African continent, such as Lesotho, Mozambique, and Zambia (Bermúdez; Rezende; Madeiro, 2019).

This inequality, which also happens in the economic-social-tax sphere, as shown below, constantly imposes its burden, and during a pandemic, this burden rises more intense, selecting individuals who will subsist or succumb, perhaps Sophie's choice, given the lack of beds for all, especially for the most destitute, as demonstrated in this study.

Moreover, social concessions in administrative procedures have to face the lack of maturity of the institutions that manage benefits and resources, making it difficult to understand how the federal government can maintain inefficient services to serve and support socially vulnerable people. There are technical and supported concessions, there are automatic concessions done by artificial intelligence (AI), and there are undue denials, even by machines, whose reviews are carried out by the CRPS due to the fragile work done by the INSS. There is something very wrong that needs to be reviewed.

### 3.1 The Brazilian economic-social-tax “apartheid”

The economic-social-tax “apartheid” is a torment for the country. Numbers from the Institute for Applied Economic Research (Instituto de Pesquisa Econômica Aplicada [Ipea], 2009) show that brown and black Brazilian citizens, who represent about half of the national population, continue being underrepresented among the richest and overrepresented among the poorest segments, corresponding to 72% of the poorest 10%. On average, they only receive 55% of the income earned by white citizens. Moreover, their unemployment rate is 50% higher than the one for white people.



Taxation is one of the most effective instruments for eradicating poverty and reducing social inequalities, which are essential goals for the Republic, and which was set forth in the 1988 Federal Constitution.

Inequality in the Brazilian tax system is brutal. Taxation over property and assets in Brazil is minimal, corresponding to only 1.40% of the GDP, while in major capitalist countries, taxes over property and assets correspond to more than 10% of all tax collection (Salvador, 2016), such as, *verbi gratia*, the United States (12.15%), Canada (10%), South Korea (11.8%), Great Britain (11.9%), and Japan (10.3%) (Owens, 2005).

A peculiarity about income taxation in Brazil is that not all individuals' taxable incomes are compulsorily included in the progressive Income Tax (*Imposto de Renda* [IR]) table and submitted to the income tax return's annual adjustment. Taxation on wages, for instance, respects the four rates (7.5%, 15%, 22.5%, and 27.5%) stipulated by law, while income from ownership of farms or land changes from 0.03% to 20% - depending on the property size and on how much the land is used. Furthermore, income from financial investments has rates between 0.01% and 22.5%, according to the term and type of investment, thus, favoring rentiers and charging more taxes from all income that derives from hard work (Salvador, 2016).

As previously pointed out, the concentration of wealth in Brazil is repugnant, it is ignoble. Besides, these assets and rights - which give rise to this brutal concentration of wealth in the country - are minimally taxed, not reaching 1.5% of the GDP. The inheritance tax (*Imposto de Transmissão Causa Mortis e Doação* [ITCMD]), *exempli gratia*, which falls under the jurisdiction of state governments, in 2014, represented a tax collection of only BRL 4,698.16 million, that is, an insignificant 0.25% of the amount of taxes collected in Brazil (Brasil, 2015).

Consequently, one can infer that, in Brazil, it is not enough to be rich, people have to pass their wealth on to their children, grandchildren, great-grandchildren, and so on. Such a phenomenon makes it clear that there is an intergenerational pact, even if implicit, that aims at perpetuating this undesirable concentration of wealth.

This minimal collection of taxes is due to the low rate charged for the ITCMD, which was set by the Federal Senate at 8% in 1992. However, it almost never exceeds 5% in the states and, most of the time, has no progression, such as in São Paulo, a state where the rate is 4% for everyone (Salvador, 2016).

To illustrate the existing disparity, we observe that in Brazil it is considerably easier to inherit wealth when compared to countries such as Japan, Belgium, France,



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the United Kingdom, and even some Latin American countries, such as Chile. In these countries, the maximum inheritance tax rate reaches significantly higher values: 55% in Japan, 50% in Belgium, 45% in France, 40% in the United Kingdom, and up to 25% in Chile (Oliveira; Biasoto Jr., 2015).

Despite having rural areas filled with large estates, Brazil charges an insignificant tax on rural properties. According to data from the Brazilian Federal Revenue Services, the Rural Land Tax (*Imposto Territorial Rural* [ITR]) collected in 2014 was equivalent to 0.01% of the GDP (Brasil, 2015). In turn, the Urban Territorial Property Tax (*Imposto sobre a Propriedade Predial e Territorial Urbana* [IPTU]), which falls under the jurisdiction of our municipalities, has its progression set forth in the constitutional text; however, neutral rates have been adopted when collecting this tax (Silveira *et al.*, 2013).

Additionally, even after more than 30 years since the 1988 Constitution was enacted, the Tax on Large Fortunes (*Imposto sobre Grandes Fortunas* [IGF]), expressly set forth in the constitutional text, has not been regulated yet, a notorious omission on the part of the derived constituent power.

Regional inequalities are also demonstrated by data from the Federal Revenue Services. More than half of the total income (57.16%) declared in 2013 is concentrated in the hands of taxpayers from only three Brazilian states: 1) São Paulo (35.60%), 2) Rio de Janeiro (13.09%), and 3) Minas Gerais (8.47%). Adding the income tax returns issued by taxpayers from the states of Rio Grande Sul (6.8%) and Paraná (6.02%), we can see that 69.98% of the income reported to the tax authorities (Salvador, 2016), that is, more than 2/3 (two-thirds), are essentially concentrated in the Southern and Southeastern states of the country (Brasil, 2015).

In order to have a better understanding of the income concentration that prevails in Brazil, per region, if we added the income tax returns from the seven states in the North and the nine states in the Northeast, plus the three states in the Midwest, it would not reach the income earned in only one state of the Federation: São Paulo.

It does not limit itself to income, the concentration of wealth can also be found in the aforementioned states, in proportions that are incompatible with their relative numbers of inhabitants. Out of the BRL 5.8 trillion declared as assets and rights to the Federal Revenue Services in 2013, more than 2/3 were distributed as follows: 1) São Paulo: 41.26% (21.7% of the total population), 2) Rio de Janeiro: 12.14% (8.1% of the total population), 3) Minas Gerais: 8.07% (10.2% of the total population), 4) Paraná:

7.27% (5.5% of the total population), and 5) Rio Grande do Sul: 6.97% (5.5% of the total population) (Salvador, 2016).

In Brazil, it is not enough to concentrate wealth, we also observe – according to the perverse logic of our non-humanistic capitalism and neoliberalism – tax exemptions being granted to the richest states to the detriment of the poorest ones (Moreira, 2020). Out of the BRL 623.17 billion of exempt and non-taxable income reported to the Federal Revenue Services in 2013, 40.08% belonged to taxpayers from São Paulo, 12.86% from Rio de Janeiro, and 8.3% from Minas Gerais, that is, the three richest states in the Federation had 61.24% of all exempt and non-taxable income (Salvador, 2016).

Hence, based on the figures disclosed by the Federal Revenue Services, one can assume that the richer the state of the Federation, the smaller its relative participation in terms of its residents' taxable income, that is, proportionally, taxpayers from these states are the most privileged as regards tax exemptions.

In 2013, while the income earned by taxpayers in the states of Acre and Roraima originated mainly from income that had to be taxed – 81.16% and 80.59%, respectively –, only 54.88% of the income declared by taxpayers from São Paulo came from taxable income (Salvador, 2016).

It is important to emphasize that these disparities in the economic-social-tax sphere have a dissipating effect, affecting several areas, such as health care, as shown below, and causing unfavorable impacts on how to cope with the pandemic, mainly when it comes to the most vulnerable.

This debate on fiscal impact inequality directly affects social security, because it is the reason for allegations of lack of collection and funding to cover social security and welfare benefits. The Constitution has poorly designed our tax system. There is taxation for social security for those who own a company, earn revenues, make a profit, have employees, import goods and services from abroad, and taxes resulting from playing the lottery (Brasil, 1988, art. 195).

In Brazil, we lack universality in our social security taxation so that there can be broader solidarity in which most of our society will be called upon to fund this social policy. Collecting taxes by establishing an additional rate on real estate properties and automobiles above a certain value, such as incomes above certain amounts, wealth, inheritances, and work done by robots that replace humans, one can imagine taxation fairness, far beyond investment capital to something closer to production capital (Piketty, 2013).

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### 3.2 The “health care apartheid” in times of the novel coronavirus

During the Covid-19 pandemic, the poorest people suffered more intensely the consequences of the shameful inequality that devastates our country, whether due to the obstacles to carrying out social distancing, threats of unemployment, or not having private health insurance (Cavalcanti, 2020).

Figures from the PNS reveal that among the poorest 20% of the Brazilian population, 94.4% have no health insurance. However, among the richest 20%, only 35.7% do not have health insurance (IBGE, 2014). Inequality as regards access to health insurance is also based on race. In 2008, 34.9% of the white population in Brazil had private health insurance, while only 17.2% of the black population had access to it, a percentage that reveals the existing racial inequalities in health care (Instituto de Pesquisa Econômica Aplicada [Ipea], 2009).

These data are extremely relevant for the analysis carried out herein, because, as already widely reported, one of the main causes of death related to Covid-19 is the collapse of a country's healthcare system, the absence of ICU beds to care for patients that, either because of their age or pre-existing illnesses, have gotten worse.

As for ICU beds, SUS has almost five times fewer beds per 10,000 inhabitants (1.04 beds per 10,000 inhabitants) than the private sector (4.84 beds per 10,000 inhabitants) (Conselho Federal de Medicina, [s. d.]).

In some states, inequality is even greater. In Rio de Janeiro, for example, the second richest state in the country, SUS has 0.97 beds per 10,000 inhabitants, while the private sector has 8.7 beds per 10,000 inhabitants (Conselho Federal de Medicina, [s. d.]), that is, the richest, who are fewer in number in Rio de Janeiro, will have access to almost 900% more ICU beds than the poorest citizens.

Similarly, in the state of Maranhão, SUS only has 0.59 beds per 10,000 inhabitants, while the private sector has 8.18 beds per 10,000 inhabitants (Conselho Federal de Medicina, [s. d.]).

That is, the wealthy inhabitants of Maranhão will have access to more than 1,300% of ICU beds than its underprivileged population. This is happening in a state in which less than 8% of the population has health insurance.

Likewise, in Bahia, SUS only has 0.64 beds per 10,000 inhabitants, while the private sector has 6.49 beds per 10,000 inhabitants (Conselho Federal de Medicina, [s. d.]),

which means that wealthy people in Bahia will have access to more than 1,000% ICU beds than the poorest people in the state.

In Brazil, the state of Mato Grosso has the highest relative capacity of ICU beds in the private sector, with 10.63 beds per 10,000 inhabitants. However, SUS in Mato Grosso only has 0.89 beds per 10,000 inhabitants (Conselho Federal de Medicina, [s. d.]), a number that is lower than the minimum recommended by the World Health Organization (WHO, 2014, which is 1.0 bed per 10,000 inhabitants, that is, the aforementioned Midwestern state is a national reference - and it is not alone, we should emphasize - on how to treat its inhabitants unequally when it comes to access to ICU beds, something that is so important during this Covid-19 pandemic.

Proportionally speaking, rich people in Mato Grosso have more than 11 (1,100%) times the number of ICU beds at their disposal, should they need intensive care because of Covid-19, compared to poor citizens in that state. This is blatant inequality, which directly affects how the pandemic is dealt with, as discussed below.

There is inequality and segregation in the healthcare sector in Brazil, given that health is a subsystem of social security, as per art. 194 of the Federal Constitution, becoming another Beveridgean policy poorly treated by Brazilian social public policies, with a lot of segregation and neglect. The Covid-19 pandemic has demonstrated this issue quite well.

### 3.3 Brazilian inequality as a risk factor for Covid-19

Using a study conducted in the United States with 7,162 individuals diagnosed with Covid-19 as a reference, the hospitalization rate among those who did not have any pre-existing comorbidity was 7%, 2% of them in the ICU (Pires; Carvalho; Xavier, 2020).

These records rise to 30% and 15%, respectively, for individuals with previous diseases, such as hypertension, chronic lung diseases, diabetes, chronic kidney diseases, neurological diseases, and cardiovascular diseases. Illnesses such as diabetes and chronic kidney diseases led to a higher hospitalization rate than the others. Those who already had a chronic kidney disease had an ICU admission rate 11 times higher than those who had no previous comorbidity. In turn, diabetics needed 8.5 times more ICU beds than those who did not have any previous illness (Pires; Carvalho; Xavier, 2020).

In turn, people who had asthma and those who already suffered from bronchitis needed 6.5 times more ICU beds than individuals who did not have any pre-existing

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disease. The elderly, those above 65 years old, who did not have any pre-existing diseases, needed twice as many ICU beds than the total population surveyed (Pires; Carvalho; Xavier, 2020), that is, even senior citizens without previous illnesses needed twice as many beds as other patients.

Data presented by the PNS (IBGE, 2014) provide an estimate of the number of Brazilians in the group considered at risk for Covid-19. According to the PNS, in Brazil, 6.2% of the population who are above 18 years old have been diagnosed with diabetes, which represents a group of 9.1 million people. Regarding hypertension, the proportion of individuals aged 18 or older who had been diagnosed with hypertension was 21.4% in Brazil in 2013, which corresponds to 31.3 million people (IBGE, 2014).

As for people with cardiovascular diseases, 4.2% (6.1 million) of people aged 18 or older had been diagnosed with some kind of heart disease. In addition, 1.5% of the population had been diagnosed with a CVA, or a stroke, corresponding to approximately 2.2 million people who are above 18 years. In turn, 4.4% of people aged above 18 years mentioned having received a medical diagnosis of asthmatic bronchitis, and 1.4% reported having been diagnosed with chronic kidney failure in Brazil (IBGE, 2014).

As we can see, with only the aforementioned diseases, all included in the risk group, 39.1% of the country's population would be at risk, that is, more than 82 million Brazilians are in the risk group, not to mention, due to the lack of official PNS data, those with immunodeficiency or neurological diseases, both included as risk factors for Covid-19.

Moreover, risk factors in poorer nations occur in far greater numbers. Around 80% of deaths from chronic diseases occur in low- and middle-income countries. But not only that, the inequality existing in rich countries also brings consequences in relation to people's vulnerability to the pandemic (Neves, 2020).

A reduction in a person's social position is followed by a linear decrease in their health conditions. Consequently, vulnerable groups at the bottom of the social pyramid face a higher mortality rate (Marmot, 2004).

The incidence of risk factors is much higher in poor communities. People without health insurance are less likely to seek early treatment, making the lack of health insurance in the United States another risk for severe cases of Covid-19 (Nassif-Pires *et al.*, 2020).

In view of the scenario presented here, it is indisputable that the several inequalities that exist in Brazil affect people's vulnerability to the pandemic since the fall into

a lower social class is associated with poor health conditions and higher mortality. Consequently, it is important to assess the new challenges that await the law, in general, and the Social Security Law, more specifically, in the post-pandemic era, which will be done below.

#### 4. The new challenges for the law, in general, and the Social Security Law, specifically

So far, it can be inferred that the ills of the three spheres and subsystems of our large Social Security system are only solved, as a rule, by litigating their cases: pensions, death pensions, disability benefits, maternity salaries, social welfare benefits, and even medium and high complexity health care are demanding litigation so that social rights can improve. Yet, it could be different.

The Covid-19 pandemic will bring immense projections into the realm of law. Understanding what they are seems to be as important as understanding how these projections work, because there are certain conjunctural opportunities in many segments, as, for example, in international trade.

A minimum level of loyalty is required to obey the rules of the game. For instance, the government of Bahia acquired new ventilators from China after 600 devices were detained at a Miami airport, in the United States, from where they would be transported to Brazil. Now, due to what happened, the government of Bahia wants to pick up the equipment directly from the Asian country (Harari, 2020). The strategy to avoid new delays is to use an airplane to pick up the ventilators<sup>20</sup>.

Therefore, what is projected for the law is not only to understand what it is, but how it works, i.e., not only to understand how the narrative of the discourse takes place, but also how this materializes from a practical standpoint, preventing rationalities from being captured by apriorism, that is, by pre-understandings that take a conclusion as a premise, and then, evidently, it removes interrationality from the debate (Fachin, 2020).

From the perspective of legal instances and, in general, of the Judiciary Branch, the main agenda is an agenda of guidelines, and a rational and systematic balance must be found between blind omission and unwanted protagonism, that is, legal instances cannot and should not do nothing and, at the same time, it is necessary to be prudent with one's protagonism, to be cautious with excessive jurisdictional actions (Fachin, 2020).

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It is important to know that there is always a door to knock on. This gives us comfort and hope, but the excessive judicialization of claims is, in some way, abdicating from the capacity to solve conflicts ourselves. It is suppressing the protagonism of the parties in solving the disputes they created by themselves. It is as if two parties transferred to other party the power to solve what they were unable to resolve themselves.

Through the ruling (or sentence) culture, the jurisdictional resolution of conflicts still prevails in Brazil, which, in view of the judicialization that is approaching with the post-pandemic period, makes it convenient to adopt other instruments to solve disputes, especially by consensual procedures and, primarily, outside the Judiciary Branch (Watanabe, 2011).

Although the legal system points to civil procedure as the most important instrument for settling disputes (Tartuce, 2008), there is a vast horizon of instruments for adequate solutions, particularly after the publicized procedural pandemic in the post-Covid-19 era.

To give you an idea of what lies ahead, up until April 23, 2020, 1,323 lawsuits had been filed in the Federal Supreme Court exclusively on the subject of the novel coronavirus.

The right to have access to justice is not synonymous with the right to necessarily provoke jurisdictional activities, and they should not be confused, considering that access to justice (granting of a welfare benefit, for instance) can be obtained by numerous means (conciliation, arbitration, mediation, etc.), being the right to file a lawsuit only one of them. This is because it guarantees a just legal command, which can be obtained, and it should be reiterated, by alternative types of dispute resolution, one of which will present itself as the most opportune and convenient for a concrete case (Mancuso, 2009).

The post-Covid-19 society challenges a new jurisdictional model, considering that the traditional methods for solving controversies were already inefficient even before the pandemic. The monopoly of the jurisdictional function by the State no longer presented adequate responses to the disputes that had arisen in today's complex society and, undoubtedly, the situation will become worse from now on.

Issues related to service rendering contracts in effect, employment relations, the suspension and/or payment in installments of taxes, consumer relations, administrative contracts, the environment, alimony payments, among countless others, will soon knock on the doors of the Judiciary Branch seeking for a resolution.



When only the conflict is solved, leaving the causes and motives without any due analysis, the origin of the controversy is not understood and solved, and the individual tends to, once again, seek jurisdictional rendering of accounts, litigating what could have already been effectively solved extrajudicially.

It is up to the alternative means to rebuild the bridge that was shattered by the dispute, thus, reestablishing a more cordial dialogue between the parties involved in the conflict. The time has come for the parties to take the lead in resolving disagreements by themselves, and the following procedural pandemic will certainly speed things up.

Jurisdictional rendering of accounts must be substitutive, subsidiary, and residual, being reserved to be used only when complex legal causes are involved, which require robust knowledge, as well as for disputes that cannot be settled by other means, other than judicially, due to particularities of the subject matter or the person involved.

This does not mean to say that the courts will have a less important role in solving conflicts. On the contrary, the relevance of the Judiciary Branch is not limited to deciding a controversy in the last instance, it is also capable of providing a robust foundation for debates for the parties involved in the litigation. More significant than delimiting the rights in a concrete case is signaling what these rights are, how to interpret them, and how to make them effective because positive legal rules do not promote themselves.

As a matter of fact, alternative dispute resolution methods are becoming more popular in society and in the Judiciary, so much so that the parties involved are increasingly encouraged to participate in some dispute resolution method, especially mediation, conciliation, and arbitration, and this tends to be the new normal from now on, due to the imperative need set by the reality that is about to come.

Besides the advantages in terms of agility and economy, alternative forms of conflict resolution offer something even more precious, which is the absence of winners and losers, keeping away that feeling of failure and inspiring the idea of peace built by the parties themselves, such as, for example, the INSS and its beneficiaries.

Certainly, one of the biggest reasons for the successful, growing acceptance of alternative dispute resolution techniques lies in the fact that the parties can take on the role of a magistrate, feeling valued for having the opportunity to play an active role in solving their own conflicts.

This is what is expected in the post-pandemic era between a parent and a school owner, a service provider and a client, a worker and an employer, a landlord and a tenant, an airline ticket consumer and an airline company, public authorities and

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patent agencies, health insurance beneficiaries and insurance companies – as regards waiting periods during the Covid-19 pandemic –, citizens and the State – regarding the emergency aid during social distancing –, among countless other controversial situations that may arise due to the pandemic.

Caution is needed so that the actions of the Judiciary will not be seized by other agendas that are not necessarily relevant to the field of law. This expression is controversial, but we must admit that there is a limited universe for legal responses and that there are appropriate spaces for politics and economics (Fachin, 2020).

A judge is not a city mayor, a state governor, or the president of the Republic, nor is he/she a congressman/congresswoman or a senator. Therefore, these roles must be made clear so that all of us together, in the most rational way possible, can find the meaning of the expression “crisis justice”, but we should not worsen the “justice crisis” (Fachin, 2020).

In this challenging scenario, more light will be shed on principles and general clauses. This will be one of the effects brought about by Covid-19. One can mention the theory of unpredictability, the *rebus sic stantibus*, *supressio*, *surrectio* clause, and force majeure. All of this will have greater legal clarity than before the pandemic (Fachin, 2020).

A tripod that will also challenge everyone’s understanding is the one that unites the economic order, free enterprise, and social function – how these three pillars are coordinated. It is necessary to revisit traditional theories, such as the theory of business foundations, to avoid, for example, a debate about the possible lack of equivalence between installments, when, in fact, that is not exactly what it is all about, what happened was a change in the business’s foundation (Fachin, 2020).

The pandemic is not a universal civil or social security *habeas corpus* for any and all kinds of behavior. Therefore, there must be a possible balance between blind omission and unwanted jurisdictional protagonism.

There are many questions about where we are and where we are going, but it is expected that there will be many questions about how we decode the present and how we will decode this future that is being built every day (Fachin, 2020).

There are no magic solutions nor are there directions in which one can read a certain formula and get an answer, but there are vectors, and there, already at the level of value judgments, one can point out as important vectors at this moment consumer protection and tutelage, which poses the challenge of not also creating an inverse

vulnerability. Hence, once again, it is necessary to strike a balance between blind omission and unwanted protagonism. There is a myriad of situations, not all suppliers have the same capacity, so one must be careful with inverse vulnerability.

Another important vector is the protection of good faith. At this moment, more than an ethical imperative, loyalty to behavior becomes a determining legal imperative. In fact, with Kant's supporters' permission, at this moment, loyalty to behavior is a categorical imperative (Fachin, 2020).

Therefore, loyalty to behavior means understanding one's own legal position in order to demand that others change their legal position. For example, people who already receive social security benefits (pensions, sickness benefits, maternity pay, etc.) should not seek emergency aid to compensate for the social distancing required by the novel coronavirus, a fact that has already been reported by some media outlets.

Social Security Law, due to its sensitive approach to social issues and its inherent mission to protect citizens' rights, emerges as an essential tool for mitigating inequalities and addressing the impacts of the Covid-19 pandemic. Through consistent and inclusive social security policies, it is possible to provide financial support to vulnerable groups, such as the elderly, informal workers, rural workers, and individuals with pre-existing diseases, thus, reducing socioeconomic disparities worsened by the health crisis.

By ensuring social security and welfare benefits, Social Security Law fosters social protection, ensuring access to health care and financial support, and thereby contributes to building a fairer and more supportive society in times of a pandemic, in which socioeconomic challenges are exacerbated.

In this context, the legal framework for Social Security Law is consolidated as a primary instrument for promoting equal opportunities and building a more prosperous and equitable tomorrow for all Brazilians and not only for the most affluent in our society.

However, in order for concessions to be fairer, in the social security, welfare, and public healthcare sectors, the administrative process should be strengthened. In health care, in this public policy of the existence of family doctors, a set of preventive procedures begins so that the system works, through its administrative acts, according to the patients' needs, thus avoiding litigation. In social welfare, the agencies, such as the INSS, can improve their technical structure and state-of-the-art technology and provide greater human resources, so that all services and the bias for fair concessions can

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be expanded. The same goes for social security. Once again, we touch upon the issue of the appeals and reviews judged by the CRPS, whose agency is clamoring for improvements.

Without these measures, social security benefits will be a mere, random draw of those lucky enough to receive a successful and fair administrative process and those who did not have the same fate and will have to file a lawsuit, victims of unfair apartheid and segregation.

## 5. Conclusion

As it has been demonstrated here, the poorest Brazilian inhabitants will suffer more due to the impacts caused by the Covid-19 pandemic that has been frightening the entire planet. Bitter measures never before faced by the present generation will have to be endured, whether we like it or not.

The pandemic has laid the country's glaring inequalities bare. Vulnerable categories, such as informal workers and low-income population, will be impacted more relentlessly both in terms of health and socioeconomic conditions. It is imperative for Social Security Law to focus on steps that mitigate these disparities and ensure that these groups have access to social benefits.

The economic crisis caused by the pandemic will particularly impact the lower classes of our society, and Social Security Law is called upon to boost economic and financial inclusion and provide income redistribution to reduce these socioeconomic discrepancies.

Tax imbalances are also being uncovered during this health emergency, with a tax framework that burdens the poorest, while, at the same time, exempts the wealthiest; and it is up to Social Security Law to undertake measures, jointly with tax law, aiming at ensuring fairer and more progressive taxation, seeking to harmonize the collection and allocation of money in a more equitable way.

The virus that has been causing this health disaster has highlighted the vulnerabilities of the Brazilian healthcare system, especially with regard to disparities in access to ICU beds between the richest and the poorest. It is vital for Social Security Law to work to strengthen and ensure universal access to health, ensuring that all Brazilians are covered by the mantle of a minimally efficient health system.

The administrative processes of all three social security areas need to be strengthened in all their nuances, in order to avoid litigation to correct State errors.

By strengthening the administrative spheres of social benefits, segregation, divisions, and uncertainties regarding the same right for the same cases will decrease. There is no such equitable treatment in Brazil.

Everyone is challenged to have discipline in order to, with it, find freedom in the post-pandemic era. The tripod that makes up social security – health care, social assistance, and social security – is one of the most powerful weapons for the fulfillment of human rights in times of Covid-19, as it ensures the delivery of an existential minimum to individuals who are affected by a situation that impacts their income, such as the one faced now due to the need for social distancing caused by the pandemic.

During this Covid-19 pandemic, shameless inequality has taken its toll, choosing the human beings who would live or die, due to the lack of ICU beds and the enormous inequality between ICU beds in the private and the public sector. The concentration of wealth in Brazil is unsustainable.

This is similar to a graduation ceremony for 300 law school students, however, there are only two bottles of champagne to celebrate this unique moment. In this scenario, one student buys a bottle only for himself/herself, and the other 299 have to share the other bottle. This emblematic graduation ceremony is an analogy that represents the current situation of Brazil's social security.

According to the numbers revealed here, 39.1% of the country's population is in the risk group for Covid-19, that is, more than 82 million Brazilians. Faced with this imminent, chaotic scenario, it seems essential to have the legal institute of solidarity as a vector.

According to Pope Francis's rich lessons: "Let us not only think about our own interests". This storm caused by a virus must be seen "as an opportunity to prepare tomorrow for everyone. Without excluding anyone: for everyone. Because without analyzing the whole, there will be no future for anyone". In the post-Covid-19 era, humanity will no longer be able to live by selecting people, disregarding the poor, excluding "those who were left behind at the altar of progress"; for "mercy does not abandon those who were left behind" (Bergoglio, 2020).

It is time for altruism and large corporations are called upon to participate. The time has come for 4.0 technologies to be put at the service of world health. It is time for everyone to help develop a new model of capitalism: a humanistic capitalism, in which progress is not a rival of social equality, the economy is not an enemy of fundamental rights, and human beings' well-being is seen as a goal and not a privilege.

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An international treaty for aiding impoverished peoples is needed, with the specific purpose of fighting pandemics and catastrophes, jointly with the creation of a universal social security system, so that human misery will never again have a place on this planet.

The conflicts that will arise from this pandemic are inexorable. They should not and cannot be extirpated, because they are inherent to the human condition and to social, family, or personal interactions. Living with adversity has proven to be increasingly difficult, and this raises questions about traditional mechanisms' response capacity to solve them.

By referring the solution of their disputes to the Judiciary Branch, individuals lose the opportunity to build the solution for their own conflicts, delegating that to a third party, the Judge-State, imposing a resolution, with winners and losers, which does nothing to help achieve the desired state of social peace, so important in the post-Covid-19 era.

The time has come for a paradigm shift – fundamentally because of the pandemic, but not only because of it – encouraging and enabling, supported by Code of Civil Procedure (*Código de Processo Civil* [CPC]), of 2015, that a considerable number of individuals no longer need to seek the Judiciary to solve their conflicts, switching from a confrontational path to a consensual one.

Alternative conflict resolution options, for the three areas of social security, have a vital role in relation to the challenges raised by the pandemic, in the light of Social Security Law, for the post-Covid-19 era. Accordingly, some measures can be implemented to face such challenges: 1) using mediation and conciliation, especially online, since the use of online platforms for conciliation and mediation of social security conflicts tends to accelerate the resolution of demands, reducing the need for face-to-face meetings. For example, the Social Security Appeals Council and the courts can adopt videoconferencing systems to enable the parties involved in social security disputes to participate in conciliation and mediation sessions from trade unions, universities, or their own homes, for example.

In addition, the following can be implemented: 2) arbitration for complex social security disputes, in which technical expertise is essential, such as special retirement benefits and supplementary pensions; 3) AI-assisted benefit analysis, with AI platforms being used to examine documents and suggest equitable solutions for the resolution of social security disputes, freeing the INSS staff to analyze more complex cases, in which the evidence involves other factors, such as cases related to special insured individuals.

The use of creative approaches and the customization of social security dispute resolution mechanisms, coupled with reducing the inequalities that have always permeated this country, can contribute considerably to building a more equitable and just society in the post-Covid-19 era.

In this scenario, besides the measures presented above, the way to alleviate the after-effects of the post-pandemic era is to encourage and develop new standards, formulas, and strategies to solve future disputes, through alternative techniques, such as arbitration, mediation, and conciliation, in which the parties involved take the lead in solving their own problems, emphasizing out-of-court solutions for controversies in all fields of law - especially in Social Security Law, which is responsible for alleviating the socio-economic inequalities revealed here -, thus, avoiding a procedural pandemic.

## REFERENCES

- BARROSO, L. R. *Curso de direito constitucional contemporâneo*. 8. ed. São Paulo: Saraiva, 2019.
- BARROSO, L. R., OSÓRIO, A. R. P. "Sabe com quem está falando?": algumas notas sobre o princípio da igualdade no Brasil contemporâneo. *Revista Direito e Práxis*. Rio de Janeiro, v. 7, p. 204-232. 2016.
- BERGOGLIO, J. Papa alerta para o vírus da indiferença: "A misericórdia não abandona quem fica para trás". *Vatican News*. Available at: <https://franciscanos.org.br/noticias/papa-alerta-para-o-virus-da-indiferenca-a-misericordia-nao-abandona-quem-fica-para-tras.html#gsc.tab=0>. Access on: Apr. 23, 2020.
- BERMÚDEZ, A. C.; REZENDE, C.; MADEIRO, C. Brasil é o 7º país mais desigual do mundo, melhor apenas do que africanos. *UOL*, Dec. 9, 2019. Available at: <https://noticias.uol.com.br/internacional/ultimas-noticias/2019/12/09/brasil-e-o-7-mais-desigual-do-mundo-melhor-apanas-do-que-africanos.htm>. Access on: Apr. 18, 2020.
- BRASIL. RECEITA FEDERAL. *Carga tributária no Brasil 2014: análise por tributos e bases de incidência*. Brasília: Secretaria da Receita Federal do Brasil, 2015.
- BRASIL. [Constituição (1988)]. *Constituição da República Federativa do Brasil*. Brasília: Presidência da República, 1988. Available at: [https://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm). Access on: Apr. 23, 2020.
- BRASIL. *Lei nº 13.982, de 2 de abril de 2020*. Altera a Lei nº 8.742, de 7 de dezembro de 1993, para dispor sobre parâmetros adicionais de caracterização da situação de vulnerabilidade social para fins de elegibilidade ao benefício de prestação continuada (BPC), e estabelece medidas excepcionais de proteção social a serem adotadas durante o período de enfrentamento da emergência de saúde pública de importância internacional decorrente do coronavírus (Covid-19) responsável pelo surto de 2019, a que se refere a Lei nº 13.979, de 6 de fevereiro de 2020. Brasília: Presidência da República, 2020. Available at: [https://www.planalto.gov.br/ccivil\\_03/\\_ato2019-2022/2020/lei/l13982.htm](https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/l13982.htm). Access on: Apr. 23, 2020.



- DARIEL SANTANA FILHO
- MARCELO FERNANDO BORSIO
- PAULO CAMPANHA SANTANA

BRASIL. SUPREMO TRIBUNAL FEDERAL. Portal. [s. d.]. Available at: <https://transparencia.stf.jus.br>. Access on: Apr. 23, 2020.

CANOTILHO, J. J. G.; CORREIA, M. O. G.; CORREIA, É. P. B. (coord.). *Direitos fundamentais sociais*. São Paulo: Saraiva, 2010.

CONSELHO FEDERAL DE MEDICINA. Available at: <https://portal.cfm.org.br/noticias/pandemia-derruba-quase-30-milhoes-de-procedimentos-medicos-em-ambulatorios-do-sus/>. Access on: Jul. 31, 2020.

CONSELHO FEDERAL DE MEDICINA. *Medicina intensiva no Brasil (2018)*. [s. d.]. Available at: <https://portal.cfm.org.br/images/PDF/leitosedestados2018.pdf>. Access on: Apr. 23, 2020.

CANZIAN, F. SUS nos estados não tem leitos de UTI contra o coronavírus. *Folha de S. Paulo*, Mar. 15, 2020. Available at: <https://www1.folha.uol.com.br/equilibrioesaude/2020/03/sus-nos-estados-nao-tem-leitos-de-uti-contr-o-coronavirus.shtml>. Access on: Apr. 23, 2020.

CAVALCANTI, H. De Bretton Woods a Wuhan e além. In: TOSTES, A.; MELO FILHO, H. (org.). *Quarentena: reflexões sobre a pandemia e depois*. Bauru: Praxis, 2020. p. 71-88.

DAVIS, M. A crise do coronavírus é um monstro alimentado pelo capitalismo. *Esquerda Online*, Mar. 30, 2020. Available at: <https://esquerdaonline.com.br/2020/03/30/mike-davis-a-crise-do-coronavirus-e-um-monstro-alimentado-pelo-capitalismo/>. Access on: Jun. 1, 2021.

DWORKIN, R. *Levando os direitos a sério*. Tradução: Nelson Boeira. São Paulo: Martins Fontes, 2002.

EMPRESAS anunciam doações para ajudar no combate ao coronavírus; veja lista. *G1*, Mar. 25, 2020. Available at: <https://g1.globo.com/economia/noticia/2020/03/25/empresas-anunciam-doacoes-para-ajudar-no-combate-ao-coronavirus-veja-lista.ghtml>. Access on: Apr. 23, 2020.

FACHIN, L. E. *Aula do doutorado em Direito da UniCEUB*. 2020. Zoom.

GOMES, C. Nada mais será como antes. In: TOSTES, A.; MELO FILHO, H. (org.). *Quarentena: reflexões sobre a pandemia e depois*. Bauru: Praxis, 2020. p. 51-61.

HARARI, Y. Na batalha contra o coronavírus, faltam líderes à humanidade. Tradução: Odorico Leal. São Paulo: Companhia das Letras, 2020.

INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA (IBGE). *Pesquisa Nacional de Saúde: 2013: percepção do estado de saúde, estilos de vida e doenças crônicas: Brasil, grandes regiões e unidades da federação*. Rio de Janeiro: IBGE, 2014. Available at: <https://biblioteca.ibge.gov.br/visualizacao/livros/liv91110.pdf>. Access on: Apr. 21, 2020.

INSTITUTO DE PESQUISA ECONÔMICA APLICADA (IPEA). *Retrato das desigualdades de gênero e raça*. 4. ed. Brasília: Ipea, 2009. Available at: <https://www.ipea.gov.br/retrato/pdf/revista.pdf>. Access on: Apr. 18, 2020.

INSTITUTO NACIONAL DE ESTUDOS E PESQUISAS EDUCACIONAIS ANÍSIO TEIXEIRA (INEP). *Censo Escolar da Educação Básica 2013: resumo técnico*. Brasília: Inep, 2014. Available at: <http://portal.inep.gov.br/resumos-tecnicos>. Access on: Apr. 21, 2020.

KANT, I. *Groundwork of the metaphysics of morals*. Edition 70, Cambridge, United Kingdom: 2009.

MACEDO, E. A judicialização dos conflitos e a pandemia do Covid-19. 2020. Available at: <https://www.tse.jus.br/hotsites/catalogo-publicacoes/pdf/TSE-eleicoes-covid-19-informacoes-selecionadas.pdf>. Access on: Jun. 3, 2020.

MANCUSO, R. C. A resolução dos conflitos e a função judicial. *Revista dos Tribunais*, São Paulo, v. 98, n. 888, p. 9-36. 2009.

MARMOT, M. *The status syndrome: how social standings affects our health and longevity*. London: Bloomsbury Publishing, 2004.

MAZETTO, L. C. *Seguridade social e direitos humanos*. São Paulo: LTr, 2007.

MOREIRA, E. A economia do desejo e a COVID-19. In: TOSTES, A.; MELO FILHO, H. (org.). *Quarentena: reflexões sobre a pandemia e depois*. Bauru: Paxis, 2020. p. 61-64.

NASSIF-PIRES, L. et al. We need class, race, and gender sensitive policies to fight the COVID-19 crisis. *Multiplier Effect*, Apr. 2, 2020. Available at: <https://multiplier-effect.org/we-need-class-race-and-gender-sensitive-policies-to-fight-the-covid-19-crisis/>. Access on: Apr. 22, 2020.

NEVES, E. A pandemia expõe e agrava as desigualdades sociais no planeta. *Veja*, May 29, 2020. Available at: <https://veja.abril.com.br/mundo/a-pandemia-expoe-e-agrava-as-desigualdades-sociais-no-planeta/>. Access on: Jun. 1, 2021.

NEW YORK TIMES. *Covid-19 World Map: cases, deaths, and global trending*. *New York Times*. Available at: <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>. Access on: Apr. 21, 2020.

OLIVEIRA, F.; BIASOTO JR., G. A reforma tributária: removendo entraves para o crescimento, a inclusão social e o fortalecimento da Federação. *Revista Política Social e Desenvolvimento*, Ano 3. Nov. 2015. Available at: <https://plataformapoliticassocia.com.br/wp-content/uploads/2015/11/revisita-pps-25-5-11.pdf>. Access on: Apr. 21, 2020.

OWENS, J. Fundamental tax reform: an international perspective. Paris: Organization for Economic Cooperation and Development (OECD): Centre for Tax Policy & Administration, 2005.

PAUTASSI, L. *El derecho a la seguridad social: una aproximación desde América Latina*. México: Fontamara, 2003.

PERIANDRO, F. O dever fundamental de fraternidade e a pandemia. In: BAHIA, S. J. C.; MARTINS, C. E. B. R.; PAMPLONA FILHO, R. (coord.) *Direitos e deveres fundamentais em tempos de coronavírus*. São Paulo: IASP, 2020. p. 82-104.

PIKETTY, T. *O capital no século XXI*. São Paulo: Intrínseca, 2013. p. 24-28.

PIRES, L. N.; CARVALHO, L.; XAVIER, L. de L. COVID-19 e desigualdade: a distribuição dos fatores de risco no Brasil. *Experiment Findings*, 2020. DOI 10.13140/RG.2.2.27014.73282. Available at: [https://www.researchgate.net/profile/Laura\\_Carvalho/publication/340452851\\_COVID-19\\_e\\_Desigualdade\\_no\\_Brasil/links/5e8aabd0299bf130798004f3/COVID-19-e-Desigualdade-no-Brasil.pdf](https://www.researchgate.net/profile/Laura_Carvalho/publication/340452851_COVID-19_e_Desigualdade_no_Brasil/links/5e8aabd0299bf130798004f3/COVID-19-e-Desigualdade-no-Brasil.pdf). Access on: Apr. 21, 2020.

- DARIEL SANTANA FILHO
- MARCELO FERNANDO BORSIO
- PAULO CAMPANHA SANTANA

POCHMANN, V. Coronavírus e tecnologia. In: CASTRO, D.; DAL SENNO, D.; POCHMANN, M. (org.). *Capitalismo e a COVID-19: um debate urgente*. São Paulo: ABET, 2020. p. 40-46.

RÁTIS, C. Dever geral de recolhimento domiciliar em tempos de coronavírus. In: BAHIA, S. J. C.; MARTINS, C. E. B. R.; PAMPLONA FILHO, R. (coord.). *Direitos e deveres fundamentais em tempos de coronavírus*. São Paulo: IASP, 2020. p. 51-61.

SALVADOR, E. *Perfil da desigualdade e da injustiça tributária com base nos declarantes do Imposto de Renda no Brasil 2007-2013*. Brasília: Instituto de Estudos Socioeconômicos (Inesc), 2016.

SAMPAIO, M. O constitucionalismo digital e a COVID-19. In: BAHIA, S. J. C.; MARTINS, C. E. B. R.; PAMPLONA FILHO, R. (coord.). *Direitos e deveres fundamentais em tempos de coronavírus*. São Paulo: IASP, 2020. p. 162-186.

SANTOS, B. Vírus: tudo o que é sólido desmancha no ar. In: TOSTES, A.; MELO FILHO, H. (org.). *Quarentena: reflexões sobre a pandemia e depois*. Bauru: Pax, 2020. p. 45-50.

SILVEIRA, F. et al. *Fiscal equity: distributional impacts of taxation and social spending in Brazil*. Brasília: International Policy Centre for Inclusive Growth (IPC-IG), 2013. (Working paper No. 115).

SOARES, D.; RODRIGUES, I. As repercussões do Estado neoliberal brasileiro sobre consumidores e trabalhadores no contexto da pandemia da Covid-19. *Revista Direito Público*, Brasília, v. 18, n. 97, 395-429, jan./fev. 2021.

TARTUCE, F. *Mediação nos conflitos cíveis*. São Paulo: Método, 2008.

TAVARES, J. A crise do capital e a Covid-19: impactos e alternativas. In: CASTRO, D.; DAL SENNO, D.; POCHMANN, M. (org.). *Capitalismo e a COVID-19: um debate urgente*. São Paulo: ABET, 2020. p. 245-255.

TORRES, R. L. *Tratado de direito constitucional financeiro e tributário*. São Paulo: Renovar, 2009.

TOSI, P.; TORELLI, L. O capitalismo neoliberal: breve história da financeirização e seus efeitos políticos e sociais em meio à pandemia. In: CASTRO, D.; DAL SENNO, D.; POCHMANN, M. (org.). *Capitalismo e a COVID-19: um debate urgente*. São Paulo: ABET, 2020. p. 245-255.

WATANABE, K. Política pública do Poder Judiciário nacional para tratamento adequado dos conflitos de interesses. In: PELUSO, A. C.; RICHA, M. de A. *Conciliação e mediação: estruturação da política judiciária nacional*. Rio de Janeiro: Forense, 2011. p. 4-5.

WORLD HEALTH ORGANIZATION (WHO). *Global status report on noncommunicable diseases: 2014*. Available at: <https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases#cms>. Access on: Apr. 22, 2020.

ZANINI, F. China cancela compra de respiradores pela Bahia, e carga fica retida nos EUA. *Folha de S.Paulo*, Apr. 3, 2020. Available at: <https://www1.folha.uol.com.br/mundo/2020/04/china-cancela-compra-de-respiradores-pela-bahia-e-carga-fica-retida-nos-eua.shtml>. Access on: Apr. 22, 2020.