CONSTITUTIONAL AND ECONOMIC DEVELOPMENT POLICY OF BRAZIL

Daniel Francisco Nagao Menezes*

Abstract: This article is the result of discussions initiated during the 26th World Congress of Philosophy of Law and Social Philosophy (IVR), which occurred in July 2013 at the Federal University of Belo Horizonte. At that time, it was raised a question of research that was to know for what reason, Finland and Brazil, which have a completely different political and economic situation, as well as a more different historical evolution, had, in fact, identical constitutional debates. That is, the issues that are at stake in the superior courts and the University of both countries are the same. For what reason? It was then proposed the drafting of a series of articles to explain the operation and evolution of key structures in each country, such as politics, philosophy and economics so that a comparison would be made between these institutions in order to reach to a conclusion about the similarity of constitutional guidelines.

Keywords: constitutional history; economic constitution; constitutionalism.

1 Introduction

Within this research project, which is beyond mere articles published in this special issue of Mackenzie Law Journal, this article will address the evolution of politics, constitution and economy of Brazil since the colonial times to the present day, a task much simpler than the Finnish colleagues have a much greater lag time to cover.

Regardless the possible answers that we may find this research journey, other issues will be particularly open to broaden the comparison to other countries. Issues such as the existence of an effective globalization or the formation of a hegemonic

* He has a Law Degree from the Pontifícia Universidade Católica de Campinas (PUC-Campinas), and specializations in (Brazilian) Constitutional Law and Civil Proceedings Law at the same institution, Specialization in Didactics and Superior Teaching Practice by the Centro Universitário Padre Anchieta, he holds a Masters' Degree and a Doctors Degree in Political and Economic Law from the Universidade Presbiteriana Mackenzie (UPM). College Professor at the Law School from UPM in Campinas and Faculdades de Campinas – FACAMP.

thinking; the effect of North American imperialism; all of these questions are covered in research problems like this one.

2 Brazilian state evolution

The State of Brazil was born in 1815, when the colony, which in fact had already been working since 1808 to host the Portuguese kingdom, was legally matched to the metropolis, becoming to the category of kingdom, united to those of Portugal and the Algarves.

It is interesting to note that the idea of ridding Brazil from the colony condition, without separating it from Portugal, came from a Frenchman, the Prince de Talleyrand, who were suggested to the representatives of Portugal in the Congress of Vienna, carried out to establish the new world balance, after the final defeat of Napoleon. Once the suggestion came to the Portuguese government, it gave birth to the letter of the law of December 16, 1815, in which the Prince Regent D. João raised "the State of Brazil to the rank and graduation of kingdom".

However, in order to understand the formation and evolution of the Brazilian State, it is essential to take into account the experiences of colonization and government, previously made. It is also necessary to consider that the act of 1815 was only a moment, though important, out of a long process, which would still overcome several steps until Brazil was completely defined and be consolidated as a true State.

Strictly speaking, we say that, since the discovery in 1500 until the year 1548, Brazil was treated as simple asset reserve, which was not expected to take great advantage. For this reason, the Portuguese government gave to some people the task of promoting the occupation and exploitation of the territory, which should be remembered that many of these individuals sought not even take possession of Brazilian land they had received as donations.

Only much later, after known the possibility of extracting Brazilian soil and subsurface wealth, new donations were once again made. However, Portugal was optimistic for a possible advantage, and donations were made to grantees who were very interested and willing to contribute to the Exchequer, which became to exercise control over economic activities in Brazil. By the way, this explains why, after the almost total failure of hereditary captaincy system, new donations were made later.

The fact is that, until the first decades of the seventeenth century, the legal and administrative structure of Brazil has undergone numerous modifications, which can be interpreted as expressions of interest from the Portuguese government, however they reveal at the same time the difficulties encountered in treating Brazil as a unit.

In 1548, D. João III created the General Government of Brazil, which, however, was far from meaning the actual presence of General Governor and his immediate assistants everywhere of Brazil that required making important decisions. The vast extent of territory and the difficulties of communication did not allow that to happen.

In view of this fact, the orientation was changed, settling in the year 1572, two administrative offices, one in Bahia and another one in Rio de Janeiro. It also did not yield good results and, by the year of 1577, it took place the reunification of the Brazilian administration.

Later, in 1607, a new split up would occur with the creation of "Southern jurisdiction", which lasted until 1616, when, once again, the unification happened. Another change, however, was introduced in 1621, when a General Government is established for Brazil, except for the so-called state of Maranhão, which would keep relative autonomy to the institution of the Viceroyalty of Brazil.

It is important to emphasize that these constant changes already reflected largely the existence of a natural differentiation, which would promote the development of a strong cultural differentiation, requiring different solutions from place to place. Precisely such a situation led the federalist leaders in the nineteenth century to assert that nature itself had already been in charge of creating in Brazil all the conditions that imposed the implementation of a Federal State.

In very general terms, it turns out that, during the eighteenth century, Brazil had two "development poles", almost independent from each other and little dependent from Portugal, where virtually nothing was received. In the North and Northeast, regions have developed various economic centers, which serve as a basis for political leaders, with land tenure as the basis of authority, which persists until this day. In the Center-South region, the large amount of gold and diamonds has attracted lot of attention from Portugal, as well as foster the development of completely different cultural centers, attracting adventurers, creating conditions for the intense social life and favoring the formation of rich urban centers, who vied with each other in ostentation of wealth.

Although in this region the presence of Portuguese authorities has been much more intense, mainly through the Viceroys and credit apparatus, such presence did not stop local political leaders to be claimed, once the Portuguese authorities were only interested in raising the maximum possible and prevent insubordination expressions.

This set of events favored and, in a certain way, even demanded the development of a broad municipal autonomy around regional leaders, because it did not exist a strong and constantly present central authority that participated in the solution of daily problems. These, in general, were the basic components that defined in the first phase of the formation of Brazilian political and social order.

The change of the Portuguese court to Brazil in 1808, in search of security that Portugal could not offer even with the support of England, powerless to contain the Napoleonic offensive, intensely accelerated the Brazilian state institution process. The mere presence of the court in Rio de Janeiro was a prestige factor and allowed the central authority to participate effectively in the solution of Brazilian problems.

On the other hand, with the absence of prospects of an immediate return to Portugal, it became necessary to equip the colony so that all the affairs of Kingdom could be directed from Brazil. It is, then, created a paradoxical situation: the head-

quarters of the Kingdom was installed in the colony and, hence, orders to the people living in the metropolitan territory came from such territory.

Although Portugal was formally the metropolis and Brazil its colony, in practice, everything was going as if it were the other way around. Gradually, Brazilians were increasing their influence over the Prince Regent and later the King, D. João, and numerous Brazilian leaders realized that the situation was ripe for Brazil to move forward in order to get rid of the colonial status.

In fact, however, the court's presence in Brazil and the influence of Brazilians would not have been enough to reach that goal, at least, in a very short time. However, for the happiness of Brazilians, there was a conjunction of factors, which determined the precipitation of events.

Indeed, once the bright star of Napoleon was erased in the disaster of Waterloo, the Congress of Vienna was gathered in 1815, so that the great powers would define the new political balance of the Western world. Now, Portugal, a militarily weak country, had in its favor the multiplicity of territories, befitting to show that Brazil was much more than a wild and resourceless colony.

France, in turn, needed to reintegrate in a powerful trading system and in order to achieve its goal, France would support Portuguese aspirations, not ignoring the event that glimpsed the possibility of direct negotiations with Brazil, whose potentialities were already known. All this, coupled with the attitude of Portuguese representatives, who, by sympathy or convenience, also wanted the appreciation of Brazil, led the legal emancipation desired by many Brazilians and that would be an important step towards the political emancipation.

Thus, by an act dated December 16th, 1815, Brazil formally and solemnly ceased to be a Portuguese colony, becoming a kingdom, united to those of Portugal and the Algarves. On that date, the Brazilian State was born, though it was still ruled by a Portuguese king.

In addition, Portugal become one of the great powers, largely by the Union of Kingdoms, nevertheless, it was creating the conditions that would make inevitable, in a short time, the political separation of Brazil.

Although the point of view of international relations the new situation of Brazil suited Portugal, for the Portuguese who lived in Portugal, such fact was seen as a negative one. On one hand, the fact that they were governed on a distance already raised discontent, because the reduction of administrative efficiency was inevitable. On the other hand, there was a certain feeling of humiliation, because they did not seem reasonable that the decisions were coming from Brazil, which was still seen as a colony.

Hence, its increasingly hostility toward Brazilians, who were preventing the return of the King just to ensure the Brazilian hegemony. Alongside this, Portugal also received liberal ideas, especially originating from France, raising a powerful anti-absolutist movement, having as the main flag the idea of Constitution and favored by the widespread discontent towards the monarch, who resisted the calls to return.

These were the key circumstances which led to the outbreak of the Liberal Revolution of 1820, which started in the City of Porto and then reached Lisbon. In summary, the Portuguese Liberals had two aspirations: the oath of a Constitution by the monarch and the restoration of the hegemony of Portugal, including the stated objective of the return of Brazil to the colony condition.

In a short term, there is a succession of important events that would lead the consolidation of the Brazilian State. On the verge of losing the Portuguese crown, D. João VI returns to Portugal, leaving in Brazil, as Regent Prince, D. Pedro, but consciously, as expressed in numerous passages from his correspondence regarding this period, he was losing the Crown from Brazil.

Constantly harassed by Brazilians and angry with the procedure of the Portuguese, that made hostile Brazil and the Brazilians and later the Prince Regent, D. Pedro came to the September 7th, 1822, cutting the legal and political ties linking Brazil to Portugal, scrapping the Union of Kingdoms and confirming Brazil as a sovereign and independent State. Then, it would come in a troubled way, Brazil's entry in the constitutional life.

As Prince Regent, on February 16th, 1822, D. Pedro had called a Council of Attorneys to take care of drafting a Constitution for Brazil. After the proclamation of the Independence and having a Constituent General Assembly was convened, the previous convocation was revoked from the Council of Attorneys.

However, by the turn that events have taken, feeling offended and diminished in his authority, although designed in the light of absolutism, D. Pedro I, the Emperor, dissolved the Constituent Assembly on November 12th, 1823, mainly for not admitting the draft Constitution that proceeded and that was markedly liberal in essence.

On November 13th, the Emperor created a Council of State, with the assignment to prepare a draft Constitution that he might deem appropriate. Once the project was ready, not having a Constituent Assembly, willing but to hear the people, in order to prove their liberal vocation not always confirmed, it was submitted to the Municipal Chambers.

The Municipal Chambers, being fully in accordance with its content or willing that Brazil soon had a Constitution, or, perhaps, fearing the wrath of the Emperor, entirely expressed favorable to the project, asking that it would be converted into Constitution without further delay.

The Municipal Chamber of Bahia and Itu, São Paulo, were among the strongest approval expressions. In fact, the Province of São Paulo, years later, would play a major role in the fight for the proclamation of the Republic in Brazil. Thus being, in this way, assured the willingness of Brazilians, D. Pedro I granted Brazil its first Constitution on March 25th, 1824.

As shown, Brazil dubiously started its constitutional life. Indeed, the dissolution of the Constituent General Assembly and the granting by the Emperor give the document to feature Granted Charter, a fundamental rule imposed by the power of the holder's will.

Nevertheless, at the same time, the pronouncements of the Municipal Chambers for the bill meant the prior agreement of the people through their representatives, even one may say that those Chambers had no constitutional power. This Constitution would be the longest-lived constitutions Brazil has ever had, as it was in force until the proclamation of the Republic on November 15th, 1889, when Decree n. 1 of the Provisional Government repealed it.

However, we must remember that the oldest political autonomies, either regional or local ones, did not fit peacefully in the structure of Unit State enshrined in the Constitution of 1824. The Emperor had to face numerous manifestations of rebellion, which led to the abdication and the establishment of Regencies, in order to rule Brazil until the heir of the Crown came of age. And during the Regency period, through the Additional Act of 1834, it was returned a part of autonomy to such provinces, particularly with the creation of Provincial Assemblies, although they had to live with a Governor freely chosen by the central government.

The autonomist aspirations remained alive and as of 1870, when the Republican Movement was triggered, there is a constant talk of federalism and municipal autonomy. These two aspirations were accepted in the first republican Constitution in 1891, thus initiating Brazil as a Federal State, which for many meant only the restoration of the situation prior to the coming of the royal family to Brazil.

After that, it comes the republican and federative experience, full of mishaps and, above all, revealing the inadequacy between the demands of social reality and the formal organization declared in the Constitution. Mostly, this inadequacy was due to the fact the federalism was seen and pursued almost exclusively as a way to promote political decentralization, so that it would strengthen state leaders at the expense of emptying the powers of the central government.

It was not properly considered the fact that devolving greater responsibilities to state governments also represented the allocation of more charges, which, in turn, demanded higher incomes. The lack of attention to this important correlation did that, from the beginning of republican life, States might prove unable to meet its burden.

This deficiency, coupled with other factors, such as the overvaluation of the heads of some policies States, determined, in 1926, through a great constitutional amendment, the attempt to discipline the exercise of state autonomies. However, the attempt was belated and timid, ending shortly after, with the deposition of President Washington Luiz and the abrogation of the Constitution in 1930, the first phase of the Brazilian republican life, leaving an unfavorable image of federalism.

In 1934, with the new Constitution, this time such as in 1891, drafted and approved by the Constituent Assembly, proceeded to the federal restoration, trying to correct the flaws previously revealed, but incurring in other inadequacies, especially because they were not properly integrated in the political and constitutional organization of new social forces, resulting from Brazil's entry into the industrial age.

Alongside this, the obsolete and reactionary structures of the North and Northeast were fully preserved, widening the gap between the other Brazilian regions. All

of this led to the establishment of a contradictory "constitutional dictatorship" of 1937, with the dictator Getúlio Vargas granting a Constitutional Charter, promising that it would be subjected to a popular "referendum", which never occurred.

Interestingly, although the dictator had absolute power, the Constitution was applied for some effects, and even some constitutional reforms had happened, also granted by the dictator's decree. Another curious aspect was that the Granted Charter of 1937, although a product of an absolute centralization of power, affirmed that Brazil was still a Federal State.

The year of 1945 was the set for the fall of Getúlio Vargas, and the next year a National Constituent Assembly approved the new Constitution, reaffirming the federative organization of the Brazilian State. In practice, Brazil returned to work as a federal state, though with a federal government endowed with greater powers and more financial resources than the state governments.

Once again, there were numerous inadequacies, as the North and Northeast regions, less developed economically and as a result, with very sharp social inequality, remained untouched. On the other hand, nevertheless it was emphatically affirmed the prevalence of free enterprise, the Constitution created several instruments for state intervention in the economic order, aimed mainly at promoting the redistribution of financial resources, through the planning of economy and granting of incentives that were made in less developed regions.

However, the social and regional disparities continued to foster the discontent and stimulate movements favorable to deep structural reforms. This led to the intensification of political struggles, culminating in the resignation of President Jânio Quadros in 1961, after a few months in office, for reasons that have not yet been clarified consistently.

Then, in a growing turmoil scenario, the Vice-President João Goulart is obliged to accept the replacement of Presidentialism over the Parliamentarism to be given possession in the Presidency of Republic. In a short time, however, a new constitutional amendment occurs – resulting from a referendum that should be held at the end of his term, but held more than two years ahead of schedule – restoring Presidentialism, which, after all, would precipitate his overthrow by a military movement started on March 31st and has finished on the April 1st, 1964.

Shortly after, on April 9th, 1964, the Constitution of 1946 was indirectly revoked. Indeed, the military government published a set of orders that called Institutional Act, saying, among other things, that the Constitution remained in force, but reserving at the same time, a wide margin of arbitrary action.

In 1967, the Congress approved a new Constitution. The project was drawn up by the military government, and the Congress, called to act as a Constituent Assembly, influenced in almost nothing, achieving just certain some amendments proposed by its members. Again, it was stated that Brazil was still a federal state, albeit with a government strongly centralized and endowed with absolute powers.

In 1969, for reasons to which politicians and the people were strange, a new Granted Charter was drawn up and signed by three military chiefs who took the government to replace Marshal Costa e Silva. This new Charter received the official name of Constitutional Amendment n. 1, with obvious inadequacy, since a Constitution can only be amended as provided therefor and in the granting of Charter of 1969 the amendment procedure laid down in Constitution of 1967 was not taken into account, which shows that this was simply set aside, notwithstanding the new reading reiterated many of their provisions.

Also, in the document of 1969, it continues the statement that Brazil is a federal State, though under many fundamental aspects it does not work as federation, with the constitutional text itself numerous provisions clearly incompatible with the federative organization. Despite this, however, formally Brazil is a Federal Republic, being expressly prohibited from discussing the constitutional amendments aimed at abolishing the Federation or the Republic.

After Brazil have gone through a long period of military dictatorship that ran the years 1964 to 1985, the country saw a new democratization process which saw the need to give back to the people all the rights that had been taken out during the dictatorial process. When José Sarney assumed the presidency after the death of Tancredo Neves, elected president who even come to take the presidential chair, he said that a new democratization process would be established in his office, however many did not realize that in fact he really would initiate this process.

In 1988, Brazil was once again defined as a democratic country. On October 5th, the Federal Constitution was enacted, which aimed to ensure the social, economic, political and cultural rights, as the previous government had suspended during the period of dictatorship. Also known as the Citizen Constitution, it was the 8th in the history of Brazil since its independence and was drafted by 558 constituents over a period of 20 months. Considered as the most complete of all the existing ones, it received some criticism in providing its extensive development, with an infinite number of articles that somehow left some loopholes. Another important thing to mention is that such Constitution actually brought the people back to the political game, allowing them to participate in State agencies' decisions. In order to be completed, it suffered 67 amendments and 6 other amendments reviews, being the one that went through this process in the history of the Brazilian Constitutions more than any other. It has 245 articles, divided into 9 titles.

A strong and important feature that cannot fail to be mentioned was the division of the three branches of government: Executive, Legislative and Judiciary, that although independent, they have reciprocal control responsibilities among them.

In 1993, it happened the ratification of the presidential system through a referendum, which gave the President the power to command the administration of federal executive through direct elections that would involve the entire population over 16 years old. Municipal and state sectors also would have their representatives chosen in the same way, with the popular vote.

The press was once again free, after years of repression and censorship, and the Indigenous and Maroon people got the right to have their lands demarcated, returning to live in their places of origin as before. The Constitution also guaranteed that every Brazilian citizen was entitled to health and education, bringing to the society a new phase, where now, people had rights, which, on paper, meant that all were equal before the law.

3 Evolution of the Brazilian economic order

The Constitutions are invariably outlined in the face of historical and cultural moment. It is not unlike the history of Brazilian Constitutions, even though it identifies this historical relationship with political or revolutionary character movements. The Constitution of 1824 was the Empire one, after the Independence and related to the dissolution of the Constituent Assembly, which did not fail to represent a break, albeit a political nature. The Constitution of 1891 was proclaimed the Constitution of Republic in 1889. The Constitution of 1934 was consequent to a turbulent period (Revolution of 1930 and Constitutionalist Revolution of 1932). The Constitution of 1937 was the Getúlio Vargas dictatorship one. The Constitution of 1946 was the re-democratization one, subsequent to the Vargas period. The Constitution of 1967 and the Amendment n. 1, 1969, were the Revolution products or Movement from March 1964.

Finally, the Constitution of 1988 also stemmed from a democratization process. Not to return to a far distant point, it should be borne in mind that, after the revolts in Brazil, especially the Conspiracy of Minas, the Portuguese government came to distend its fiscal policy towards Brazil Colony.

Any argument about the economic legal order of the Constitution of 1824 shall be considered that Brazil was hitherto a Colony, the richest Colony, and for that reason the one that transferred the more resources as any other to the metropolis, which was, in fact, the essence of economic colonialism system. After all, the real war waged by the European countries to form colonies, was justified at the time because it was the exploitation of colonized lands overseas, which provided the country's own enrichment.

3.1 The Constitution of the Empire – 1824

In a liberal economic system, the Constitutions would have little to say about the organization of the economy. Indeed, the political cards were designed to determine the State organization and to establish fundamental rights. The Charter of 1824 well marked the concern for maintaining the monarchical right by the royal family, that is, the family of D. Pedro I.

The political organization, as known, recognized four powers, i.e. a bicameral legislature, an Executive whose head was the Emperor and it was exercised with the collaboration of Ministers, a Judiciary and the Moderating Power. The Mode-

rating Power, as specified in art. 98, centered on the Emperor all the ultimate power, given that it ensured the "maintenance of independence, balance and harmony of other powers".

Therefore, it was up to him to appoint Senators, extend or postpone the General Assembly and dissolve the House of Representatives where the "State of Salvation" was required (art. 101, § 5). They were bundled in the Moderating Power the possibility of suspension of judges by complaints made against them, pardon and reduced sentences to defendants convicted and the granting of amnesty (art. 101, § 7, 8 and 9). Then, the realities were made clear when the right to vote was established only to those with an income above 100 thousand Reis and when it was established that to be elected a Senator a required income was 800 thousand Reis and for Representative, 400 thousand Reis.

The art. 179 of the Constitution governs the inviolability of civil and political rights of Brazilian citizens, based on freedom, individual security and property. As peculiar to the most enduring Constitution until then – 65 years – it should be noted that the parliamentary system, not provided for in its wording, was implemented towards a convention and parliamentary rules, and it was widely applied during the first and second Kingdoms.

The Constitution or Charter of 1824 expressed such reality. Thus, it can be said that few rules set out therein are related or relevant to the economic order. With some economic relevance, we may be quote four points of the Constitution: art. 102, § 8, referring to the Treaties, art. 170 referring to the National Treasury, art. 179, § 23, concerning the recognition of public debt and the art. 179, § 25, referring to the extinction of corporations.

The art. 102, § 8, of the Constitution of 1824, gave to the Emperor, as the Head of the Executive Branch, the possibility of benefits and trading treaties. It should be noted that the Emperor was also the holder of the Moderating Power, in addition to Head of Executive Power. As stated, the fact that the Emperor was entitled to benefits and trading treaties was normal, and was inserted as an unfolding of ruling, a task from the Executive Power.

The system was monarchic and the Emperor was the chief executive. What was not clear in this Charter was the control of this treaty by the Senate or the House. It should be also noted that the Legislative Power was bicameral, consisting of the Senate and the House of Representatives, who constituted the so-called General Assembly for the Empire.

The functions of the Senate or the House did not ratify treaties. However, as it turned out, the very art. 102, § 8, proposed that the treaties were taken on completion to the General Assembly, "when the interest and national security permit". The security or interests of State summed up the Emperor's interest. It is particularly important to note that the Treaty of 1827, recognizing the Independence, which remained broadly the same privileges to England, although not recognizing the preferential tariff which has granted to several other countries the same *ad valorem*

tariff of 15% on imports, was signed by the Emperor D. Pedro I, without consulting the Senate or House.

We cannot forget that the Emperor granted the Charter of 1824; therefore, his authoritarian education decided to assign this responsibility. Another plan is to take into account that such a proposal had explained in his own way the Independence. Finally, the Charter of 1824 considered that the Commercial Treaties were a matter from the Executive Branch and did not submit to a real control by the Legislative Branch. In commerce and industry, everything depended on the government, with permits, favors, protective tariffs and concessions, eliminating through restrictive legislation economic freedom of private enterprise.

The art. 170 refers to the National Treasury. The dimension set in art. 170, however, is solely administrative. The National Treasury is treated as a named administrative unit as well as a court one, and it is clear that such a body is in charge of the administration of income and expenses. Obviously, it has been clearly established the distinction between the treasury of the nation and the royal family, which it was certainly a practice. The control of finances is made to the General Assembly of the Empire, i.e. the Legislative Power. The Legislative Power, incidentally, was also in charge for "fixing, each year, the public expenditure and allocating the direct contribution" (art. 15, § 10).

What happens is that the little economic content of the Constitution exclusively emphasized the concern about public finances. Worse, however, is that there was no parameter in relation to contributions or taxes. As it turned out, it was acknowledged the so-called direct contribution, but it was not constitutionally regulated.

On the contrary, it specified, "no one is exempt from contributing to the expenses of the State in proportion to their assets" (art. 179, § 15, recalling that art. 179 was the so-called civil and political rights). Anyway, we may not really even say that the Constitution expressed a concern with the control of finances, to the extent that merely expressed the existence of the National Treasury, not even marking the contributions or limits citizens would be required to give to the State.

From an economic point of view, it should be noted that the Independence Recognition Treaty of 1827 determined a stiff in Treasury storage capacity, since the 15% tariff, compromised with England, could not be increased and that more flexibility in trading was conquered, Brazil had to reduce imports of rates from other countries. The Treaty ended in 1842, and Brazil resisted the strong pressure from the British government to sign another agreement alike, a fact that enabled the tariff to be increased and the consequent increase in the financial power of the central government whose authority is finally consolidated in this step. Overall, however, the Brazilian foreign policy was highly dependent on the European capitalist centers, notably from England and France.

Finally, a mention that effectively is the area of civil rights and political constant in the Charter of 1824 is the extinction of crafts and corporations, logically remnants of the Middle Age. As it turns out, it only reflexively regard to the economic order.

Such provision, however, did not affect the Brazilian economic system, the main fact that it had not developed corporations within the rules of the Middle Ages. Thus, there were no corporate privileges.

The strongest sector of the economy was the primary sector, and, thus, structured in slavery. The secondary or manufacturing sector was prohibited during an extensive period, because it contradicted the interests of the metropolis. The result was that the manufactured goods that have managed to impose establishing some form of production would not obey to that feudal structure, but acted as an enterprise with a developed and assimilated autonomously technology.

Thus, for instance, the industry of jerky beef in Rio Grande do Sul, small metallurgy etc. It is evident that Brazil has not had a framework of economic exploitation like that of the Middle Ages, even because, as a Colony, such administration was altered in accordance with the needs and interests of the metropolis, and the main interest was to exploit the Colony mainly through the commercial control and taxation.

Moreover, the Charter of 1824 do not mention nor rule about economic system, because, historically, at that stage, the Constitutions only took care of the State organization and made some mention to the rights of freedom, as was expressly enshrined in art. 178 of the Constitution of 1824.

Considering all of the above, it is concluded that only were constitutional issues those concerning the duties of political Powers and political and individual rights of citizens. The regulation of the incipient economic order was, thus, in charge of the ordinary legislation.

In relation to labor regulations, also nothing was established in the Charter of 1824. For free workers, it was in place the freedom of contract. The large labor force, however, was slave labor, outside any regulation, since this class of workers was considered an object and not subject of law in the economic order of that time. At the time of Independence, the essentials of the economy were the slavery economy. In this model already opposed the model of Capitalism, whose main point analysis was England, a power of the time. The slavery model represented an advantage for economies, such as Brazil Colony, since the labor was cheap.

Certainly, the fact that of being slave labor did not determine it to be for free. First, there was the very need of capital for investing in the purchase of slaves. This is because, in the economic and even accounting perspective, slaves were considered capital and a particularly valued equity method, to the extent that it served as collateral for obtaining loans and credits, which curiously did not happen to own land, an abundant capital and of little or no value without it could be grown just by slave labor. Secondly, such labor was the cost of maintenance, which meant the primary obligation to feed the employee, assist, even for the same to produce efficiently. This cost, at first, was below the cost of production in other models.

The capitalist model began to emerge from the late eighteenth century. It is constituted with new inventions provided a production level. Liberal ideas justified this

scheme, since they were absolutely opposed to any possibility of man submission from another man.

It is important to note how political ideas intertwine with economic or even ideas like economic reality interfere in political ideas. Because of two particular inventions (steam engine, mechanical loom), mainly in England and spread to other countries in Europe, the exploitation of sheep breeding, even with organizational remnants of the medieval era, the basis of the economic system hitherto prevailing there came to succumb, requiring the new cotton production system. It is the rising textile industry no longer needed the wool, which came to frustrate the primary sector based on it. Because of this, the old structures are dismantled, releasing up people from their ancient ties to the land.

It occurred the absorption of small properties by large, including due to debts. Such people had to inhabit the outskirts of cities, creating what Marx called the reserve army and, in his view, determining the operation of such people by rising bourgeoisie.

It is certain that this capitalist system, from an economic point of view, had two advantages over the previous system: an advantage was the exchange relationship, as the profitability and the field of supply chain dangled over the side of the nascent industry. Alongside this, the colonial system gave a captive market to such sector. The profitability guess exactly cheaper than going to represent the labor, and the newly introduced factory system was based on intensive labor.

Paradoxically, what happened is that somehow the slaves who could no longer work continued to be tied to its owner should at least be provided with food. Otherwise, deployed in the factory model, the labor was literally exploited, keeping adults and children in journeys of 16 hours, in environments not so salubrious for a miserable price set by entrepreneurs, price of which was determined exactly by supply and demand. Since there was excess supply (reserve army), the price was pushed down to the subsistence minimum.

For all that, in the Constitution of 1824, Brazil, in spite of the system and the prevailing economic ideas, the economic order was limited to the protection of property and something about taxation. It is relevant to note that the Treaty of Independence of 1827 (or 1825) predicted the abolition of slavery in 1831, which surely affect the right to property, since slaves were considered property and, moreover, the secret way the Treaty was drafted generated discontent, especially because it projected a serious problem for the structure of Brazilian economy, since, in theory, it would involve higher costs.

From a legal point of view, referring to the infra-constitutional legislation, it is important, during the Constitution of 1824, that the introduction in the administrative law the concession scheme inspired by European law for public works and services. It is also noteworthy that the enactment of the Brazilian Commercial Code on June 26th, 1850, through Law 556, which through centuries and undergone modifications, is partially in effect. Also dated from this period, the Regulation 737, relating to civil

and commercial proceedings, a legal document that exerted great influence on doctrine and Brazilian law.

3.2 The Constitution of 1891

A few days after the proclamation, under the decree of December 3rd, 1889, a Commission was made to draw up the bill for the Constitution. Once the project was made, Rui Barbosa was tasked to conduct a review. Rui Barbosa was beyond review, coming to claim the authorship of the project itself. On November 15th, 1890, the Constituent was settled and in February 24th, 1891, the Constitution was approved. The governance model was the model of the United States of America, despite the quite different historical features. The Constitution was approved with 91 articles plus 8 others, numbered aside, the Transitory Provisions.

It was not forgotten to assign a lifetime pension to ex-Emperor Pedro de Alcântara, (art. 7 of the Transitional Provisions), in recognition of which he had represented for Brazil revealing this fact the ambiguities surrounding the proclamation itself, as many, even in agreement with the regime replacement, they had respect for the old figure of D. Pedro II, which explains, by far, the lack of absolute conviction as regards to the proclamation at that time and circumstances.

Finally, the Constitution of 1891, which had the outstanding participation of Rui Barbosa, was liberal, but an abstract liberalism, and it was considered the pinnacle of theorizing, formalist monism (from the elites), thus creating a problem which is still pointed out, that is, the incomes of division between Union and States, that, immediately, after the promulgation led to a campaign to review it.

In reality, the confrontation was mainly due to the distribution of tax revenues between the Union and the Federated States, once the idea of a federation was sketched along the molds of the United States of America, which did not find, however, no support in the Brazilian reality characterized by a State which was imperial and centered.

The Constitution was been in force from February 24th, 1891 until July 16th, 1934, when the new Constitution came into force. The inadequacy of constitutional and legal system conducted some attempts of constitutional review that, at last, became a reality in the constitutional reform of 1926.

> The changes of 1926 have led to:
> a) expand the possibilities for the Union to intervene in the States;
> b) reduce powers of the National Congress in favor of the Executive Power;
> c) create the possibility of partial veto;
> d) restrict the jurisdiction of the Court, once it ruled out the possibility of legal appeal against the intervention in the States, against the declaration and actions practiced during the siege, against the discussion on office losses to the members of the Legislative or Executive Power, either federal or state;

e) limit the guarantee of *habeas corpus* in cases of arrest or illegal constraint threat to freedom of movement, since the *habeas corpus* had assumed the role of an instrument of defense of rights, including political rights.

The Constitution of 1891 was criticized by the fact that it omitted to speak on the economic order and other issues already mentioned and regulated in other constitutions. In short, everything was affection to the ordinary legislation, and, therefore, at the mercy of representative political class of a backward system, based exclusively on agriculture.

Despite the misunderstood industrial policy brought by Rui Barbosa in the early days of the republic, the coffee remained as the mainstay of the republican economy, with the differential to be based then on free labor and no longer a slave labor.

It is important to highlight that, due to the defense of this export product and the effort to ensure its leading position in international markets, the initial measures were processed in the infra-constitutional level, in order to intervene in a more active manner in the State economic domain. Such intervention was processed initially at the initiative of the States of São Paulo, Minas Gerais and Rio de Janeiro, which, in 1906, signed the Convention of Taubaté, regulating the elements of the intervention. Subsequently, the Federal Government began to intervene directly in the field, creating even new formulations of legal entities of public law, obeying the functional decentralization system, very similar to legal entities of private law, distinguishing, however, those at performance of public service functions.

The analysis of intervention mechanism of State in coffee policy, closely linked to the behavior of the exchange rate, demonstrated convincingly that the coffee economy could, within this policy, socialize the losses and privatize the profits in the period. Welcoming the proposals of the Convention of Taubaté, the federal government began to buy and stock the coffee surplus in the market to be sold when prices would normalize. With increasingly stocks and production, the damage was inevitable.

Some contents of the Constitution give an idea of the treatment given to the economic issues. It was the exclusive responsibility of the Union for the establishment of issuing banks (art. 7, § 1), reminding that, at that time, the issue of currency was committed to various banks, once the gold standard was in force.

Obviously considering that it was after all a monetary policy, nothing more normal for the Union had the exclusive authority. Likewise, it was recognized exclusive competence of the Union for the creation and maintenance of customs (art. 7, § 2), which, in fact, it has no relevance to the system or economic system, because customs are related to the control of entry and exit of goods and, therefore, regarding to the import and export taxes.

There is nothing in the Constitution of 1891 precisely clear about economic system, although there can be extracted: The interpretation of the telegraph and postal services, although indicated as preferably applicable to the Union, could be achieved by the States. This is how you can understand the constant in art. 9, § 1, section 2, that “solely for the States to enact contributions concerning their telegraph

and post office", and in art. 9, § 4 on the "permission of creation by the States the right to establish telegraph lines between different parts of their territories among them and other states, who are found not served by federal lines, the Union may evict them when the public interest".

We may not extract from the Constitution that the railroad industry was state or private level, although it is known that it came to be private and exploited by foreigners, notably the British, as the Constitution merely established, in its art. 58, § 13 that the "law of the Union and the States to legislate on the rail road and inland waterway shall be governed by federal law".

It can be drawn that there were lands and mines of the Union, without determining whether all the mines (underground) would be owned by the Union. In addition, that can be extracted when the art. 34, § 29, stipulates that it competes exclusively to the Congress "to legislate on lands and mines owned by the Union".

In addition to these three themes that relate to the economic system, and that the Constitution was not direct enough to determine the appropriate situation, there was another theme in the Constitution that has been treated more clearly: it was the art. 13, sole §, on cabotage ("Coastal shipping will be made by national vessels"). In this case, the reasons were not economic direction *per se*, but more of concern for national security.

The Constitution of 1891, faithful to the spirit of economic liberalism of the time, not even bother to indicate positions or ideas that should be considered and that should guide the pursuit of economic development. A nation that had its origin and development in a clear centralism, even with the proclamation of the Republic and a propensity, at least theoretically, to adopt a model distinctly federal, there was no concern for establishing which field the government should take to encourage the development or even what role would be for the government in the economy.

We may remember that the fact that the time is characterized by economic liberalism did not prevent governments from various countries had an idea, and to take up this notion into practice as a way of encouraging internal development, so that, long before governments had already established companies with particular for the exploration of trade, such as the East India Company, for example, created by the Dutch. What the Constitution made clear, much like line of defense of national security than as an economic policy; it was to safeguard the exploitation of coastal shipping for domestic vessels.

The political regime of the Old Republic, supported by the state oligarchies and the maintenance of *coronelismo* evolved into organizing a policy of governors without the maturing of a global vision of national problems. The State, keeping the same absentee position, was thus unable to give solution to the new economic and social problems of Brazilian society, where it reflected the aspirations of social reform that strove upon the European world.

The crisis of the New York Stock Exchange in 1929, the coffee defense system collapse, thereby maintaining the exchange rate, made the Old Republic came into

agony and gave rise to the Revolution of 1930 and the new forms of political and social organization.

3.3 The Constitution of 1934

The reforms of 1926 were ambitious and eventually restricted to the political aspects of strengthening the Union Government. The world was shaken by the crisis of 1929, and Brazil ended up suffering minor concussion than the countries directly involved in the outbreak of the crisis, particularly, the United States and Europe.

From the political point of view, it is important to note that the Revolution of 1930, which was followed by the Constitutionalist Revolution of 1932, which then provided the Constitution of 1934, was carried out by a Constituent Assembly. In short, the provisional government was established by the decree of November 11th, 1930, and Getúlio Vargas went on to head it, accumulating the duties and powers of the Executive Power and the Legislative Power, until the country was institutionally reorganized.

This accumulation was interesting for the government, which did not show any haste in institutional organization, and this factor was the main cause for the Revolution of 1932. Thus, symbolically, on November 15th, 1933, after the Constitutionalist Revolution, a solemn session for installing the National Constituent Assembly had occurred. On July 16th, 1934, the Constitution of the 2nd Republic was promulgated and lasted until 1937, in the face of various historical circumstances.

When the Constitution of 1934 was promulgated on July 16th, 1934, more than decade of presence of other constitutions that enshrined the social state had passed (Constitution of Mexico of 1917 and Constitution of Weimar of 1919), and these values the Social State came to be welcomed reflecting a mutation operated in the State's position and the society in relation to the economic activity, leaving the characteristic neutrality of the Liberal State, in order to incorporate the active version of the interventionist State, agent and regulator of the economy.

Some of the concepts of the Welfare State came to appear in the text, and for the first time, in the Constitutions of Brazil, rules on the Economic and Social Order were present, establishing a number of rights concerning the labor (art. 115) and the creation of Justice Labor (art. 122). Title V provided for the family, education and culture.

Also, we may note that the political representation was guaranteed in the House of Representatives, to the representatives elected by professional organizations, chosen made by employers' and employees' associations, whose representation corresponded to 1/5 of the representation of representatives elected by the people (art. 22). It was also established in art. 88 that the Senate was in charge of promoting the coordination of Federal Powers among others.

It should be noted that many of the measures that have been recognized by the Constitution only came to be effectively observed later: it is appropriate to mention that the Constitution "recognized" because most of the measures to implement the ideas, or was only much later taken or has even been taken: the Consolidation of

Labor Laws is hailed as the legislation that recognized workers rights, being a product of Decree Law 5452 of May 1st, 1943.

The social character of the Constitution is registered in its preamble, in which the National Constituent Assembly affirms the commitment to organize a democratic regime ensuring to the nation the unity, freedom, justice and social and economic well-being.

The Constitution of 1934, in art. 115, ensured the economic freedom, but it set three conditions for such freedom: 1. the principles of justice; 2. the needs of national life and; 3. the purpose of ensuring a dignified existence for all.

In other words, the economic freedom was subject to limits, which could lead to a severe intervention in economic life. The Constitution created tools for the economic order was placed at the service of the general interest and not merely the maximum of capitalism concept, the profit.

In this sense, it was also treated for granting or delegation of utilities. The Industry Nationalization or activity was authorized, since that, under the art. 116, the Union could, for reasons of public interest and authorized by special law, therefore, to ensure the economic order within the proposed limits, establishing a monopoly of certain industry or economic activity upon due compensation. However, it was the nationalization a target of a higher volume of rulings.

A concern as regards to the Financial Sector (art. 117) was drew up, establishing guidelines for the law to promote the development of the national economy and credit development, with the consequent prohibition of usury and 1. Progressive Nationalization of deposit banks; 2. Nationalization of insurance companies, and also the obligation of these to be organized under the Local Legal Framework, since foreign companies were incorporated under the regimes of their own domiciled countries and that merely performing activities in Brazil.

The Constitution (arts. 118 and 119) definitively stated that the Mines and Wealth of the Underground, as well as waterfalls constituted a distinct property from the land for exploration purposes and industrial use and indicated that the law would regulate the Progressive Nationalization of mines, mineral deposits and waterfalls and other sources of hydraulic power, deemed basic or essential to economic or military defense of the country. The use of mines, mineral deposits and waterfalls: 1. with authorization or federal grant, according to the law; 2. for Brazilians or Companies Organized in Brazil, except for the preference on the exploitation or co-participation in the profits to the owner (ground). In this sector, the State is responsible for replacing the Union in the attributions of authorizations or concessions.

The Property of News Companies, Policies or Newspapers under the national control, being prohibited the property of such species of companies to corporations for bearer shares, as well as the foreigners (art. 131). In addition, it was sheltered for the Brazilians the main intellectual or administrative guidance responsibility.

In the Maritime Transport sector, the owners, shipowners and captains of national vessels, as well as 2/3 of the crew at least should be native Brazilians. Also, it was reserved for native Brazilians pilotage bars, harbors, rivers and lakes (art. 132).

The exercise of Liberal Professions was allowed only to native or naturalized Brazilians who had military service in Brazil, except those who were legitimately exercising on the date of the Constitution and cases of international reciprocity admitted by law (art. 133).

It was assigned to the regular law the compulsory rate of Brazilian employees in public services data in concession and the establishments of certain trade and industry branches (art. 135).

Also, in relation to dealers or contractors under any title of federal, state and municipal public services, prescribed by the art. 136 that should be their administrations with most Brazilian directors resident in Brazil, or management powers exclusively delegated to Brazilians; when foreigners, powers of attorney issued by foreigners must be granted to Brazilians in majority, with substitution power exclusively to nationals.

It appeared finally in the Constitutions of Brazil a whole set of rules as to labor. As stated, it is the ultimate recognition of the Social State. In the matter of labor, the Constitution of 1934:

> – Established official recognition of trade unions and professional associations (art. 120).
>
> – Determined (art. 121) the creation of urban and rural labor legislation concerning the social protection of workers and economic interests of the country, setting forth: a) the prohibition of wage gap; b) the establishment of regional minimum wage; c) maximum working day of 8 hours; d) prohibition of work for children under 14 years old and night work for children under 16 years old and unsanitary labor for children under 18 years old and women; e) weekly rest; f) paid annual leave; g) compensation for unfair dismissal; h) medical and health care to workers and pregnant women, as well as maternity leave and social security system by parity of the State contribution, the employee and the worker; i) regulation of professions; j) recognition of collective labor conventions.
>
> – Still in the area of labor organization, the Constitution set forth: difference prohibition between manual and intellectual work; direction of the responsibility of protection of motherhood and childhood services enabled women; agricultural labor especially protected aimed at keeping people in the countryside, rural education and preference to national workers in the colonization and exploitation of public lands.
>
> – There are two rules that draw attention, respectively specified in art. 121, § 5, 6 and 7: First, the organization of agricultural colonies to route the inhabitants of impoverished areas they wish and the unemployed. The second is the establishment of rule for immigration policy, and correlatively the sealing concentration of immigrants.

– In addition to the recognition of several labor rights, the Labor Justice was created.

Similarly, the Constitution was minded with the service concessions, and the federal law was entitled to regulate the supervision and review of tariffs for services operated by lease or delegation, aiming at the collective interest through balance between profit and expansion needs and improvements (art. 137). In addition, it forbade the Federal Government, States, and the Municipalities to guarantee of interest to the public utility companies (art. 142). In the tax area, economic development functions were established to tax on rural property and tax on transfer of property and inheritance. Thus, the art. 126 set forth the establishment of tax reduction benefit in areas not exceeding 50 hectares and the art. 128 set forth the progressive tax to conveyances of goods or inheritances.

In the area of social assistance other than labor, the art. 138 commissioned to the three levels of government in accordance with respective laws the following:

a) ensure support to the disadvantaged ones;
b) stimulate eugenic education;
c) support motherhood and childhood;
d) help the families of great offspring;
e) protect youth against all exploitation and physical, moral and intellectual abandonment;
f) adopt legislative and administrative measures to restrict morality and child morbidity and social hygiene, to prevent the spread of communicable diseases;
g) care for mental health and encourage the fight against social poisons.

In the same line of thinking, the Constitution forced the industrial or agricultural companies established outside the school centers, with more than 50 workers a free primary education offer, when there were at least ten illiterates among employees and children. Anyway, we may highlight that the Constitution of 1934 definitely set forth between us the social state in its dual dimension (recognition and establishment of labor-derived rights and other rights of a social nature).

Moreover, it was a nationalist Constitution, opening a gap to the State interventionism, and mainly reaffirming the role of supervision and activity-regulation for the State. However, a large part of these lines would lead Brazil to the state of social welfare ran out consequences for various reasons, mainly economic and financial ones.

From a legal standpoint, the explanation for the failure of these constitutional guidelines was relegated to the idea of program rules. As a tailpiece, which it is learnt once again, we come to the conclusion that a legal system, as perfect as it is, *per se*, does not have the power to alter the reality. We may even anticipate the comment that, in Brazil, the statement is particularly true. If only a small part of legal principles set out from the Constitution of 1934 was complied with, the gap among regions and people would certainly have been reduced and prevented several chapters of political instability that permeated the Brazilian history.

3.4 The Constitution of 1937

Interestingly, the prologues of the Constitutions should be observed. The Constitution of 1937 was enacted by the President after the coup that created the so-called New State (Estado Novo), which set forth the framework that existed in the country: disorder, aggravation of partisan disputes branded of a class struggle by demagogic propaganda, the expectation of violence and the threat of civil war, the state of apprehension created by the communist infiltration and the inefficiency of the previous institutions for preservation and defense of peace, security and well-being of the people.

The Constitution concentrated powers in two ways: first, in the hands of the President; the second, to undermine the Member State, in the face of the Central Branch. The Constitution of Poland was the main influence, inspired in fascist and Nazi models, and the label *Estado Novo* was sought in the Portuguese corporatism (dated 1933).

Such was the power of the President, assured even to indicate one of the potential presidential candidates, whose election was scheduled by an Electoral College, as well as to postpone, extend or call (this order is the one provided for in the Constitution) the Parliament (art. 75). The presidential government was enshrined as a constitutional principle and could justify the intervention in the Member State (arts. 9 2). The President was allowed to legislate by Decree-Laws, including the periods of Parliament recess and the dissolution of the House (arts. 12 and 13).

In order to scale the significance of this, it should be noted that the Penal Code still in force in Brazil, although subjected to successive reforms, comes from the Decree-Law n. 2848 of December 7th, 1940, and the Code of Criminal Procedure of Brazil still in force under the same conditions comes from the Decree Law 3689 of October 3rd, 1941.

The dictatorial character shines through the treatment given to the press, in art. 122, § 15. The press has been framed, either upon authorization of censorship, either by indication that “the responsibility will become effective by prison sentence against the director and responsible monetary penalty imposed on the company”, together with an indication that the machinery and utensils used in newspaper printing constituted fine of warranty, repair or compensation in convictions for violation of press laws, excluding any derivative privileges of the newspaper company employment contracts with their employees.

The Constitution created a Parliament with two Houses, to wit, Representatives, composed of representatives elected by the people and the Federal Council, with one representative per State and 10 members appointed by the President, who, of course, was the controlling party (art. 38). The President had the initiative to Laws, and do not allow individual initiative of law bills, which collectively depended on the initiative of at least 1/3 of the members of the House.

In fact, the bills would be of little value, because neither these nor amendments could refer to tax matters or that resulted in the increase of expenses. Even if the bills

went beyond these barriers and be started in one of the Houses, they would be suspended since the Government communicated its purpose to present the bill to regulate the same subject (art. 64 § 2). The bills of Government, with a favorable opinion of the National Economic Council (an assistant body establishing economic policies provided for in art. 57, with representatives from the various branches of national production), were subjected to one debate in each House, whose decision could only be to reject them or accept them (art. 65, sole paragraph).

The veto to any project, with a term of 30 days, could only be overthrown by a nominal vote of 2/3 of the participants (art. 66, paragraph 3). In fact, the legislative process was in the hands of the Government, which, incidentally, did not require even the appearance that the Legislative Power had some importance, because it had the Decree-Laws.

The Member States were framed, provided the possibility of turning them into territory, if during three consecutive years they did not present sufficient revenues to maintain their services until the appointment of an intervener by the President, to ensure constitutional principles, and one of the principles was the presidential government (arts. 2 and 9, item e). The intervention was also provided for reorganizing State finances that for two consecutive years suspended the payment of debt service founded or delayed for more than a year the loan redemption obtained from the State (art. 9, item d).

The Charter of 1937 corresponds, in the Brazilian Constitutional Law, to a type of Semantic Constitution, i.e., put the constitutional text placed at the service of power holder, for personal use, also known as merely formal or nominal, once it does not establish an identity between people's aspirations and the express provision.

The economic order was treated in a separate chapter. It was responsible for the articles 135-155, and, formally, many of its provisions were similar to the previous Constitution of 1934. Indeed, the *Estado Novo* concern was the political control. The economic order in the Constitution of 1937 and others was expressed in the wealth production and national prosperity and labor as against the face of production.

The principles of economic order were underlined because of the vision of physical production, because, at that time, the system of goods production did not have the variety and sophistication Brazil has today, and the property had a direct relationship on the welfare and comfort then. The declaration of principles and the sense of economic order contain some different sense that the Constitution of 1934. They proposed to be more descriptive of abstract values and directed to the character. They focus on the individual, and the intervention of the State as a subsidiary, and can be presented in three ideals:

> *First* – the principles of economic order beat any collectivist or communist influence (because one of the reasons for the emergence of the *Estado Novo* was the communist threat, as it turned out). It specifies that the wealth and national prosperity are founded: in individual initiative, in the power of creation, organization and invention of the individual exercised within the boundaries of public good.

Second – it establishes that the State intervention in the economic domain would only be justified to address the weaknesses of individual initiative and coordinate the factors of production in order to avoid or resolve their conflicts and introduce in the game of individual competitions the thinking of the Nation interests represented by the State.

Third – it sets the time and form of State intervention: mediate or immediately, in the form of control, encouragement or direct management. In practice, however, the appreciation of individual initiative was eventually weakened because the political power of the President ultimately determined the intervention in the economy, mainly in the basic industries sector.

Out of all labor rights recognized by the Constitution of 1937, there are two worthy of a brief comment, because they do not appear in earlier Constitutions: one is the consecration of different forms of salary, recognizing the possibility of fixed and variable wage; the other is the recognition of the legal succession of companies, recognizing the continuous nature of the employment contract.

The highlight of the Constitution of 1937 with regard to labor relations was not the strengthening of trade unions, but its attachment to the State. It established the freedom of professional or trade union membership, but it limited the right to represent exclusively the union recognized by the State. Such limitation of representation covered the defense of rights before the State and other professional associations, set forth collective labor contracts, impose contributions and exercise the delegated duties of public power in relation to its members.

The Labor Court was recognized, and there is no discrepancy with what had the previous Constitution had predicted. It is worth noting that the strike and lockout were declared as antisocial resources, meaning that they were banned.

The Constitution of 1937 directed the organization of the economy of population for companies placed under the assistance and protection of the State, as bodies with delegated duties. It indicated the fostering of popular savings through the law assuring special guarantees, equating the crimes against the popular economy to crimes against the State. It assigned to the law the duty to combine severe penalties and judgments appropriate to the prompt and secure punishment of crimes against the economy, while reaffirming the punishment of usury.

The Constitution of 1937 maintained the same treatment given by the Constitution of 1934 the nationalization of mines, mineral deposits and waterfalls. The progressive nationalization also remained as scheduled and directed to the law.

In the same text, the Constitution reaffirmed the progressive nationalization, also an important segment of industries considered basic or essential, to the economic or military defense of Brazil. Overall, the Constitution of 1937 maintained the determination of nationalization of the banking and insurance industry established by the Constitution of 1934, inclusive, setting forth the law in charge of establishing a

reasonable time for foreign companies operating in Brazil to turn into companies with Brazilian shareholders.

It also maintained the previous idea of nationalization of utilities concessionaries with mostly Brazilian administration. In addition to reiterating the nationalization of labor in utilities companies, it referred to the law the nationalization of labor also in industry and commerce, without establishing restrictions to "certain branches" as occurred in the Constitution of 1934 (art. 135).

On the issue of nationalization of the economy, it remained the same idea of the previous Constitution, establishing that the owners, shipowners and national vessels commanders and crewmembers in the proportion of two thirds should be native Brazilians, and the same proportion should be obeyed to the practical bars, harbors, rivers and lakes. Also with respect to the nationalization of the economy, it repeated the Constitution of 1937, a rule already present in the previous one as regards to professionals, safeguarding the exercise of such professions to native and naturalized Brazilians who had been in Brazilian military service.

It should be noted that the Constitution of 1937 dealt with the regulation of the press within the right to the information (art. 15), in addition to the framework to which it was submitted, including the possibility of pledge on the machinery for the payment of an indemnity for press crime. As to the exclusive property of Brazilians, it was also kept the same guidelines of the previous Constitution either on the property or the direction and intellectual guidance, policy and administrative, reserved for native Brazilians.

The Constitution of 1937 thus tried to organize the economy of Brazil around corporations. Social security then created, for example, was not universal, but it covered every segment of workers. A relevant part for the economic policy was the creation of the Council of National Economy, which had as one of its duties "to promote corporate organization of the national economy". The Council of National Economy, close to the President, was treated in art. 57 as a collaborator body of the Legislative Power, which was exercised by the Parliament (House of Representatives and Federal Council), meaning that, in practice, the entire national economic policy started from the Presidency, which was aided by the National Economic Council.

It was the centered power and exercised in full by Getúlio Vargas and it was this model that allowed Brazil to give greater extension to an incipient industrialization process started in the 1930's. The fact that the Constitution of 1937 points the State intervention in the economic domain as justifiable only to address the weaknesses of individual initiative and to coordinate the factors of production in order to avoid or resolve their conflicts and introduce the game of individual competitions the thought of interests of the Nation represented by the State did not prevent it to be implemented in Brazil an interventionist and entrepreneurial State, because, this was the development model adopted in many countries.

The Charter of 1937 contains the complete organization of an authoritarian State and an individual power in the President's figure only suffered a reflux with

democratic postwar recovery, which triggered the calling of the National Constituent Assembly for reintroducing the institutions of Brazil in the constitutional mechanisms of the democratic government.

In essence, as we have seen between the treatments of the Constitution of 1934 and the Constitution of 1937, there is no difference. There are restatements, as in the case of associations and unions, as agreed to the centralized model of unionism bailed out by the State. Both Constitutions, for better or for worse, directed the State as the actual agent of the economy, the driver of its development either from the perspective of intervention either from the perspective of regulation.

3.5 The Constitution of 1946

The *Estado Novo* that had begun in 1937 ends with the removal of Getúlio Vargas from the power, even though he had already called elections in February 1945, which occurred in December 1945. A Congress with Constituent Assembly powers was elected and, hence, the Constitution of September 18th, 1946, came up to "organize a democratic regime" as it is stated in its prologue.

The Constitution of 1946 established a classic separation of powers in which the Legislative Power was again organized with the House of Representatives and the Senate, with three senators per state. The prologue of the Constitution set forth a concise line of wording. Despite this, this Constitution was lengthy, with 218 articles, including the integrating transitional provisions. It is symbolic from the character of the Constitution, to establish a counterpoint to the previous Constitution of 1937, in which the state of emergency no longer appears in the Constitution of 1946, however only the state of siege, and the assignment to decree it pertaining to the Congress (art. 206).

It is also enlightened from the ideological differences between the previous and this Constitution the fact that, although in both Constitutions, the wording expressly indicated what measures could limit the rights (Constitution of 1937 in art. 168 and Constitution of 1946 in art. 209), the Constitution of 1937 during the state of emergency the President could suspend part of the Constitution which obviously become innocuous any controls.

The Constitution of 1946 was facilitated by the fact that the principles were programmatically set out, as a commitment for the future. In another situation, rights have never been observed by the lack of regulation, as the case of mandatory profit sharing (157, IV). Another important distinction is that in the Constitution of 1937 the Judiciary Power could not be aware of the acts taken arising from the state of emergency and state of siege, which was expressly acknowledged in art. 215 of the Constitution of 1946.

The principles of economic order were treated to a degree of long-winded way in the previous Constitution of 1937, which, however, it pointed out as inherent thereto the individual initiative and the supplementary intervention from the State. The Constitution of 1946 chose to be more concise and objective in submitting the eco-

nomic order to the principles of social justice, seated in reconciling the freedom of initiative and the enhancement of human labor. The focus, at least theoretical, changed the axis: the Constitution of 1937, the objectives of the economic order (national wealth and prosperity) and, therefore, the economic order itself would be based on the individual initiative exercised within the limits of the public benefit, thus being admitted the intervention of the State in the economic domain to address the weaknesses of individual initiative.

The work that was in an own distinct plan was considered more a social duty than a right, although it ensured to the worker many other rights. So much so that the Constitution of 1937 interpreted the strike and lockout were also harmful to the economic order. In the Constitution of 1946 the goals of economic were not included, perhaps for being understood as obvious, or even to extend its meaning. Implicitly, the goal of the economic order was established as social welfare, which would obviously be underpinned by the wealth creation and national prosperity.

The use of the property was conditioned to the own social welfare, determining the distributive policy of property, with equal opportunity for all. Note that the provision was broad and ambitious, since it authorized the expropriation of any properties. This distributive policy, which many considered applicable only to rural land, however, did not take off, because, in opposition to this policy, the individual right to property ensured in art. 141, § 16, was argued.

On the other hand, even as an outline of the economic order, the constitution of 1946 established the repression to the abuse of economic power. Finally, the economic order was considered in the reconciliation of opposing freedom of initiative and valuation of human work in order to obtain social justice. The work continued to be treated as a social obligation (and not a duty, as indicated in the Constitution of 1937).

The Constitution of 1946 clearly established the required combination between freedom of initiative with appreciation of work, in order to obtain the so-called social justice, notwithstanding it referred to the law, as seen heretofore, the provisions on state intervention and even nationalization of the work or activities. It should also be noted that in respect to the freedom of initiative and the repression to the abuse of economic power, the Constitution of 1946 ended consecrating an ambiguity, since state capitalism yet existing in the case of base industries, particularly steel, ports and oil, was compatible with monopoly by the very scale of business, and so, the concern about the abuse of economic power would always be restricted to the industrial and commercial sectors, largely dependent on their supply.

Moreover, the very art. 146 authorized government intervention in industry and the monopoly (the State may, by special law, intervene in the economic domain and monopolize certain industry or activity. The intervention will be based on the public interest and by limit the fundamental rights guaranteed in this Constitution).

While claiming that the economic order was founded on social justice with appreciation of the work, it appears that the labor law 133 was provided with the same structure already pointed out in previous Constitutions, especially the Constitution of

1937: minimum wage; prohibition on wage difference for the same job; night shift in the excess of daytime shift; daily journey not exceeding eight hours; compensated weekly rest; paid holidays; prohibition of night shift and unhealthy for minors and women; maternity leave; compensation for dismissal and stability; health care, including hospital and preventive health. It reiterated the recognition of the Collective Labor Convention.

It was recognized the right to unemployment assistance (art. 157, XV), which it did not mean the creation of unemployment insurance, embraced by the Brazilian legal system long after that (Granting – Law 8900 of June 30th, 1994). It was also clarified that the right to social security would come from the State contribution, employer, employee (art. 157, XVI). The workmen's compensation insurance was imposed as a commitment from the employer (art. 157, XVII).

Thus, beyond the reiteration of existing rights in the harvest of labor legislation and the more accurate indication as regards to some others, the main novelty hosted by the Constitution of 1946 was the consecration of "compulsory and direct participation of the workers in the company's profits, according to the terms and in the manner determined by law" (art. 157, IV). As known, the difficulty of implementing such constitutional provision meant that the Constitution was replaced without having been established direct profit sharing.

Another aspect to be observed in the Constitution of 1946 was the recognition the need for Brazil to attract foreign resources, including for the infrastructure sectors, such as electric. This explains why, pragmatically, art. 151 of Constitution of 1946 refers to the law the regime concessionaires of federal, state and local public services, while specifying the suitability of profits to fair remuneration of capital and improvement needs and expansion of services. Nevertheless, the idea to set aside part of jobs to Brazilians was preserved, either in utility companies or establishments in certain branches of trade and industry (art. 157, XI).

Also, in art. 149, it was referred to the law lay to set forth rules to be followed by the financial sector ("the law shall regulate on the system of deposit banks, insurance companies, capitalization and similar objects"). Usury continued to be prohibited, as provided for in art. 154, to wit "usury in all its forms will be punished according to the law".

3.6 The Constitution of 1967 and the Amendment 1 of 1969

With the military coup dated March 31st, 1964, the military took power in Brazil. Initially, they intended to "bring order", considering that the moments preceding the coup were marked by deep social instability, with successive outages and general strikes and even by an ambiguous conduct of President that directly sought in unions and others support for the reform policies he understood as necessary but interpreted as measures in order to communism.

This was mainly the tone for the coup placed in 1964. The military organized a military board with the Commanders of the three Armed Forces, providing the choice of a military President. At that time, the regime still obeyed the rights and was legalistic, having been issued the Institutional Act n. 1 to organize and legalize the new government, formally maintain in force the Constitution of 1946.

In terms strictly technical, the March Revolution, as defined by the military, marks the end of the Constitution of 1946, because with the Institutional Act n. 1 dated April 9th, 1964, a new Constitution ought to govern Brazil, a granted Constitution that received much of the text from the Constitution of 1946. The Institutional Act of 1964 and then the Institutional Act of 1965 allocated and concentrated strength and power in the hands of the President, Marshal Castelo Branco, who, in practice, altered the tenor of the Constitution itself.

The Institutional Act n. 4, granted by the President on December 7th, 1966, convened the National Congress to vote on the Charter drawn up by a commission of jurists and then submitted by the Executive Power on December 12th, 1966, enacted on January 24th, 1967, and coming into force on March 15th, 1967.

It included 189 articles, with the transitional provisions. As noted, after nearly 80 years (1889-1967), the official name of the country was set as Federative Republic of Brazil, a proper replacement to better express the nature of the Brazilian State. The Constitution of 1967 had an ephemeral duration. On December 13th, 1968, it was impacted by the Institutional Act n. 5 that formally kept in force the Constitution of 1967, but with the modifications imposed thereby, among which, it declared recess for the Congress and allocated to the President legislative powers.

The Amendment n. 1 of 1969 completely rewrote the Constitution of 1967. It is recalled that the Amendment is authored by the three military ministers and came into force in October 30th, 1969. The First Amendment n. 1 does not change in depth the Constitution of 1967, but it extensively changes its wording, emphasizing its centralized and authoritarian character.

Formally, it contained two articles, and article 1 related all changes therein and it was inserted all the articles from the new wording of the Constitution. In art. 2, it consisted the term. Historically, it succeeded that militaries in power resolved to harden the regime, once they thought to be under internal threats. Indeed, there were signs of rebellion due to the authoritarian and dictatorial regime, which, under the eyes of that time, should determine a political regime even more authoritarian.

In the Constitution of 1967, the Economic and Social Order also deserved a separate chapter, outlined in art. 157 to 166. Two articles of the transitional provisions also direct such topic: art. 181, corresponding to the extinction of the National Economic Council and the art. 185, reaffirming land ownership by forestry. More synthetically, one can point out that the wording had an attempt to be refined in order to distinguish the purpose of the economic order (to achieve social justice) and the principles (freedom of initiative, work valorization as a condition of human dignity, social function of property, harmony and solidarity among the factors of

production, economic development, repression to the abuse of economic power, characterized by the domain of markets, elimination of competition and the arbitrary increase of profits).

The economic order aiming at achieving social justice was already an indication of the previous Constitutions. The economic development can be setup as growth with quality, equally distributed to provide an improvement to the standard of living and general well-being. The freedom of initiative and free enterprise is the permission of the person, free from encumbrances, to be able to engage in any economic activity at his/her own risk, subject only to specific regulations or general restrictions set by the State.

The free enterprise establishes the recognition of individuality and, more distantly, one can say that it is a corollary of democracy itself. In an economic system, the free enterprise is compatible with a private market economy system. It is a principle heir of the one expressed in the Declaration of Human Rights and of the Citizen of 1789 that "nobody is obliged to do or not to do something, if not under the law".

In the Amendment n. 1 of 1969, which perfected the Charter of 1967, the economic and social order was registered with the numbers 160 to 174, formally within the article 1 of the Amendment, keeping in the social and economic sector the basic guidelines of 1946. The Amendment n. 1 of 1969, aware of the fact that economic development is the true purpose of economic and social order, and not a principle of it, specified the development and a purpose, alongside social justice, but it was treated as a national development, which corresponded to a broader development than the merely economic, but still the purpose of economic and social order.

It is, finally, stressed that the purpose of economic order is the national development and social justice, laying down on freedom of initiative, valuation of labor, social function of property, harmony and solidarity between social categories, that is, workers and employees, the repression to the abuse of economic power and the expansion of employment opportunities. Nothing different from what it was being unfolded in previous constitutions.

The explanation of freedom of initiative was reaffirmed in art. 163 of the Constitution of 1967, which enshrines in preference to private companies the organization and exploitation of economic activities, leaving the State only to supplement the private sector. Alongside this, the exploitation of economic activity by the State, through public companies, municipalities and joint stock companies were to be governed by the rules applicable to private companies, including with respect to labor law and obligations and subject to the same tax regime.

The intention was that when the State acted in an economic activity, such action was submitted to the same rules applied in the private sector, which would have the virtue of keeping a chance to give a new birth to competition in non-monopolistic sectors. The treatment for local authorities was wrong. The other face of this principle of freedom of initiative is the principle also declared constitutionally, the repression

to the abuse of economic power, characterized by the domination of markets, the elimination of competition and the arbitrary increase of profits.

The intervention in the economic domain and the monopoly of a certain industry or activity constitute restriction to the principle of freedom of initiative. The intervention and monopoly are indulged in art. 157, § 8, as the previous Constitutions. As a general rule, intervention and monopoly are inherent since if the State deems as necessary the intervention for national security reasons, the monopoly will be justified more than ever.

Similarly, if you believe that intervention is necessary to organize an industry that cannot be developed efficiently in the competition regime and freedom of initiative, the monopoly would also be justified. This case is compatible with those sectors of the economy that require a certain size to allow for scale economies to sustain the project.

The Constitution of 1967 established a federal initiative (from the State) to establish contributions designed for the cost of services and charges of intervention of the State in the economic domain for national security reasons, as determined by law. Certainly, the reasons would require to be subjected to defined parameters because, in principle, national security is a meaning too open-ended. In this case, the interpretation of the Constitution depends much more on political bias than any other facts. To a certain political line, national security can justify many interventions and the creation of many state enterprises.

The principle of harmony between the production factors – i.e. capital and labor – already appeared in the Constitution of 1946 in submitting the economic order to the principles of social justice, laid down in reconciling the freedom of initiative to the valuation of human labor. Several labor rights listed in art. 158 repeated previous ones, in particular, in the Constitution of 1946: minimum wage; prohibition of wage gap; night shift in the excess of daytime shift; daily journey not exceeding eight hours; compensated weekly rest; paid holidays; hygiene and safety at work; maternity leave; health care, hospital and preventive health; social security upon contribution by the State, the employer and the employee; worker's compensation insurance; prohibition of distinction between manual, technical or intellectual labor.

Some difference in treatment occurred on the following labor rights:

a) The age for working was reduced from 14 years old, which appeared in the Constitution of 1946, for 12 years old, maintaining the prohibition of night shift for children under 18 years old and unhealthy work for people under 18 years and women;
b) It was constitutionally consecrated the family allowance which was introduced by Law 4263 of October 3rd, 1963 and regulated by Decree 53153 of December 10th, 1963;
c) It reiterated the right to participate in profits, and, exceptionally, in the management of the company;

d) The stability is reaffirmed, with compensation to the dismissed employee or equivalent guarantee fund (originally, there was the creation of the guarantee fund, or more accurately, the reaffirmation of the guarantee fund, which was already created in 1966 by Law 5107);
e) As a novelty, it specified the creation of summer camps and nursing homes, rehabilitation and convalescence kept by the Government;
f) It was specified a special rule for the retirement of women, at thirty years of work, with full pay.

In the case of social security, for the first time, it was established the obligation to indicate sources of revenue for the creation, surcharge or extension of aid-oriented service or benefit, as well as it was clearly established that the financing as regards the Government should occur for budgetary allocation or product of pension contributions collected with general character.

It was also maintained the union model. Freedom of professional or trade union was acclaimed, and it was recognized the legitimacy of representation in Collective Agreements, reaffirming the delegation to raise contributions for the funding of activities. In addition, it was established the obligation to vote in union elections. The Amendment n. 1 of 1969 did not show any change with respect labor social rights on the Constitution of 1967, unless any linguistic accuracy.

The regime of federal, state and municipal utilities concessionaries reappeared in the Constitution, with equation of tariffs and remuneration of capital. However, it was clarified that the obligation of maintaining proper service and ongoing monitoring and periodic review of tariffs, even if stipulated in the previous agreement. Note that it was kept the nationalization of labor upon fixing percentages of Brazilians in utilities in concession (and even in establishments of certain commercial and industrial branches).

3.7 The Current Brazilian Constitution of 1988

The Constitution of October 5th, 1988 was the product of a Constituent General Assembly. A High Remarkable Commission had been named earlier to prepare a project. Although a project had been presented, it was ignored by the Constituent Assembly who left for their own project. The most representative sectors of Brazilian society demanded a Constituent Assembly formed by parliamentarians exclusively vested with constitutional powers, to be dissolved with the enactment of the Constitution. However, such fact did not occur. Parliamentarians have accumulated the constituent functions and ordinary legislators. The training system of committees and thematic subcommittees was adopted, producing texts that reflected the diverse ideological currents and even personal interests.

The result was the enactment of a Constitution with lack of systematic unity and the impossibility of achieving a harmonious system of rulings, which was reflected in a heterogeneous Constitution. Historically, an informal grouping was

constituted, then called *Centrão* (center-minded) who directed, finally, the resolution on the issues, although the leftist forces were able to defend their claims in several parts of the Constitution.

On October 5th, 1988, the Constitution of the Federative Republic of Brazil was published in the Official Gazette n. 191-A – the so-called the Citizen Constitution by the President of the National Congress. Following a certain trend, the Constitution was drafted in order to rule in details all matters, except those that did not get any consensus and that were sent to ordinary legislation.

The Constitution of the Federative Republic of Brazil of 1988 has a different structure from the previous Constitutions. It is composed of 250 articles, divided into 9 titles dealing with: 1. Fundamental principles; 2. Fundamental Rights and Guarantees (individual and collective rights, social rights of workers, nationality, political rights and political parties); 3. The Organization of the State (structure of federation and its components); 4. The Organization of the Powers: Legislative, Executive and Judiciary (followed by a chapter on the duties essential to justice); 5. The Defense of the State and Democratic Institutions; 6. Taxation and Budget; 7. The Economic and Financial Order; 8. The Social Order; 9. The General Constitutional Provisions. It follows this structure over 94 articles as Act of Transitory Constitutional Provisions.

Since the Constitution of 1934, the Constituent Legislator is paying a title to regulate the so-called Economic Order of the Brazilian State. Identified by a proper sector, this set of economic content rules entered the field of constitutional matters associated with the Social Order. It acquired the constitutional naming the title level and this condition consisted in the Constitutions of 1946 and 1967. The Charter of 1937 abolished the division into Titles, simplified the name to Economic Order, but it kept the common content to the Economic and Social Order of Constitution of 1934, 1946 and 1967.

The Constitution of 1988 gave a different treatment to the matter. It integrated the national financial system to the economic order, which came to be governed by Title VII, under the name of Economic and Financial Order. It gave autonomy to the Social Order, expanding the field, which was incorporated by the social security, health, social welfare, social welfare, education, culture and sports, science and technology, social communication, environment, family, children and adolescents, elderly, indians and regulated in a proper title.

Workers' rights that in previous Constitutions made up the Social Order were displaced to the field of Social Rights, located in the title of Fundamental Rights and Guarantees. The separate treatment of Economic and Social Order in the Constitution of 1988, as well as the extension of the regulated content, were not immune to criticism in the doctrine.

The Constitution of 1988 extended the treatment of the economic order joining with the financial order. Using a specific technique to write Constitutions, it indicated fundamentals and general principles that should permeate the economic and financial order, without,

however, fail to submit to the ordinary legislator the unfolding of constitutional rule, thus being converted to the ordinary legislator in recipient of the constitutional ruling and responsible for the development of matter originally enshrined in the Constitution.

Most standards that inform the Economic and Financial Order in the Constitution of 1988, as well as in the previous ones, are classified by the doctrine as programmatic rules once they are provisions of principles aimed at the future, requiring successive activity of the Legislative Power. The supplementary law and the ordinary law are the main instruments of legislative achievement for the programmatic ruling, which, however, it is not exhausted in these two possibilities, since the programmatic norm may also be bound to constitutional rulings that establish foundations, set goals, declare principles and lay down guidelines. In such cases, the direction of the programmatic standard is enforceable *per se*, without the need for further legislative complementation.

Urban, agricultural and land policies as well as land reform, and the national financial system were themes that got special treatment in the Constitution of 1988. The fundamentals and general principles outlined its treatment of foreign capital investments. They establish that the exploitation of economic activity by the State is a subsidiary and how such exploitation will be established. They establish the development planning guidelines, determining the structure of utilities, also providing for mineral resources and hydroelectric power.

The Constitution of 1988 reserves the exploitation of hydrocarbons to the Government, the contribution of intervention in the economic domain, the ordering of transports, the preferential treatment for small and medium businesses, the indication of promoting tourism, and the service of requiring documents or commercial information made by foreign authorities.

Municipalities are in charge of implementing urban development policies, fulfilling standards defined in its organic law for the performance of social functions of the city. Urban adverse possession is facilitated and the performance of social function of urban property provided for in art. 182, § 2, is seen in the light of the right when it meets the fundamental requirements for the ordainment of the city, expressed in the master plan approved by the City Council. It is observed following this study that the Constitution of 1988 is the first Constitution that devotes a chapter to urban policy. The design of the urban development policy stems from the matching with art. 21, XX, which empowers the Government to institute guidelines for urban development with art. 182, setting forth that the urban development policy aims at organizing the full development of the functions social of the city, ensuring the well-being of its inhabitants and is performed by the municipal government, according to guidelines established by law.

The constitutional right to housing was included to art. 6 by the Constitutional Amendment n. 26/2000 and based on these provisions the Government issued the Law 10.257/2001, known as the Statute of the Cities.

In agricultural, land, and agrarian reform policies, the competence of the Government is laid down to expropriate, the specification of the contours that mark the social

function of property and indications for agricultural policy, the delimitation of the acquisition or lease of rural property by foreigners, beyond rural usucaption. The expropriation for social interest provided for in art. 184 of the Constitution is characterized as a sanction for the rural property, other than the performance of its social matter.

The national financial system is referred to supplementary law and called attention to the specification of a limit of 12% per year to interests in the original draft of the Constitution, which, however, did not get any practical results since its term was subject to legal regulation that did not occur. The deletion of paragraph 3 of art. 192, by the Constitutional Amendment n. 40/2003, validated as a whole the rules of Civil Code authorizing the charging of such fees collected by the Government and, in turn, the jurisprudence has recognized that the Usury Law should be applied only to particulars.

The Constitution of 1988, in the original text, established in art. 173: 1. that the public company, mixed-capital company and other entities engaged in economic activity, are subject to the legal regime of private companies, including for labor and tax obligations (§ 1st); 2. public enterprises and joint stock companies may not enjoy tax privileges not extended to the private sector (§ 2nd); 3. the law shall regulate the relationships of public companies with the State and society (§ 3rd); 4. the law shall repress the abuse of economic power that aims at the domination of markets, the elimination of competition and the arbitrary increase of profits (§ 4th); 5. the law, without prejudice to the individual liability of the officers of the corporation, shall establish its responsibility, subjecting it to punishments compatible with its nature, for acts performed against the economic and financial order and against the popular economy (§ 5th). The wording of Constitutional Amendment 19, dated June 4th, 1998, altered the tenor of § 1, stating that law must create the legal status of a public company, the joint stock company and its subsidiaries that explore economic activity of production or marketing goods or provision of services, and that such a law should establish: 1. the social function and methods of supervision by the state and society; 2. entry for the own regime of private companies, including with respect to civil rights and obligations, commercial, labor and tax; 3. bidding and contracting of works, services, purchases and disposals, observing the principles of public administration; 4. establishment and operation of management and tax advice, with the participation of minority shareholders; 5. mandates, performance evaluation and responsibility of directors.

The wording of Amendment of 1998 forwarded to law certain definitions. Among these, the highlights are procurement and contracting of works, services, purchases and disposals, observing the principles of public administration, constitution and functioning of Councils, mandates and performance evaluation and accountability of directors. It is seen that the Amendment seeks to impose public company, the joint stock company and its subsidiaries a double control, to obey the principles of administration (legality, impersonality, morality, publicity and efficiency) and to provide for the constitution of Boards and Audit Committee, with the participation of minority shareholders. On the other hand, the mandate specification and, mainly, the evaluation of objective performance management seeking efficiency, which, after all, is

consistent with the idea of treatment of public companies and mixed capital, company as the treatment by the private company.

The State as seen, although it is not its function, can act as a subsidiary producing agent, complementing the role of private enterprise. The essential function of the State is its normative and regulatory role. Particularly, the art. 174 of the Constitution of 1988, which retains the same wording to date, establishes the contours of supervision, incentive and planning, determining that planning is binding for the public sector and indicative for the private sector.

The regulatory role of the State, inherent in a democratic system, is to plan, establishing guidelines and bases for balanced national development planning, harmonizing such policies with national and regional development plans. In the role of inducer and encourager, the State support cooperatives and other forms of association, which has the merit, in theory, share the benefits of income generation. The cooperative is indicated as appropriate and preferential for the exploitation of mining activity, in which cooperatives must take into account the economic and social promotion of miners and at the same time protect the environment.

One reason for the creation and support of the State is its condition as a public service provider. Invariably, the State has to produce, because the private sector or have no economic interest, or because such services are met by the private sector, would have the universal character that, as a general rule, should be utilities.

It is important to note that even when individuals provide the activities, considered essential for the community, their prerogatives not abandon them. Pursuant to the art. 175, which did not change to date, the provision of utilities lies with the Government, either directly or by concession or permission. In this case, the choice of the dealer or grantee depends on bidding. Bidding is carrying out the principles inherent in the administration, and should provide companies the competition for the production of goods and services, which is consistent with the essence of a republican regime.

The law scales the administrative contract in which it exploits a concession or permission, from: 1. establishment of the system of concessionaires and licensees companies, special character of the contract and extension conditions of forfeiture, control and termination of the concession or permission; 2. users' rights; 3. tariff policy; 4. obligation of maintaining adequate service.

In short, in the case of administrative law regarding the regime of concessionaires and licensees and circumstances relevant to the term of the agreement and its extension, expiration, inspection and termination are set forth by law, meaning that the bidding and the contract award must comply with the law. Industrial or commercial public services, before being economic activities, are State-owned activities and submitted to the administrative legal system. The law indicates the rights of users, the obligation of maintaining proper service and tariff policy, which must have as a common denominator the financial balance of the contract. Notwithstanding the legal requirements, it also applies the Consumer Protection Code to the relations arising from the provision of utilities.

4 Concluding Remarks

The text presents a descriptive nature of legal, constitutional and economic history of Brazil than actually a reply to a research problem located in Brazil.

However, analyzing the long description provided in the previous pages in the context of the special issue of the Mackenzie Law Journal, we can see that Brazil has a political and constitutional developments in heels, that is, at various times of historical breaks which allow the adoption of new legislation more connected with the legal and political events that happen around the world, especially in the more advanced countries.

The Brazilian political backwardness and its history of constant disruptions that allow in the following times the rupture occurs in a constitutional evolution approaching Brazil from other more advanced countries.

However, in the economic field, Brazil did not get close to the core countries, keeping the backwardness and economic dependence, and this fact makes, in Brazil, other agendas beyond those common to Finland and Brazil, are inserted under the judgments in constitutional courts.

EVOLUÇÃO POLÍTICO-CONSTITUCIONAL E ECONÔMICA DO BRASIL

Resumo: Este artigo é fruto das discussões iniciadas durante o 26º Congresso Mundial de Filosofia do Direito e Filosofia Social (IVR), ocorrido em julho de 2013, na Universidade Federal de Belo Horizonte. Nesta oportunidade, foi levantada uma dúvida de pesquisa que consistia em saber por qual razão, Finlândia e Brasil, que possuem uma situação política e econômica totalmente diversas, bem como uma evolução histórica mais diferente ainda, tinham, na atualidade, debates constitucionais idênticos. Isto é, os assuntos que estão em pauta nas cortes superiores e na universidade de ambos os países, são os mesmos. Por qual razão isto ocorre? Para isso foi proposta a redação de uma série de artigos que explicassem o funcionamento e a evolução de estruturas-chave em cada país, como a política, a filosofia e a economia para que, com isso, houvesse uma comparação entre estas instituições para chegarmos a uma conclusão sobre a semelhança de pautas constitucionais.

Palavras-chave: história constitucional; constituição econômica; constitucionalismo.

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