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# THE BRAZILIAN CONSTITUTIONAL STATE AND ITS POLITICAL OPTIONS IN FUNDAMENTAL RIGHTS ISSUES: A CRITIQUE OF THE OBJECTIVES AND FOUNDATIONS OF THE SOCIAL DEMOCRATIC STATE

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**André Luiz Valim Vieira[1], Fernanda Pantaleão Dirscherl[2], Heloisa Barros de Azevedo Silva[3], Ana Clara Miranda[4] and Vanessa Desidério de Souza[5]**

## ABSTRACT

The present work aims to study the Brazilian Constitutional State from a perspective of the effectiveness of fundamental rights and the objectives and foundations of the legal-democratic regime. From a critical perspective, we propose an analysis of the fundamental objectives of the Brazilian social and democratic State of Law, taking as a reference the political options materialized in the Lex Magna. Through the historical and analytical methods we intend to carry out a bibliographic and dogmatic research from a critical and reflective constitutional thinking about the constitutional normative bases in view of their ability or possibility to specify and standardize reality. The Constitution as a fundamental law expresses the values and the political-social conditions to the extent that it seeks to confront the objectives and legal-normative foundations, showing that even these represent political options whose division of competences and attributions to the federative entities

[1] Professor at the Federal University of Rio Grande (FURG). Master in Law and PhD in Social Sciences from the São Paulo State University (UNESP). Post-doctorate in International Law from the São Paulo State University (UNESP). PhD student in Law at the University of Vale do Rio dos Sinos (UNISINOS). CAPES-PROEX scholarship holder.
E-mail: andreluizvalimvieira@gmail.com
ORCID: 0000-0003-1052-6594
LATTES: http://lattes.cnpq.br/1442423232451997
[2] Dr. student in Law: legal protection and social cohesión, at the University of León, Spain. Master and Bachelor of Laws from the Federal University of Uberlândia (UFU). Participant in the Study Group "International Law: Perspectives and Challenges", in the "Permanent Working Group: Migration, Refuge and Reception" and in the Study Group on "Critical International Law - DiCri". Reviewer. Teacher. Lawyer.
E-mail: fernandapantaleaod@gmail.com
ORCID: 0000-0001-6336-6315
LATTES: http://lattes.cnpq.br/4872394421837008
[3] Bachelor of Laws from the Catholic University of Pernambuco (UNICAP). Postgraduate degree in International Law from the Center for Law and Business (CEDIN).
E-mail: heloisaaazevedo@gmail.com
ORCID: 0009-0003-2584-3282
LATTES: http://lattes.cnpq.br/4715243985781554
[4] Bachelor of Laws from Centro Universitário UNINOVAFAPI. Postgraduate degree in International Law from the Center for Law and Business (CEDIN).
E-mail: aclaramiranda@gmail.com
ORCID: 0009-0000-16338-322X
LATTES: http://lattes.cnpq.br/1011990034632465
[5] Bachelor of Laws from the Federal University of Sergipe (UFSE).
E-mail: nessads98@gmail.com
ORCID: 0009-0005-0636-3165
LATTES: http://lattes.cnpq.br/3560994468939256

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and to the forms of power and to the representations of authority demonstrates an ineffectiveness for the full and effective realization of its desiderata.

**Keywords:** Brazilian Constitution. Democratic Rule of Law. Political Options. Fundamental Rights.

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## INTRODUCTION

The desire for a Social and Democratic State of Law stands out mainly for a society structured based on rights and the provision of means of defense in the face of illegitimacy and anti-democracy. Although a new Constitution does not inaugurate a new legal structure, the existing normative order and its set of laws begin – with a new political charter of fundamental rights – to surround a new structuring reference.

Thus, the rights provided for by the born constitutional text must be interpreted and realized to the maximum extent of seeking materially existing conditions for their realization; or, if conditioned by the lack of skillful instruments, new forms of enforcement must therefore be (re)created, in accordance with the formal precepts and the new list of constitutional rights.

Precisely because the constitutional text provides in its initial structure the fundamental bases on which every social and constitutional edifice is based through the declaration of values, principles and objectives said to be fundamental that we cannot leave aside the political options of the Constitution. These must be understood in accordance with the objectives and purposes of the Social Democratic State of Law. True axiological guidelines that should dictate all legal, theoretical and procedural activity in our system. But which, however, are often forgotten or discredited in the face of governmental or economic options.

To better understand the meaning of the objectives and purposes of the Constitution, we will need to understand the context of the political options of our Magna Carta in order to achieve a glimpse of the responsibility and permanent obligation of the Brazilian State, especially ours, which is called democratic and of law.

## STATE, CONSTITUTION AND POLITICAL OPTIONS

The origin of the State is an attribute of discussion that involves many paths and many considerations (Carvalho Junior, 2001, p. 35). To take the State as a general entity of similar identification in any region of the planet or in different historical periods is a mistake, so that a more adequate apprehension of the phenomenon lacks a historical-critical understanding of its origins, based on kinship ties and the structural factors that shape it (Maciver, 1945, p. 27), under penalty of concealment of its specificities from a given state superstructure.

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First, because even in current times the various forms of organization that enable the basis of the existence of this entity, the State, change in numerous variables. In addition, of course, to several relevant factors to consider regarding the historical moment, the region or location of the object, the culture and the forms of power that can be the most varied. For this reason, considerations can rest from the power instituted in an organized society centered on laws, to the formation of groups whose lives gravitate around criteria centered on religion, moral obligations or non-positive norms of conduct.

The word State as currently used in most studies is based on the denomination born in the writings of Machiavelli, in a work dated 1513, to refer to the State as an attribute of a city independent of the others, since "all States, all governments that have had and have authority over men are States and are either republics or principalities." (Machiavelli, 1996, p. 11). For our study, however, the most relevant issue is the characterization of the State as this entity endowed with powers over people and the collectivity of subjects. This conception as we conceive it today dates back to previous social organizations of remote times, such as societies: Egyptian, Greek, Roman, among others; forming respectively the ancient, Greek and Roman states (Dallari, 2003, p. 60).

For the ancient Greeks, the State would be a moral necessity. In this perspective, Aristotle considers it a creation of nature, even having priority over the individual, because when isolated he proves to be not self-sufficient; it would therefore be part of the set (Aristotle, 2004, p. 146). It is the organicist view of the formation of society and consequently of the State, because it considers life in collectivity to be indispensable.

Thomas Hobbes seeks to trace the theory of power to explain it in Leviathan. For others, such as Rousseau and Kant, the legal-sociological ties influenced the construction of a theory of a social contract or a moral pact, respectively. In a theological strand, Augustine of Hippo brings us the theory of the divine will, separating the divine State from the earthly State. Precisely for this reason, many authors have been concerned with the justification of the State. Approaching it in a historical-philosophical understanding or even in an approach to the theory of the State requires a lot of attention and care, because the determination of the evaluative-ideological criterion that justifies the origins and reasons for the emergence of this entity must maintain a pertinence, a teleological cohesion, with the arguments and academic objectives launched in the research.

Among the plurality of possibilities to do so, we can mention two theories that antagonize each other in a theoretical sense and dispute their material consequences, as a

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way of illustrating this debate. The first is the dominant theory in Law and studied in the propaedeutic and trainingal disciplines of the professional and the student, centered on the ideas proposed by Jellinek and Kelsen; where, in a positivist conception, it would consider the State as an entity endowed with legal personality, therefore subject to rights and capable of imposing duties, including by means of sanctions, and whose legal system comes from the State (Jellinek, 1954; Kelsen, 1992). The other theory to refer to its opposition concerns the communist ideology that differently understands the State as an institution strong enough to ensure individual wealth against the collectivization of gains and the valorization of private property as the highest objective of the human community from the new forms of wealth accumulation. In general, the invention of the State occurred, according to its adherents, for the figuration of an institution that perpetuated the division of society into classes and the creation of a right to exploit one over the other (Engels, 2000. p. 120; Kelsen, 1957).

It is not because our model of State is this current one, certain and determined in its characteristics that there is the exclusion of other political species or types of organization of society, of Law and of power. In fact, it is imperative to remember that, when we remember the State at the same time, we take a Western definition as a reference. More than that: a Western, capitalist, European concept exported to other nations as the only historically constructed model.

According to this majority understanding of the State, it is sought to be defined by the junction of three essential elements, also known as conditions of structural existence, which are: the people, the territory, and the organizational political power. However, we need to emphasize once again that such a model constitutes only one of the possible types of State and is the sovereign entity, which emerged in European historical processes (Miranda, 2009, p. 48) and exported to most modern nations centered on the figure of the internationally recognized subject of public law. This does not mean the exclusion of other forms or conceptions regarding the formation and function of the State, however, for what we intend to demonstrate in this work we will need to take it from the traditional and widely disseminated conceptions.

From this point of view, for Pontes de Miranda, the State is a normative order that necessarily supposes two legal orders: one is where the State bathes, enabling the name of State, consistent with the law of nations; while the other is located within the State, making up the internal law, that is, the legal order of human conduct (Pontes de Miranda,

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1937, p. 21), determining the role of the State as the main subject of the rights of nations. The first normative order would presume the Constitution. The second, the other legal norms that, together with the first, allow the existence and maintenance of this construct.

Michel Temer's teaching conceives the State as a social body, revealed through the Constitution. If every society presupposes organization, it is provided by the set of precepts contained in the constitutional text. Any society that was organized by the Constitution would therefore be a legal order, and there would therefore be identity between the State and the Constitution (Temer, 1984, p. 4).

From the sense of the *polis* or *the Greek politeia* , a Constitution serves to demonstrate the composition of a social organization centered on bases of equal recognition by all its members, consistent with the convictions or rules shared by the community and accepted by the majority. This constituted society has its laws, although strictly moral, established in a constitutive act that seeks to deal with the power relationship between those who will hold the management and command of the organization and those who will be the recipients of this specified power: the people or society.

When a power with the capacity to make a Constitution, that is, the constituent power, meets, from its deliberations a new Constitution of a State emerges, an entity to be ordered by this newly created fundamental norm. Thus, the emergence of a new political charter does not inaugurate a new State, but aims to establish a new model of exercising power, based on certain principles, precepts and values erected as criteria of predominance. If there is no birth of a new State, there would also be the specification of a new social and legal model. Between this close connection between the State and its Constitution, it can be deduced that it is practically impossible to separate State and Constitution (Bercovici, 2008, p. 28). We can identify them separately to the extent of the intended objective and the object of consideration, however, a theoretical understanding closer to the current social reality is only possible if we have as premises the related attributes between the State and the Constitution.

In this perspective, we could understand in an ontological sense to be considered as *telos* of every Constitution the creation of institutions to limit and control political power. From this point of view, each Constitution would represent a double ideological meaning: firstly, to free the recipients of power from the absolute social control of their rulers; and, in a second point, to point out a legitimate participation of people in the processes of power and command (Loewenstein, 1986, p. 151). Modernly, conceiving a State without a

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Constitution is almost impossible; The reverse is also perfectly unreasonable. Once again recalling Machiavelli's definition, governments and their powers of authority over men are states. The Constitution would thus be the form of fixation, limit and provision of this power and authority to be exercised by the public powers.

The Constitution, represented as the fundamental law of free peoples, is only found in states where, due to historical popular conquests, limitations were imposed on the actions of power, which were theoretically insurmountable (Freitas, 1923, p. 34). The Constitution, therefore, is recognized as a political document – the highest law of the State – where fundamental rights (individual, social and collective) are established, the means of guaranteeing these rights, the organization of the State and public functions, in addition to the division of competences, the establishment of limits to government action consisting of immunities and limitations. The Constitution, therefore, is the fundamental law of the State. Every Constitution corresponds, when in a politically organized human society (creating or specifying a certain model of State), to the need to order power in terms of stability, in order to establish the permissive bases for the action of the public powers.

Although there is no consensus on the concept of Constitution, due to the possibility of its conceptualization under various premises or contexts: normative, sociological, political; An almost unanimously accepted general idea is that of the end, that is, of the purpose of this hierarchically superior legal-state content, embodied in a political charter of rights. Under this direction it would be "[...] the Constitution the special document in whose text the higher norms of the legal order of the State are gathered" (Franco, 1976, p. 113). Unlike the conceptualization of the Constitution, the purpose of the Constitution is not divided into divergent or mutually exclusive points, but is only equated in successive phases of manifestation, according to the historical moment representative of a given period of validity.

At the end of the eighteenth century and the beginning of the nineteenth century, the written Constitutions of the States aimed to limit the action of monarchical power, in order to favor the full development of the emerging economic class from the specification of the limits of the State's powers. At the same time that individual public rights and the limitation of power were established, we have the manifestation of liberal constitutionalism. The State was characterized by an abstentionist superior entity, interfering with the least possible effect on the life of the social body and on the fabric of the legal relations of individuals.

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This first phase is the time when social and economic problems and the rights related to them were less relevant.

Returning to the question of the concept, bearing in mind each moment of its features, we would have as a Constitution, coined from a historical sense as being the "[...] set of rules (written or customary) and institutional structures that conform a given legal-political order in a given political and social system" (Canotilho, 1999, p. 50). The constitutional movement of today, called modern constitutionalism, in its essence, according to Gomes Canotilho, would be understood as the theory (or ideology) that raises the principle of limited government, indispensable to the guarantee of rights, in a structuring dimension of the political-social organization of a community. It would therefore represent a specific technique of limiting power for guarantee purposes (Canotilho, 1999, p. 53). In the view of the eminent Portuguese author, the constitutional movement that generates the Constitutions, that is, constitutionalism is not one, but rather representative of various constitutionalisms – such as the English, the French and the American – better referring to these as constitutional movements.

As a result of modern constitutionalism, we would have the characterization of the modern constitution, understood as "[...] systematic and rational ordering of the political community through a written document in which freedoms and rights are declared and limits of political power are fixed" (Canotilho, 199, p. 52). Within the modern concept of Constitution, we would also identify its fundamental dimensions, essential to every political document of today: the first of them would be the legal-political order materialized in a written document; the second would be embodied in the express declaration of a set of fundamental rights and respective forms of guarantee; and, finally, the specification of the organization of political power in such a way as to represent itself in a limited and moderate power.

The Constitution of the Federative Republic of Brazil, democratically discussed in the National Constituent Assembly and promulgated on October 5, 1988, is a historical milestone in Brazilian society. Firstly, because it establishes the population's desires for the return and definitive establishment of the democratic state, the possibility of free direct elections, the full exercise of freedom and other rights suppressed or restricted in the military dictatorial period in force since 1964. In a second analysis, it is the legal birthplace of a new constitutional charter, because it represents much more than a political document for the organization of the State and the provision of rights and guarantees, as it renews

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the hope of an entire nation for the rebuilding of its social structures shaken by the numerous crises: political, economic, representative, ideological; crossed in the decades and if not centuries past.

This seems to be the perspective of José Afonso da Silva, for whom the objective of the Constituent Assembly duly enshrined in the constitutional charter was to institute, not to create any mere Democratic State of Law, like those of the classical conceptions, an opposite to the *gendarme States*, despotic. On the contrary, through the indefinite article "one" we sought to contextualize the directive function for the creation of a democratic state with a new destination: those inscribed in the objectives of the first article, ensuring the supreme values not only of a new society, but of this remodified one, with new desires (Silva, 2007, p. 22).

Therefore, the Constitution represents in its text the choices made by the constituent legislator. These politically formalized options under a democratic authorization do not appear to be neutral, impartial or sterile; on the contrary, they are established from mental processes where the interest and will of the one who elaborates the text tend to manifest themselves in a more or less influential way. Concomitant with individual values are added the ideals of society in his time.

According to Pontes de Miranda, every system of law, every law, presupposes a social circle to which it belongs, so the law of one social circle belongs to that circle and not to another. Thus, being directly linked to the respective social circle, situated in space and time, the Law is concrete, current, alive, in the exact sense of still being Law. Therefore, the reality of Law is linked to social life, coexistence and social adaptations (Pontes de Miranda, 1937, p. 18/19). Dividing the spatial-temporal criterion, we find the existence of a point of support for the right of the respective social circle, it consists of the "essential principle of social structuring". This basis of social structuring in the legal field finds recognition in the State Constitution, the central juridical-normative axis under which the other positive constructions of social organization gravitate.

Based on previous historical-social experiences, the new Federal Constitution – the one promulgated on October 5, 1988 – was constructed in such a way as to bring in its core the most perfect identification with the purposes and expectations of society in general, as recognized in the Constitutional Preamble, which for the vast majority of national authors is legally irrelevant, constituting no more than a letter of intent, a document of propositions and intentions that motivated the elaboration of the constitutional

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norms and demonstrating the contents exposed throughout the articles and other elements of the promulgated text.

According to the majority current, the preamble serves only as an element of interpretation and integration of the various constitutional components. Not being a constitutional norm, it cannot be invoked against an express norm of the political document and cannot even be a comparative basis for legal constitutional purposes, such as a declaration of unconstitutionality or state omission. At most, it would consist of an ideological guideline, guiding the life of the Constitution. However, its role as an introducer of the fundamental text and enabler of the first nuances erected as essential in the new political charter is unquestionable, when it says:

> We, representatives of the Brazilian people, gathered in the National Constituent Assembly to establish a Democratic State, destined to ensure the exercise of social and individual rights, freedom, security, well-being, development, equality and justice as supreme values of a fraternal, pluralistic and unprejudiced society, founded on social harmony and committed, in the internal and international order, with the peaceful settlement of disputes, we promulgate, under the protection of God, the following CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL. (Brazil, 1988).

It is not, however, the objective of this work to carry out a detailed and in-depth analysis of the text of the Constitution, as is the object of the manuals and courses on this discipline of the field of public law. Nor is it consistent with our proposal to simply exclude from our consideration the main and essential issues of the epistemological context of the theme addressed.

For this, we need to understand the Constitution, its nature and choices so that we can better understand its rights and possibilities for its realization. For this reason, the purposes of the Constitution have always been directly linked to the nature of the current political regime and the historical conjuncture experienced (Franco, 1976, p. 116).

The Constitution of the Federative Republic of Brazil of 1988 is no different. For this reason we find the sets of positive norms, derived from the axiological elements, coined as commitments of the current Brazilian constitutional society. This is how our fundamental law was constructed. In this way, the system of legal norms is also built based on previously chosen criteria, based on desired objectives. The issue, perhaps more relevant, is that both the Constitution and Law itself as a science are covered with criteria of values, choices and ideologies.

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At this point lies some of the criticisms that consider Law as an ideological phenomenon and a manifestation of the intimate values of the people responsible for its making or possessors of the exercise of the current power; and, especially, of the current society. Since Law is irremediably a phenomenon where the ideological phenomenon is also manifested, it must be considered that through the forms of legal expression: the laws, these values are placed as conforming attributes reflecting on reality. The Constitution as a fundamental law is not exempt from this ideological manifestation to govern an entire system of rules and principles also based on legally chosen criteria, but not exempt from axiological contributions in its formation:

> Theorists are more or less unanimous in affirming that the idea of law, the methodology used for its knowledge, the various possibilities of its use and, above all, the objectives that are intended to be achieved with it, in the end, derive from evaluative or axiological operations, which always express desire, ambitions. The purposes, concerns and, finally, the interests of those who get involved with the legal phenomenon either to institute the law, or to study it, or to apply it or even to reproduce it through legal education. The idea of law, its methodology and purposes are even conditioned by the interests and, therefore, by the worldview of those who propose the task of dealing with the legal phenomenon. (Machado, 2000, p. 35).

In this same sense is the magisterium of Antonio Carlos Wolkmer when he states that no science is exempt from ideological influences, mainly because while in the orbit of Law all legal activity consists at the same time of an ideological practice:

> It seems that, critically, the normative neutrality of a 'pure' Science of Law no longer resists its ideologization. The Science of Law can no longer overcome its own contradiction, because as dogmatic Science it also becomes an ideology of concealment. This ideological character of legal science is linked to the assertion that it is committed to an illusory conception of the world that emerges from the concrete and antagonistic relations of the social. Law is the normative projection that instrumentalizes the ideological principles (certainty, security, completeness) and the forms of power control of a given social group. (Wolkmer, 2003, p. 54).

The science of Law invariably presents criteria of objectivity, the legal norm or the law can be presented with criteria of generality; however, allied to the principles and methodologies that are proper to it, there is no need to passively believe in the idea of Law as lacking in values, neutral or lacking in interests. Let's go back to the Constitution.

At first, the 1988 Charter seeks to establish the fundamental principles and then deal with fundamental rights and guarantees; This title includes individual rights, social rights, as well as nationality and political rights. The organization of the State and the organization of powers also received special attention from the constitutional legislator. In the seventh title

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we find the economic and financial order (articles 170 to 192) with the general principles of economic activity. In the following title, the social order (articles 193 to 232) is the object of appreciation and provision to deal with rights while in society.

The constitutional text in several points makes clear and clear the political option of our society for the capitalist economic form of the State, because it is entirely supported by the private ownership of the means of production based on the premise of free enterprise and private property as a fundamental right. It reflects, therefore, the dominant political-ideological thought, when the Constitution is shaped in the Constituent Assembly, insofar as it presents all the clear characteristics of the capitalist mode of production; allied then to the concern for social order and for means of guaranteeing and mitigating unequal forms of life in society, providing for means of equalization and security through education, health, social security and social assistance; for culture, science and the environment.

Ideology, as István Mészáros puts it, when discussing science as a legitimizer of ideological interests, are the values most dear to a person or a society as a manifestation of power. This is because, through the authority of science, the most effective value commitments are presented with a pretense of neutrality and incontestable objectivity. Thus, in the name of science, certain measures and even courses of action or development are adopted, whose paths tend to meet the conceptions of the one who produces it. Science could thus assume diversified functions and study countless objects, with a justification of neutrality, but which alone would not be enough to deviate from its intellectual constructions derived countless times from its ideological position. Furthermore, the myth of a methodological neutrality free of axiological characters would exempt us from questioning the directive values of the object analyzed. According to the author:

> Statements and procedures of this kind are, of course, extremely problematic, because they presume, in a circular way, that their enthusiasm for the virtues of 'methodological neutrality' would inevitably produce 'axiologically neutral' solutions to controversial issues, without initially examining the all-important question of the possibility of systematic neutrality on the level of methodology itself. The validity of the recommended procedure is considered to be indisputable and self-evident, due to its purely methodological character. [...] This is where we can see more clearly the implicit orientation in the whole procedure. Far from offering an adequate space for critical inquiry, the general adoption of the stipulated 'common' methodological framework only succeeds in transforming 'rational discourse' into the dubious practice of producing a methodology for methodology's sake [...]. (Mészáros, 2007, p. 302-303).

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If in the traditional conception a Constitution should express, together with the most cherished values of its society, the fundamental rights and the organizational structure of the State with the division of competence between the powers, in modern times the Brazilian fundamental law flirts in its construction with economic elements. In this way, the Federal Constitution of 1988 represents and denotes – by the construction of its articles and by a title separately dedicated to dealing with this matter – the ideological option of choosing a certain economic system, revealing clear identifications of an economic constitution. For Fábio Nusdeo, an economic system would be a particular and organic set of institutions that society employs to face or equate its economic challenges, in order to allow "[...] to any human group to manage its scarce resources with a minimum of proficiency, avoiding as much as possible their waste or misuse" (Nusdeo, 2001, p. 97). Furthermore, the choice of the constituent legislator to represent the desires of society for the formation of a capitalist legal society does not eliminate other additions compatible with said economic system, because...

> "[...] systems are distinguished from each other by the affirmation of certain productive forces and certain forms of material organization of production, the economic base (economic structure or infrastructure) within which certain social relations of production develop and from which certain political structures are erected and installed." (NUNES, 1994. p. 07).

For many authors, the fact of the constitutionalization of economic precepts and principles that guarantee the preservation of the capitalist system based on profit, free enterprise and private means of production reflect the Brazilian constitutional economic order, that is, the provision of norms of economic content inserted in the constitutional text (Bercovici, 2005). It should be noted that the choice to predict the economic-capitalist system to reflect the dominant ideology of Brazilian society does not exclude the existence of other evaluative characteristics in line with the current system. It should be noted that along with the economic assertion engraved in the constitutional charter, there is a relevant concern for the social issue.

Ideologies and values, when taken as attributes of the State and considered by it, are invariably transformed into political options. So much so that the Brazilian economic-capitalist order presupposes a social order of rights, in addition to an extensive list of *sui generis* rights, the fundamental rights.

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The political option of our State, formally established in the Constitution, is to maintain a society centered on the individual values of liberalism, with simultaneous and conditioning experience of social values, contained in the objectives and purposes of the State itself. These are identified with hybrid elements, but tending, in our conjuncture, to a greater approximation of the idea of social well-being in harmony with the individual, whose central motto is to provide the reduction of social inequalities through principles and norms of a political, legal and economic nature.

This assertion is true when we see the existence of article 170 of the Constitution of the Federative Republic of Brazil, with the provision of the establishment of the economic system on the fundamental bases of human labor, with the primary purpose of ensuring everyone a dignified existence from a life in accordance with the dictates of social justice. Thus, although the authority of the capitalist system resides as a factor, in theory, incontestable enshrined in the constitutional text, its existence is evident, conditioned to the same extent as free enterprise – as a right, principle and foundation – to the constant search for the reduction of social and regional inequalities. It can also be deduced that property is only guaranteed and protected as a fundamental right if it inexorably meets its social functions. Work and the legitimized means of survival are conditioned by the reigning social values, which cannot be departed from them.

Notwithstanding this identification of the economic value found in the constitutional text, the most relevant is the verification of the values pertaining to a social state of rights. This choice of the original constituent legislator for the construction of a document of an eminently social nature reflects one of the main bases of our political document. The understanding of the characterization of our current Constitution, erecting an economic order centered on the values of a social order, finds support and foundation in the political options made by the constituent legislator and based on the fundamental principles of existence of our socio-legal reality: "[...] the fundamental principles are essentially aimed at defining and characterizing the political collectivity and the State and at enumerating the main political-constitutional options" (Canotilho and Moreira, 1993, p. 66), a theme on which we will comment in the following topics.

By the sequence then established in this work, we will understand: (1) what is; and, (2) what is the purpose of a Social Democratic State of Law; because, although in the constitutional text the expression is found without the attribute "social", the choice of the

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constituent for the characterization of an organization of fundamental social rights assumed by the State is incontestable.

It is not, therefore, incompatible with the existence of economic provisions in the Constitution based on a capitalist society and a social order of rights assumed by the State and society. This is what our 1988 Constitution sought to bring: to demonstrate, formally and theoretically at least, the coexistence between such dissonant values.

Are the Social Democratic State of Law and the Democratic Socialist State the same thing? No, after all, the welfare state is structurally different, although in some points it comes close to a socialist state. It is unmistakable with each other; even though they can coexist in the same place and at the same time. In the same way, they can present points of convergence without at least mutually coexisting in the same society. Therefore, in the first place, it is entirely possible for a social state to exist in a capitalist society. However, in no way can the economic system prevail over the prevalence of capital and its values (free enterprise, private property, private means of production) in a socialist state.

Logically, the social state represents a superstructural transformation that the old liberal state went through, but it does not engender the formation of a proletarian state, the result of the movement carried out by the ideology of Marxist socialism (Bonavides, 2009, p. 184). The distinguished professor from Bahia states in his work the observation that the social state can make use of democratic regimes and with the provision of rights, as it can also very well exist in authoritarian, illegitimate states or even in antagonistic political regimes. That is why a State can present itself as social and not cease to be Nazi, fascist, democratic or even outside the capitalist order like Bolshevism. About this he tells us:

> To the extent, however, that the State tends to detach itself from bourgeois class control, and this weakens, it becomes, according to the aspirations of Lorenz von Stein, the State of all classes, the State a factor of conciliation, the State that mitigates social conflicts and the necessary pacifier between labor and capital. At this moment, when the contradiction between political equality and social inequality is being overcome, an important transformation occurs, under different political regimes, although still of a superstructural nature. This is where the contemporary notion of the social state is born. [...] The pertaining mistake in the distinction between the social state and the socialist state is also due to the fact that there is within the bourgeoisie and the proletariat a political orientation that intends to reach socialism by democratic means, previously creating the conditions conducive to this political transition. The welfare state would therefore be half-battled, imposing, at least on the part of the bourgeoisie, the recognition of rights to the proletariat. (Bonavides, 2009, p. 185).

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The social state seeks to preserve its adherence and form of existence to the capitalist order, even if it may later present a system of political organization that is not very close to and partially divergent from economic liberalism, but whose program implies fundamental or even revolutionary changes, promoting a break with economic postulates.

The State of economic liberalism was premised on the freedom of action of individuals, especially influenced by the rise of the bourgeoisie as a social-economic class in direct confrontation with the rights and privileges of the nobility and the clergy – representing political power – calling on the sovereign to recognize freedom and the separation of powers, with a view to their limitation and means of protection and defense of these rights; especially property and freedom. With these rights it was possible to exercise free trade and free enterprise, since the profits arising from the negotiation process were protected against the insane hunger of the State. The market as the sole regulator of economic activity is the clear representation of this model of State, abstentionist and mere observer of the activities of the bourgeoisie. Soon, the bourgeoisie guaranteed its demanded rights would no longer worry about the interference of the State in its work of accumulating capital.

The social State is the ideological overcoming in reality of the regime of liberalism, insufficient and incapable of continuing to fully and unrestrictedly govern the direction of life in society and imposing barriers to action by the State. While a few became rich, the vast majority of people were in the process of being subjected, bordering on exploitation in many cases. The large number of needy people, in a state of misery, unable to access most of the goods that capitalist liberalism disseminated, accessible to everyone and anyone, demonstrated a social layer on the margins of any dignified life. The formal equality preached by the liberal model proved incapable of providing equal access to the basic material conditions of existence. Groups of workers through their incomes were unable to achieve the same rights and goods as the liberal-bourgeois class previously emerged from previous revolutions.

The liberal State provides access to goods only to those with the financial capacity to acquire the consumer good offered in the market. The welfare state, on the other hand, must provide those who lack their own and independent means of acquisition with the goods said to be essential to life. While any right is easily exercisable by the individual capable of paying for the conditions for its exercise; in the social state, the right must also be made possible to those who are unable to obtain the means to exercise it. If education

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or health are rights that the bourgeois class benefited by liberalism can freely acquire through economic expenditure based on supply and demand; in the consideration of an organization whose objective is to reduce social inequalities and provide a more equitable distribution of historical human achievements, the State must grant those who are less economically favored the enjoyment of the same rights as those.

The social state, Professor Paulo Bonavides explains, is the one that is legally contained in democratic constitutionalism. The latter has the task of granting the masses of the people political emancipation through universal suffrage. For this reason, the German Constitution of Bonn is the one that historically best contains and represents the social state in its true nature through the three-dimensional theory of the state: the idea-state, the juridical state, and the social-state. It thus represents more clearly the social and political phenomenon of the popular masses in the struggle for the realization of their rights before the liberal order. Furthermore, conceiving a social State means understanding it as a protector, guarantor of the minimum conditions in line with the achievements made, even if they are still inaccessible to most people, to make them possible.

Even in view of the complexity of today's human, legal or economic relations, it is not possible to conceive of a totally abstentionist, liberal state, regulated exclusively by the laws of the market, by supply and demand and by free enterprise. It was imperative to structure a social State committed to participation in the processes of granting rights and goods essential to life in its present context. The social State was originally supposed to be an eminently "[...] interventionist, which always requires the militant presence of political power in the social spheres, where the individual's dependence has grown due to the impossibility in which he finds himself, in the face of factors beyond his will, to provide certain minimum existentials" (Bonavides, 2009, p. 200). The social state is then a necessity of our world and of our human conjuncture in current times, even in the twenty-first century and regardless of the economic system, political regime or even dominant or adopted ideological values.

The Social Democratic State of Law is, so to speak, the one structured in a political-democratic regime whose organization is based on the primacy of legality. Brazil brought, in its Constitution of the Federative Republic, clear and unsurpassed contours of a social State where, through the participation of the people in decision-making processes through democracy, rights and duties are exercised before the superiority of the law, with the Constitution being the hierarchically superior law and binding on the entire legal system.

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These laws and even the constitutional text, when interpreted and applied, must keep in mind the objectives, principles and institutional foundations of our social organization. The State is the provider of goods and conditions for the existence of everyone's life directly or indirectly, especially regarding the needs of those who social demand recognizes as needy, in need of a provision or state intervention and of the public authorities to provide them with minimum conditions of equality and contributing to the achievement of social justice.

We could say that the democratic and social state of law is the foundation of the government regime adopted by the Brazilian State (Nery Júnior and Nery, 2006, p. 117). The Democratic Rule of Law adopted as a model of representation in Brazil, therefore, is said to be social because it seeks through the legal system to meet the demands of social justice, especially through the instruments and means provided for in the Constitution itself.

## THE FOUNDATIONS OF THE FEDERATIVE REPUBLIC OF BRAZIL

The foundations of the Federative Republic of Brazil are the foundations on which our republican, federative and democratic Brazilian society is based as a Democratic State of Law. They are provided for in the five items of the first article of the Constitution. They are: sovereignty, citizenship, dignity of the human person, social values of work and free enterprise, and political pluralism.

If any of those foundations are absent or not guaranteed, our Federative Republic will not be characterized as a Democratic State of Law. Therefore, the foundations of this are foundations of the former. Consequently, the foundations of the democratic-legal State have their existence, reason for being and legitimacy based on those foundations, that is, on those primordial elements (Silva, 2007, p. 35). All five items with each of the foundations are equally essential for the existence of the Brazilian State. It would not be possible to understand the international reality without observing the sovereignty of our country; in the same way, the Democratic Rule of Law without understanding citizenship and the democratic processes of political participation provided for in political pluralism. Thus, in order to understand the right to food as a social right, we need to study some fundamentals provided for in the Constitution: the objectives and purposes of the Brazilian State.

For our study of the social right to food and the means of justiciability, however, we will not need to specify all the kinds of these grounds. This would cause an unnecessary lengthening of the work and would not contribute to the formation of the path by which we will follow the achievement of our goal. Before entering into the specific theme of the role of

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social rights, we need to make brief comments to elucidate the role of the Union, the States and the Municipalities as manifest personalities of the federation and their competence and responsibility to guarantee human dignity and the social values of work; These are extremely relevant foundations for the configuration of the right to food and its effective judicial protection.

Brazil is formed from a federated state centered on the principle of indissolubility. Our country as a republic as a form of government elects the federation as a form of state. The Federal Constitution of 1988, expresses in its first article the bases of political organization from the constitutional definition derived from the choice originated from the constituent power in a federation. The federation aims to achieve the effectiveness of the exercise of power at the internal level of the State (Rocha, 1997, p. 171). As a system of government, presidentialism serves to represent the Executive Branch, with the Legislative and Judiciary branches still remaining as powers of the Union, all independent and harmonious according to the theory of separation of powers or functions of the State.

The components of our federal state as typical institutions: States and Municipalities in addition to the Union, as a representative entity of this federative pact, find the constitutional provision for the distribution of their competences resulting from the political-administrative division in the second title of the fundamental law: dealing with the organization of the State. The federative entities: Union, States (plus the Federal District) and Municipalities find in Title III on the "Organization of the State" the division of competencies and attributions for the exercise and development of their functions. Each entity has its own autonomy, unlike sovereignty, a specific attribute of the Brazilian Federated State. The structuring of the Brazilian Federal State thus responds to a vertical scale of legal and political attributions of the Union, passing through the States and the Federal District and reaching the Municipalities.

A constitutional foundation of the 1988 Charter, thus recognized and declared as a fundamental principle contained in the third item of the first article, human dignity, more than a foundation of the existence of the organization on which the powers and society are based, is an attribute of maintenance of the essential element of life – this is the matrix of everything that exists and for what exists – referring to respect and dignity. It is not enough for the State to join efforts for the maintenance and protection of life, it lacks the attribute of dignity to conform the essential minimum to everything. It is thus dignity, the adjective that

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will complete the noun life, allowing it several other legal or social additions, but without which nothing could exist if reduced below the essential element of a dignified life.

The meaning we use today for human dignity is not born with the legal-normative positivity or its constitutional provision. It dates back to earlier historical periods. Undoubtedly, the issue of dignified human life consists of an identifiable creation from a distant trajectory, from ancient and medieval thought, in transit to modernity and revealing itself to be very strong and present in the present day. When referring to modernity, it is necessary to state that we use it in order to represent the social and legal moment of the present. We prefer the use of the generic term "modernity" without the intention of establishing theoretical differentiations as to what we see today to be the time of postmodernity, liquid modernity or even any other different adjective. In the understanding of Moraes Godoy, there is no post-modern law, but only post-modern jusphilosophical reflections, incapable of proposing new models or alternative theories to question the paradigms of modern law (Godoy, 2005; Anderson, 1999; Kumar, 2006; Bauman, 1998; Santos, 1999).

Human dignity, as thought by Gregório Peces-Barba Martínez, since the times of its emergence and subsequent recognition, human dignity, presents itself today as a reference of moral, legal and political thought; achieving in the scope of law the role of value or principle; founding and fundamental criterion of other values and legal principles (Peces-Barba Martínez, 2003, p. 66). Thus, since thinkers of remote eras taking man as the center of the world, a perfect being created in the likeness of the creator; to the conceptions of respect for every living being that inhabits the Earth on theological grounds; reaching the Socratic and Platonic philosophical discourses and thoughts.

On this path through the Middle Ages and culminating in the humanist Renaissance with the predominance of reason and the great scientific discoveries of the following centuries, man, as time advances, will present diversified connotations of integral elements, which must be respected for materializing the basis of his essence: a soul in the conformation of a human body, holder of rights and who must be able to exercise his life to the fullest.

In general terms, historically considering, however, the supreme dignity of the human person and his or her rights have been the result of processes of physical pain and moral suffering (Comparato, 2007, p. 38). For this reason, dignity does not emerge as a prior right born of the logical-rational inflections of the need for its protection. Unfortunately,

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in the past, it was only after several acts, actions and omissions were carried out that later analyzed, made it possible to conclude the dangerousness of such measures, unlimited and offensive against any human right, including life itself, that the need to protect life and dignity was discovered. Such events, if they did not cause the death of the subject, determined suffering and deprivation; whose execution distorted any condition of humanity of that being.

Currently, the essence, the heart of modern doctrines of fundamental rights – within the limits of the constitutional state or even human rights in discussions at the international level – are based on the concept of the dignity of the human person, where respecting this right and principle means protecting the dignity of every human being (Cassese, 2008, p. 54). For this reason, together with the systems of law and the provisions of freedoms and guarantees, there is an express connection to life as a right and dignity as an inseparable attribute of it, at the risk of returning to slavery, both that of the physical body and that of the conscience.

From the Kantian conception of dignity in "Metaphysics of Morals" and based on the understanding of the French Council of State, the distinguished Italian professor of international law. Antonio Cassese, conceives the limits of a dignified life from when none of us, as an obligation, should treat another human being as a means and only as such. This is because the other must constitute an end in itself. In this way, the being other than ourselves, all other humans cannot be used as an instrument for our end, as often occurs in acts of torture, bombings of civilians, terrorist instruments of murder or any other action that involves diminishing the humanity of the victim.

It was with the 1988 Constitution that the dignity of the human person came to be considered an elemental principle and foundation of the Republic and the Democratic State centered on law, legality and respect for fundamental rights that serve to complete the construction of the guarantor framework of respect and protection of life with dignity. The first reference to the theme of the dignity of the human person comes from the Brazilian Constitution of 1934, where article 115 prescribed the need for the economic order to be organized and seek to enable all Brazilians to have a dignified existence, based on the principles of justice and in view of the needs of national life (Martins, 2003, p. 47).

The Constitutional State (*Verfassungsstaat*) is the connecting element between the proposal for a Democratic State and a Rule of Law. In this model chosen by the constituent legislator, human dignity is characterized as an anthropological-cultural premise; it is,

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therefore, the developed and permanently developing biography of the relationship between citizens and the State (Nery Júnior, 2010, p. 36-37). Human dignity as a qualifying attribute of the right to life is, therefore, an inseparable element of a Constitutional and Democratic State of Law, erected from the perspective of protection and enforcement of fundamental rights and the provision of procedural guarantees for this purpose.

The dignity of the human person, therefore, is constitutionally presented as an axiological value that is the source of the legal system, having an order superior to all and other values; also revealing itself as an express constitutional principle (Andrade, 2007, p. 161). It also urges us to mention that the dignity of the human person is presented as a supra-principle according to which the legal operator must be guided by his social action, based on the constitutional text (Nunes, 2002, p. 50). This source value represents the foundation of the Brazilian Republic and the Democratic Rule of Law, an axiological-normative unit of the constitutional system, around which the other norms of the legal system, normative interpretations, the actions of individuals and especially of the State, its powers and representatives must gravitate. Nevertheless, it is the value of life that underlies the centrality of human dignity that determines the conformation of the legal system to the identification of everyday reality, to the confronting issues of this act of existing. In this sense:

> "It is shameful for a country like Brazil to claim that the dignity of the human person is one of the main foundations of society and the organization of the state, while the existence of many citizens who are alien to an existential minimum that can provide them with a reasonable life still prevails. Even more vexatious is the realization – not only from statistical data, but in reality and in the day-to-day life of our cities and streets, in the suburbs and peripheries, in rural and semi-arid areas, in large capitals as well as in the countryside – the existence of countless families without any food in the refrigerator or in the pantry and perhaps the worst, unable to achieve this with its exteriority in place. (Vieira, 2011, p. 122).

The Constitution is the primordial norm under which all other rules of the legal system must obey and pay reverence to their application. Since the principles are founding contents and guiding values of life in society, therefore, the dignity of the human person is an essential content of permanence. This means that every action of the State or its powers and every social relationship between subjects must be carried out in such a way as to give full effect to this precept and be exempt from any and all measures that may infringe this principle of life and freedom.

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The work presents a form of dedication of human activity aimed at the satisfaction of its ideals and has the nature of an attribute of personal satisfaction and complementation for the characterization of a dignified life. If work in times of slavery was a form of subsistence, of means of acquiring the goods necessary for survival, in a modern sense it is more than a condition of life. It is, without a doubt, a qualifying attribute of life, especially when in a social group.

It also consists of a moral value not only accepted, but also recognized and valued by the whole society in current times. Simplified, among numerous issues regarding its essentiality, work would have a double function: the first as a way of revealing and achieving the ideal of human dignity, contributing to social insertion and justice; and second, it would be an indispensable economic element (Borcony, 2003, p. 71). Work, if not understood as a fundamental right and cell of the total organism that constitutes life with dignity, would lack economic or monetary identifying claims.

In this sense, work represents not only the foundation of the Brazilian Republic, but also its recognition in the Constitution as the foundation of the economic order. It constitutes the basis of our capitalist state organization and has indiscernible ramifications with the social order. This order recognizes work as an honest instrument and axiologically referenced as the matrix of our collectivity. Through work, the conditions for survival are acquired. Through work, the person seeks to dedicate himself to the task of his pleasure, which will not only bring financial and material rewards but also satisfaction and happiness in the act of living.

The Brazilian constitutional social order is based on work. It is the basis of existence in society in the midst of rights and duties. It has an attribute that can be coined in a monetary tone, by the remuneration or payment received for its exercise, but it is not the only identifiable face. Work is superlative from the 1988 Charter as a fundamental issue of organized society. More than a right, therefore, work represents the primacy of the modern social order.

## CRITICAL ANALYSIS OF THE FUNDAMENTAL OBJECTIVES OF THE BRAZILIAN DEMOCRATIC STATE

The 1988 Constitution sought to give special attention to the fundamental objectives of the Federative Republic of Brazil, prescribing in the third article the purposes to be achieved. The four items constitute true *vectors of interpretation* , binding all the powers of

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the State and placing them as achievable goals from the exercise of activities linked to political power (Moraes, 1997, p. 76). The fundamental objectives of our organization are: to build a free, fair and solidary society; to ensure national development; eradicate poverty and marginalization and reduce social and regional inequalities; in addition, to promote the good of all, without prejudice of origin, race, sex, color, age and any other forms of discrimination.

The State, as an abstract entity, presupposes a democratic social connotation of active participation in the lives of individuals. For Antônio Carlos Wolkmer, a new conception of the State that proposes to construct it in a critical way should take into account that the scientific models of rationality (current paradigms) of knowledge are insufficient for an alternative conception of the State that truly instrumentalizes and guarantees a real participatory democracy, provoking mental changes and transformations in conventional relations with society. Thus, more than a conflict-appeasing entity or an administrator of the general interest, a new critical conception of the State would privilege a space for dialectical articulation with the whole society, that is, with the ability to express the true objective of the majorities. Therefore, a State transformed and redefined by the action of civil society and not only constructed externally from the models of foreign States embedded as a general theory (Wolkmer, 1990, p. 58).

An eminently abstentionist entity is no longer conceivable. In the same way, the action or interference of the State in all the affairs and relations of the life of the individual and of society or even at all times is non-subsistent. He must act on the most sensitive issues and efficiently, because the objectives are not ideal to be achieved in future events. Not even in far-reaching goals. The objectives must be seen as a fully attainable possibility, which must be made real in the present and its achievement must be maintained over time, under the same actions and interventions, if necessary, to maintain the real effect of these effects.

José Afonso da Silva's position is very lucid when he brilliantly identifies that the fundamental objectives are not government objectives, but State objectives (Silva, 2007, p. 46). These are commitments of the Brazilian State as a Federative Republic. Indistinctly, each government – especially influenced by partisan issues – has its own goals and objectives for a certain period of time, usually coinciding with the mandate of the elected political representative. However, these actions practiced by the public authorities aiming at the achievement of their objectives (electoral promises) must be in line with and with

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purposes similar to the issues posed in the fundamental objectives of the third article of the Constitution.

All objectives must be considered as important vectors for shaping the actions of the State through its representatives and through its powers. Each one has a special relationship with the other relevant content exposed in the principles and rules of rights of our legal system. We will try to mention those that we consider essential in the construction of a less unjust and unequal society and thus more in line with the assumptions of social rights and the social State.

As a fundamental objective of the Brazilian State we find the teleological specification of the construction of a free society, presupposing freedom as an individual right and as an attribute of the social body. The prediction of building a society of solidarity, fraternity and responsibility for their well-being, but also concerned with the well-being of others, presupposing from this prediction the religious and philosophical attributes of solidarity. In addition, of course, to the specification of the duty to achieve a just society. From this objective we can understand two essential issues: a society in which balance is provided by justice as power, through the judiciary in the fulfillment of its institutional function; and, permanent attention so that through the actions of the State it is possible to reduce the immense inequalities recognizable in our political community.

It should be emphasized that the responsibility of the State for the construction of a society with the adjectives of freedom, justice and solidarity is not consumed or extinguished only in the search for its realization from the actions of state agents and authorities or through the economic and social public policies implemented by each government. It also involves an active obligation to maintain the achievements and results already achieved that provide a greater approximation of reality to meet these objectives.

This construction is not made at a specific time or from easily executable acts. Rather, it demands uninterrupted observance so that, from each form of execution arising from the powers of the State, obedience, respect and participation for the achievement of these fundamental general objectives can be identified with the specific objectives of each particularity of political action.

The social order is analyzed here under a strictly legal cut based on the Federal Constitution of 1988. It is a warning to mention that our choice is one among many possible methodological reference options. As an example, we cite the philosophical conception attached to the theory of the social contract when it states that it is: "the social order,

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however, is a sacred right that serves as the basis for all the others. Such a right, however, does not originate from nature: it is therefore based on conventions" (Rousseau, 1999, p, 53-54).

Thus, provided for as a constitutional title immediately after the economic order, the social order is based on the primacy of work, that is, the prevalence, primacy, and priority of work. This, as the foundation of the Federative Republic of Brazil, as we have specified, has inestimable value as a form of survival, exercise of freedom, practice of autonomy of will and an essential condition for the complexion of human dignity, it is still built as an imperative social value. Work represents countless aggregations of other rights and has its incalculable value as a possibility to be used by anyone. Through work, personal and moral satisfaction find the point of intimate fulfillment, of the expectations and dreams of each one. Through work, human beings achieve the financial and economic conditions to suppress their material needs.

When people are prevented from working, for any reason, or when the fruits of work are negligible, insufficient to promote the minimum conditions for a dignified life, poverty presents itself as a harm to the social order, which presupposes social justice as its structuring objective. To achieve social justice is to understand that the fundamental objectives of our State must be focused on continuous efforts of maximum potential to: first, the eradication of poverty; and then and at the same time, the reduction of the inequalities reigning in the social sphere, due to the great abyss separating the richest Brazilians from the poorest. Now, all of these are subjects of rights, citizens, members of the social order and beneficiaries of the economic order and therefore all are responsible for their rights to contribute to the reduction of existing inequalities, especially those resulting from the lack of general fundamental rights.

What is the origin of inequality among men and is it authorized by natural law? To this question proposed by the Academy of Dijon, Rousseau (2002) conceived two forms of inequalities in the human species: the first the natural or physical established by nature consisting of differences in age, health, strength of the body, qualities of the spirit or soul; the second, moral or political inequality originates from a kind of convention and is established (at least authorized) by the consent of men (privileges of some to the detriment of others). The philosopher concludes that inequality, being almost null in the state of nature, draws its strength and its growth from the development of our faculties and the progress of the human spirit; and it becomes stable and legitimate through the

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establishment of property and laws. Therefore, moral inequality would be the result of the social convention among men, duly authorized by positive law, since it is practiced by the magistrate and by the Justice.

Among these inequalities conceived since Rousseau, the Brazilian State is especially obliged to reduce, under the canopy of the Constitution, article 3, III, as a fundamental objective, social and regional inequalities, as a reflection of the relevance of the impact caused to society by the strict connection between the economic order and the social order. But after all, what kind of inequality does the constituent refer to? In our understanding, the meaning used in this normative construction is to reduce the social inequalities taken in the context of the whole country and the regional disparities between the national geographic regions that attend to or attribute ineffectiveness to a fundamental individual or social right. They are all those inequalities that disqualify the attribute of a life with dignity, denying a person or several people their fundamental rights.

For this reason, the Brazilian Constituent Assembly inscribed in the title of the social order the specification, in successive chapters, of fundamental social rights to be provided by the State to meet the fundamental objectives of our political-social organization. They are: social security through social security, health, social assistance, education, culture, leisure and sports, social communication, the environment, among others.

The benefits identified as social rights to be offered by the State are public actions and policies that essentially aim to reduce inequalities. Through education, it seeks to enable access to study, knowledge and intellectual development, providing less inequality between the various entities of our social body. Through health provided by the State as a duty through the Unified Health System, it seeks to enable full and unrestricted access to the means of prevention, treatment and cure of diseases and other risks to life. The worker who is no longer in conditions of work is entitled to social security to be provided by the State, if certain requirements are met. That person or family group with the impossibility of exercising subsistence work activity and whose income is below a limit provided for in ordinary legislation has the right to receive a benefit through an economic benefit granted by the State for its maintenance.

## CONCLUSION

Article 193 of the Federal Constitution, as has already been stressed elsewhere, reads that "the social order is based on the primacy of work", an affirmation appealing to

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the senses whose rational deduction is reproduced without difficulty as a logical operation, after all, work is what builds, what transforms nature, materializing human volition, But the truth is that for the constitutional assertion to be effective, work cannot be just any work. The fullness of the dignity of the individual depends as much on work, as work must itself be dignified, on pain of retrogression, as has repeatedly occurred throughout history as a result of the non-critically reflected fulfillment of the will, which in a mechanistic, outdated Modern way, seeks to increase employment rates under the heavy social cost of reductions in labor benefits, making work more precarious, discouraging consumption and affecting the economy, which, although macroeconomically can grow, tends to see social inequality widened.

Thus, with regard to the constitutional obligation to meet the fundamental objectives of the Brazilian State, here dealing specifically with the social order, it seems to matter little the political hue of the president or the majority of the legislature, whose actions must then obey the constitutional framework, which, as developed in the course of this work, converge to the existence of an action minimally necessary to guarantee the dignity of Brazilian citizens, as the result of the conjugation of the constitutional norm with the theory of human rights.

Relativity is undeniably a characteristic of human rights, they need to be conjugated with each other, a fact that is exponentially true when considering the constant amplifying mutation of the list of these rights. However, even though the possibility of relativizing human rights is recognized, what is argued is that even their weighted limitation must contain an ethical/normative limit such that the economic order is necessarily, always, seen as a means whose main objective is a dignified existence according to the dictates of social justice, as an irreducible interpretation of the obvious, but constantly undermined, diction of article 170, of the Federal Constitution, to define the general principles of the national economic order.

Labor is then in an open field, at the crossroads of the economic order with the social order, determining that the combination of articles 170 to 193 of the Federal Constitution results in a command to value labor, because by integrating both the means and the objective of the political options of the Charter, the constituent seeks to demonstrate that labor in itself has a power of synthesis capable of materializing the jusphilosophical bridge that united two currents of thought then historically antagonistic,

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symbolized by a conflict between economic power and social rights, and which are part of the Constitution, both in norm and in spirit.

An enormous value burden is therefore placed on work, in such a way that the treatment given by the State to the protection and continuous valorization of work reflects directly on the evolution of socioeconomic dynamics. In other words, society tends to reflect what it thinks and does about work. This affectation relationship between interacting with and understanding an object, so that thought and action are constantly refracted from each other, finds a fair home in Giddens' essay, for whom "there is a fundamental sense in which reflexivity is a defining characteristic of all human action. All human beings routinely 'keep in touch' with the bases of what they do as an integral part of doing", (GIDDENS, 1991, p. 38).

From an enlightened framework, which proposes greater control over what and how the future is produced, it is perhaps less important to predict the contours of the future than to recognize that any philosophical/institutional design that it may assume depends on how work is carried out today. It does not matter what exactly the future will look like, if the world will possess a supranational institution; whether there will be a universal basic income; whether intelligent machines will take over routine and unwanted tasks; or if that future will be as dystopian as the futures of H. G. Wells and Huxley, it will be built with work.

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