

LAW AND ECONOMICS: DISCUSSIONS CONCERNING THE 2002 BRAZILIAN CIVIL CODE AND COVID-19***DIREITO E ECONOMIA: DISCUSSÕES ACERCA DO CÓDIGO CIVIL BRASILEIRO DE 2002 E O COVID-19***

Artigo recebido em 07/10/2020

Revisado em 24/10/2020

Aceito para publicação em 11/11/2020

Flávio Edmundo Novaes Hegenberg

Doutor (PhD, Business Studies, 2001) pela University of Leeds, England (UK). Mestre em “Administração e Política de Recursos Minerais” pela Universidade Estadual de Campinas (UNICAMP, 1994). Geólogo pela Universidade do Estado do Rio de Janeiro (UERJ, 1987). Professor de Economia Política do curso de Direito do Centro Universitário de Volta Redonda (UNIFOA) de 2007 até 2019. Atualmente é membro da “The Development Studies Association” (www.devstud.org.uk), com sede no Reino Unido. flavio.leeds@gmail.com(email). <https://orcid.org/0000-0002-7472-2685>.

Luiz César Martins Loques

Mestrando em Direito pelo Centro Universitário Salesiano de São Paulo (UNISAL). Pós-Graduando em Direito Empresarial e em Direito Notarial e Registral pela FUNIP. Bacharel em Direito pelo Centro Universitário de Volta Redonda (UNIFOA). Advogado. Professor dos cursos Jurismestre e Cepifar. lcloques@gmail.com(email).

ABSTRACT: This text is a discussion concerning economic and legal “powers” in Brazil. The context of pandemic caused by the COVID-19 generates a crisis that makes this discussion necessary. The overall context adopted here are the studies of *Law and Economics*. A brief discussion is made about the contemporary *Liberal State*. Some ideas concerning the 20th century *workings* of the state (if the state is ‘social’ or if it is ‘minimum’) are also analysed. Some reality is offered by providing numbers collected from *The World Bank*. Information regarding COVID-19 as a global cause for economic crises is given. Within the text, Article 421-A of the Brazilian Civil Code is discussed. Some concluding remarks shed some light regarding what could be done to improve economic conditions in Brazil.

KEY WORDS: Civil Code; Covid; Law; Economics.

RESUMO: No presente artigo apresenta-se uma discussão sobre os “poderes” econômicos e jurídicos. O contexto de pandemia causado pelo vírus COVID-19 gerou uma crise que merece um *tratamento* acadêmico. O texto, de forma geral, insere-se no contexto dos estudos de *Direito e Economia*. Uma breve discussão é feita acerca do chamado “Estado Liberal”. Algumas ideias sobre o *funcionamento* do século XX são aventadas (questões sobre estado

“social” e estado “mínimo”). Um pouco de realidade é oferecido por meio de números e dados obtidos a partir do Banco Mundial. Algumas informações são fornecidas sobre o COVID-19 e seus efeitos deletérios sobre a economia global. Ao longo do texto discutimos também o Artigo 421-A do Código Civil brasileiro. Algumas conclusões são oferecidas de modo a iluminar o caminho de modo a melhorar as condições econômicas do Brasil.

PALAVRAS-CHAVE: Código Civil; Covid; Direito; Economia.

SUMMARY: Introduction. 1 Overview regarding the relationship between *economic power* and *legal power*. 2 Historical perspectives on the liberal contemporary state. 3 20th century state: social & minimum. 4 A bit of reality: some numbers about Brazil and the wider world. 5 Covid-19 pandemic: another element amplifying the world capitalist crisis? 6 A brief reflection about the effectiveness of article 421-a. Concluding remarks. References.

INTRODUCTION

The law, the State and economic “power” (or economic activity) are intrinsically related. The development of capitalism, considering its many facets and influences, observing its evolution, is responsible for many transformations (*e.g.*): from *industrial capitalism* towards *financial capitalism*. Legal studies and legality itself are changeable and always searching to adapt to the times (and in many cases not successfully). As society transforms and as the economy promotes new ways of conducting businesses, the legal framework will change and adapt to these new times and conditions.

The so-called *Liberal State*, influenced by neo-colonialist ideas (and ideals), was built over strong economic structures and business relations, to provide support for large industrial ventures and the expansion of markets world-wide (including developed and underdeveloped nations). The *Contemporary State*, in its own way, is therefore subjected to economic forces, more specifically through the amalgamation of a great amount of capital, considered by some commentators (BRESSER-PEREIRA, 2018, s/p): as “Rent Financial Capitalism”. This type of capitalism is formed by monopolies (in certain key sectors of the Economy), which are nowadays mostly managed by financial markets institutions and agents (and no longer by industrialists).

The COVID-19 pandemic is a great force of (and for) change. The pandemic is superimposing (*i.e.*, adding problems) to (and over) the internal Brazilian economic crisis; and

over the global structures of capitalism. It is causing enormous transformations in capitalist and business relations in most countries around the world. The pandemic has added a new “layer” of complexity to the already complicated structure of economic relations, becoming a new source for insecurity to all economic agents. This results in *conservative business practices* (risk averse in nature; and interventionist in practice) being ever more a part of Brazilian government policy.

Article 421-A of the 2002 *Brazilian Civil Code* (“CC/2002”) brought to light a vision which may be seen as excessively liberal (even *neoliberal*) with respect to the interpretation of company contracts. Does this result in the *quasi* extinction of the presence of the judiciary as an element of re-equilibrium and also of contractual analyses? It is also assumed that this new code has brought about uncertainty in relation to the preservation of private investment (assuming conditions of *equal forces* among parties with respect to their economic capacities).

In a pandemic scenario, the Brazilian legal system, mainly considering entrepreneurial economic relations (*i.e.* businesses relationships between shareholders and stakeholders), due to increased legal vulnerabilities (considering contracts; changeable Brazilian legislation; or the *Brazilian ability* to have many different interpretations for the same law), it is not possible (as the environment is in crisis and uncertainty is the norm) to solve many conflicts. Conflicts which could be argued as not being the duty of the State (or the government and its legal institutions) to resolve.

This text explores issues of law (legislation) and economics (business, management, and entrepreneurial activity). The origin of such studies can be traced back to Adam Smith (1723-1790), with his *Lectures on Jurisprudence* (1762-1763), and also *The Wealth of Nations* (1776). Although Adam Smith may be considered one of the pioneers in what we regard today as “Law & Economics”, the main impulse for research and practice in this area came only during the 20th century. Two examples for this development are: (1) the creation by the University of Chicago of the *Journal of Law and Economics* (in 1958), and (2) Richard Posner’s book: *Economic Analysis of Law* (1973).

The terminology used by specialists within the area of *Law & Economics* may be reviewed in *The New Palgrave Dictionary of Law and Economics* (1989, 2nd ed., in 3 volumes, Edited by Peter Newman). The present article will discuss matters relating to Brazil; however, it is recommended that the reader put these matters alongside the wider view of *Latin American Studies*. To undertake such a task, it will be important to read texts about *Latin America* and also about *Development Studies*. Legal studies and research on law,

legislation and economics must be viewed broadly. One main academic book, able to provide this broad view was written by Robert Cooter and Thomas Ulen (2010).

1 OVERVIEW REGARDING THE RELATIONSHIP BETWEEN *ECONOMIC POWER AND LEGAL POWER*

It is possible to observe along the process of construction of the Brazilian legal structure, that there were attempts to mitigate this condition of *capitalist power* domination (more powerful than general public interest). For this purpose, some legal instruments with constitutional and *infra-constitutional* characteristics were used in order to protect matters of property and contract. Part of the legal doctrine was considered to be of a “social function”. This was established by means of the *social function of property* (Article 5, XXIII, of the 1988 Brazilian Federal Constitution / “CRFB/1988” / Social Function of Contracts).

In Brazil there are arguments against privatisation, questioning the legitimacy of private enterprise being responsible for a social function, mainly in areas where the State could be substituted in their activities. With respect to Brazilian legal doctrine, it is possible to argue that some legal instruments tried to control, to some extent, the *power of capitalism* in Brazil; but with limited success. Salomão Filho (2012, p. 3) argues that the *submission of law* [in relation to economic forces] is a result of not overcoming the *positivistic reasoning*. This implies that there are no proper legal discussions, resulting in a legal system that is “compensatory”, only trying to retribute, in reduced value, where the exploitation by the privileged over the less privileged is the norm. Not solving social inequities, but being merely compensatory. The *rational-positivistic legal system* maintains economic structures which are uneven in nature, and also monopolistic. There are no proper discussions on social interests, but only punctual manifestations of agents.

To interpret the economic phenomena, more specifically *capitalist power* and its consequences such as capital concentration and market concentration, it is necessary to overcome the Brazilian deficiencies regarding its legal framework (which is badly constructed and dubious). This implies, *e.g.*, tackling the existing asymmetrical relations in the same manner as symmetrical relations. This comes as a consequence of not having a formal (properly built) character for justice in Brazil. This is also the result of still having a legal framework that constructed its rationality from the 19th century: “[...] making sure that disadvantageous individuals, regarding the processes of exchange or civil life, can have access to some compensation system” (SALOMÃO FILHO, 2012, p. 4).

One important criticism regarding *capitalist power*, and the development of capitalism globally, is that of severe social and economic inequalities. These are said to be brought about by the capitalist system (PIKETTY, 2014). Practical observation usually arrives at conclusions that solving the *inequality problem* must be extremely difficult (or even impossible). A transformation of this kind would imply changing the “model” we have today; changing many structures of *capitalist rationale*.

Analysing the Brazilian case, it is not only a simple change of the legal model that must be studied (theoretically); we must also advance to a context where we can understand how institutions work to fulfil the public interest. This complex research of issues (and social interactions) has to be broadly tackled and give special attention to structures. Structures are the main drivers for change (be it for good; or for bad and deleterious effects). The focus must be social harmony.

Taking the scenario of 21st century capitalism, a capitalism which needs to be restructured (SEN, 2010; SKLAIR, 2002; NAISBITT, 2007; PIKETTY, 2014; SALOMÃO-FILHO, 2015), and considering the impacts promoted by the COVID-19 pandemic, it is probably time to rethink the *capitalist system*: its structures, *status*, relations (economic, social, legal, institutional, etc.). The next chapter will consider these issues and offer some ideas in order to pursue a scenario where more sustainable relations may arise for people, enterprises, and countries.

2 HISTORICAL PERSPECTIVES ON THE LIBERAL CONTEMPORARY STATE

The State, as originally conceived by “contractualists” (*i.e.* with a contractual approach in mind), was supposed to be a structure where the protection of its individuals (of its members, of the population) could be possible and could advance in terms of welfare. This was done for many reasons, one being to protect people from the *tyranny of power* (Hobbes, 1991). In a monarchic absolutist state, the origin of the “modern state” originated from medieval historical contingencies. Power was legitimated from what was considered “divine power”. This context had one essential characteristic (SARTORELLI, 2018, s/p): “the arbitrariness of the acts of the Monarch”. Historically, the context being dealt here also considers the transition from “High” to “Low” *Middle Age*, a period of time that would promote the rise of a new social class, that later would be the protagonist (taking the powers from nobility and clergy): *the capitalist bourgeoisie* (COMPARATO, 2011, s/p).

At the same time that we perceive great evolution in which the State *behaved* (acted upon people), there was also radical modifications regarding the way the Economy was developing. Greater value was given to commercial and mercantile exchanges, while land was decreasing in economic status terms. The importance of political and legal institutions is relevant here. Many economists claim that economic success results from solid property rights, low taxation, and a minimum of government intervention. An arbitrary government is negative [deleterious] to growth because of its high taxes, excessive regulations, corruption, and exploitation of rent-types privileges (*rent-seeking*) – and all this reduces the incentive to produce. When this is applied to History, the arguments are that absolutist monarchies, such as Spain and France, or empires (such as the Chinese, the Romans, or Aztecs), suffocated [stifled] economic activity, prohibiting international commerce and threatening property and even the life of people. These positions, evidently, reproduce those of Adam Smith and other liberal thinkers of the 18th century. The development of the Economy came as a result of the substitution of absolutist power in favour of representative government (ALLEN, 2017, p. 25).

The transition from absolutist power to representative government represented a victory not only to economics (and economists), but also to legality (and lawyers). The development legal studies, of the rule of law, of contractual relationships, was fundamental for the development of capitalism. The law and all legal activities ceased to be merely an absolutist manner of “validating” (enforcing; by the use of force and absolute-corrupt power), and became part of a *representative government*, accountable to the people (to a wider population of voters and economic agents). It is a transition from an *Absolute Power* (centred by the State; a primitive and medieval State), to a model of *Shared Power*: where economic activity would link itself ever more strongly with the rule of law in order to develop the capitalist system we have today. Money and Law working together; in favour of the construction of capitalism.

During the 17th and 18th centuries, new political and legal structures came to existence in Europe. Many European States were able to create legislation which would better determine the duties of the State and its regulatory capacities; which in turn would open spaces for market monopolies (FORGIONI, 1998). These changes also reached the structures of political power and, with the advent of liberal revolutions, such as the French Revolution and the American Revolution, would bring about a new state of affairs for the development of capitalism (SGARBOSSA & IENSUE, 2018).

It can be said that one of the most important events for society at large, which brought about a new structure for economic relations, was made through legal instruments, promoted by legal institutions. Therefore, it is possible to give greater value and security to private activities via a situation where there is greater freedom for the development of market activities (with more competition and less intervention from the State). This happened clearly and ever more solidly during the 18th century, mainly due to the transformations brought about by the American Revolution, the French Revolution, and the Industrial Revolution. Using a Constitutional Law terminology referred as “negative liberties”, it can be seen that the State will cease to intervene in the private lives of individuals (including their economic relations). This non-intervention by the State was conquered because *legal tools* were put in place of “power” (authoritarian power). Legality and the rule of law helped, therefore, to promote the development of capitalism.

The *Liberal State* develops a situation where there are “safety mechanisms” agreed by law and by the legal system. These are supposed to be stable, even if a discussion can be made in relation to this stability (and its interests). Contrary to this, in the “Police State”, a phase of the *Monarchic Absolutist State* (SGARBOSSA & IENSUE, 2018): *the concentration of power of the Monarch would take to a mode of working of the State to interfere in other aspects of life such as religion, the economy, and economic relations would be driven by the Monarch* [in Portuguese: “Dirigismo Econômico”; a “driven Economy”].

Contrary to what happens in the case of the *Liberal State*, the mercantile operations were always destined to what would favour the State; and the market agents of the time were only at a second level (in the scale of priorities). The Liberal State, strongly influenced by the Industrial Revolution, had a social structure where economic agents and wide elements of society were powerful and extremely relevant for public policy and public development. This was the case because, among other changes, they were effective in abandoning the old ways where family descendancy and nobility titles were important (to work and to direct the Economy and economic ventures and activities).

The priority for having Individual Rights recognised, would no longer come from the State (as a State concession). This priority would now derive from the social evolution that made freedom possible in many sectors of life, including economic freedom. Merchants would pay taxes to the State in order to be able to exercise their economic freedom and the possibility to make their own decisions with respect to capitalist ventures and businesses. This was a starting point for a period of time with less State (and also less government)

intervention. This period of greater freedom brought many innovations and a new impetus for economic development.

During the *Middle Ages* the State was of a mercantilist type and was directed by Kings and their Courts. The interests of the King and of the Kingdom had the bourgeoisie as their interlocutor. The period of Revolutions (Industrial, American and also French), from the 18th century onwards, created a State that was less interventionist, a State that would allow for greater economic freedom of its “subjects” (its individuals and citizens). Before the more open model of capitalism was constructed during the 20th and 21st centuries, there was an intermediate stage that was *neo-colonial* and *imperialist*.

The *Industrial Revolution* of the 18th and 19th centuries, starting with Great Britain (England, Scotland and Wales), and then developing even more when other countries joined the process (Belgium, France, Germany, United States of America), made the capitalist system expand enormously. This happened not due to ideology, but merely as a consequence of market expansion and consumer needs being met in a more open society and a global manner. The process also helped to lower production costs internationally and bring about a market that could benefit a greater number of people world-wide (with access to new products and new services at a greater scale, as never seen before).

The “Colonial Capitalism” (allowing here a *complicated* terminology) of the 15th century was mainly State-led (led by a Kingdom and the “Court Bourgeoisie” of a specific State). This was the case from the 15th century up until the 18th century, when things changed due to the Revolutions (Industrial; American; French). From the middle of the 18th century and for most of the 19th century (practically in its entirety), there was a form of “Expansionist Capitalism”. This expansionism incorporated many countries into the capitalist system. As a result, several countries promoted industrial developments, and capitalism itself became more and more sophisticated.

Capitalism is a “power”, not only regarding its *market power*, but also a *social and political power*. It is not possible to separate the idea of power from the *economic spectrum* (and its allied *legal spectrum*). This was the great characteristic of the Imperialist Liberal State (a joint-venture between Law and Economics). The conditions were not merely of State domination (one country over another), but it was also a domination of state power represented by the symbiosis between Economics (businesses and markets) and Law (legal structures and institutions). When people say that economic power is dominating the world, they should never forget that this means equally being dominated by the *legal system* and the

legal framework constructed in order to allow the development of capitalism. Failing to understand this is immature in terms of Social Science knowledge.

Neo-colonialism was developed, along the 19th century, through some of the major European States (mainly England, France and Spain). The 20th century brought about changes that were substantial. These changes came (mainly) as a result of the First and Second World Wars (HOBSBAWM, 1998). After the 2nd World War (the post-1945 period), many international organisations were proposed and created; the main one being the *United Nations Organization* – UNO (ROBERTS & KINGSBURY, 1993). Twentieth century capitalism showed a transition from an *Industrial Capitalism* to a *Financial and Services Capitalism* (mainly after the Great Depression that came as a result of the 1929 New York *crash*). Industry was no longer the only focus of economic attentions. New structures of accumulation came to light: insurance, banking, investment, stock-exchange services, legal advice and consultancy, informational-statistical, accounting, travel and tourism, medical services, safety & security, environmental consultancies, TV-radio-media and publishing, Information & Communications Technologies (ICT), teaching & research services (schools, universities, etc.), and many other services (of a diverse range of sectors) ... all with strong elements of *Law & Economics*.

It must be absolutely clear by now that there is no way of developing the so called “capitalist system” only with “economic power” or only with “legal power”; you need both together, in symbiosis (Law and Economics). The development of capitalism, if it is to give credit or if it is just to show its failings, is the responsibility of both: economic power (business development) and legal power (the development of legislation and its institutions). In the conflict (*game play*) which is typical of superficial analysis: economists are as bad as lawyers and the blame or credit (for capitalist development) should be directed at both!

3 20TH CENTURY STATE: SOCIAL & MINIMUM

The so-called *Social State* need be considered here in some detail. Since the end of the 19th century (beginning with the “Germanic people”), and thereafter with the United Kingdom (UK), France, the United States of America (USA), Sweden – and thereafter, mainly after the 1929 financial crisis – the main issue for society was to bring about a style of governance that would be able to promote better educational, health and housing quality for the population as a whole. This is what we refer today as the *Welfare State*.

Although we may criticise capitalism (and its *economic* and *legal* frameworks) for many problems – the main problems are probably those of inequality of income and poverty. Two things need to be considered: (1) that the capitalist system brought more wealth to humanity, and (2) the capitalist system is able to evolve and to invent new ways in which wealth can be redistributed (via legal and economic innovations and institutions). If “capitalist power” is the same as “legal power” plus (added to) “economic power”, then, as it was always the case since its inception, transformations may be conducted through legislation and business promotion. This will bring about new models of capitalism where the welfare of the masses can be satisfied (and rationally implemented).

We must not forget that *state intervention* was never able to solve social problems and inequalities in general. There is not only one example available in favour of state intervention (when analysed in the long-run). When state intervention was put into practice it was solely to distribute poverty (and never to distribute richness). The dream of a “happy society” with strong government intervention is a dream which is typical of Latin American and African countries. Resulting in: poverty, corruption, inequality, poor public services, underdevelopment (KAY, 1989; BULMER-THOMAS, 1994; BETHEL, 2002; ARZE & RODRÍGUEZ, 2013; HOBBSAWM, 2017).

Although market forces will never be enough to bring about a *happy society*, the development of capitalism was the essential force in order to take millions (even billions) of humans out of poverty and into work (and given some degree of welfare at least better than previous “systems”). We must press for more legal and economic innovations and institutions to be able to make the necessary corrections, so that more people may have better access to a *welfare society*. There is no need for excessive government intervention. What is needed is state legislation. The problem here is that many individuals, and even many “social scientists” (including many lawyers and economists), are not able to distinguish between government and state. In order to avoid confusion (and to understand the differences between state and government) it is useful to read the book on “Reinventing State Capitalism: Leviathan in Business, Brazil and Beyond” (MUSACCHIO & LAZZARINI, 2014).

The idea (and the proper implementation) of *Welfare State* is European. In Brazil there is a poor understanding of this idea, where is associated with the United States of America (USA). The USA is a capitalist society without a Welfare State system. They talk about it. They promote discussions about it. They even try to implement policy and legislation which could bring about a more equitable society, however there is no such thing as a Welfare State in the USA. The Welfare State was put in place in many European countries (mainly after

1945; but in the German-speaking countries, the Swedish and British cases, you may trace its inception at the end of the 19th century). The USA had a short-period of experimentation with the Welfare State during the 1930s; as a result of the *1929 Crash*. It lasted for around 10 years. Then “business as usual” came back to the USA (KENWOOD & LOUGHEED, 1992; BACKHOUSE, 2007; HOWARD, 2010; JESSUA, 2011; GAZIER, 2016; FURTADO, 2017).

The notion, the idea, and the development of *Liberal State*, *Welfare State* and a *Social State* is associated to the evolution of capitalism. We now have to ensure that the reader will not associate this Liberal-Social State (pursuing Welfare State conditions) with socialism and the socialist state. The *Social State* is the direct result of the evolution of the Liberal State and of the capitalist system (a market economy). The *Socialist State* is a totally different “entity”! The socialist case is one where market economy is not in place; what you have is a state-controlled economy. Even knowing that there is no “perfect model”, the Social (Liberal / Capitalist) model was able to promote and distribute greater wealth than the Socialist (Planned-State) model.

Some “mainstream” texts produced in Brazil mainly by lawyers (or researchers on legal matters) promote the erroneous view that a “Minimum State” (“*Estado mínimo*”) represents an ideology that is part of a 20th century development of “financial capitalism more geared towards speculation” (as in CARCANHOLO, 2009, pages 49-50). This is a misinterpretation, a misreading and a distortion of what really is (or was) the “Minimum State” (here it is important to read THATCHER, 2005; and FRIEDMAN & FRIEDMAN, 2015). In the so-called Third World (or “periphery”), of which Brazil is part, some commentators argue that *industrial capitalism was abandoned* (SALOMÃO-FILHO, 2020). This is an exaggeration; even more in peripheral countries which had late industrial development; which is the case of Brazil (that only started its heavy industry with Getúlio Vargas, and after 1940).

The “minimum state”, as viewed by Sgarbossa & Insue (2018), is considered as a modern version of the Liberal State. These Brazilian authors also advance that there is an *inverse logic*: the *Liberal State* came to existence as a result of the need to dissociate the State from the commercial activities of the bourgeoisie; and the *Minimum State* was the result of the negation (denial) of the social practices of the State (which were seen as performing activities that were the duty of the private sector). The *Minimum State* structure would, therefore, deny public policies that were supposed to be, typically, the obligation of the State. This interpretation is at odds with texts written in English. It looks like there is a “parallel world” created by Brazilian commentators and “academics”!

The poor result of this distorted view of matters is that the argument “in favour of reducing public spending” brings about more social problems, more inequality and more delinquency (and this greatly affects the most vulnerable and the poorest). Social rights are equally disregarded. Our interpretation for this fallacy could indicate that the judiciary and the legal community is working towards a system that redirects resources: from the poor; and directed to the privileged government-sector and state-sector employees and civil servants. This can be seen when we notice that a huge percentage of the Brazilian population is marginalised (unemployed, badly paid, and working informally for example), while there is never a lack of resources for government and state employees.

The excuse to produce a *Minimum State* in Brazil is always at odds with the privileges of government employees and civil servants; who are always better paid and have “special privileges” (including better pensions and retirement funds). This could be a strategy to deviate and to misappropriate resources (mainly from taxation); always in favour of these more privileged classes protected by government policy and also by State structures and institutions. Government and State personnel consumes more resources than Education or Health. The priorities in Brazil are not to take care of its people (the population at large), but solely to promote good and stable conditions for the elite controlling government and state structures (Federal-national; State-regional; Municipal-local; autocracies; etc.).

4 A BIT OF REALITY: SOME NUMBERS ABOUT BRAZIL AND THE WIDER WORLD

Table 1 indicates that in order to open an enterprise (to have a company registered and operating) in the Democratic Republic of Congo, ranked 175 in terms of “Doing Business” for the year 2008, you will need 13 procedures, 155 days and a cost equivalent to 5 times the annual *per capita* GDP of the Dem. Rep. of Congo. Brazil is not that different from the Dem. Rep. of Congo. In Brazil (ranked 122) it takes 18 procedures, and 152 days to set up a business. Similar amount of days ... and Brazil is even worse in terms of procedures (indicating that the legal system in Brazil is really very bad indeed).

The year 2008 was taken as an example in order to show how Brazil was (in term of its numbers and statistics) during a period of time when Brazil was considered to be “good” and “doing fine”! The data of **Table 1**, collected and organised by the World Bank, precedes the 2008 world crisis. The data used by the World Bank was that of 2005, 2006 and 2007 (adjusted for comparisons; to be statistically valid).

Table 1 shows some selected countries and data related to: (a) their *world ranking* regarding doing business (internationally), (b) the number of procedures needed in order to register businesses, (c) the number of days it takes to have a company registered and working, and (d) the cost for all this to work. Notice that, in the specific case of Brazil, it is not the cost (the economic conditions) which is hindering businesses and entrepreneurs; what hinders Brazilian businesses are the procedures (a total of 18). In simple terms: it is the legal structure and the Brazilian legislation the main one responsible for Brazilian underdevelopment. Lawyers in Brazil continue to promote the fallacy that the problem of the country is its Economy or “capitalism”! ... It is certainly not! The problem is legislation and the backward and awkward legal structure of Brazil!

The reason for **Table 1** is to provide evidence for the huge hurdle that legislation (legal requirements) represents to Brazilian businesses and to the Brazilian economy. There is an incorrect perception that the greatest problem in Brazil is one of the Economy; but the reality is that the greatest problem for Brazil is one of law (legislation and legal requirements). It is the legal structure of Brazil that is making the country remain as an underdeveloped country. The main fact that determines Brazil as part of a collection of backward Third World countries is its legislation, its legal structure, its Constitution, and its bad lawyers (supposing here that there are good lawyers in Brazil).

Amongst the chosen countries shown in **Table 1** we have the USA (as a “reference country”; a developed democratic country), and China (the second most relevant economy of the 21st century). The other countries were selected among *Less Developed Countries* (LDCs). The reason for this being that our main interest here is to discuss the case of Brazil. For a discussion of this type, it is pointless quoting European developed countries (France, Germany, United Kingdom, etc.), or Asian developed countries (such as Japan or South Korea), or English-speaking developed countries (Australia and Canada). This is the case as Brazil is not part of this “league of development”. Brazil barely compares to many underdeveloped nations. In fact, of the 22 countries selected in **Table 1**, Brazil managed only to be marginally better than Indonesia, Egypt, Bolivia and the Democratic Republic of Congo. Brazil was behind many countries (including: Malaysia, South Africa, Mexico, Turkey, Peru, Colombia, Azerbaijan, etc.).

5 COVID-19 PANDEMIC: ANOTHER ELEMENT AMPLIFYING THE WORLD CAPITALIST CRISIS?

Even writing in September 2020, it is clear that the COVID-19 pandemic is a factor that is hugely relevant to analyse the world economy – as its impacts are being felt in many countries: affecting businesses, employment, profitability, tourism, air travel, sales and commerce, trade, industry and global supply chains, etc. These changes are affecting the labour market in ways yet difficult to predict; but which will certainly bring significant changes for the younger generations that will inherit the capitalist system and will have to find new ways to manage it.

The changing world economy will need to find a “new equilibrium” (a “new normal”) for activities such as: financial services, industry, corporate management, environmental management, investment in education, investment in research (science, technology and innovation), ... and many other sectors and issues. A “new order” (a “new normal”) will have to be agreed amongst leading nations; even knowing that today this new normal looks very “messy” and unlikely! Apart from the *European Union* (EU) nations (which have their conflicts and unsolved problems as well), there is no real democratic global leadership today. The *United Nations Organization* (UN / UNO) is suffering to advance its policies for a more united world.

In the specific case of Brazil, it may be argued that the *Brazilian Bank for Development* (the BNDES / “Banco Nacional do Desenvolvimento Econômico e Social”), created to work as a source of financial capital, failed to develop Brazil. The BNDES was created, in theory, to promote development; but the reality we see in Brazil is of raw underdevelopment. It may be a harsh analysis, but it seems that since the creation of BNDES in 1952, the country deteriorated; and never really developed (LAZZARINI, 2011, p. 49-52; MUSACCHIO & LAZZARINI, 2014-2015, p.271-299 [of the Brazilian translation]; ZANINI, 2017, p. 11).

Every country will have its specific history and characteristics. However, all countries have to be viewed comparatively within an international arena. Different countries will have different reactions to crises (local or global). For example: Brazil apparently managed to partially “escape” the global 2008 global crisis; but its toll (its heavy impact) came as an internal political and economic crisis that started in 2013 (being amplified in 2016 and 2018), and still continues (with no clear signs of recovery).

The COVID-19 pandemic is “helping” to make things worse (worsening many economic, social and legal *indicators*). The “Brazilian Institute for Geography and Statistics” (the “IBGE” / *Instituto Brasileiro de Geografia e Estatística*) publishes data about almost every aspect of Brazilian society; and the numbers are far from inspiring. The only “clear”

strategy in Brazil nowadays is *not to have a strategy* (no one knows where Brazil is heading to)! It is a story of *smoke and mirrors*, of fantasy and carnival, of blaming others (the pandemic; China; the UNO; capitalism; the “minimum state”).

There is no courage or decency to take account for enormous mistakes that were made by Brazilian governments (Federal, state, municipal). No one is to blame for lack of strategy, for lack of continuity (in those very few cases when something was done correctly), for corruption, mismanagement and incompetence. There is no one to blame for bad sanitation, low levels of literacy, high levels of criminality and murder, plus limited investment in health services, etc. In underdeveloped countries such as Brazil, it is always easier to blame others, and it is always convenient to blame something difficult to understand: such as “capitalism” or the “minimum state”. The harder it is to find, the better is the enemy (taking the approach of Brazilian politicians, many lawyers, and some economists from this “sunny nation”).

Another “method” used by Brazilian policy-makers (mainly politicians, lawyers, economists, lobbyists linked to local and national *pressure-groups*, and members of innumerable labour unions), is to talk about the “Brazilian vulnerability”, about “unequal or uneven relations”, “asymmetries”, “external pressures” (external meaning *international*), “externalities”, “lack of equity”, “global forces”, “power from Brasília” (from the Brazilian Federal sphere), “disparity of powers”, “lack of information”, “secrecy”, “contractual terms and agreement”, etc. No one is willing to do their job properly ... it is just a “blame game”. The more “esoteric” the argumentation, the better (not for the bulk of the population, of course).

6 A BRIEF REFLECTION ABOUT THE EFFECTIVENESS OF ARTICLE 421-A

The Law 13.874 / 2019 was conceived with the objective of establishing a *declaration of economic freedom*; containing rules with the “clear objective” to reduce the presence of Brazilian State in the relationship between economic agents subjected to the Brazilian Commercial Law.

Commercial Law is constructed to protect economic relations between parts (people and enterprises), to help the development of business transactions with some degree of certainty and safety (even to protect businesses from government itself). This is why contracts are made and they must have an acceptable degree of independence from government and government interventions. Commercial Law, even if it is agreed by state institutions, comes into existence to protect individuals and companies from the state and the government if

necessary. The greatest judicial insecurity is to not understand that government may well be the greatest enemy of economic development. In the case of Brazil (and many other Latin American countries and other LDCs), the greatest abuses are frequently committed by Brazilian state structures, by governments (municipal-local, state-regional, and federal-national), and also by several institutions that in many cases exist for no good reason (bringing more harm than good to enterprise development).

Article 421-A, *caput* [first part], of the 2002 *Brazilian Civil Code* (“CC/2002”), in its writing determines that enterprise (company) contracts will be believed to be *equitable* [promote parity] and symmetric. The Brazilian “legal doctrine” already recognised that Civil Contracts and Commercial Contracts were dealt with in a same *system*; since the time when they had been established in different legislative documents (COMPARATO, 1981, p. 251). All these observations help us to see how complicated, confusing and conflicting these rules and legal documents are. By creating double-meanings, by originating exceptions and the possibility of different interpretations, Brazilian law shows its low capacity to promote long-term business relations without a huge participation of a legal team able to “navigate” the legislation.

Contracts should simply materialise agreement between parts (and it does not matter if one part is “stronger” or more “powerful” than the other). This is the basis of any contract: to reach agreement and to have a document certifying this agreement. Relationships are hardly equitable (individuals are different; companies are different). What matters is that people and companies must make contracts in a situation of freedom and independence. In Brazil much discussion (of probably little value) is made regarding the application of the Law 8.078/1990 to commercial contracts as a protective norm for the legally (contractual) more vulnerable part of the relationship (FORGIONI, 2009, p. 34), and also discussions about the outline or framework of Commercial Law (in order to avoid injustices)!? ... and according to Claudia Lima Marques (2017, s/p): “There is no justice when the strong oppresses the weak”. These are the type of discussions taking place in Brazil today by “legal experts”!

Again, in relation to Article 421-A, topics I, II and II, still makes reference to other three elements: (1) the establishment of objective parameters to interpret the general clauses and later resolution or extinction, (2) the respect to allocation of risks defined by the *parts* (individuals or companies) of the contract, and (3) the exceptional (and limited?) revision of contracts by the Brazilian Judiciary Power and apparently these discussions were already carried in other legal “doctrines”. It all sounds of no use to society.

With respect to topic I (above; Article 421-A), the matter takes into account symmetry and parity. Parity is inherent to the nature of contractual relation. As for symmetry, the main issue is to understand the characteristics of its *contractual parts*, verifying their economic, legal, technical power (among others). Parity is related to the possibility of the parts to stipulate freely their contractual clauses (that they will abide). One element connects itself to the other in order to promote a more precise interpretation. (...) ... and these seemingly sterile discussions go on and on ...

The legal document, with its “doctrines” (as already quoted), establishes that company contracts will be presumed to have parity. There are examples, however, of contracts where they are made under petition (NEVES & SELLMANN, 2016, p.6-7), as it is the case in contracts dealing with franchising ventures. It is evident that it is possible to be identified in some specific contractual relation the disproportion of powers between “franchisee” (the “weaker” link), and franchiser (the “powerful” part). Pursuing now a *combined interpretation* of Article 421-A (topic I) of the “CC/2002”, and Article 1 of the Law 13.966/2019 (which on its turn disallows the enforcement of Law 8.078/1990 to franchising contracts), there will be no possibility for protecting the “franchisee” (the weaker link); and, in this case, the relation between parts is that of *petition* [“adesão” in Brazilian Portuguese], and it is also asymmetrical. Another seemingly sterile discussion is (SALOMÃO FILHO, 2012, p.8): regarding vulnerability of one of the parts, inequality of power, economic exploitation (possibly abuse) of power by the stronger part, the power of great business conglomerates, all able to perpetuate market distortions and inequalities.

Topics II and III (of Article 421-A) considers the intervention of the Brazilian Judicial Power on company contracts; bringing more instability and uncertainty to businesses. Contracts should establish a sense of legal safety and legal security (and not uncertainty, insecurity and instability)! As considered (COELHO, 2017, p. 296): ... *contractual parts have the right not to be surprised by strange conducts unrelated to what was agreed in contract, ... even if risks are present, as risks are part of any economic relation or entrepreneurial activity*. To add to this discussion, we must consider carefully (and suspiciously) if *judicial decisions are being relevant to businesses?* ... (as they bring more insecurity to the business environment). The non-predictability of Magistrates decisions bring-about an element of uncertainty (COELHO, 2017, p. 295).

Because the Brazilian legal system is riddled with a “forest of laws” (many contradicting each other), and also due to a system allowing for “interpretation” (and two Magistrates will have different understanding regarding the same law), it is almost impossible

to have a stable business environment in Brazil. Even when the law was well constructed (being objective and pertinent), the application of the law does not necessarily follow what was agreed in the legislation. Allocation of resources in Brazil is complicated by the fact that it is hard to attract investors (mainly long-term foreign investment) due to the characteristic volatility of legal interpretation; something that brings an *important element of instability for businesses* which is beyond “normality” when compared to other countries (even other underdeveloped and backward countries).

There are manifestations of these unduly interventions by the Brazilian judiciary and Brazilian legal system and structure over company contracts and economic agreements between enterprises. One such example is discussed in Ramos (2018).

Allocation of resources by part of economic agents, in fact, constitute one essential element for the development of all entrepreneurial activity, and, consequently, for the development of the Economy of a country (COELHO, 2016). Enterprises, as seen by a contemporary view, for market development (FORGIONI, 2016), will need the elements of safety (certainty and assurance) and also predictability in order to choose its best choices for investment, considering as well that mistakes are part and parcel of the proper understanding of Commercial Law, as it allows for competition and freedom of action and decision-making by enterprises (FORGIONI, 2003, p. 14-15).

Revision of contracts performed by the Brazilian Judiciary Power will distort contracts, bring economic instability, and contribute to business uncertainty. Magistrates should not intervene by adding their (unnecessary, unwelcome and “exceptional”) views and interpretations. Performing judicial revisions of contracts will inevitably complicate things for businesses. This will become a vice (wrongful), will contribute to more “ups and downs” for people and businesses. The COVID-19 pandemic has brought about exceptional conditions that will have to be addressed, but this should not justify giving the Brazilian State a position of decision-making for businesses and the economic decisions of enterprises. The same way that enterprises are allowed to thrive, they have to be allowed to fail.

In a developed society (which is not the case of Brazil), it is reasonable that contracts can be revised without the “help” of the State. The parts of the contract (individuals, companies and their business relations) are able to establish new conditions for business (without State participation). Repeating what was already said: it is only possible to promote a developed society, with a thriving economy, if enterprises are allowed to make things right and also if enterprises are equally allowed to fail and cease to exist. One of the main reasons

(probably the main reason) for Brazilian underdevelopment and Brazilian economic backwardness is State intervention.

Maintenance of a reasonably balanced economic environment, which allows private initiative to develop, is fundamental for every country pursuing a certain degree of “economic health”. Law, legislation (commercial or otherwise) should not be the *ruler* (the controller, the administrator) of business development and of economic ventures. Market practices will be better-off if businessmen (and women) are allowed to get things right (or wrong) by themselves (without State or government intervention). We must not forget that State intervention in Brazil only helped to amplify inequality and poverty (CLEMENTE; 2001; SOUZA, 2007; LAZARINI, 2011; BACHA, 2012; FERREIRA, 2013; MIRANDA, 2014; MEIRELLES & ATHAYDE, 2014; ZANINI, 2017; RESENDE, 2017; MOREIRA, 2019).

CONCLUDING REMARKS

It is important to start arguing that economic development in Brazil is limited and incipient. If the economy has some relevance it is due to the size of the population and the size of the country (not because of its “development”). Probably the main reason for Brazilian underdevelopment is Brazilian legal structure (including its 7th Federal Constitution of 1988). In Brazil, authorities, the legal professionals and economists (and many others) like to play a “blame game”, they usually blame “ethereal” things such as *capitalism*, the *minimum state*, the USA, China ... scapegoats are plentiful!

Laws should be made as a matter of stability. In Brazil the legal structure and legal institutions (and even most legal practitioners) are more a cause of instability and uncertainty rather than of stability. The fact that there is an excess of “legality” in Brazil (almost everything is judicialized and adjudicated), makes the country a very unsafe and problematic place to make business and to live.

The COVID-19 pandemic is opening an avenue for greater intervention in the Brazilian Economy. Many lawyers are happy to increase their “participation” in the economy ... “creating *difficulties* [*i.e.* new legislation] to sell *facilitations and provisions* [*i.e.* consultancy]”!! As it looks today, things are only going to get worse. The “legal people” of Brazil have this eternal talk that they will assist by providing solutions to protect the most vulnerable ... but what we observe in Brazil and its social statistics is quite the opposite (increase in poverty and inequality; worsening of social services; increased criminality; and inefficiency of the legal system).

We may also conclude that Article 421-A of the 2002 Brazilian Civil Code, and also Law 13.874/2019 (the “Law of Economic Freedom”), are all badly made and ineffective. However, what is even more worrying is that, almost for sure, any modification which will come to light (probably very soon) will be even more negative, deleterious and ineffective to promote a stable and good business environment in Brazil. Brazilians are specialists when it comes to making things even worse than they already are. The scenario of uncertainty represents the environment that lawyers like to work in (selling their “facilitations”) Chaos is good for them. These moments of crisis give them “power” to increase the size of the State, to control (intervene in) the economy and its many “agencies”. To build “special [legal] cases” and favour *new privileges* for the “legal family”, to stifle liberties and economic freedom. The future looks bleak.

Table 1: Doing Business 2008 – selected countries:

Countries	Rank [1]	Procedures [2]	Days [3]	Cost [4]
USA	3	6	6	0.7%
SAUDI ARABIA	23	7	15	32.3%
MALAYSIA	24	9	24	18.1%
SOUTH AFRICA	35	8	31	7.1%
MEXICO	44	8	27	13.3%
TURKEY	57	6	6	20.7%
PERU	58	10	72	29.9%
COLOMBIA	66	11	42	19.3%
CAZAQUISTAN	71	8	21	7.6%
CHINA	83	13	35	8.4%
AZERBAIJAN	96	13	30	6.9%
URUGUAY	98	11	44	46.0%
PARAGUAY	103	7	35	77.6%
RUSSIA	106	8	29	3.7%
NIGERIA	108	9	34	56.6%
ARGENTINA	109	14	31	9.7%
INDIA	120	13	33	74.6%
BRAZIL	122	18	152	10.4%

INDONESIA	123	12	105	80.0%
EGYPT	126	7	9	28.6%
BOLIVIA	140	15	50	134.1%
D. R. CONGO	175	13	155	487.2%

Source: *Doing Business 2008* / www.worldbank.org / The International Bank for Reconstruction and Development – The World Bank, 2007.

[1]: World ranking regarding doing business (globally).

[2]: Number of procedures in order to register businesses.

[3]: Number of days needed to open a business.

[4]: Cost to open a business (as percentage of annual *per capita* of the country).

REFERENCES

ARZE, Antonio Araníbal & RODRÍGUEZ, Benjamín (Coords.) *América Latina, del neoliberalismo al neodesarrollismo?* Buenos Aires: Siglo Veinteuno, 2013 [PAPEP / PNUD].

ALLEN, Robert C. *História Econômica Global: uma breve introdução*. Porto Alegre: L&MP, 2017 [Translated from: “Global Economic History”, 2011, Oxford University Press].

BACHA, Edmar *Belíndia 2.0: fábulas e ensaios sobre o país dos contrastes*. 1.ed. Rio de Janeiro: Civilização Brasileira, 2012.

BACKHOUSE, Roger E. *História da Economia Mundial*. São Paulo: Estação Liberdade, 2007 [Originally in English: “The Penguin History of Economics”, 2002, Penguin Books].

BETHEL, Leslie (org.) *Brasil: fardo do passado, promessa do futuro: dez ensaios sobre política e sociedade brasileira*. Rio de Janeiro: Civilização Brasileira, 2002.

BRESSER-PEREIRA, Luiz Carlos. Capitalismo financeiro-rentista. *Estud. av.*, São Paulo, v. 32, n. 92, p. 17-29, Apr. 2018. Available from <http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0103-40142018000100017&lng=en&nrm=iso> access on 29 June 2020. <https://doi.org/10.5935/0103-4014.20180003>.

BULMER-THOMAS, Victor *The Economic History of Latin America Since Independence*. Cambridge University Press, 1994.

CLEMENTE, Durval *Um Brasil Canalha*. 2.ed. São Paulo: Editora Alfa One, 2001.

COELHO, Fábio Ulhoa. *A alocação de riscos e a segurança jurídica na proteção do investimento privado*. *Revista de Direito Brasileira*. São Paulo, SP | v. 16 | n. 7 | p. 291-304 | jan./abr. 2017.

_____. *Curso de Direito Comercial: Direito de Empresa*. v.1. Revistas dos Tribunais: São Paulo, 2016.

COMPARATO, Fábio Konder. *Capitalismo e Poder Econômico*. Rev. Fac. Direito UFMG, Número Esp. em Memória do Prof. Washington Peluso. p.167 - 195, Belo Horizonte, 2013. Disponível em:

_____. *Capitalismo: civilização e poder*. Estud. av., São Paulo, v. 25, n. 72, p. 251-276, Aug. 2011. Available from <http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0103-40142011000200020&lng=en&nrm=iso>. Access on 22 June 2020. <https://doi.org/10.1590/S0103-40142011000200020>.

_____. *Novos Ensaio e Pareceres de Direito Empresarial*. Rio de Janeiro: Ed. Forense, 1981.

_____. *Estado, Empresa e Função Social*. Doutrinas Essenciais de Direito Empresarial | vol. 2 | p. 69 - 80 | Dez / 2010/DTR\1996\453.

COOTER, Robert & ULEN, Thomas *Direito e Economia*. 5.ed. Porto Alegre: Bookman, 2010 [Original in English: “Law and Economics”, 2008, 5th edition, Pearson Education / Addison-Wesley].

FERREIRA, Pedro Cavalcanti (organizador / et al.) *Desenvolvimento Econômico: uma perspectiva brasileira*. Rio de Janeiro: Elsevier / Campus, 2013.

FORGIONI, Paula Andrea. *A evolução do direito comercial brasileiro: Da mercancia ao mercado*. 3^a ed. São Paulo: Editora Revista dos Tribunais, 2016.

_____. *Teoria Geral dos Contratos Empresariais*. Revistas dos Tribunais: São Paulo, 2009.

_____. *Os fundamentos do antitruste*. São Paulo: Ed. Revista dos Tribunais, 1998.

_____. *A interpretação dos negócios empresariais no novo código civil brasileiro*. Revista de Direito Mercantil – Industrial, econômico e financeiro. Vol.130/2003. p.8-38. São Paulo. Disponível em: https://edisciplinas.usp.br/pluginfile.php/341598/mod_resource/content/1/Forgioni%2C%20Paula.%20A%20interpreta%C7%A7%C3%A3o%20dos%20neg%C3%B3cios%20empresariais.pdf. Acesso em: 20 ago.2020

FRIEDMAN, Milton & FRIEDMAN, Rose *Livre Para Escolher*. Rio de Janeiro: Editora Record, 2015 [American original: “Free to Choose”, 1979 / 1980].

FURTADO, Peter (Editor) *Histories of Nations: how their identities were forged*. London: Thames & Hudson, 2017.

GAZIER, Bernard (1950-) *A Crise de 1929: uma breve introdução*. Porto Alegre: L&PM, 2016 [French original: “La Crise de 1929”, 2009, Presses Universitaires de France].

GOMES, Roger Marcelo Martins. *O Imperialismo no século XXI no Ensino Médio: a Índia sob o olhar orientalista e eurocêntrico*. Anais do XXVI Simpósio Nacional de História – ANPUH: São Paulo, julho 2011.

GRAU, Eros Roberto. *A ordem econômica na constituição de 1988*. 13.ed. São Paulo: Malheiros, 2008.

HOBBS, Thomas [1588-1679] *Leviathan*. Cambridge University Press, 1991 [edited by Richard Tuck].

HOBBSAWM, Eric. “The fall of liberalism”, In: *The age of extremes*. London: Abacus Books, 1994.

_____. *Viva la revolución: a era das utopias na América Latina*. São Paulo: Companhia das Letras, 2017 [organização de Leslie Bethel].

HOWARD, Michael *Primeira Guerra Mundial*. Porto Alegre: L&PM, 2010 [English original: “The First World War”, 2002, Oxford University Press].

JESSUA, Claude *Capitalismo*. Porto Alegre: L&PM, 2011 [French original: “Le Capitalisme”, 2009, Presses Universitaires de France].

KAY, Cristóbal *Latin American Theories of Development and Underdevelopment*. London: Routledge, 1989.

KENWOOD, A. G. & LOUGHEEDM, A. L. *The Growth of the International Economy, 1820-1990: an introductory text*. London: Routledge, 1992.

LAZZARINI, Sérgio Giovanetti *Capitalismo de Laços: os donos do Brasil e suas conexões*. Rio de Janeiro: Elsevier / Campus, 2011.

MEIRELLES, Renato & ATHAYDE, Celso *Um País chamado Favela: a maior pesquisa já feita sobre a favela brasileira*. São Paulo: Editora Gente, 2014.

MIRANDA, Felipe *O Fim do Brasil: a crise da economia, os bastidores da censura, a proteção do seu patrimônio*. São Paulo: Escrituras, 2014.

MOREIRA, Eduardo *Desigualdade & caminhos para uma sociedade mais justa*. 2.ed. Rio de Janeiro: Civilização Brasileira, 2019.

MUSACCHIO, Aldo & LAZZARINI, Sergio *Reinventing State Capitalism: Leviathan in Business, Brazil and Beyond*. Harvard University Press, 2014 [also available in Brazil as: “Reinventando o Capitalismo de Estado: o Leviatã nos negócios, Brasil e outros países”, São Paulo: Portfolio Penguin, 2015].

NAISBITT, John *O Líder do Futuro: 11 conceitos essenciais para ter clareza num mundo confuso e se antecipar às novas tendências*. Rio de Janeiro: Sextante, 2007 [Translated from: “Mind Set!”, 2006].

NUNES, António José Avelãs. *Introdução à Economia Política, uma?!*. São Paulo: Quartier Latin, 2007.

PIKETTY, Thomas *O Capital no século XXI*. Rio de Janeiro: Intrínseca, 2014 [from the 2013 French original: “Le Capital au XXI Siècle”, Éditions de Seuil].

RAMOS, André Luiz Santacruz. *Manual de Direito Empresarial: Volume único*. 10ªed. Rio de Janeiro: Forense; São Paulo: Método, 2020.

RESENDE, André Lara *Juros, Moeda e Ortodoxia*. 1.ed. São Paulo: Portfolio Penguin, 2017.

ROBERTS, Adam & KINGSBURY, Benedict (Editors) *United Nations, Divided World: the UN's roles in international relations*. 2nd Edition. Oxford: Clarendon Press, 1993.

SALOMÃO FILHO. Calixto. *Novo estruturalismo jurídico: uma alternativa para o direito?* Revista dos Tribunais. vol. 926/2012 | p. 533 - 547 | Dez / 2012 DTR\2012\451077.

SARTORELLI, Alberto José Colosso. A conjuração dos mortos: Jacques-Louis David, artista do porvir. *ARS (São Paulo)*, São Paulo, v. 18, n. 38, p. 241-265, Apr. 2020. Available from <http://www.scielo.br/scielo.php?script=sci_arttext&pid=S1678-53202020000100241&lng=en&nrm=iso> access on 18 June 2020. Epub Apr 27, 2020. <http://dx.doi.org/10.11606/issn.2178-0447.ars.2020.161952>.

SEN, Amartya *Desenvolvimento como Liberdade*. São Paulo: Companhia das Letras, 2010 [translated from: “Development as Freedom”, 1999 / Alfred A. Knopf & Random House].

SCHREIBER, Anderson. *Manual de direito civil contemporâneo*. 3ª ed. Saraiva: São Paulo, 2020.

SGARBOSSA, Luís Fernando; IENSUE, Geziela. *Teoria do Estado Moderno e Contemporâneo: fundamentos do Direito Público e do Direito Constitucional*. 1ª ed. Campo Grande: Instituto Brasileiro de Pesquisa Jurídica, 2018.

SIMÃO, José Fernando. “O contrato nos tempos da covid-19”. *Esqueçam a força maior e pensem na base do negócio*. Migalhas. 03 de abr.2020. Disponível em: <https://www.migalhas.com.br/coluna/migalhas-contratuais/323599/o-contrato-nos-tempos-dacovid-19---esquecam-a-forca-maior-e-pensem-na-base-do-negocio>.

SKLAIR, Leslie *Globalization: capitalism and its alternatives*. Oxford University Press, 2002.

SOUZA, Nilson Araújo de *Economia Brasileira Contemporânea: de Getúlio a Lula*. São Paulo: Editora Atlas, 2007.

THATCHER, Margaret [1925-2013] *A Arte de Governar: estratégias para um mundo em desenvolvimento*. Rio de Janeiro: Biblioteca do Exército Editora, 2005 [tradução de original inglês: “Statecraft: strategies for a changing world”, New York: Harper Perennial, 2003].

TARTUCE, Flávio. *Manual de Direito Civil: Volume único*. São Paulo: 7ªed. Ed.Método, 2017

ZANINI, Fábio *Euforia e Fracasso do Brasil Grande: política externa e multinacionais brasileiras na era Lula*. São Paulo: Editora Contexto, 2017.