

FROM PERIPHERAL UNDERDEVELOPMENT TO DEVELOPMENT WITH INTEGRATED HUMAN RIGHTS

Giovanni Clark¹

Universidade Federal de Minas Gerais (UFMG)|

Jailton Macena de Araujo²

Universidade Federal de Campina Grande (UFCG)|

Joao Batista Moreira Pinto³

Escola Superior Dom Helder Câmara (ESDHC)|

ABSTRACT

This work had as broader thematic support the discussion between State, Constitution and Development. The research problem was thus outlined around different understandings of development, one of them leading to the maintenance of Latin American and Brazilian underdevelopment, and another, present in the Brazilian constitutional text of 1988, pointing to the need to overcome social inequalities, with the implementation of human rights and citizenship; which led to new conflicts, evidenced in the approved neoliberal constitutional amendments. As a result of this process, the fundamental question that arises is: how to overcome this process that has led to non-observance and effective implementation of human rights, especially social and socio-environmental rights? The hypothesis discussed is that a new understanding of human rights, as a societal project, could

1 PhD in Economic Law from the Universidade Federal de Minas Gerais (UFMG). Master in Law from UFMG. Degree in Law from UFMG. Professor of the Graduate Program in Law at the Pontifical Pontifícia Universidade de Minas Gerais (PUC-Minas). Undergraduate professor at the Faculdade de Direito da UFMG. Lattes Curriculum: <http://lattes.cnpq.br/8525677886136477> / ORCID: <https://orcid.org/0000-0002-9324-4770> / e-mail: giovaniclark@gmail.com

2 PhD and Master in Legal Sciences from the Federal University of Paraíba (UFPB). Permanent Professor in the Graduate Program in Legal Sciences at the Universidade Federal da Paraíba and in the Law Degree, linked to the Departamento de Direito Processual e Prática Jurídica (DDPPJ), at UFPB. Managing Editor of *Prim@ Facie*, PPGCJ/UFPB Journal. Leader of the Research Group “Trabalho e desenvolvimento: influxos e dissensões”. Lattes Curriculum: <http://lattes.cnpq.br/7244831858426121> / ORCID: <https://orcid.org/0000-0002-0488-0880> / e-mail: jailtonma@gmail.com

3 Postdoc and PhD in Law from the Université de Paris X – Nanterre. Master in Philosophy from the École des hautes études en sciences sociales (EHESS). Master in Law from the Universidade Federal de Santa Catarina (UFSC). Degree in Law from the Universidade Federal de Minas Gerais (UFMG). Professor of the Graduate Program in Law at Escola Superior Dom Helder Câmara (ESDHC). Leader of the Research Group “Direitos Humanos como projeto de sociedade e direitos da Natureza: elementos sócio-históricos, políticos, jurídicos, culturais e epistemológicos”. Lattes Curriculum: <http://lattes.cnpq.br/8769472578927409> / ORCID: <https://orcid.org/0000-0003-0464-6960> / e-mail: jbmpinto@gmail.com

lead to a process of strengthening the observance and implementation of social and environmental rights in societies. In methodological terms, the genre of theoretical research integrated with the practical one, the legal-social aspect, is adopted in a dialectical perspective, with qualitative analysis, based on bibliographic research.

Keywords: conservatism; constitutional disputes; development; human rights.

RESUMO

O presente trabalho teve como suporte temático mais amplo a discussão entre Estado, Constituição e Desenvolvimento. Assim, a problemática da pesquisa delineou-se em torno de diferentes compreensões de desenvolvimento, uma delas levando à manutenção do subdesenvolvimento latino-americano e brasileiro, e outra, presente no texto constitucional brasileiro de 1988, apontando para a necessidade de superação das desigualdades sociais, com implementação dos direitos humanos e da cidadania; o que levou a novos conflitos, evidenciados nas emendas constitucionais de cunho neoliberal aprovadas. Em decorrência desse processo, a questão fundamental que se coloca é: como superar esse processo que tem levado à não observância e implementação efetiva dos direitos humanos, especialmente dos direitos sociais e socioambientais? A hipótese trabalhada é que uma nova compreensão dos direitos humanos, como um projeto de sociedade, poderá levar a um processo de fortalecimento da observância e implementação dos direitos sociais e ambientais nas sociedades. Em termos metodológicos, adota-se o gênero de pesquisa teórico integrado ao prático, a vertente jurídico-social, em uma perspectiva dialética, com análise qualitativa, baseada em pesquisa bibliográfica.

Palavras-chave: conservadorismo; desenvolvimento; direitos humanos; disputas constitucionais.

INTRODUCTION

The nations classified as underdeveloped, currently in development, e.g. Brazil, have sustained for consecutive decades a peripheral place in the capitalist world in relation to the developed nations, called central economies. The former are generally subject to the wishes of gigantic oligopolistic international companies, as well as international entities and the developed nations themselves.

The divergences about the definitions and styles of nations' "development" and "underdevelopment" are not recent, as well as about causes, factors and explanations of such phenomenon. Nowadays, these realities must be considered with the contributions of environmentalist theories, that is, of alternative development and of the alternative to development, at least. In this way, we start from the concerns about the different understandings of development, one of them leading to the maintenance of Latin American and Brazilian underdevelopment, and another, present in the Brazilian constitutional text of 1988, pointing to the need to overcome social inequalities, with the implementation of human rights and citizenship; which led to new conflicts, evidenced in the approved neoliberal constitutional amendments.

The general objective of this text is to analyze the dialectical process between different models of development in the Latin American reality, its influences on the Brazilian reality and on the Federal Constitution of 1988 (CRFB), its fragilities and, in the face of these, the emancipatory movement to overcome the social and environmental contradictions, of political affirmation of human rights. As specific objectives, it is proposed: to analyze the development proposal in the face of underdevelopment in a context of conservative resistance, to research the achievements, guarantees and resistances to CF1988 and, in the final moment, to inquire about the potential of development with integrated human rights.

Thus, the following research problem is presented: to what extent is it possible to make these models of developmental proposals compatible with the current Brazilian reality? How to overcome this process that has led to non-observance and effective implementation of human rights, especially social and socio-environmental rights? The hypothesis worked is that a new understanding of human rights, as a society project, could lead to a process of strengthening the observance and implementation of social

and environmental rights in societies.

In methodological terms, the theoretical research genre integrated with the practical one, the legal-social aspect, was adopted, in a dialectical perspective, with qualitative analysis, based on bibliographic research. Thus, for constituting this article, we started from epistemological and at the same time political and economic disputes around the understanding and implementation of development processes and disputes around their different perspectives and consequences since the mid-twentieth century in Latin America and in Brazil; to then update these disputes to the last period of constitutional preparation in Brazil, its final result, the Brazilian Constitution of 1988, and the processes of weakening of the constitutional principles and guarantees resulting from it.

In this way, we sought to highlight and analyze these conflicting and dialectical processes in dispute in Brazil, first around underdevelopment and social and political alternatives to this model, and in a second moment, around the broad and emancipatory constitutional understanding of development and human rights expressed in the CRFB and the weakening of these rights and constitutional guarantees in the subsequent period, having the neoliberal policies of regulation and austerity⁴ as the basis and source of the resulting contradictions. Then, we sought to analyze human rights from a political perspective to consider them a possible counter-hegemonic alternative to the process of social fragility and inequalities experienced by Brazilian society.

The text was structured in three moments. In the first one, different understandings about development are approached, in the second, the social and guarantee perspective established in the CRFB and the political and legal disputes around this construction are explained and, in the last moment, the possibility of rescuing the potential for development integrated with human rights is discussed.

⁴ Clark, Corrêa and Nascimento (2020) write about the facets of neoliberalism, based on the work of Souza (2017), according to which regulatory neoliberalism, implemented in Brazil in the 1990s, is characterized by privatization of state-owned companies, creation of regulatory agencies, economic regulation and the world of work revamped in favor of oligopolized “markets”. Austerity neoliberalism, implemented after the 2016 parliamentary, business and media coup, is characterized by the radicalization of privatizations and in parallel with the structuring of public-private partnerships and the creation of state-owned companies to securitize public debt, as well as a State intervention in the socioeconomic domain even more favorable to large capital, especially linked to the financial, agribusiness and mining sectors.

1 FROM UNDERDEVELOPMENT TO DEVELOPMENT IN CONSERVATIVE RESISTANCE CONTEXTS

We begin by retaking some of the bases of studies disseminated by the Economic Commission for Latin America and the Caribbean (ECLAC), an entity created by the United Nations (UN) in 1948, seeking to tabulate public policies for the region, in order to break underdevelopment and dependency, coordinated at the time by the Argentine Raúl Prebisch and the Brazilian Celso Furtado, according to the structuralist theory (BIEL-SCHOWSKY, 1998).

In their studies, they understand the realities of development and underdevelopment as two sides of the same coin, motivated by the international division of labor; and make it clear that, in a region of “late industrialization” such as Latin America and the Caribbean, a nation specialized in the production of agricultural goods and natural resources, for sale in the international market, would not reach the level of a developed nation. Such economic policies would only widen the gap between developed and underdeveloped nations.

The unequal trade between developed and underdeveloped nations, in addition to generating a historical disadvantage in the prices of goods from underdeveloped nations, in relation to goods acquired from developed nations, especially in times of capitalism’s cyclical crises, would lead to multiple dependencies between them: economic, financial, technological and cultural.

For the father of the Brazilian economy, Celso Furtado (1998), development and underdevelopment should be analyzed together and in the capitalist logic, that is, developed countries need to expand their dependence on the underdeveloped ones, as they need natural resources, agricultural and secondary industrial products in order to maintain their status, thus deconstructing the vision of necessary steps to break the stage of underdevelopment. Furthermore, developed nations only reached such a degree in capitalism because they had a strong state action in the economic domain with public planned coordination, especially in the industrial and technological areas, even today, as shown in the studies by Mariana Mazzucato (2014).

As for cultural dependence, this was also the object of concern for Furtado (1998), as he realized that underdeveloped countries imported ideas and, consequently, consumption patterns, abandoning national needs and thus reinforcing other dependencies and neocolonialism.

1.1 Proposals for overcoming underdevelopment

In 1949, Raúl Prebisch, speaking on behalf of ECLAC, launched his Manifesto for the industrialization of the region, in Cuba. For him, the advantages of the *desarrollo de la productividad* had not reached the periphery; and industrialization would not be “an end in itself, but the only means available to these [new countries] to capture part of the fruit of technical progress and progressively raising the masses’ standard of living” (PREBISCH, 1962), *apud* BIELSCHOWSKY, 2020, p. 4).

Celso Furtado (1998) observes that already at the beginning of his theoretical work, “What is the best way to promote development” was discussed. And, at ECLAC, a vision was established that would be conducive to modernity and industrialization; through the dependency process that was established in the Latin American context.

In his analyses of Brazilian economic history, Furtado perceived the interests of “agrarianism”, which maintained the structure of dependence and the consequent reality of poverty, income concentration and regional inequalities. However, with ECLAC tools, initially established by Raúl Prebisch, having as a reference the recognition of the political as a fundamental element for overcoming economic obstacles, he believed that it was possible to achieve Brazilian development.

In Brazil, late industrialization was a reflection of socio-historical and structural factors. With the world crisis of 1929, Vargas began a process of industrialization, but still in an occasional and heterogeneous way. However, it was in the late 1940s that discussions on industrialization and development gained strength, in line with ECLAC propositions; which led, for example, to the creation of the National Bank for Economic Development – BNDE, in 1952.

For ECLAC, the end of dependency and underdevelopment in Latin America and the Caribbean would only be possible with an endogenous project for the region and its states, where they would be the coordinators of socioeconomic changes towards regional development, based on state intervention in the economic domain, planned and focused on industrialization, technological evolution and income distribution, ending the region’s cycle of supplying primary goods to developed countries and unequal trade.

Furtado (1998), in addition to his theoretical work, was notable for his political action and public management, and following above all the

perspective of overcoming underdevelopment, through the gain of external autonomy, he sought to promote a planned development with national industrialization. However, he was aware of the challenges, as he maintains that development required structural changes and that these would not come from the traditional forces of a society marked by inequalities, but from an integrative perspective of the State.

1.2 The opposition of established sectors of power

Despite Brazil having structured an industrial process from the 1930's Revolution (FAUSTO, 1990) with a national developmental project until 1964, creating bases for an endogenous industrial capitalism, due to existing internal and external conditions, influenced by ECLAC, after its creation; however, after the military and civil coup of April 1 of that year, a dependent and excluding capitalism began to be implanted on Brazilian soil, in an authoritarian planning (IANNI, 2019).

It should be noted, however, that in the early 1960s, and in the face of attempts to implement an integrated planning, aimed at economic development, driven by industrialization, Celso Furtado realized that even "the social forces that fought for industrialization [...] tended to ally themselves with latifundium and the ideological right" (FURTADO, 1998, p. 20); which demanded other actions to enable the proposed change of conception and development; which was discontinued in 1964.

With the military and civil coup, the ideological reinforcement determined by the capitalist mode of production intensified the conservative strategy of conducting state action, guided by political repression and economic austerity, determined by structurally regressive and centralized policies, with a reduced distributive character. As a result, despite the persistence of industrialization in the period, Brazil's status as an underdeveloped nation and the continuity of economic policies inspired by comparative advantages did not cease.

The so-called comparative advantages are inspired by the ideas of David Ricardo and are generally defended by Brazilian "liberals". They embody a concept of "development" for the nation, focused on international trade, as they argue that a nation should deepen its exports of goods/products in which it has expertise/vocation and greater competitiveness. In this vein, in modernity, developed nations would continue to export technology and advanced products, well remunerated in international exchanges, while

developing nations would export natural and agricultural resources, with lower remuneration in these exchanges. Logically, such a conception of “development” and its corresponding socioeconomic policies are extremely beneficial to Brazilian economic elites, perpetuating the concentration of income and national socioeconomic and environmental injustices.

Thus, it can be highlighted that, in Brazil, the national economic/political elites are almost non-supporters of a sovereign developmental project, since the times of the Empire, as Florestan Fernandes (2005) points out, and will oppose structural changes and plans for development, as proposed in the 1950s and early 1960s, and, as will be later on, continue to work day and night to achieve their goals, even when contradicted in their dependent neoliberal policies, including the use of symbolic violence (SOUZA, 2015) in the media, political, legal and academic circles.

2 CONSTITUTION AND DEVELOPMENT IN DISPUTE

The process of construction of the 1988 constitutional text was arduous, considering the context of political disputes and conflicting interests, but it ended up resulting in an important symbolic construction regarding the elevation of social values for the benefit of a citizen constitution.

The previous historical moment, marked by the military dictatorship and social oppression, was characterized by the violent repression of social struggles and by the impediment to the construction of a development plan that would allow the expansion of well-being. The political rupture, which allowed the formation of the National Constituent Assembly in 1987, ended up being guarded by the transition process that granted amnesty for crimes, guaranteeing impunity for those who violated human rights during the 21 years of dictatorship.

This historic constitutional mark, although hidden in the constitutional text itself, reveals the limited character, many times, that followed regarding the realization of a truly revolutionary constitutional project. The constitutional forecast of national development, which is an objective of the Republic, ends up hampered by the undeniable systemic construction of Brazilian institutions, reduced in its effectiveness by legal juggling and relativized as to its strength, especially when it comes to social rights, which demand positive and efficient action by the powers that be.

This has been the keynote and hallmark of the Brazilian constitutional text, modern and inclusive in its symbology, but unfortunately relegated to a secondary level and, therefore, stuck in terms of its effectiveness. Thus,

symbolic and inefficient, this has been the mark of Brazilian constitutionalism, which, in the face of so many setbacks and political backlashes, ends up marking a destiny regarding the future of “the country of the future”. Underdevelopment – in fact, its worst side, social inequality, in such a rich country – is the clearest evidence of the difficulties in fulfilling the constitutional promises of 1988.

2.1 The persistence of characteristics of underdevelopment in the pre-1988 Constitution period

During the period of democratic transition to the New Republic, between 1985 and 1988, there was the revelation of a social concern, previously muffled by military excesses, which made possible some advances that, at the political level, culminated in the rupture with the dictatorship and the preparation of a new Constitution.

Faced with the challenges of overcoming inequalities and promoting a just society, ECLAC influences are evident in the discussions typical of the constituent period. Several Brazilian intellectuals were involved in the National Constituent Assembly between 1987 and 1988, regardless of whether they were constituents, advisors or specialists in certain topics. One of the researchers and formulators of ECLAC thought, Celso Furtado, contributed directly with his ideas to the production of the constitutional text. In fact, it is not by chance, but more influenced by ECLAC (BERCOVICI, 2009), that dictates related to development, state coordination in the production process, state planning and national integration with Latin America are set out in the Brazilian Constitution of 1988.

The CRFB was enacted after long and historical social struggles for redemocratization and aimed at building a project to transform national realities that have been secularly perverse. The dictates, both of the economic order and of Fundamental Rights (constitutionalized human rights), theoretically mean the victory of socioeconomic, racial, environmental, technological changes in the legal sphere and the consequent state duty to implement the said rights in the world of life.

2.2 The 1988 Constitution and its guarantees

Ideologically eclectic and plural, in its symbology, the CRFB, contrary to what one might imagine, is responsible for expanding public

spaces previously concealed by representatives of economic privileges, responsible for conducting the political and social game. The historical constitution (or the reality of social, political, economic, cultural facts) has been split from the values harbored in the ideological Constitution, by the real factors (holders) of power, represented by those responsible for the political conduct of the State's directions, who, unfortunately, have appropriated the pragmatic discourse to determine, once again, the inefficiency of the most progressive constitutional provisions.⁵

The constitutional drafting process, carried out with “[...] open doors, for all to see; especially from the dissemination agencies” (CHAVES, 1988, p. 39) influenced the Brazilian constitutional idiosyncrasy, which harbors strong economic values and a clear social concern, but which, over the years, has proved insufficient to break the paradigms of economic exploitation that imposes on Brazil the condition of a State-periphery, orbiting around decision and power centers.

Evaluating the constitutional text, the constituent's great concern (revealed in the constitutional *mens legis*) with social rights is perceived. Attention should be paid to the fact that social rights are the most concrete representation of the core of the Federal Constitution of 1988, which also summarizes the requirement of “real factors of power that govern the country” (LASSALE, 1969, p. 55) and that guide the normative policies that should guide the Brazilian development processes. However, the very construction of democracy has led the country to a real dead end, under the evil influence of a far-right, ultra-conservative and reactionary government.

The possibilities to reach the goal of development have become increasingly distant, especially now, under the setbacks imposed by the COVID-19 pandemic. The economic order of the 1988 Constitution set limits and impositions for the private sectors' economic policies, whether for profit or not, since these would invariably be responsible for the production of goods and services in Brazilian society and, therefore, enablers of dignified lives. It so happens that the interests of Capital have proved to

⁵ Especially in the current context of State crises, the idea of political representation has been increasingly concealed. What can be inferred from reality is the true distance of people's representatives in relation to the State's governing precepts and the population's very desires. In this sense, Morais (2002), when dealing with the State and constitutional crises, reflects on the crisis of political representation that has deepened citizens' apathy, stating that there is a perception of total unnecessaryness in the choices of representatives, through elections. The normativity of the constitutional text becomes closer to social reality, although, often, the inconsistency of the political representatives' actions takes the opposite direction. The ambiguity expressed and experienced from the Constitution ends up emphasizing the nature of the conflict experienced in Brazilian society.

be even more petty, the country, hit hard by the pandemic, has been sucked dry even more, and the workforce, even more massacred.

Nevertheless, it is important to state: the constitutional order also dictates state intervention in the economic domain (arts. 170, 173 to 175 of the CRFB), in a planned manner (arts. 165, 174, 182 and 187 of the CRFB), in which the domestic market must be valued as a national asset (art. 219 of the CRFB) and obviously public authorities must act in accordance with the instruments of Economic Regulatory and Institutional Law (SOUZA, 2017). To this end, the constitutional text guides national endogenous development (articles 3 and 174, § 1, of the CRFB) with economic sovereignty (article 170, I, of CRFB), with incentives for scientific development, research, scientific and technological training and innovation, so as to enable cultural and socioeconomic development, the population's well-being and the country's technological autonomy (arts. 218 and 219 of CRFB), protection/defense of the environment (arts. 170, VI, and 225 of CRFB), full employment (art. 170, VIII, of the CRFB) and reduction of social and regional inequalities (art. 170, VI, of the CRFB), building a free, fair and solidary society (art., I, of CRFB).

The commands of the economic and financial order (arts. 170 to 192 of CRFB), central core of the Economic Constitution, impose binding norms on public and private policies aimed at ensuring, to all Brazilians and other residents in the country, a dignified existence, according to the dictates of social justice (art. 170, *caput*, of CRFB). Therefore, the Economic Constitution (CAMARGO, 2014) has as its primary mission the realization of human rights established in the constitutional text, because only through the concreteness of these is it possible to achieve human dignity for everyone.

These are values derived from the constitutional text that reiterate and reinforce the ECLAC objectives, which need to be expanded and revitalized, especially in the context of the crisis we are currently facing, in which the Executive fails in the face of citizens' immense human needs, the Legislative, muzzled by the interests of Capital, revels in the formation of cartels, taking advantage of the lack of transparency to take advantage of the so-called secret budget (CAMPOREZ; GONÇALVEZ, 2022). And, in turn, the Judiciary, cowed in the face of "constructed" public opinion, ends up tied up when urged to put constitutional ideology into practice.⁶

6 "The ideology we refer to is the one defined, in Positive Law, in the Rule of Law, by the Constitution in force, at each time and in each country. Therefore, we define it as 'constitutionally adopted ideology'. Therefore, the difference between this and what can be understood by ideology of traditional theoretical models is established, that is, sets of ideas, principles or theories destined to explain, abstractly, the social organization, the political structure and so on" (SOUZA, 2017, p. 28-29).

It cannot be forgotten that the 1988 Economic Constitution presents an adopted constitutional ideology (SOUZA, 2017), which imposed economic democracy (CLARK; CORRÊA; NASCIMENTO, 2020), through which pluralism was also taken to the productive model. Thus, several compatible production systems are accepted (*quilombola*, indigenous, cooperative, associative), and not just the capitalist system, based on private ownership of the means of production.

It is observed, therefore, that, in dialectical terms, the CRFB would correspond, in the political-legal level, to the ECLAC proposal of overcoming underdevelopment and dependency in Latin America, based on the State's proactive action, with national and regional planning of the industrialization process, to achieve economic development with equity and sustainability. The great challenge, however, as can be seen, given the current reality, is the difficulty of facing conservative resistance, which seeks to continually create obstacles to the materialization of these values.

2.3 Constitutional fragmentation and resistance movements

Thus, as can be seen, the dialectical opposition of certain sectors to the proposal for equitable and sustainable development in the economic sphere, also the CRFB, as a broad proposition for the reorganization of society, seeking to overcome central contradictions such as social inequality, has faced conservative resistance of national and international movements and articulations of economic, political, legal and other power groups.

Thus, the supposed ideological ambiguity enshrined in the Federal Constitution of 1988 was, many times, responsible for, during the first years of its validity, preventing, under the auspices of neoliberal economic interests, the effectiveness of the social values enshrined therein. Thus, the CRFB has suffered, since its enactment, institutional blocks by national groups and sectors, in articulation with international interests, and defending financial capitalism and the neoliberal dictates of regulation and austerity (CLARK; CORRÊA; NASCIMENTO, 2020).

Setbacks such as Constitutional Amendment no. 95, of December 15, 2016, which instituted the so-called "New Fiscal Regime" within the scope of the Fiscal and Social Security Budgets of the Federal Government, which determined the limitation of public spending for twenty years, ended up preventing any public investments in the promotion of social well-being as a substantive consonant with human development.

Alongside the process of constitutional blocking of public investments in the social field, workers were muzzled with the enactment of the Labor Counter-Reform, which, by altering more than 100 articles of the CLT, deepened inequalities and imposed a regime of servitude on Brazilian workers represented by setbacks that end up further usurping the possibility of recognizing development as a practice in the Brazilian State – breaking up the collective labor law, authorizing a supposed autonomy of the worker’s will, limiting the exercise of labor jurisdiction (ARAÚJO, 2019).

One cannot admit a “[...] constitutional reality *contra constitutionem*” (PEDRA, 2010, p. 15), in which the reality of threats to the Democratic State of Law overcomes the constitutional text. The effectiveness of the constitutional *mens* requires a political and social transformation that represents true citizenship, responsible for promoting, through society and public institutions, new directions for Brazilian constitutionalism, in terms of a gradual and slow rupture with the privatist and physiologist culture of institutions, which, sheltered in the constitutional axiological materiality, founded on development and solidarity (ARAÚJO, 2020), has not yet been put into practice in its entirety.

The social effort around the restructuring of the Brazilian State, which began in 1988, is still ongoing. Dissatisfaction with the slow steps in evolution in relation to such historical ills as corruption, impunity and social inequality is amplified by social movements and the numerous popular manifestations that yearn for social and economic improvements truly centered on citizens. Thus, the constitutional ideology, represented by the social element, widely disseminated in the constitutional text, is the object of social struggles around the realization of constitutionally protected rights and which reinforces the role of the historical constitution, putting itself in confrontation with the economic interests also sheltered in the social and legal planes.

The traditionally ambiguous Brazilian social structure – very well co-opted by the ultra-conservative and reactionary wing that is currently in power – brings together abyssal inequalities and frames socioeconomic conflicts which are the keynote of the interpretation and experience of rights. The constitution and its normative force are, every day, revisited in an attempt to make the population’s social experience the real gear that directs the solution of socioeconomic and political conflicts, apparently of an ideological nature, but which ends up getting stuck by the adoption of economic policies that deepen the concentration of income, inequalities and precariousness.

The non-fulfillment of the constitutional precepts of social justice and dignified existence only exposes the very ineffectiveness of the expressive majority of its provisions, evidencing the low understanding of what the Constitution itself is in its material sense. Thus, the formal Constitution must be confronted with the social experience, allowing its promises to be fulfilled and in which many of the rights it covers only reveal the expression of an “ought-to-be” – never put into practice –, capable of removing the merely symbolic and inefficient character of constitutional development forecasts.

The Constitution must represent the legal framework for conducting social processes, through which minimum normative nuclei that require implementation are outlined. These nuclei must encompass the civilizing achievements of the Democratic State (Solidarity) of Law and Social Welfare, which guide and determine the primordial characteristics of that society and that group of citizens, who must be taken into account in all government spheres, and which also represent the greatest desires of that society (ARAÚJO, 2018; 2020). Thus, the instrumental role of the Constitution in the realization of democracy is relevant.

The inviolability of the CRFB, through the determination of its strength, is what determines its potential for effectiveness – and it also ends up being the last stronghold of hope for building a new wave of development. In fact, the normative distinction that is produced due to the degree and, above all, the quality of the constitutional norm, which has a peculiar structure and function, requires from the interpreter a hermeneutic exercise of weighting (CARBONELL, 1998), capable of giving validity to the principle of maximum effectiveness of the constitutional norm.

The process of constitutional reconfiguration is the turning point for the re-edition of a new era of development that has conditions to be sheltered in the ECLAC ideals. Nowadays, ECLAC has been updating its studies and is now not only concerned with industrial policy and income distribution – seeking to break with underdevelopment –, but also with the green economy and the consequent necessary technological evolution, and for that, it has been producing approaches to the “Big Push for sustainability”, including those aimed at Brazil (GRAMKOW, 2019).

Generally, underdeveloped nations, in the 21st century, perform modernizing growth and a significant portion of their elites are linked to the thoughts of Adam Smith’s ‘invisible hand of the market (18th century) and Davi Ricardo’s comparative advantages (19th century), in order to achieve developed status. For this vision, development would be achieved with

“minimal” state intervention in the economic domain, centered on the innovative capacity of the private sector and on international trade based on the export of goods, in which countries had competitiveness and productive expertise.

However, based on the aforementioned liberal agenda, the former colonies of the past, currently underdeveloped nations, continue to export primary products, always cheaper in the international market, and import elaborated products and technology from developed nations, which are always more expensive; thus generating, among others: deterioration of the terms of trade and the consequent negative and/or fragile trade balance of underdeveloped countries. Furthermore, such economic policies (SOUZA, 2017) were not able to promote development in underdeveloped countries, but rather made their economic sovereignties unfeasible, destroyed the environment, produced large socioeconomic and technological differences, interrupted nationalist developmental policies, etc.

In fact, an agenda that is currently expanding, taking advantage of the difficulty of social movements to articulate in the face of the imposition of social distance, the only safe way to cool the pandemic in its new variants. Thus, not even after the redemocratization of the nation and the enactment of the 1988 Constitution did development arrive – in fact, we live in a period of de-industrialization (since 1990), as indicated in Technical Note no. 259 (DIEESE, 2021), relating to the automotive sector, but which portrays the reality of the entire “national industry”.

It should be noted that, in the face of all the economic transformation experienced by Brazil in the last 20 years, which ranges from an increase in consumption capacity to real improvements in the quality of life of part of the population, the great challenge of social inequalities still persists, which maintain a serious gap between the extreme social strata. Also, from the acquisition of some socioeconomic improvements, the downward shift determined by the current economic and political crisis exposes and highlights, in a clearer way, the social issue as the central core of the needs that must be met by state action, especially in the face of the challenge of guaranteeing the social rights of setbacks, even in times of crisis.

3 FOR DEVELOPMENT WITH INTEGRATED HUMAN RIGHTS

The previous reflections show the dispute over models or styles of development, some of which linked to conceptions that would lead to a

continuity and maintenance of the bases of underdevelopment, with benefits only for a few sectors and for a portion of the population and with restrictions that tend to maintain a structure that reproduces inequalities, a model that has been represented in recent decades by the neoliberalism of regulation and austerity.

In the same vein, the bases of development presented by the constitutional ideology adopted in the Brazilian text of 1988 reveal a very clear panorama of the constitutional profile, with a social base that establishes a concern for human rights and citizenship. In turn, the concept of development, assumed by those who, before any commitment to the common good, seek to maintain or expand their privileges, has been responsible for the oppositions to any proposal or project to overcome inequalities and the establishment of a more egalitarian and dignified society for all – which obviously hurts the development model desired by the constitutional spirit enshrined in the CRFB.

What can be highlighted about the dialectical moments analyzed and that could help in delimiting strategies to overcome this model of reproduction and valorization of conceptions and structures that favor the exploitation of people and nature?

First, it is notable that, in the conflictual context of current societies, the overcoming of contradictions will not come from a rational consensus, especially because the constructions and development models in dispute are based on opposing rationalities. Therefore, one cannot expect, for the Brazilian legal-political and social reality, something like “the victory for the best argument” (HABERMAS, 2000). This theory, for the reality analyzed here, in Latin America and, more specifically, in Brazil, in the last seven decades, proved to be completely inoperative. Even though the strength of the “best argument” may have prevailed in debates and decisions in smaller circles of power, in broader political definitions, at the local, national, regional or international level, other factors and powers, in the vast majority of cases, have shown to be more evident, subjugating what would be “more rational”.

Second, the overcoming of structural inequalities in current societies necessarily involves the political, that is, the linking and defense of a political project that presents and can enable new forms of societal organization. The dispute between these different projects of society involves, in addition to the political in its breadth, other powers: the economic, the legal, the cultural, the media, among others; which highlights the relevance

of society's involvement with the political dimension, whether in terms of understanding or acting. This participation in public life and debate can occur in different ways, and will depend on each subject's relational context and process; not necessarily implying a direct role in party politics. You also act politically, when you claim or demand, based on the rights of all, for example, better access to health, to quality education, to the right to food, housing, land (for those who want to plant in it), in short, the right to equality, freedom, effective citizenship.

Third, political participation is fundamental for improving democracy and achieving and realizing human rights. In this process, individual action is important, but it expands its potential and acquires greater relevance when it takes place in an organized and collective way. Hence the recognition of popular movements, organizations and civil society groups that fight for the realization of these rights; whether from social struggles, economic struggles, cultural struggles, socio-environmental struggles, struggles for freedoms or struggles for the right to full citizenship. These struggles are politically evident when constructed in the collective spaces of neighborhood associations, unions, women's organizations, gender, racial or social movements, in short, in the spaces of partisan struggles. Likewise, they can take place as specific and even isolated struggles at certain times, but when they manage to enable actions and support in a network and from a social plurality, they expand social mobilization, acquiring, as a result, greater legitimacy, political strength and power of pressure in the disputes in question; which would normally require a broader political project to articulate and sustain these demands and struggles, including effective social participation through plebiscites, referendums, horizontal assemblies, etc.

Fourth, could human rights themselves become the political basis to sustain and underpin the integration of these struggles for greater social equality, emancipation and justice? Answering this question requires a broader and political conception of human rights, and without a doubt, if these rights are analyzed in their trajectory of social struggles of at least three centuries, it is possible to perceive that the rights established in declarations, and even in the Universal Declaration of Human Rights of 1948 (UN, 2022), are no more than recognition of rights achieved in this socio-historical process of struggles and social claims. In addition, it should be considered that the recognition of these rights in international and national documents, including the Brazilian Constitution of 1988, was not and will never be sufficient for such rights to be guaranteed to all. The

effective implementation of human rights, especially social rights – representing the set of economic, social, cultural and socio-environmental rights – having structural and transformative effects on society, is a political-legal process, and as such, it will have its own confrontations and obstacles of political actions, articulated with the other powers of society, including the Judiciary. It is in this sense that one can and should consider the dispute over the understanding, scope and observance of human rights in society. And it is by considering this set of questions that the authors of this article defend that human rights can and should be considered as the most appropriate political project to respond to the challenges of implementing an increasingly just and solidary society that can enable the set of values linked to freedom, equality and dignity, expressed in the political idea of access to all rights by all; which, of course, is a process of construction and political struggles, including the dispute over the development model to be adopted, as evidenced in the dialectical processes discussed earlier (PINTO; COSTA, 2014; PINTO, 2018).

Fifth, political participation and valorization demand a process of political education in human rights. The expansion of the population's involvement in the struggle for human rights requires that it better understands the dispute around the broader or more restricted implementation of these rights, that is, that they be aware of its political dimension. Nowadays, with the interest in human rights greater than any other political project, the involvement of emancipatory forces in implementing a broad, formal and informal process of human rights education is fundamental and strategic (ZENAIDE; PINTO, 2020). The expansion of political understanding of these rights in society can lead to an appreciation of politics itself, leading to the strengthening of the population's participation in the struggles for the realization of these rights and overcoming historical discrimination and inequalities, that is, for a restructuring of society, having as project and guiding utopia the access to all rights for all.

It is evident, therefore, that, in the Brazilian social contract, signed from the plural construction that was established with the CRFB, social commitments, based on citizenship and social rights, development is the main republican objective. The removal of the obstacles that keep the Brazilian State as an underdeveloped nation, in which the resistance to broad development, only embodied in modernizing growth (BERCOVICI, 2005) and restricted to the capital holders, stands out in the face of the conservative and retrograde resistance that currently governs the country. The

constitutional values, placed and still maintained in dispute, only show the importance of the realization of human rights as a practical key for the promotion of development. It is in this sense that a citizen reaction is imposed, based on democracy that revitalizes Brazilian institutions and makes them able to guarantee the achievement of the constitutional objective of development integrated with human rights, resuming the Brazilian constitutional commitment as the main mechanism for overcoming the multiple crisis. – democratic, economic, political and social – deepened since the beginning of the COVID-19 pandemic.

FINAL CONSIDERATIONS

With the reflections carried out in this article, we sought to highlight elements of dialectical processes experienced first around Latin American underdevelopment and the construction of alternatives to overcome it, in the mid-twentieth century, following ECLAC proposals, which led to resistance of Brazilian society's conservative sectors, fearful of the loss of power in the face of the perspective of state planning based on industrialization and the involvement of the various sectors of society in a more participatory process and greater social justice.

The second moment analyzed was the result of the constructions around the constituent process in Brazil, leading to a constitution that clearly promotes human rights and the overcoming of inequalities, based on the performance of a Social State; however, as a result of the advances of regulatory and austerity neoliberalism, what followed were political and economic movements that sought to de-characterize the original text, leading to the weakening of the implementation of its principles and guarantees.

The conservative and neoliberal actions evidenced in the dialectical processes analyzed sought to oppose not only the concept of emancipatory development that sought to establish itself, but also the broad concept of human rights, plural and with the potential to transform the reality of inequalities and violations against the human being and nature present in the preceding vision of development, based on economics.

However, in the face of the contradictions and fragility that followed and that continue to be present in society – and deepened with the COVID-19 pandemic –, what is defended in the third moment of this text is the recognition and political perspective of human rights, considered

a political project of society, more suitable to face and overcome the obstacles that have been evidenced in previous processes, especially if the political dimension of these rights becomes more evident to the population that experiences the contradictions of their non-observance and non-appropriate implementation.

REFERENCES

ARAÚJO, J. M. Constituição, cidadania e trabalho: premissas para o reconhecimento de uma racionalidade estatal pautada na solidariedade. *Direito, Estado e Sociedade*, Rio de Janeiro, n. 52, p. 134-158, jan./jun. 2018. Available from: <http://direitoestadosociedade.jur.puc-rio.br/media/art%206%20direito%2052.pdf>. Access on: Mar. 22, 2022.

ARAÚJO, J. M. Conteúdo jurídico do valor social do trabalho: pressupostos normativo-constitucionais da complementaridade entre o direito do trabalho e o direito ao trabalho. *Revista Direito da Cidade*, Rio de Janeiro, v. 11, n. 2, p. 783-807, 2019. Available from: <https://www.e-publicacoes.uerj.br/index.php/rdc/article/view/37535>. Access on: Feb. 20, 2022.

ARAÚJO, J. M. Ensaio sobre o valor solidariedade: proposta teórico-hermenêutica para a superação do paradigma econômico neoliberal. *Novos Estudos Jurídicos*, Itajaí, v. 25, n. 2, p. 431-454, 2020. Available from: <https://periodicos.univali.br/index.php/nej/article/view/16914/9598>. Access on: Mar. 22, 2022.

BERCOVICI, G. *Constituição econômica e desenvolvimento: uma leitura a partir da Constituição de 1988*. São Paulo: Malheiros, 2005.

BERCOVICI, G. Os princípios estruturantes e o papel do Estado. In: CARDOSO JR, J. C. (org.). *A Constituição Brasileira de 1988 revisitada: recuperação histórica e desafios atuais das políticas públicas nas áreas econômica e social*. Brasília, DF: Ipea, 2009. p. 255-291.

BIELSCHOWSKY, R. Evolución de las ideas de la CEPAL. *Revista CEPAL*, n. ext., p. 21-45, out. 1998. Available from: <https://repositorio.cepal.org/handle/11362/12121>. Access on: Jul. 07, 2021.

BIELSCHOWSKY, R. Do ‘Manifesto Latino-americano’ de Raúl Prebisch aos dias de hoje: 70 anos de estruturalismo na CEPAL. *Revista de Economia Contemporânea*, Rio de Janeiro, v. 24, n. 1, e202411, 2020.

Available from: <https://www.scielo.br/j/rec/a/jLtLx335tRMr6yhMFYyS-BhL/?format=pdf&lang=pt>. Access on: Aug. 22, 2022.

BRASIL. [Constituição (1988)]. *Constituição da República Federativa do Brasil*. Brasília, DF: Presidência da República, 1988. Available from: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Access on: Aug. 23, 2022.

CAMARGO, R. A. L. *Curso elementar de Direito Econômico*. Porto Alegre: Nuria Fabris, 2014.

CAMPOREZ, P.; GONÇALVEZ, E. Governo destinou R\$ 5,7 bilhões do orçamento secreto nos últimos dias de 2021. *O Globo*, 9 jan. 2022. Available from: <https://oglobo.globo.com/politica/governo-destinou-57-bilhoes-do-orcamento-secreto-nos-ultimos-dias-de-2021-25347221>. Access on: Feb. 02, 2022.

CARBONELL, M. La normatividad de la Constitución Mexicana: tres propuestas. In: DURÁN, M. M. *El significado actual de la constitución: memoria del simposio internacional*. Ciudad de México: Universidad Nacional Autónoma do México, 1998. p. 69-92.

CHAVES, F. L. A nova constituição e sua construção ideológica. *Revista de Informação Legislativa*, Brasília, DF, ano 25, n. 100, p. 39-40, out./dez. 1988.

CLARK, G.; CORRÊA, L. A.; NASCIMENTO, S. P. *Constituição econômica bloqueada: impasses e alternativas*. Teresina: EDUFPI, 2020.

DIEESE – DEPARTAMENTO INTERSINDICAL DE ESTATÍSTICA E ESTUDOS SOCIOECONÔMICOS. A desindustrialização e o setor automotivo: retomada urgente ou crise sem fim. *Nota Técnica n. 259*, 1 jul. 2021. Available from: <https://www.dieese.org.br/notatecnica/2021/notaTec259desindustrializaSetorAutomotivo.html> Access on: Jul. 07, 2021.

FAUSTO, B. A Revolução de 1930. In: MOTA, C. G. *Brasil em perspectivas*. 19. ed. Rio de Janeiro: Bertrand Brasil, 1990. p. 227-257.

FERNANDES, F. O que é revolução. In: PRADO JÚNIOR, C.; FERNANDES, F. *Clássicos sobre a Revolução Brasileira*. 4. ed. São Paulo: Expressão Popular, 2005. p. 55-148.

FURTADO, C. *O capitalismo global*. São Paulo: Paz e Terra, 1998.

GRAMKOW, C. O big push ambiental no Brasil: investimentos coordenados para um estilo de desenvolvimento sustentável. *Perspectivas – Fundación Friedrich Ebert*, n. 20, São Paulo, 2019. Available from: https://repositorio.cepal.org/bitstream/handle/11362/44506/S1900163_pt.pdf?sequence=1&isAllowed=y. Access on: Jul. 07, 2021.

HABERMAS, J. *Teoria da ação comunicativa*. São Paulo: Martins Fontes, 2000.

IANNI, O. *A ditadura do grande capital*. São Paulo: Expressão Popular, 2019.

LASSALE, F. *Que é uma Constituição?* Rio de Janeiro: Laemmert, 1969.

MAZZUCATO, M. *O Estado empreendedor: desmascarando o mito do setor público vs. setor privado*. São Paulo: Portfolio-Penguin, 2014.

MORAIS, L. B. *As crises do Estado e da Constituição e a transformação espacial dos direitos humanos*. Porto Alegre: Livraria do Advogado, 2002.

ONU – ORGANIZAÇÃO DAS NAÇÕES UNIDAS. *Declaração Universal dos Direitos Humanos de 1948*. United Nations Information Centre, Portugal. Available from: <https://www.ohchr.org/en/human-rights/universal-declaration/translations/portuguese?LangID=por>. Access on: Aug. 23, 2022.

PEDRA, A. S. As mutações constitucionais e o limite imposto pelo texto da Constituição: uma análise da experiência latino-americana. *Revista Brasileira de Estudos Políticos*, Belo Horizonte, n. 101, p. 7-36, jul./dez. 2010.

PINTO, J. B. M.; COSTA, A. B. (org.). *Bases da sustentabilidade: os direitos humanos*. Rio de Janeiro: Lumen Juris, 2014.

PINTO, J. B. M. (org.). *Direitos humanos como projeto de sociedade: caracterização e desafios*. v.1. Belo Horizonte: Editora Instituto DH, 2018.

SOUZA, J. *A tolice da inteligência brasileira: ou como o país se deixa manipular pela elite*. São Paulo: LeYa, 2015.

SOUZA, W. P. A. *Primeiras linhas de Direito Econômico*. 6. ed. São Paulo: LTr, 2017.

ZENAIDE, M. N. T.; PINTO, J. B. M. O processo de construção e disputas em torno dos Direitos Humanos no Brasil. *Revista Interdisciplinar*

SULEAR, Ibirité, ano 4, n. 8, p. 8-30, dez. 2020. Available from: <https://revista.uemg.br/index.php/sulear/article/view/5279/3361> Access on: Apr. 03, 2022.

Article received on: 05/11/2022.

Article accepted on: 08/29/2022.

How to cite this article (ABNT):

CLARK, G.; ARAÚJO, J. M.; PINTO, J. B. M. From peripheral underdevelopment to development integrated with human rights. *Veredas do Direito*, Belo Horizonte, v. 19, n. 44, p. 11-33, may/aug. 2022. Available from: <http://www.domhelder.edu.br/revista/index.php/veredas/article/view/2347>. Access on: Month. day, year.