Reforms in Brazil during the *Real* Plan: *who wins?*

> *And in the sovereign lies the essence of the Commonwealth; which, to define it, is: one person, of whose acts a great multitude, by mutual covenants one with another, have made themselves every one the author, to the end he may use the strength and means of them all as he shall think expedient for their peace and common defence. [...] The attaining to this sovereign power is by two ways. One, by natural force [...] The other, is when men agree amongst themselves to submit to some man, or assembly of men, voluntarily, on confidence to be protected by him against all others. The latter may be called a Political Commonwealth* (State)*, or Commonwealth* (State) by *Institution.* (Hobbes, Leviathan)

1. General Considerations

Hobbes is concerned with the condition of existence of individuals in individualist societies. By making an abstraction of the society of individuals, he recognises in them a self-destructive nature, concluding that the society of individuals produces, in its own dynamic, the war of men against all other men. To avoid this the State is constituted. For him, the authority of the sovereign is given by every particular man in the Commonwealth who grant him the use of power and force which enables to *transform the wills of them all in the sense of peace at home and mutual aid against their enemies abroad* (HOBBES, 1979:106)[i]. In the sovereign lies the essence of the Political State, of whose acts a great multitude, by mutual convenants one with another, have made themselves every one the author, granting him strength as an expedient for their peace and common defence.

Talking about the functions of the State and the rights that constitute the essence of the sovereignty, Hobbes points to the essence of the Liberal State: the power of coining money; charging tributes; disposing of properties and peoples of the young heirs; buying in the markets; controlling the citizen army; issuing laws and judging[ii]. However, he adverts, these functions only can be transferred by the sovereign if it does not cause loss of the power of preserving peace and Justice, that is the main reason why all the States are instituted.

From Hobbes´ arguments one might ask: how would he see the reforms in Brazil during the *Real* Plan[iii]? Would them compose the paths that would lead to a more democratic society, apt to participate in the process of reciprocal integration, without internally causing the loss of power of preserving peace and Justice, the main reason why all the States are instituted?

2. Times of Crisis

At the beginning of this new century, we are in a deep political, social and economical crisis. The State seems to have lost its capacity of coping with social demands. Such a crisis might result in a loss of function for the Parliament, for the social organizations, for the political parties, with the reinforcement of the political Executive and some restrict groups of high ranking in a political party (ALTVATER, 1987)[iv]. Solidarity networks that seem to have sewn the social tissue during the so-called "glorious 30 years" of regulated capitalism are being torn apart. Social exclusion increases. The gap between rich and poor deepens. Trade union organisations lose its strength and this is reflected in the collective bargaining processes and in terms of conquered rights. As a consequence, the institutions are weakened. In the dynamics of crisis, authoritarian trends receive an important impulse (*Ibid.* 88). While Parliament loses its function, the political Executive is strengthened and becomes progressively seized by restrict groups with private interests. In the inner areas of the deregulated capitalism, the interests of private groups in an uncontrolled competition, take over the State and suppress its formal independence in relation to the civil society (BELLUZZO, 2001)[v]. Democracy is thus threatened.

In this context, reforms play a fundamental role. In Brazil, under the guidance of liberal fundaments, the Administrative, Judicial Power and Social Security reforms were sent to Congress. Making a concrete analysis of their propositions we can observe their consequences for our society. From this standpoint, one may think of transforming alternatives, in the perspective of a more cohesive and less excluding society, especially because the perception of the problem and its consequences is a stage in the construction of a new object. It is a search for a solution.

3. The Reforms during the *Real* Plan

> ***One thing is to organize arranged ideas; another is to deal with a country made of people with flesh and blood, of over a thousand miseries*** (Guimarães Rosa, Grande sertão: veredas).

In Brazil, stressed by unemployment and in disbelief for a State that apparently loses its regulatory power, individuals seem insecure, hopeless and deprived from their capacity for collective organisation (OLIVEIRA, 1966: 22-28)[vi]. Corruption and clientelism permeate in the insides of power at the same time that an ideology of despises for the public sphere seems to catch the imaginary of the people[vii]. The Judicial Power, *locus* of the concrete enforcement, and even enlargement of rights, seems to have reached its exhaustion

The trend of liberalization that reaches the country in the 90s is intensified during Cadoso´s government. Policies are adopted based in the assumption that State intervention must be limited to the "breaches" of the market, such as: reduction of barriers to the free trade; opening up for the free flow of investments; privatization; deregulation of the financial and labor markets and sectors such as energy, transportation and telecommunications. "Policies of adjustment" and "structural reforms" basically aim at reducing the public deficit and at opening the private sector for solutions that were previously only available for the public sector.

Based on the argument that the State is inefficient, it is suggested to dismantle it with efficiency. Among the responsibilities taken with the IMF, besides the reforms and their complementary acts, are the acceleration of privatization, including Banks, systems of generating and distributing electrical energy, as an emphasis to the approval of laws which will give room to the privatization of water services and sewage (www.brasil.gov.br).

The Administrative, Security and Judiciary reforms receive attention in the present text. The intention is not to dissect them from their content, but to bring in elements that will allow for the discussion of their consequences, bearing in mind the main concern of this Seminar: peoples integration in the assumption of social cohesion and non exclusion.

3.1 Enlarging differences

Brazil is a country of 169 million people, according to recent data of the IBGE[viii] [Brazilian Institute of Statistics]. Among these, the majority is poor; many are miserable. In 1999, the family income per capita of the wealthiest 10% was more than 50 higher than the poorest 10%. With a GDP of U$ 557 billion in 1999, it annually pays for services of the external debt, 21% of this GDP. In the

annual Budget, only 1,5 % are destined to the Judiciary Power, a meaningless amount if compared with the one spent with the services of the debt. On the other hand, this Judiciary begins to get more demanded in face of the lesion to rights. The Labor Justice is summoned by hundreds of workers, in their great majority unemployed.

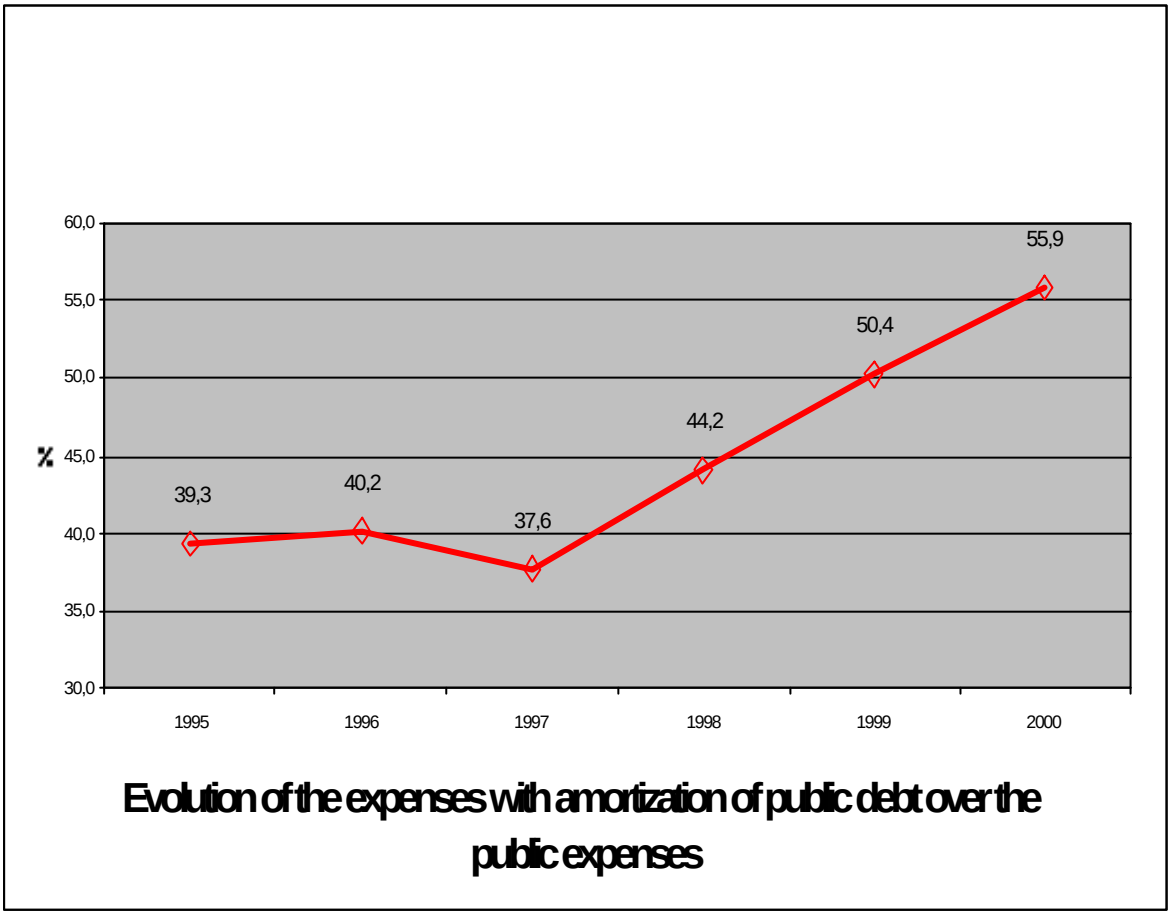
According to data of the BNDPJ – National Data Bank of the Judiciary Power for the Labor Justice (http://www. stf. gov. br/bndpj), in 1990 1.233.410 lawsuits are disputed; in 1995, 1.823.437; in 1999, 1.876.874. From 1990 to 1999, the increase is of 52%. Similarly, to Courts 145.646 lawsuits are disputed in 1990; in 1995, 363.576; and in 2000, 418.378. The increase from 1990 to 2000 is 187%. The table and graph below show the discrepancy between what is destined to the amortization of debt and to the Judiciary Power.

Table 1. Public Expenses in Amortization of Debt and Judiciary Power during the *Real* Plan

(1995-2000)

	Amortization of Public Debt (R$mi)	Expenses with Judiciary Power (R$mi)	Total of Public Debts (R$mi)	Total Amortizatio (%)	Total Judiciary (%)	Amortization/ Judiciary (%)
1995	95.503	3.691	242.957	39,31	1,52	25,9
1996	116.287	4.400	289.226	40,21	1,52	26,4
1997	147.039	6.028	391.067	37,60	1,54	24,4
1998	218.973	7.169	495.791	44,17	1,45	30,5
1999	296.423	7.470	588.535	50,37	1,27	39,7
2000	344.861	9.314	616.382	55,95	1,51	37,0

Source: Ministry of Planning



In the Brazil of the *Real*, a model of fiscal adjustments of primary superavit occupies the highest priority in the agenda. Cuts of rights, of social benefits, of electric energy affect the Brazilian citizens. In 1999, the duty of producing *superavit* is part of the budgetary law. In 2000 and for 2001, the Law of Budgetary Policies (LDO) expresses this obligation. More recently, with the Fiscal Responsibility Law (Complementary Law 101/2000), very demanding fiscal goals hinder the fulfillment of debts, and pose a condition on the public action. In the limit, the public administration is criminalized for not complying

with these goals. Moreover, what is crucial is that this primary result is not aimed at the social needs such as health, education, safety, justice, security, transportation, environment, labor, and so on. On the contrary, it is aimed at the payment of the debt (ANFIP, 2001).

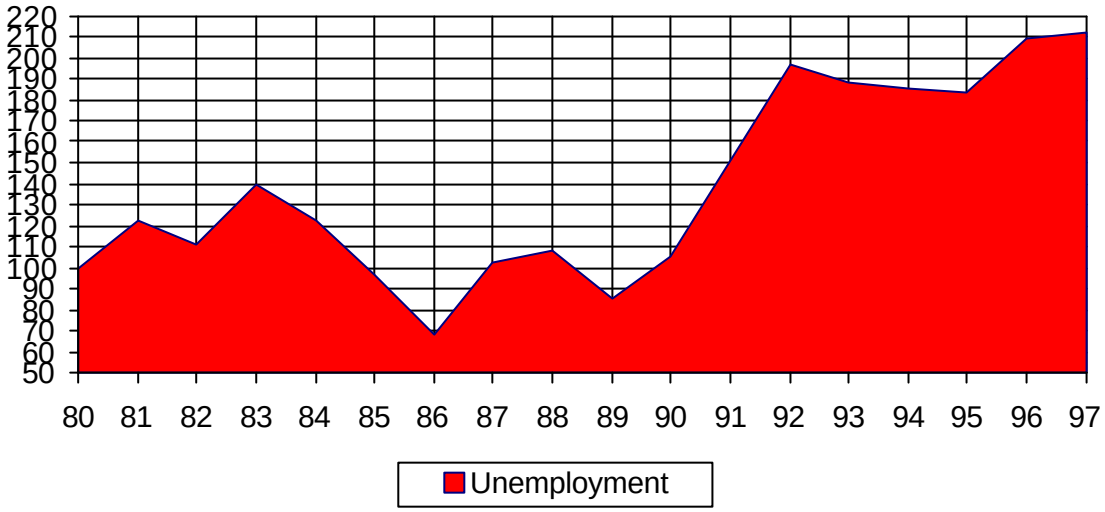
The Fiscal Responsibility Law (LDO) that defines the basic lines for the year 2002 is inserted in this model of adjustments. It aims at generating R$ 31 billions of superavit in the primary public account to pay the interests of the debt. The oppositions proposed a reduction of the primary result in the government accounts from R$ 31 billions to R$ 6 billions. The difference of R$ 25 billion would go to the readjustment of the minimum salary (today US$ 75), civil servants, agriculture and investments in the energy sector. The government claiming that there would be loss of foreign capital pressed its basis in Parliament to approve the project. The opposition lost this battle. Meanwhile the government proposition is approved, an energy crisis threatens the population with rationing, fines and blackouts[ix]. The tendency for privatization follows its course. The bill 4147/01 that privatizes water and sewage services – a commitment included in the Economic Politics Memorandum submitted to the IMF – is a governmental goal[x]. In spite of the entire fiscal adjustments and reforms subordinated to the agreements with the IMF, unemployment, informal labor, misery are violence are increasing. Unemployment and informality cause reduction in the Security contribution. This reduction has been paradoxically used as a justification to suppress rights, public benefits and social services, affecting the needy ones.

The Brazil of the *Real* Plan loses its position in the international trade and has its public debt highly increased. A perverse map of the social exclusion reveals about **63,6 million of excluded** among them, at least **25 million are miserable** – 16 years old or older, living in the lowest degree of the social pyramid, the equivalent of three times the population of Sweden, or the total population of Peru – **24 million of deprived** and **15 million of poor**. The miserable suffers with the lowest income and schooling and, among them, one in every four survives out of temporary work, without any guarantees and no social participation. Among these, 45% are in the Northeast and 83% have less than four years of education; these are the excluded of the excluded (TOLEDO, 1998) [xi]. In the ranking of countries with higher income concentration its Gini coefficient is the worst when compared to other Latin-American countries.

With a growing structural and long-time unemployment, a truly *disorder* (MATTOSO, 1995)[xii] increases the insecurities in the labor scenario. In 1999, 58% of the population is inserted in the market

in a precarious way (IBGE data). According to Pochmann (POCHMANN, 1998)[xiii] the unemployment rates in the Brazilian geographical regions are, at least, the double of the ones obtained at the end of the 80´s. The increase in the labor which dose not receive a wage causes more precariousness and thus, in more insecurity.

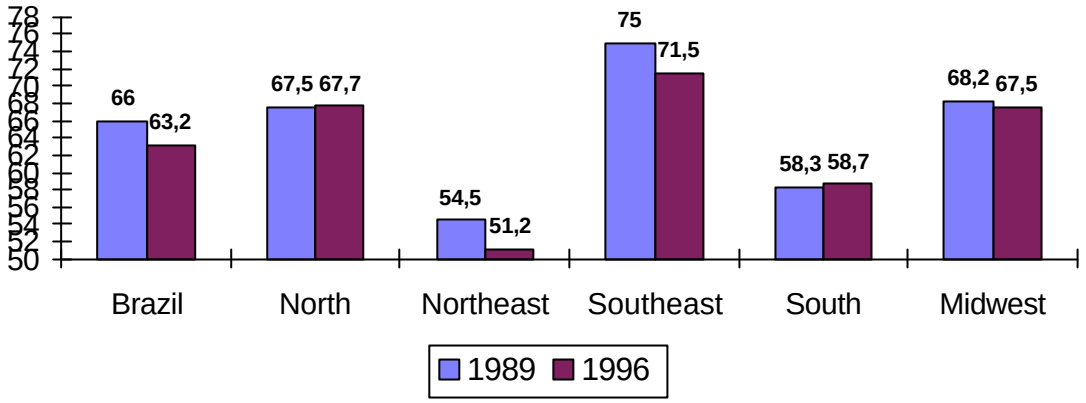
Graph 1 - Brazil: Evolution of the unemployment indexes (1980 = 100,0)



Source: FIBGE/PNAD's adjusted
Elaboration: Márcio Pochmann

The rate of formal waged workers per geographical region is enhanced expressively in the Southeastern, Northeastern and Midwestern regions, as we can see in the graph below, and is kept practically unaltered in the Southern and Northern regions.

Graph 3: evolution of the rate of wages per geographical region, 1989 and 1996 (in %)



Source: FIBGE/PNAD's adjusted
Elaboration: Márcio Pochmann

In this context, the workers organization loses force and vitality. The nature of their claims is shifted to the maintenance of working positions. The fight for reduction in working hours – which allowed for the inclusion in the law of the 7th clause of the Federal Constitution of the right to reduce the working load from 48 to 44 weeks - is suspended. Some collective agreements now bear clauses that are harmful to rights[xiv]. Disrespect to rights increases the numbers of litigation, overwhelming even more the overloaded **Labor Judiciary**.

Data from DIEESE – Interunion Department of Statistics and Socio-Economical Studies[xv], concerning 1999, show that we are facing the worst years for collective negotiations during the Real Plan. Only half of the professional categories have been able to regain their wages according to past inflation. With the increase in the cost of living – 8,4% between January and December (INPC-IBGE data), the employers become more rigid in the wage negotiation, which results in difficulties for the union movement concerning the defense of workers purchasing power. Those data show that just one professional category has received a real increase higher than 3%, although still revealing retrogression in relation to last year.

In the mean time, in the Sector of Collective Dissension of the 4th Region/ RS, the situation is different: in the trials of collective dissension it is being assured to workers that they will receive the replacement of inflation indexes measured by the INPC-IBGE. The Court of São Paulo has been assuring to certain categories a productivity index of 10%, besides the salary. These decisions have influenced some collective agreements in the automobile industry. So, the practice of the Normative

Power regulated by article 114 of the Constitution [xvi], by the Labor Justice – originally suppressed from the reform, and then kept via public arbitration, in its latest version – has revealed its importance in a moment when the workers collective organizations [xvii] have been so frail.

In such a context, a meaningful reform of the State becomes necessary, having as a framework the public interest and the common well being. Instead, the reduction of its roles and the (de) construction the Constitution's normative force are part of the official plan. Liberalizing reforms rather than democratize the State and strength the Judiciary Power as a *locus* of effectiveness and guaranty of rights, are weakening even more its democratic components.

3.2 The Administrative Reform (PEC 41/97)[xviii].

Based on a diagnosis of the "State Crisis", the Chamber of Reform of State Apparatus approves, in November 1995, a document through which objectives and guidelines for the reform of the public administration are formulated, with the aim of preparing it for the "magnitude and challenges by which the country has gone through due to the economical globalization" (*apud* DIAP, 2000). The aim is to have a reduced State. The private interest is the keynote. Alterations in the State structure are approved. Withdrawing from public servants acquired rights, it includes, for instance: a) **the extinction of an only judicial regime** approved by Law 8112, of December 11th, 1990, which defined as statutory all the servants, with the possibility of creating a public job, without restrains to its finalities and reach; b) **the alteration in the way of entering the public service**; c) breach of the principle of payment **isonomy**; d) **breach of the principle of stability**, allowing for dismissal due to insufficiency of performance (by means of procedures simplifying the periodical evaluation) or for reducing the staff to the limits defined in complementary law for expenses with personnel; and e) **breach of irredutibility of wages**; and, f) **impending or suspension of funds and loans**, including for anticipation of revenues given by the federal and state governments and their financial institutions, **for payment of assets, inactive and State pensioners**, Federal Districts and Municipalities. By adopting a second system of contracting, submits the servants to the duties of the statutory regime, without the advantages, among others, of stability and integral retirement. Besides instituting two juridical regimes, it flexibilizes the policy of entering the public service by means of examination (article 37, II of Constitution). In practice,

it allows that the public servant's juridical regime becomes a CLT[xix] one. As part of its regulation, the PLP 248/98 awaits in Senate for the voting of the amendments. In addition, the Law 9962, of February 22nd, 2000, controls the regime ruled by CLT, thus adapting to the landmarks of reforms. With this law, a second category of servants, without stability and without the advantages of Law 8112/90, is constituted, enlarging the dissension of workers undermined by unemployment and precariousness.

3.3 The Social Security Reform.

The PEC 33/96 dealt with the Social Security Reform. After an uneasy legislative process, the Constitutional Amendment 20/98 is approved. In short, this Reform produces, among others, the following effects: a) **limitation of the state public security**, with privatization of the complementary security regime of the Union, States, Federal District and Municipalities public service except for the military ones; b) **extinction of the parity regime** between wages of activities, gains of inactivity and pension due to death; c) **extinction of the public security regime** of the statutory servant, specially regarding the careers typical of the State; d) establishment of regime of **juridical irresponsibility of the Union,** States, Federal District and Municipalities, regarding the complementary security of the servants with public offices of effective wages; e**) institution of a funding plan** with annual minimum periodicity and **financial regime of obligatory capitalization**; f) **indefinition and aleatory status of the security benefit value**, subject to the amount of accumulated individual capital and to the profitability of the portfolio of financial investment funds in the stock market; g) **privilege of the private financial sector**, by means of canalization and transference – immediate or in the medium term *reals* in complementary security contributions of state entities and public servants for private, closed or open corporations, of complementary security.

By means of a Constitutional Amendment (PEC), the essence of a whole system instituted by the Federal Constitution of 1988 is altered (and not just amended). Rights are restrained and/or suppressed. Among other clauses, accident at work begins to have a securitary nature instead of a security one[xx]. **Private** funds are institutionalized to complement the general regime of the Security. With application to the complementary law concerning the private plans of security (art. 202 and paragraphs)[xxi], the integral **retirement** of servants who make more than R$ 1.200,00 s suppressed, in

a **system that combines two criteria**: a) time of contribution, 35 years for men and 30 for women; and b) minimum age of 53 for men and 30 for women, substituting, in practice, time of service for time of contribution. Approved in the House of Representatives, the PEC 33/96 receives the approval of the Senate in two turns, with amendments that substantially alter its original text. When returning to the House of Representatives, in the agenda of the period for extraordinary summon of the Congress, it becomes tumultuous[xxii]. Some Congressmen, in points-of-order presented to the Commission of Constitution and Justice, underline the risks it imposes on the Democratic State of Right[xxiii]. Nevertheless, the Amendment is approved, opening up for the institutionalization of private funds, in a system which is subordinated to the orders of the market and, above all, of the financial capital[xxiv].

Following the Amendment, the complementary bill 08, 09 and 10 are submitted. The first and third are approved, with the edition of Complementary Laws 108 and 109, of May 25th, 2001, approved by the President. In the House of Representatives a complementary bill nº 09 is going through its final voting, which withdraws from the public servant the right of integral retirement, whose pension value will be undefined, depending on the status of the market. Although in this moment the project concerns the security of the public servants, it signals to a future privatization of the general Security system (MATTOSO et allii, 2000). The benefit plans sponsored by the public organs shift to the administration of the private security. The ones retired today do not have any guarantee for preserving the rights acquired during their own regime, creating extinction charts and differentiated benefits (Ibiden). The pension funds are just collectors and administrators of contributions. For the ones who join the system, when the conditions for retirement are implemented, the benefit will be acquired in the market from an insurance company, having as a basis the values accumulated in the fund, and the responsibility of the public sponsoring entity is not defined.

According Belluzzo & Appy´s[xxv], if the project is approved, the economical impacts will be negative, contrary to the arguments of its proponents. In the short run, there will be losses for the public accounts. In the long run, lack of security and certainty. This negative impact will be even worse as the support for the new regime increases. City Halls, for instance, will face cash problems. In the long run, the impact will depend on the real cost of the public debt in the coming years and also on factors such as: contribution tax rate for the own regime; growing rate of the servants real salary; and, age of retirement and time of contribution. The administrative cost of the system will increase for two reasons

(1) due to the need of keeping two parallel managerial structures and (2) due to costs in marketing and sales resulting from the dispute for clientele undertaken by the private companies which will generate the acquisition of coverage of private companies done individually, as happened in Chile (BELLUZZO & APPY, 2000). According to this statement, imprecisions in the project may affect not only the rights of the servants, but the public accounts, which are the main reason why these reforms are being imposed to the society.

When approved, it is even possible that the servants and their families begin to rely on the success of the stock exchange market frightening that a crash will affect their life conditions (MATTOSO et allii, 2000). Particularly in Brazil, where the system of closed security has 86 (eighty-six) funds near collapse. This is a finding of the Office of Complementary Security (SPC) that concludes that these eighty six funds, the majority are middle and big-sized, do not have enough assets to pay the retirement plans to their contributors. In 46 of them, the situation is so critical that the reserves are below the necessary to pay up to the end the benefits of the ones who are already retired. Among these, 19 are sponsored by public corporations and 27 by private ones. As for the other 40, 10 are sponsored by public corporations and 27 by private ones[xxvi].

The performance of the labor market plays a fundamental role in the social security system. Data by CEPAL for Latin America register preoccupying trends, with the deepening of inequalities. Ocampo (OCAMPO, 2000)[xxvii] mentions some of these trends. First, the growing disparity of pay among workers who are more or less qualified, with increase in job positions with low wages; second, the scarce generation of formal employment, with deterioration in their quality. The informality goes on being the main reason why Latin-American economies face a scarcity of job positions in the triennial 1995-97. The rate of open unemployment increases in most of the countries. Finally, he recognizes that, while in the 90´s the social public expense per inhabitant and in relation to the GDP has recovered when compared to the 80´s, this recovery has been heterogeneous and concentrated in expenses with less favorable distributive incidence. For sure, these are elements that contribute to deepen the problems faced by the security systems in Latin America, in which the precariousness and the informality in the capital worker relationship cannot be underestimated.

The memorandum of Economical Politics of the Ministry of Treasury as of March 29th, 2001, submitted to the IMF (www.brasil.gov.br), does not consider these elements. By analyzing the

performance of Brazilian Economy in the third year of the Agreement "Stand-by", it discusses among other issues the projects for the public service, which are indispensable for the success of fiscal adjustment. The government commits itself to proceed in 2001 with structural reforms it considers important for the “improvement of quality”, of “equity” and the “sustenance” of the adjustment. It also commits to obtain as fast as possible the approval from the National Congress of the legislation referring to pension funds, to the measures to increase social security contribution for active civil servants, extending it to the retired ones, and, also, two law projects regarding the implementation of the administrative reform: a) the law regulating the dismissal of public servants who benefit from the stability due to inadequate performance (PL248/98); and, b) constitutional amendment that imposes limits in wages for public servants.

These themes are subsumed in the fiscal adjustment and in the need of producing primary surpluses, thanks to the commitment with the IMF, stipulated in the LDO for 2002 in R$ 31 billion, aimed at paying the debt. To whom is this reform interesting?

3.4 The Reform of the Judiciary Power

The Judiciary Power is a deep crise. The lack of satisfaction in society, with its performance when complying with the constitutional attributions, is great**.** Law Operators**,** by means of their representative entities have been offering proposals for meaningful reforms so that the Judiciary meets the new social demands, with the aim of making it more democratic and seeing that it performs its role of stating and guaranteeing the rights of the citizen.

The political system adopted by the Brazilian Constitution is based in three powers: the Executive, the Legislative and the Judiciary. The Higher Courts – Supreme Federal Court, Supreme Justice Court and Supreme Labor Court – with their attributions defined by the Federal Constitution, are composed by Ministers freely chosen by the President of the Republic and nominated by him. The Supreme Federal Court, created in the first years of the Republic (1890), has kept its original characteristics with some slight changes (COSTA, 2001). A Guardian of the Constitution, among its main duties is the decision on the constitutionality of the laws and acts of the other powers judge the litigation between the States and the Union, defending in a last jurisdiction the rights of the citizens. The 1988 Constitution has

basically kept its structure, though enlarged its constitutional competence through new mechanisms such as, for example, the collective security mandate and the injunction mandate. It has withdrawn, however, the competence for examining issues concerning the infraconstitutional federal right, creating the Justice Superior Court. And together with democratic trends, the Supreme Court has lost its avocatory power[xxviii], attribution received from the Constitutional Amendment 07, during military dictatorship. The same Amendment that had created the National Council of Judges composed by ministers of the Supreme Federal Court (*Ibid.* 185).

From 1985 on, democracy begins to get reassured as an essential value in Brazil. With the "political opening", an explosion of demands is begun. New social and labor conflicts are seen, both collective and intercollective, with laws that are old-fashioned and technical expertise is outdated. The Law practices moves from an abstract and inert vision to an activist and politically aware perspective. A process of adequacy to the juridical and to a new Brazilian reality is begun.

The new collective mechanisms would allow the Judiciary to meet the needs of this new social order, making the "Live Law" and social rights incorporated by the Federal Constitution effective (MELLO et allii, 2000). Nevertheless, instead of giving force to these new instruments, it weakened them, little by little. In society, with the support of the mass media, the criticism to this Power becomes generalized. Without conditions of making the new juridical-political order effective - introduced by the 1988 Constitution, pressed by the excess of demands and with a precarious structure – it seems to have arrived at its exhaustion. The loss of credibility provokes in a certain *traditional common-sense*, the emphasis in the private spaces in detriment of the public ones, leading to a search for direct forms of solution of conflicts. These circumstances impel the discussions about the Judiciary reform, in search of a more democratic Power. In practice, more conservative forces appropriate the banner. Their propositions, appropriated by government, were incorporated in the project of constitutional reform in course. It rescues institutes from the dictatorship year's system, as the avocatory and the National Council of Judges. Additionally, imports partially institutes of legal systems that have Constitutional Courts without considering its contextualization and without worrying about the democratization of Power. This way, the precaution made by Guimarães Rosa, in the epigraph that opens this item, was forgotten: *one thing is to organize arranged ideas; another is to deal with a country made of people with flesh and blood, of over a thousand miseries.*

3.4.1 The international organisms and the reforms. The State reforms have in general caught the interest of international economic-financial organisms. Object of studies in depth, the Judiciary reform does not escape from the sight of the World Bank. The Technical Document 319, for Latin-America and Caribe, includes a program for this reform, referring specifically to the factors which *affect the quality of this service, its slow pace and its monopolistic nature* (DAKOLIAS, 1996)[xxix]. The document calls the attention to the slow pace, the excessive accumulation of demands, the limited access to the population, the lack of transparency and predictability of the decisions and the frail public reliability of the Judiciary. With this starting point, it suggests solutions in the system for appointing judges, disciplinary evaluations, administration norms, reformulation of codes and institutes related to the access to justice, including as well the juridical teaching, training and Professional Councils of Lawyers.

In the creation process of the Free Trade Area of the Americas (FTTA) the interest of the USA pushes the work groups which discuss intellectual property issues. The Report on the Barriers to Foreign Trade in the USA/2001, Chapter Brazil, shows that the compliance with the copyrights is unequal, and calls the attention to the fact that the Brazilian Courts and the judicial system are inefficient and complicates the application of the rights of intellectual property in Brazil (*Agência Estado,* April, 20th, 2001). In this evaluation, the application of laws in an inadequate way in our country ends up serving as a non-tariff barrier against North-American products. In the Quebec Declaration (http://www.summit.americas.o), elaborated during the meeting of the III Summit, the concern with the Judiciary Power is present.

Inspired in the Technical Document 319 f the World Bank, the Judiciary Reform is, in Brazil, impelled by the governing basis in Parliament. The Parliamentary Investigation Commission, in the Federal Senate has strengthened the reform policies. Apparently dissociated from the Judiciary reform, the "Parliamentary Investigation Commission of the Judiciary" had the effect of generalizing its demoralization and the ones of their judges. In the official discourse, the reforms seek juridical security, swiftness and predictability in the decisions. In practice the centralization of Power aiming at the predictability and control by the ones on top. Democracy or autocracy? This is an issue for debate, especially because this reform has been suffering from concrete resistance by Brazilian judges, through

their representative entities and also, through other segments of the organized civil society, who do not see it as a democratic agent of the judicial system.

3.4.2 The plans and phases of the constitutional reform of the Judiciary. Within a process that may be divided in two plans – first, the reform itself; second, the alterations via infraconstitutional laws – the reform desired by the government, although some resistance, is, in practice, accomplished. What remains to be approved is a disciplinary statute, directed to judges. By means of infraconstitutional laws, in a process conveniently put aside of the so-called reform of the Judiciary, meaningful alterations have been implemented. Many of the goals defined for the reform, whose proceeding have been sometimes blocked by the resistance movements, ended up being achieved without it.

The constitutional reform of the Judiciary may be **divided in five phases**, four of which in the House of Representatives; the fifth and last one, in the Federal Senate (MELLO et allii, 2000).

The **first** is identified with the works of the Constitutional Revision, from which the Rules 26 (Judiciary Power: General Dispositions), 27 (Federal Supreme Court), 28 (Administrative and Disciplinary Control of the Judicial Power), 29 (Superior Justice Court Regional Federal Courts and Federal Judges), 30 (Courts and Labor Judges) and 31 (Courts and Electoral Judges, Courts and Military Judges, Courts and State Judges) have resulted. The Rule n° 27 (1994) is conditioned in Laws 9.868/99 and 9.882/99, later examined. In their topics, this Rule which, in some aspects is inspired in German institutes and, in others, seems to be reflected on amendments of the military period, as for instance: a) concentration on the Supreme Federal Court of the competence for judging the popular trials and administrative improbity against authority acts or employees subject to their jurisdiction; b) decisions pronounced in Direct Suits of unconstitutionality and Directs of Constitutionality, with possibility of extension, by law, to other decisions of merit preferred by the Supreme Federal Court; c) mandates by the Supreme Federal Court in incident constitutional issues, with possibility of suspending the ongoing process before any court. This Rule does not consider democratizing, for instance, access to the Supreme Federal Court nor does it propose a Constitutional Court in resemblance with countries in which the control of the constitutionality is concentrated. The proposals of the Constitutional Revision are not approved. A new cycle of the same process is begun.

The second begins in the first mandate of President Cardoso. The Proposal of Constitutional Amendment 112/95 by the Congressman José Genoino (Labor Party, São Paulo) is attached to the Proposal of Constitutional Amendment 96/92, by the Congressman Hélio Bicudo (Labor Party, São Paulo). In the House of Representatives the Special Commission on the Structure Reform of the Judiciary Power is installed. The relator, Congressman Jairo Carneiro (PFL[xxx], Bahia), presents a substitute global amendment, substantially altering the original foundations of the two Proposals of Constitutional Amendment and distorting them. The government appropriates this substitute, transforming itself in a proposal of total reform of the Judiciary Power.

In this substitute, the following alterations, among others, appear: a) **extinction of lifelong status,** with loss of public offices due to public interest or disciplinary reason, by deliberation of the competent court or by decision of the National Council of Justice; b) **approval in official course** of preparation for magistracy, or accredited by the National Council of Justice, as an obligatory stage in the process of confirmation in the public office, causing alteration in the form of recruiting – the public examination is made into a stage in the process of choice, with final decision attributed to the higher public offices in the Superior Courts who detain the hegemony of the National Council of Justice and the control of the Schools of Magistracy; c) **disciplinary penalties,** with sanctions such as removal, availability and retirement, by public interest, with decision taken by absolute majority of the Courts and no more by qualified majority of 2/3; d) **institution of the National Council of Justice**, integrating organ of the Judiciary Power, composed basically by Ministers of Superior Courts, with competence to sue and judge claims or organs of the Judiciary Power, including against its own auxiliary services, without affecting the ,correctional competence of the Courts. The Council may: 1) **avocate disciplinary processes** and, by the vote of the absolute majority, decide for the loss of the public office, availability or retirement of judges, with proportional gains; 2) decide for the **suspension, removal, or other administrative sanctions** foreseen in the Statute of Magistracy e, 3) **review, by own motion or by means of provocation, disciplinary processes** of judges and members of trials judged in a period less than a year, with a disciplinary strictness that threatens the internal and external independence of the Judiciary. This Council surely does not correspond either to popular participation in the administration of justice, with a shift in the axle of power to the civil society that has been proposed by entities of juridical operators, nor to the construction of interaction channels between the

Judiciary x Society, necessary for the democratization of the Power. It is, in fact, an internal organ of controlling judges and of centralizing decisions and Power; e**) judicial control of constitutionality of laws,** altering the system concerning the incidental question. In practice, it suppresses the spread (diffuse) control of the constitutionality, established by the Federal Constitution of 1988[xxxi]. The latter, in a moment of democratic advance, contemplates two control systems of constitutionality: **the spread one,** through which all the judiciary organs may perform the control of constitutionality of laws in incidental form, when judging the concrete case; **the direct,** through which this control is limited in one judiciary organ (ex. direct actions of unconstitutionality, of competence of the Supreme Federal Court)[xxxii]; and, f) **abridgments of the Superior Court with binding effects**, with the argument of swiftness, security and efficiency in the decisions. One cannot deny the importance of the oriented abridgements in order to make the Jurisprudence more uniform. However, the binding effect that has been granted to it, obliging judges from a lower degree of jurisdiction to judge in accordance to them is to hinder the creating force of Law. By approving the binding agreements, the higher ranks in the Judiciary will begin to issue statements with a force superior to the laws, imposing the interpretation of the norm. In the first substitute, the non-compliance configures a **responsibility crime,** leading to the loss of the public offices, a punishment withdrawn in the subsequent ones. By electing three aspects – binding abridgements (judicial control); responsibility crime (punishment for the non-application of the abridgements); and national council of justice (administrative control by the higher ranks) -, we become aware that this reform, instead of democratizing the Judiciary, reinforces a centralizing model of the State.

For the Labor Justice, the end of the Normative Power withdraws the possibility of intervene in labor collective conflicts and to edit norms for the various categories of workers. Due to this, solution for this conflict is to directly and autonomously negotiate, without the mediation of the State. Thanks to the resistance to the Report, with accusations to its non-democratic content, its voting is not concluded before the end of that legislature.

The third begins in the second mandate of President Cardoso. The Special Commission for the reform of the Judiciary is reinstalled and the relator is the Congressman Aloysio Nunes Ferreira, PSDB, São Paulo. His report keeps the prior authoritarian aspect. As a novelty, it proposes the extinction of the Labor Justice. As a distinguishing point, he withdraws propositions with sustentation, such as the

crime of disobedience for the non-application of the abridgement with binding effect. With the promotion of this congressman to the public office of General Secretary of the President of the Republic, the Report ends up not being voted.

The fourth begins with the designation of the Congresswoman Zulaiê Cobra, from PSDB, São Paulo, as Relator in the Special Commission. Her Report keeps the structure of the previous ones, with the addition of some democratic values: a) **direct election** for the administrative public offices in the Courts; b) **revocation of the declaratory action of constitutionality;** and, b) adoption of mechanism of **impeditive abridgement of resources** (instead of binding abridgement), idealized by a group of magistrates, approved by the Congress of Judges at the Association of Judges of Rio Grande do Sul. Parliamentary majority rejects all the innovative propositions, which in a first moment reduced the resistance to the project. Approved in the Special Commission, with contrary voting from the opponent parties, the democratizing points in the Report Zulaiê Cobra were suppressed, being reinserted with those prior authoritarian values.

The fifth corresponds to the present moment, in the Federal Senate. The relator Bernardo Cabral did not submit a substitute. There are no signs that the process will develop, basically due to the serious accusations of corruption that have been taking place in the Senate and, above all, the frailty of the federal government, which is facing a progressive loss of social support[xxxiii]In short, the **constitutional reform** of the Judiciary is reduced to some key-factors such as: a) moratorium of the writ of mandamus; b) frailty of the guarantees of the judges, with establishment of an authoritarian and rigid disciplinary system, including the loss of the public office; and, c) creation of one more organ of the Judiciary Power, with bureaucratic functions of high hierarchy which, under the appearance of an external control, centralizes the administrative power. The remaining is already positive law.

3.5 The reform via ordinary legislation.

Laws 9.868/99 and 9.882/99 that alter the control system of constitutionality of laws are highlighted. With the excuse of regulating the direct actions of unconstitutionality and the declaration of constitutionality, the Executive submits to the House of Representatives the bill 2.960/97. Its approval results in Law 9.868/99, which institutes the differed unconstitutionality. The Supreme Federal Court

may, when declaring the unconstitutionality of law or normative act, due to reasons of exceptional social interest or juridical security, determine that the effectiveness of this decision is made from the transit in *rem judicatam*, or in another moment that is determined. It also foresees the possibility of a decision in writ of prevention suspend all the processes, in any court in which the constitutional issue to be decided by Supreme Federal Court is going through discussion. Moreover, it attributes a binding effect to the declarations of constitutionality or unconstitutionality pronounced by the Supreme Federal Court.

The Law 9.882/99 grants to the Supreme Federal Court, in its article 5th, § 3rd, competence, in liminar mode, to determine that judges *and Courts suspend the progress of the process or the effects of judicial decisions, or of any other measure that presents relation with the object matter of argumentation challenge of non-compliance with the fundamental precept, unless this is a result of a judged issue.*[xxxiv]. Altering the system of control of constitutionality, it weakens the diffuse one (a democratic conquer), strengthening the higher rankings in the Judiciary, represented by the Superior Courts, whose Ministers are appointed by the President of the Republic. This is already a positive law.

Concerning the ongoing bills that are related to the reform of the Judiciary, we call the attention to the 2961, of 1997, whose author is the Executive. It is the so-called "law of the gag", approved in the House of Representatives in 1999. With the aim of modifying the Law of Abuse of Authority (Law 4898/65), it creates vague and non-specific types, leaving judges, members of the Public Ministry, District Chiefs of Police and other authority who may make any comments on the suits that are submitted to them subject to punishments with fundaments based on subjective interpretation. The victory celebrated upon the disapproval of this "law of the gag" during the reform of the Judiciary may become null in case this bill is approved.

Nevertheless, the bill 687/99 goes to an extreme when it aims at punishing judges. By regulating the responsibility crimes, it alters the dispositions in the Criminal Code, foreseeing sanctions in cases of improbity. It foresees criminal types and aggravating of punishment, by using totally open criminal type techniques. Thus, it subjects the determination of its content to the discretion and subjectivity of the interpreter, forgetting the principle of legal reservation, that is the basis of the Democratic State of Law.

Concerning with the Labor Justice, the reform desired by the government is about to be concluded. With a labor world going through an extremely high levels of informality, which would call

for guidelines with proposals enlarging the focus of the Labor Law – in order to include informal workers – the Minister of Labor plans to support an "attachment" to article 7 of the Federal Constitution, that deals with the rights of the urban and rural workers so that these rights may be neglected in a direct negotiation. It is in this context that a law allowing private discretion for solving conflicts, including labors ones, is approved; and stills another, foreseeing the temporary suspension of labor contracts.

It is also in this context that the Laws 9601, 9957 and 9958 are approved. **Law 9601**, deals with temporary labor, imposing bigger precariousness and division of a class that is already divided because of the deep rupture between formal and informal workers. **Law 9957,** of January 13th**,** 2000, institutes the summary proceedings for suits of up to 40 minimum salaries. With this new summary proceeding, it is imposed to the worker the payment of expenses in the foreseen situations, breaching the principle of gratuity, an expression of the correcting principle for inequalities, informed by the Labor Law. **Law 9958,** published on January 13th, 2000, foresees the Commissions of Previous Conciliation, of parity composition for companies with more than 50 employees[xxxv]. Having this Commission instituted, any labor demand shall be submitted to it. If the proposed conciliation is accepted, even when the contract is still current, the term is transcribed with *general liberating efficacy, except for the items expressively safeguarded.* In other words, it is legitimized any renouncements to rights resulting from the working relation. The compulsory "visit" to the Commission appears as a condition for the suit. In case it does not occur, a suit that may be judged runs the risk of being extinct. Informed by a privatist view, the law fights with the principles of the Labor Law, which presupposes the inequality between the employee and employer, breaching with the liberal logic. Gilmar Mendes quotes this law in an article[xxxvi] as being one of the elements of the reform made effective in the government of Cardoso.

Among many projects the bill 168-A/99 also deserves a highlight. In its original proposal, it sought to limit the access to the Supreme Labor Court, based in the fact that in a country with so many socio-cultural differences one cannot uniform jurisprudence. However, it is attached to the bill nº 3267/2000, of the Executive, that creates the issue of transcendence. In the form proposed, it is a mechanism of submission to the political economies of the government. The Supreme Labor Court may know from the Search – a resource that may be employed in the Regional decisions that do not involve examination of facts – when the matter offers transcendence concerning the general reflexes of juridical,

political, social or economic nature. Relevance defined in the law itself as an "important resonance of the cause in relation to the entity of public law or mixed economy, or still serious repercussion of the question in the national political economy, in the productive segment or regular development of entrepreneurial activity"[xxxvii].

Would this reform lend to the Judiciary conditions to meet the social demands, assuring it as a *locus* of guarantees of law? Would this be the way to come closer to the ideal of a modern State, ruled by public laws, apt to unify the fragmented interests of society? And with Hobbes, would this reform compose the paths that would lead to a more democratic society, apt to participate in the process of reciprocal integration, without internally causing the loss of power of preserving peace and Justice, the main reason why all the States are instituted?

4. Final Considerations

So as to have the integration of peoples living together with democracy and social cohesion, solidarity relations should be reconstructed. However, to be able to do so, a national development project that assures the sovereignty and presents conditions to reduce external vulnerability is of utmost importance. In face of this, policies that aim at a sustained development are indispensable. Universal social policies that have in their core man and his needs, in the presupposition of a well being are also needed, both in the social scenario and in the political sphere.

In regards to a construction of a democratic Judiciary, some Brazilian judges, committed with the idea of enhandement and democratization, collectively elaborated proposals, found in a manifesto broadcasted by the Brazilian Association of Judges. Some will be transcribed now:

a) Constitution of an effective Constitutional Court, with temporary mandate for its members;
b) Revision of the role of the Supreme Labor Court - TST, so that the decisions of the Regional may be effective, with a jurisprudence that respects regional diversities;
c) Democratization of the process of selection of judges;
d) Access to career, with objective criteria and independence, in a process informed by the public interest;

e) Decentralization of the jurisdictional and administrative power, with elections of the heads of Courts made by judges from any jurisdiction;

f)Possibility of having all the juridical operators participating in the discussion and definition of the budgetary priorities of the Judiciary Power;

g) Establishment of interaction channels with society so as to introduce social participation in the administration of Justice, in search of an internal and external democratization;

h) Emphasis on the technical and personal improvement of the boards of magistracy, by means of schools and/or graduate courses, stimulating also multidisciplinary studies;

i) That all the proposals that involve changes in the Judiciary Power be conducted through a wide process of discussion in society, specially concerning the model of a State that we wish to constitute (http://www.amamsul.com.br)

4. End Notes

[i] HOBBES, Thomas. *Leviatã*. 2ª .ed. São Paulo: Abril Cultural, 1979 (Os pensadores), p. 106.

[ii] Concerning the object of this paper, it is importance to realise that Hobbes annexes to the sovereignty the right of judicature; that is, of hearing and deciding all controversies which may arise concerning law, either civil or natural, or concerning fact. For him, without the decision of controversies, there is no protection of one subject against the injuries of another (ibidem).

[iii] The Real Plan was instituted in 1994. It started by changing our money from the Cruzeiro to the Real.

[iv] ALTVATER (ALTVATER, Elmar. A crise de 1929 e o debate marxista sobre a teoria da crise. In: HOBSBAWM, Eric (Org). *História do marxismo*. Rio de Janeiro: Paz e Terra, 1987, p. 79-133) analyses fundamental aspects of the crisis theory, offering an important breakthrough to the understanding of the

constitution of material bases in Brazil, which will allow for the implementation of liberal reforms. According to him, when an economic crisis evolves up to the point that it becomes a social and political crisis, politics ends up retreating in face of the economical facts, making use of them as if they were a political project. This is the material base for (neo) liberal programs.

[v] Cf. BELLUZZO, Luiz Gonzaga. Fascismo. *Folha de São Paulo*. 3 jun.2001, p. B-2 (Lições Contemporâneas). Belluzzo invoques Karl Polanyi who, when studying the evolution of fascism in the 20´s and 30´s, concluded that it was not a pathology, or an irrational conspiracy of classes or groups, but rather, of forces originated in the core of a deregulated capitalism, arguing that the collapse of the self-regulated market had produced its counterpart: the superpolitization of the social relations.

[vi] The mentioned text (OLIVEIRA, Francisco. Neoliberalismo à brasileira. In: SADER, Emir; GENTILI, Pablo. *Pós-neoliberalismo:* as políticas sociais e o Estado democrático. 3. ed. Rio de Janeiro: Paz e Terra, 1996), points to the individuals subjectivity who, in disbelief of the State, lose their confidence in hope, a fact that, in his point of view, allows the popular imaginary to be taken by a conservative wave. This is one of the most lethal effects of the neoliberal movement.

[vii] According to *The Economist*, June 16th. 2001, p. 37, opinion polls reveal across Latin America a belief that corruption is flourishing as never before.

[viii] IBGE is the Brazilian Insitute of Geography.

[ix] An analysis on the energy crisis may be read in the site (www. ilumina.org.br) under the title: “Energy

[x] Congressman from the left wing are trying to avoid the PL 4147/01 to be approved, which privatizes water and sewage services in the country. Orlando Desconsi, from the Labor Party, Rio Grande do Sul, quoted the example of the Water and Sewage Company in the State of Rio Grande do Sul (CORSAN) referring to the fact that when Governor Olívio Dutra took charge of the government in that state, 38% of CORSAN´s budget was being used for the payment of debt. During the first two years of government, without financing and dismissals, it invested R$ 123 million. For this year’s budget, there is a forecast of R$ 80 million of investments, which means an expense of R$ 2 per inhabitant/month. If this effort be undertaken in all the States in the country (expense of R$24 inhabitant/year) in ten years it would be possible to universalize the water and sewage service in Brazil.

[xi] *Datafolha* survey on the exclusion in Brazil, 1998. See TOLEDO, José Roberto de. Os miseráveis são 25.000.000. *Folha de São Paulo,* 26 set.98, p. A-3 (Map of the exclusion).

[xii] Mattoso is a professor at the School of Economics, a researcher at the Center of Union and Labor Economics Studies - CESIT, at UNICAMP and author of the quoted text (MATTOSO, Jorge. *A desordem do trabalho*. São Paulo: Scritta, 1995; e Emprego e concorrência desregulada. In: OLIVEIRA, Carlos Eduardo Basbosa; MATTOSO, Jorge (Org.) *Crise do Trabalho no Brasi*l: modernidade ou volta ao passado? São Paulo: Scritta, 1996.

[xii] POCHMANN, Marcio. *O movimento de desestruturação do mercado de trabalho brasileiro nos* (versão preliminar). São Paulo, Unicamp, april, 1998, s.ed. Pochmann is a professor at the School of Economics (IE), a researcher and executive director at the Center of Union

and Labor Economics Studies - CESIT, at UNICAMP. For the empirical study quoted, he used primary information generated by the Labor Ministry (Annual Report of Social Information – RAIS – and General Cadastre of the Employee and Non-employed – CAGED -) and by Foundation IBGE (National Survey per Sample of Domiciles).

[xiii]National Survey per Sample of Domiciles, da Foundation Brazilian Institute of Geography and Statistics - FIBGE.

[xiv] For instance, the one that reduces the journey with the correspondent wage reduction and the one that allows renouncement to the stability of the pregnant mother, a fact that has been provoking judgements of collective suits in which labor unions request nullification of the clauses, for being abusive. Including a strong category such as the one of the metal workers at the ABC in São Paulo, signs collective agreements with Volkswagen - Brazil, whose text can be read in the **appendix**, implementing the reduction of the weekly working load – for the ones who are paid by hour, from 42 hrs to 35hrs42min per week, in average and for the ones who are paid by month, from 40 to 30 hrs per week, by means of reduction of working days per month – with a wage reduction of 15%. One of the aims of the agreement is to assure the position for five years. Although it is stated in the exhibition of motives, it does not appear in any of the clauses, and its compliance is dependent on the political fight between categories.

[xv] DIEESE, Informativo eletrônico, Ano I, n.2, maio 2000 (The worse year for salary negotiations).

[xvi] In Brazil, the collective labor conflicts, dealing with strikes, wages, working conditions for the different professional categories, when a direct collective agreement is not possible, are submitted to the Judicial Labor Power. So, the labor judges, members of the Collective Conflict Section – a Section of the Labor Regional Tribunal or Court -, can intervene in the labor relationship fixing rules and regulations for the different professional categories. This system is allowed in the Brazilian Constitution. Since I ascended to the Regional Labor Court, in 1997, I have been a member of this SDC – Collective Conflict Section.

[xvii] The wage losses due to inflation have been paid and during the trials in the collective conflicts, the advantages conquered by the category have, as a rule, been kept in the Regional Labor Courts.

[xviii] PEC stands for Project of Constitutional Amendment [*Projeto de Emenda Constitucional*], through which the Constitution of the Republic may be amended, with a demand of qualified quorum so that this alteration may happen.

[xix] CLT stands for the Consolidation of Labor Laws [*Consolidação das Leis do Trabalho*] which, in Brazil, rules over the contracts of private jobs. With the reform, the public servants may be statutory, with rights defined by the Law of Only Regime, or employees, ruled by the CLT, without rights to the job. This loss to the rights is similar to the one of the 'option' to the FGTS – Guarantee Fund for Working Time – instituted by law nº 5107/66. In practice, this law has become an imposition that makes the right to the job an inheritance; a weapon against the stability of the workers. A flexibilizing landmark of rights, it sought the attraction of external investments, being considered the first wave of labor liberalization, according to Márcio Pochmann (POCHMANN, Márcio). The second liberal wave on labor in Brazil (
Paulo, 25 Jan. 98, p. 2-2); is in progress since the beginning of the 90´s, receiving an additional element with the contract for temporary work.

[xx] Par. 10, of art. 201: *The Law will rule on the coverage for accident at work, to be dealt with concurrently by the general regime of social security and private sector*

[xxi] Art. 202: *The regime of private security, made up of a complementary character, organized in an autonomous way in relation to the general regime of social security, will be optional, based in the constitution of reservations which guarantee the hired and regulated by complementary law benefit.* Par. 4º: *Complementary Law will rule the relation among the Union, States, Federal District or Municipalities, including their governmental agencies, foundations, societies of mixed economy and companies directly or indirectly controlled, working as sponsors of closed entities of private security;* par. 5º: *The Complementary Law that the aforementioned paragraph describes, will apply to private companies that render public services, when sponsored by closed entities of private security.*

[xxii] Conflicts occur from the first turn, in the House of Representatives. The opponents, via judicial measure, seek to replace the respect to the constitutional and regimental rules. Minister Marco Aurélio de Mello, the current President of the Supreme Federal Court, tentatively suspends the process of reform, a decision that is not maintained by the Supreme Federal Court, with the argument that it was a decision *interna corporis*. Entities of Law Operators, in an official note as of November, 1997, formalized a public denouncement which causes some Legislative Officers to present questions-of-order in the Commission of Constitution and Justice, so as to restore the regularity in the process of the PEC 33, calling the attention to the risks for the State of Democratic Law, when constitutional and regimental rules are disrespected. During the period of extraordinary summon at Congress, the conflicts are intense. The reaction of the opposing legislative officers and of segments of society to a reform that is imposed by the basis of government, which disrespects the regimental rules, reaches its highest points in the episode of February 5th, 1998. Congressmen and manifesters linked to CUT [a very strong labor union] and the Brazilian Confederation of Retired People (COBAP) invade the Plenary, protesting against the decision of the Congressmen Michel Temer and José Lourenço, from PFL - Bahia, not annulling the January 30th, 1998 session of the Special Commission, although there were regimental irregularities. José Lourenço refuses to accept the request of the opponents for annulling the session due to lack of a minimum number.

[xxiii] Among these points-of-order, the one by Congressman Jarbas Lima/RS, elaborated with the collaboration of Multidisciplinary Group of Constitutional Studies, points out regimental violations, unconstitutionality and the privatization of the Social Security since it is submitted to financial profits, making it dependent on complementary private funds and insurance companies.

[xxiv] TAVARES, Maria da Conceição. Agreement of investments, privatization and citizenship. *Folha de São Paulo.* 1 mar. 98, p. 2-6. Comments on the Multilateral Agreement of Investments, to be submitted to countries of the OCDE, Tavares, when points out the *abdication of the power of the State* and one of the *unacceptable* aspects in it, indicates the case of the Security reform as an example of high profits for the international capital. Opening room for the privatization of the system, this reform, according to Congressman José Pinotti (Hierarquia de violências. *O Globo*, 13 fev. 98), would allow for the international insurance companies business involving R$ 1,4 trillion.

[xxv] Elaborated for the Association of Brazilian Judges (AMB) .

[xxvi] See IZAGUIRRE, Mônica. Previdência fechada tem 86 fundos perto do colapso.
4 maio 2001, Ano 2, N. 253, 1º Caderno (*Valor Digital,* May 4th, 2001)

[xxvii] OCAMPO, José Antônio. *Más allá del Consenso de Washington*: una visión desde la CEPAL. http://www.cepal.org/29/08/00.

[xxviii] The power of calling off (for judging) any demand from any Brazilian Court.

[xxix] This reference is on page 05, in the Technical Document Number 319, of the World Bank Washington, D.C., signed by MARIA DAKOLIAS. See Report World Bank. Technical Document Number 319. Judiciary Sector in Latin America and Caribe – Elements for the Reform.

[xxx] Liberal Coalition Party is the party of Antônio Carlos Magalhães.

[xxxi] In Brazil, all the judges can examine the constitutionality of any law in their individual decisions. It is the so-called spread or diffuse system. The Supreme Court examines the constitutionality of the laws in abstract; it is the so called direct or concentrate control system.

[xxxii] To concentrate the judicial control of constitutionality of laws is fundamental for the Executive, so much that, by hindering the process of the substitute Jairo Carneiro, it edits a tentative measure 1570, as of 03.26.97, ruling the anticipations of the guardianship against the Public Treasury. Converted in Law 9.494/97, its article 1 is being the object of Declaratory Action of Constitutionality - ADCon 4 -, proposed by the President of the Republic, Federal Senates´s Desk and House of Representative's Desk. Through it, acting prior to the binding effects of the decisions of the Supreme Federal Court, of the mandate and the suppression, in the indirect way, of the diffuse control of constitutionality, besides the declaration of constitutionality of the article 1º of Law 9.494/97, the intent of their authors is to suspend the execution of all the judicial decisions **that determine** immediate payment of advantages to public servants, including the ongoing suits, until the final judgement of the case by the Supreme Federal Court.

[xxxiii] As recent surveys have shown.

[xxxiv] The legitimate to propose the action are the same for the direct action of unconstitutionality. The active wide legitimization that granted to all of those who have had their rights threatened received veto.

[xxxv] They may be constituted by companies or group of companies, or, still, present a status of union.

[xxxvi] MENDES, Gilmar. Reforma tópica do Poder Judiciário. *Revista Jurídica Virtual,* n. 7, dez. 99 (Presidency of the Republic: subchief for juridical matters).

[xxxvii] In other words, the worker's protection principle is shifted to the capital.

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