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CITIZEN CONSTITUTION, 30 YEARS OLD

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Brazil is prodigal son in drafting constitutions, since the first in 1824 until the last, in 1988, there were seven (1829, 1881, 1934, 1937, 1946, 1967, 1988). There is a "concept" or tradition, that the constitution serves to solve all the problems, and not just as a basic text, to guide the legal system of the country,

The country had left the military regime, then the constituent members with a focus on democratization and the recognition of civil and social rights, wrote the Constitution of 1988, which at the time of enactment received the title of "Citizen Constitution", given by Mr Ulyssis Guimarães, President of the Constituent Assembly.

With 30 years of duration, the Constitution of 1988, began to be more widely debated about their capacity to sustain the social-political pact which has been governing the country's democracy and its institutions. Several aspects are placed in this debate: (a) the environment in which the constituent process; (b) the constitution and the effects of social policies; (c) the prominence of the judiciary; (d) the effects on the economy. These issues have been gaining importance in scientific production, especially in the areas of Law, Political Science and Economics, and also in the day-to-day life of the population.

The aspirations of the pact politico-social center-left opposition to the regime of exception lived during 21 years of the military regime (1964-1985), gave as a response "natural" to this scheme, not only the tone, but the scope of the constitutional charter. In addition to the pursuit of freedom, large social rights were inserted therein, without, however, being provided for their respective forms of financing.

The constituents, eager to "Expel" any remnant of authoritarianism do not realize that they were changing to another, this made the State, even in a democratic regime. They clung to the strong presence of the State in national life since the decade of 1930, history was not present, and even increased their participation.

Then, in its main provisions, the Constitution of 1988 puts the State as a guarantor of policies oriented to the universalization of education and health, innovation in the environmental chapter opening space for the environmental movement, consolidates labor rights, promotes the rights of minority populations, such as indigenous and quilombola communities. Result of articulations between anthropologists, indigenous leaders, lawyers, doing with that the Constitution was the first in the country to dedicate an entire chapter to indigenous peoples.

In social policies there is a paradigm shift, to guarantee to all, for example, the retirement and health services, benefits before who had contributed to the social security. But, the constituents showed no where would the financial resources for the payment of such benefits, now universal.

On individual rights, had as ironclad clause – it cannot be changed – the large defense, allowing in criminal proceedings, the enforcement of the sentence by the defendant only occurs after all the resources brought forward and tried until the last instance of the judiciary, i.e., the Federal Supreme Court (STF). As there is no limit to the number of resources, but it is at the mercy of the argumentative ability of defense lawyers, the death penalty can never be fulfilled, as it may prescribe. This possibility of protelatários infinite resources ad for the enforcement of the sentence contributes, and much, for impunity.

This greed for political and social rights in the Constitution, the places with explicit purpose of transforming society, unlike most classic as the constitutions of the United States, which is limited to structure the condition and submit a letter of rights, to the contrary, the brazilian establishes itself as a commitment to social justice.

In the current reality, these good intentions have shown its effect of creating a social welfare state in an economy of low growth, and more than that, in recession for three consecutive years. Add to this scenario the privileges of corporate groups of public officials and businessmen who exert pressure to ensure that the State is paternalistic, with the support of the Constitution itself. However, the account is not closed, since each expense corresponds to a recipe.

Perfectionist as the Brazilian Constitution of 1988 tends to suffer constitutional amendments. From 1992 to 2017 were 105, however, but added that withdrew articles that contribute to a better performance of the economy and its own downsizing. The result is a constitutional text 44% larger than the original version.

The study *The Endurance of National Constitutions*, published in 2009 by Zachary Elkins, Tom Ginsburg and James Melton, analyzing all national constitutions, between 1789 and the beginning of the year 2000, reached the conclusions they have an average duration of 19 years, lean and strong exception to the constitution of the United States.

Walking for his 31 years of the Citizen Constitution, which brought institutional stability to the Brazilian democracy and social benefits, needs to be revised to reduce the presence of the State in the economy and in the life of society, allowing the political liberalism and economic to install and help the development of the country, maintaining the freedom of citizens.

The account has to be paid by society. This, then, in the elections of 2018, with the country in great recessive economic crisis, endemic corruption and high level of insecurity, society, the election takes away the power the center-left coalition to opt for a liberal government in the economy and conservative in customs. The Citizen Constitution with twice the number of age presented in the study mentioned above need to be reviewed and updated, has become another country other than that of 1988 to interact with a world that is also different.