

REBUILDING THE SOCIAL FUNCTION OF CONTRACTS: IS IT POSSIBLE TO COME UP WITH A SYSTEM IN WHICH THE SMALLEST MINORITY HAVE AN EFFECTIVE CUSTODY? | RECOMPONRIENDO LA FUNCIÓN SOCIAL DEL CONTRATO: ¿ES POSIBLE UN SISTEMA EN EL QUE LA MENOR MINORÍA POSEA UNA TUTELA EFECTIVA? | RECOMPONDO A FUNÇÃO SOCIAL DO CONTRATO: É POSSÍVEL UM SISTEMA EM QUE A MENOR MINORIA POSSUA UMA TUTELA EFETIVA?

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ABSTRACT | The social function is one of the most instigating principles in contractual relations. In the social function, contractual limits become more fluid, in order to conform to social needs and expectations. With the new regulation of private relations, arising from the Economic Freedom Law (Law act 13.874/19), the economic characteristics of the social function, already covered in the Brazilian Federal Constitution of 1988, gained special importance. This study seeks to demonstrate how the individual and the social aspects need to work together in the new universe of private relations.

KEYWORDS | Social function. Economic freedom. Civil Law.

RESUMEN | *La función social es uno de los principios más estimulantes de las relaciones contractuales. A partir de ella, los límites contractuales adquieren contornos fluidos, de forma que se amolden a las necesidades y expectativas sociales. Con la nueva regulación de las relaciones privadas, advinda de la Ley de la Libertad Económica (Ley 13.874/19), los caracteres económicos de la función social, ya percibidos en la Constitución Federal de 1988 ganaron especial relieve. El presente trabajo busca demostrar cómo el individual y el social están llamados a caminar juntos en el nuevo universo de las relaciones privadas.*

PALABRAS CLAVE | *Función social. Libertad económica. Derecho Civil.*

RESUMO | *A função social é um dos mais instigantes princípios que se fazem presentes sobre as relações contratuais. A partir dela, os limites contratuais ganham contornos fluidos, de forma a se moldarem às necessidades e*

expectativas sociais. Com a nova regulação das relações privadas, advinda da Lei da Liberdade Econômica (Lei 13.874/19), os caracteres econômicos da função social, já percebidos na Constituição Federal de 1988 ganharam especial relevo. O presente trabalho busca demonstrar como o individual e o social são chamados a caminhar juntos no novo universo das relações privadas.

PALAVRAS-CHAVE | *Função social. Liberdade econômica. Direito Civil.*

1. FROM A SAFE HARBOR, THE TIME TO SET AWAY HAS ARRIVED

Being objective, without further ado, we must recognize that all existing legal systems have always been functional¹. Every right has a function, an end. The structuring of a legal system is inconceivable without it taking place for the satisfaction of an interest, for the protection of a sore point. Don't bother to consider whether the end is fair or not, whether the system seeks to uplift humanity or dismember it. What is appreciated is the fact that, always and at all times, the Law had an end that characterizes it, be it to protect the King, the hierarchical caste structure, the individual, the community, etc. As well explained by PERLINGIERI

Subjective situations can be considered under two aspects: functional and normative or regulatory. The first is particularly important for identifying relevance, for qualifying the situation, that is, for determining its function within the scope of socio-legal relations. The Italian order attributes to each subjective situation a social function. The phenomenon can be more or less relevant; sometimes it is such that it transfigures the subjective situation. There are situations that “are” social functions, others that “have” a social function. In the legal system, the interest is protected as it serves not only the interest of the holder, but also that of the community. In most hypotheses, interest gives rise to a complex subjective situation, composed of both powers and duties, obligations, burdens. The complexity of subjective situations – whereby moments of power and duty are present in each situation, so that the distinction between active and passive situations should not be understood in an absolute sense – expresses the solidarity configuration of our constitutional order². (Translated).

Nowadays, with the environmental problem, the scarcity of natural resources, the decadence of man, the legal system has turned to the person as a being inserted in society, giving subjective rights (and the objective, by derivation) social characteristics. Hence, talking about social function, which is already an old concept as a function, brings a new paradigm as a social one.

1 Duguit considers the 'objective right' a 'law of the end', in the sense of achieving 'social solidarity' (...) The idea of the end is not a purpose external to man, it is immanent to man living in society, implying a process of exteriorization and interiorization, because 'the act of human will appears as a bodily movement that is the product of an internal energy of the subject, consciously manifesting itself abroad in view of an end to be achieved, and conditioning a series of unconscious facts that follow one another according to a certain law. FARIAS. op.cit. pp. 225-227.

2 PERLINGIERI, Pietro. *Perfis do Direito Civil*, pp. 106-7.

Due to the idea of absolute rights, as preached by some in relation to Roman property rights, little has been discussed about the plural content of rights. Moreover, when it came to the rights of obligations and contracts, the perspective of the creditor or the debtor was focused on a pole of positive values, owner of power and inflection; the other, servile and submissive, ship at the mercy of the powers of the holder of the credit asset.

This vision, which must be relegated to the legal memory by reference, has already been overcome by the understanding of the obligation as a process, and the contract has already crossed the binary space, with contractual networks and complex contracts. The comparison serves, however, as a defining element of a clear change of vector, an alternation in the central paradigm, from the lord-individual to the cooperator-person. In the words of Orlando de Carvalho,

It is in this sense that the repersonalization of civil law is considered opportune – whatever the envelope in which this right is contained –, that is, the accentuation of its anthropocentric root, of its visceral connection with the person and his rights. Without this root such a right is unintelligible, not so much because the bulk of civic institutions only still support the autonomy of the will, at least in the form of freedom of conclusion, but mainly because civicism or civilism is an idea that either no longer has any nexus or has it precisely because it is the circle of the person. Undoubtedly, this personalist guideline tends to impress itself on the entire world of Law, emphasizing, both against relativism and against the transpersonalisms that relativism nurtured (of the State, of the Nation, of Race), that Law, not being a logical system, as conceptual jurisprudence intended, it is, however, an axiological system, an ethical system that man presides over as the first and most imprescriptible of values³. (Translated).

The creditor and the contracting party ceased to be abstract beings to become concrete, living beings, the ethical being, engaged in the social. A being that cries, laughs, gets emotional. Experience each moment as if the sunrise were the last; being who recognizes and knows that there is not just one path to be followed, but an infinity of exits and mishaps that accentuate its greatest value, the possibility of error. And this brings the I closer to the we. So much so that, as we shall see, the we walked by overlapping the I. The search

3 CARVALHO, Orlando. For a theory of the civil legal relationship – the general theory of the legal relationship – its meaning and limits. v. I. Coimbra (PT): Spark. 1981.pp.90-1.

for a solidary system led us, however, to a stigmatizing understanding, in which the function gained an air of content, dominating the very structure of rights. Worse, a social overload began, in such a way that the exercise of rights could be threatened by the irrationality of carrying out a contract or obligation in the face of the risks and costs for its implementation.

There is then a new right, re-conceived, re-read, in which the whole matters and qualifies the part; in which each part means a lot for the construction of the whole. Not a reductionist right, in which each one is lost in the whole or in which the whole must bow to the part. An agile, lofty right, which allows the manifestation of the person in its completeness, at its maximum. The person reproduces the total picture, without losing his specificity, without reducing or disqualifying himself.

The social functionalization of law becomes a recurring theme of legal currencies, turning the system to its main value, the value of cooperation. One should not act alone, alone, each conduct must bring the conception of the other in the self. This can qualify the idea of social function: exercising the right within the threshold of self and other people's benefit; as far as the law satisfies my claim without harming others. Gradually, this concept was distorted, in which the alien began to occupy a prominent space in front of the self. A new negative step, which needed to be reviewed.

The understanding of limited use of the right, in turn, encompassing the concept of abuse of the right, was clearly outlined by the Civil Code, in its art. 187, and did much to justify the social function, as it clearly worked in favor of both the whole and the part. In this view, the concept of illicit act expands beyond the bulwarks of conduct born on the eaves of the system to be collected by the basket of legality, appearing in the juridical sowing, but growing like chaff that suffocates the wheat. The little jury that was left to the act is lost in the excessive act, revealing the itches and the ailments that follow it. It should be stressed, in time, that one should not conceive non-legal law, or that abuse is established in the very structure of law. On the contrary, the abuse is in the subject, in the extra who exercises the right, who extrapolates, forgets the basic parameters of proportionality and necessity.

The emulative act or the theory of abuse of rights, from its origins in French law, has already perfected contours, gaining, today, forums of objectivity, from which arises the perspective that it does not matter why, but what matters is that damage has occurred. Subjectivity, guilt, bequeaths space to cross the wall. It migrates, as already stated, from the unlawful act to unfair damage⁴.

It is the social function that resumes the counterpart, the return or social payment. With regard to contracts, what can be seen is a clear attempt to profile the nexuses so that each subject-part brings a plus (not added value) to the system, moving the structure forward. Each established contractual situation makes it possible for many others to arise, for a contractual network to be established with the social, bringing together men who, in their sometimes selfish desire for self-satisfaction, end up recognizing and seeing themselves in others.

It is this figure of the neighbor that becomes the center in relation to which the right orbits. Not a near neutral, distant, abstract, but the one that is reflected in the I, the one that is also the I. The neighbor, the other, is a multiple figure, several others that matter to a single obligatory relationship, generating a network of obligations, which validate the I, the other, the we. And if that was always the case, then everything would be fine. But we have clearly seen rules and formalities act solely for the purpose of discouraging hiring; the increase in risks becoming prohibitive and impossible to share;

See which emphasis should be given to contractual networks, a common fact these days when contracts and contractors interconnect with each other, so that each one starts to influence directly over the others, but in a legally structured symbiosis, in which each one necessarily needs the other to reach his goal, even if he is not even aware of the other. Exactly, contractual networks are a good example of the depersonalization-repersonalization⁵ that

4 For that, see BODIN, in Damages to the Human Person, pp. 177 and ff.

5 Here, we start from the idea of repersonalization, an occurrence recognized by many as a middle moment and not an end. The expression depersonalization-repersonalization denotes the idea of destruction-reconstruction, or perhaps better, mutation. The sign destroys itself, remodels itself and remakes itself, acquiring not only a new format, but also a new meaning. It is a dynamic concept, in which, in order to repersonalize itself, there was, prima facie, the depersonalization of relationships.

obligatory civil law has been going through. When you used to be hired, you were sure who would be the opposite, complementary pole. In the current situation, one is no longer fully sure of what one is contracting (see articles 413 and 478 CC/02), much less with whom one is contracting (as noted in the contract with a person to be declared, articles 467 and ss of CC/02).

A parenthesis is allowed here in order to explain the reason for talking about depersonalization-repersonalizing. When rights and duties are structurally aligned, without questioning “from whom” or “for whom”, greater interaction can be promoted among those who otherwise would not hire. With depersonalization, what is taken into account are the characteristics of the part, not the subject behind it. The contractual part can absorb all the needs of the subject that completes it, and also, in a flexible way, adjust the contractual possibilities for the optimization of the relationship. There is no false-emancipationist discourse here, in which one wants to pretend equality on a threshold of robotization. On the contrary, what is meant is the clear demonstration that, in the virtual universe of the contract, several weaknesses can be overcome, always in the best interest of the party that, in the real world, presents physio-intellect-structural deficits.

This, even without creating an abstraction of the real subject, since the basic essence remains uniform, centralized. The minimum staff remains at the center of the concept. Hence, what is observed is that the subject as a part can adapt his existence in order to overcome his limitations. And it was necessary to give greater prominence to this personal space, an effectively individual space.

This fantastic phenomenon that the current contractual perspective makes possible brings new problems, which are still puerile in their legal construction. You can list contracts via the World Wide Web, in which there is no subject under the canopy of the party, on the contrary, there is a second canopy, the “nick⁶”, identification key, “IP⁷” or any other data in which if you can summarize the human identity on the Internet. A new world, which faces

6 Abbreviation of nickname, nickname in English. Form of identification in which it is possible for the navigator to maintain secrecy regarding his identification.

7 Internet Protocol, common data transfer protocol, which includes the computer in the worldwide network. This number identifies the machine as a mailbox for oldies.

concepts founded in the 19th century or in the first steps of the 20th century, among them, the social function.

This social function, before a hesitant understanding, is now found on new (more stable?) seas, which we will now analyse.

2. HEAD TO STARBOARD, WHAT WATERS AWAIT US?

This is not only the most important component of this article, but we can even assume that if read alone it is the intended message. The part that preceded it and that will follow it can be left for another moment, when the reader has more time. They have the sole intention of strengthening intimacy and accepting responsibility for the conclusions they draw here. Dear reader, accept our apologies, and to compensate for any reading up to this point, we warn you of the possibility of postponing the last part. But, if you liked the first one, read the last one besides this one, to have the whole string in your hands.

The doctrine has always defended, rare exceptions made, that the social function enshrined in the Magna Carta has an economic design, conceived to meet the socioeconomic expectations that the people who surround the contractors, owners or entrepreneurs about their conduct, deposited.

However, overthrowing any possible previous debate, the Law of Economic Freedom (LEL), in addition to giving new contours to property, established an intellectual and interpretative bias for the universe of contracts, affecting good faith and the social function. The latter we will take care of now.

First, we must understand the reason for a new intellectual vector. Article 1, paragraph 1 of the LEL establishes that the provisions of the law will be observed in the application and interpretation of civil, business, economic, urban planning and labor law in the legal relations that are within its scope of application and in public order, including on exercise of professions, commerce, commercial boards, public records, traffic, transport and protection of the environment.

LEL has not established a microsystem, it actually acts in a microbial way, reacting with previously existing elements in the system (macro), giving them a (more) clearly economic appearance. It is a mechanism that starts from the core of each category, and must be present in the very act of reading and decoding the rights and duties of different spheres, notably (given the purpose of this article), civil and contractual.

As both Carlos MAXIMILIANO and Pietro PERLINGIERI remind us, although basic decoding is not enough to understand the real scope of a norm, it is the first step in any interpretive activity. Without understanding in a primary way what is written, without the level of intellection (understanding, leading to the intellect), it is not possible to advance in any interpretative sense. And, already in intellection, we begin to apprehend the concrete meaning of the norm, which results in different intellectual biases overflowing into different interpretative shades.

And, now yes, in the final influx of understanding of the norm/rule/postulate/principle, it is up to us to observe that the new bias established by the LLE for the social function of contracts, is stamped in art. 113, §1, V, in verbis:

(...)

§ 1º The interpretation of the legal transaction must give it the meaning that (...)(Translated).

V - Correspond to what would be the reasonable negotiation of the parties on the issue discussed, inferred from the other provisions of the deal and the economic rationality of the parties, considering the information available at the time of its conclusion. (Translated).

And, from now on, we will dedicate ourselves to understanding the projection created by this item. First, however, a short stop to absorb data on the Economic Analysis of Law and the economic rationality of the parties.

Despite some disagreeing with the effective inflection of economic thought on law, in the universe of contracts it is complicated, not to say impossible, to remove such a relationship. The conception of a contract is

based on economic rationality, on the evaluation of externalities and on the distribution of risks.

Those who defy the current analysis of Economic Law (in addition to the AED), tend to consider that one of the areas in which economists and jurists tend, supposedly, to have smaller discrepancies precisely in the area of contract law, especially when these last ones are entered into between private parties⁸. (Translated).

But in a solidary system, based on the dignity of the person, would it not be a contradiction to understand that the law is established on a level of economic rationality? Wouldn't that be too tough on legal relations and putting the human in the background? There is no need for further debate. In these lines there is no profession of faith in favor of AED, but rather, it is intended, starting from economic concepts, to understand how a mind can reflect an agreement based on economic rationality. And, for that, we will use the lessons of POSNER:

Those who are not economists tend to associate the economy with money, capitalism, selfishness, a reduced and unrealistic conception of motivation and human behavior, a formidable mathematical apparatus and an inclination towards cynical, pessimistic and conservative conclusions. The economy gained the nickname of "dark science" due to the thesis of Thomas Malthus, for whom the hambruna, war and sexual abstinence were the only ways in which population and the food supply could be balanced. The essence of the economy has nothing to do with these things, however. The essence is extremely simple, even though the simplicity is misleading. Lo simple can be subtle, it can not be intuitive; its antithesis is "complicated", not "difficult". The major part of the economic analysis consists in bringing the consequences that derive from assuming that people are more or less rational in their social interactions. (Translated).

Trying to explain how economic rationality is part of reflection in business is a limited act, which we can improve through a simple example. In 2010, when drilling the Gastau gas pipeline, Petrobras decided to abandon a tunneling machine (a drilling machine), acquired for 51 million reais, in a part of the tunnel that had been excavated, since the eventual dismantling of the

8 MONROY CELY, Daniel Alejandro. Economic analysis of good faith in the right of contracts, p. 56

machine and its transport out of the tunnel would delay the work by 104 days. As a result, Petrobrás claims to have achieved savings of 700 million reais compared to the dismantling and removal option. This is the aspect of rationality that is observed in business agreements and that must be observed in all contracts of an economic nature. Logically, it is not the thought that will be applied to a donation or a mandate made out of friendship, but, as has been said, it is what should guide the interpreter in the analysis of contracts conceived on an economic basis.

And how would the social function be recomposed in the face of these biases, intellectual and interpretive, presented? Not only would the nature of the social function be established on economic bases, but its entire body would now have the purpose of maximizing efficiency, avoiding/combating externalities and guiding the distribution of risks.

As it has always been, in the balance of the social function, the individual remains on one side and society on the other, but now, the believer must lean in favor of respecting the expectations and calculations printed by the individual in the agreements and pacts he celebrates. If, on the one hand, the contract must produce the effects expected by society (dignifying the essentiality of the contractual cause), the interpreter cannot impose a solution for the case that disrespects the economic rationale on which the agreement was built. That would mean that we have retreated into selfishness and speculation; that drawer contracts (execrated by the lack of social function) would come back to the scene? No, such a hasty conclusion is flawed and distorts reality. What is intended is to demonstrate that, within the scope of legality, the deadlines, constraints and points set by the parties in the agreement must be respected and, yes, due to the social function itself, since, now, in addition to dealing with the majority, it gives voice and listens to the smallest minority, the individual (to paraphrase the writer Ayn Rand). The individual who wants to act, undertake, plan, produce and distribute within a rational space, which interweaves not just a few, but even hundreds of agreements that need to be recognized and respected, for the whole to work.

This relationship between the individual and the social function may still be nebulous, or worse, it may appear, for some, even contradictory. But it is not. The social function, for a long time, invokes two major movements in relation to contractual protection: on the one hand, it shielded the relationship from the action of third parties (third-party aggressor) while preventing the relationship from affecting the legal orbit of other people (third victim). When protection failed, the civil liability system was triggered, as seen in the figure of the bystander, contemplated by art. 17 of the CDC. As can be seen from this short tour, the social function was never presented as a static factor, but as an influencer of all subjective rights, both giving them a necessary end and imposing limits on them. Our recomposition, here, does not discuss limits, but evaluates the current inclination to be expected from such functionalization.

There is no exaggeration on the part of the Legislator or action contrary to the Federal Constitution, as he did not act by removing the social function from private relations. Much less established an orientation shift. On the contrary, he fine-tuned the controls, clearly defined the guiding principle, now leaving no doubt about the economic functionalization, and establishing that economic rationality must be pondered by the interpreter and enforcer of the law. There is no unconstitutionality when the infraconstitutional legislator assumes the space left to him by the Constituent Assembly, precisely defining rights or rules generically established by it.

And how should this whole issue be addressed in the contract? For this, we must bear in mind that the Law of Economic Freedom establishes a declaration of the inherent rights of the person, natural or legal, which are necessary for the establishment of a State of economic freedom.

The basis on which such rights are built is art. 170, of the Federal Constitution, which must always be remembered as an interpretative vector. Same motto, the purpose of such rights is the economic development and growth of Brazil. This is fundamental for understanding the alignment of such freedoms to the construction of a broad and free market space; still, in the first place these freedoms have space between citizen and State, but will affect, as can be seen in the disregard of legal personality, relations between private

parties. Squinting, yes; to a lesser extent, yes. But such relationships will also be contemplated for the satisfaction of a space of freedom.

First right – Freedom for low-risk activities – It is the right of citizens and legal entities to develop low-risk economic activity, for which it relies exclusively on their own private property or consensual third parties, without the need for any public acts of liberation of economic activity (art. 3, I).

Second right - Not to be taxed or charged an increased amount due to the day and hours of operation –This right, established in art. 3, II, of the LEL, does not apply to environmental rules (such as those prohibiting noise pollution), labor (such as night and non-working day premiums) in addition to those resulting from private relationships, such as condominium rules. At this point, it is clear that intervention in private relations is guided by respect for agreements and adjustments, whenever these do not oppose cogent norms and human rights. In reality, the LEL reinforces the privatistic space of freedom, as it should be known, pointing out an important directional vector for the interpreter and enforcer of the law.

Third right – Free pricing in unregulated markets –Supply and demand are, in a free market, the thermometers for price fixing. Price control measures are possible and, in extreme situations, necessary, but it should be borne in mind that such measures, time and again, are accompanied by a supply crisis and the need for intervention by the state police power to prevent the disappearance of market products. It is important to balance price freedom with consumer protection. It is not up to the State to define the price (except for the aforementioned exceptions) of the products, it is up to it to act when there is a link to the supply of products (tied sale) or measures that exploit the good faith of consumers.

Fourth right - Receive equal treatment from public administration bodies and entities –This right prevents casuistry in the decisions of the Public Administration necessary for the release of an activity. The figure of precedent becomes important for the solution of operating authorizations, permits, etc., generating, still, a space of citizen control over the acts of the Administration,

since the exception made in favor of a sponsored person can be invoked as a interpretive vector.

Fifth right - Presumption of good faith and freedom as an interpretative vector of subjective good faith –. The fifth item of art. 3 of Law 13.874/19 establishes that it is the right of citizens to enjoy the presumption of good faith in acts performed in the exercise of economic activity, for which doubts regarding the interpretation of civil, business, economic and urban law will be resolved in order to preserve private autonomy, unless there is an express legal provision to the contrary. The fact is that in the private space, that is, in civil and business law, subjective good faith is already presumed, and it is up to those who claim to prove bad faith, as Cesare Vivante's writings remind us. In other areas, there is also an important legislative framework in favor of good faith. However, what draws attention is the novel interpretative vector of good faith itself, which must be supported by economic freedom. We already know that the social function inscribed in the CFRB has always had an economic bias, but now, good faith also has a special functionalization in favor of the market, of freedom of action in the market.

Right to innovate –Innovating anywhere in the world is a challenge. Innovating, when legal systematics are not able to keep up with the new developments (see, today, the strong debate on the succession of digital rights, which is far from the interests of the legislator), generates an immovable force against any and all citizens who intends to bring to the market new mechanisms or innovative methods. Logically, this freedom is linked to the protection of the health and integrity of consumers and the population as a whole. It is still too early to discuss the real scope of this new rule, but time will show how free our country will be in the face of innovations.

Seventh right – Right to a wide autonomy of will –Business relations begin to have as a fundamental rule the autonomy of the will of the parties in the stipulation of their agreements. The legal rules must be taken, with the exception of the cogent ones, as merely subsidiary, the interpreter making use, first, of the norms established between the parties, then, what can be deduced from the spirit of the agreement and, finally, the legal rules. Although there is no

mention of this “spirit of the agreement”, from the moment the will of the parties is raised to a new level, it is necessary that the presumption of the “potential will of the parties” must also be considered by the interpreter and applicator of the right.

Eighth right - Right to a reasonable duration of the administrative process and presumption in its benefit – Upon completion of the delivery of all requested documents, two rights start to assist the citizen: (I) right to a specified period for the solution of his demand; and (II) subject to express prohibition by law, the presumption of acceptance of the citizen's request in case of non-compliance with the deadline.

Ninth right – Freedom of archiving – which may be done by microfilming or digitally, according to future regulations.

Tenth right - Protection against the demand for abusive compensatory or mitigating measures –This right does not prevent the imposition of compensation measures or to reduce the environmental or urban impact of an activity, what is now explicitly prohibited is the abuse of such a requirement. Item XI contains situations that exemplify abuse: require a measure that was already planned for execution before the request by the individual, without the economic activity changing the demand for the execution of the referred measure; use the individual to carry out executions that compensate for impacts that would exist regardless of the undertaking or economic activity requested; requires performance or provision of any kind for areas or situations other than those directly impacted by economic activity; or appears unreasonable or disproportionate, including used as a means of coercion or intimidation; and not be required by the direct or indirect public administration certificate without express provision in law.

A new social function is presented, based on the general interest, but with full respect for the interests of those who exposed themselves, who took risks. It protects the social, but does not forget the needs of those who make the wheels turn. Protects without neutering. This is the new recomposition of the social function. Social concern with individual eyes.

3. DOCKING, BUT ALREADY PREPARING THE VESSEL FOR DEPARTURE

Land in sight. Rise sails. Drop the anchors. Unfortunately, this is a quick stop, as our interest in these writings is not to reassure, but to instigate. Awaken the debate about the major influences embarked on the Economic Freedom Act. Recently, Brazilian Civil Law has received important contributions that have been, sometimes, left aside or not fully understood. We cannot let that happen with the LLE. Alongside the recomposition explained here about the social function, good faith and the real right of ownership were also revisited by the legislator, gaining an air of individualization, which are nothing more than echoes of a repersonalization structured in the Federal Constitution of 1988.

We must now be clear that protecting the individual is not a selfish agenda, much less a maneuver that weakens movements to protect minorities. On the contrary, when we emphasize the need for respect for the individual, we give him his own voice, let him speak for himself and even choose to speak with the social group. Autonomy, emancipation, are needs of today's world that is, every day, faster, connected and fluid, bequeathing to the subject the experience of either getting lost in the crowd, or raising his voice, claiming respect for his interests.

In spite of solidarity, which is urgent, it should be noted that there will be no sharing if the person is discouraged from producing; there will be no contract if the parties cannot see their legitimate intentions respected; there will be no circulation, if riches do not exist to move.

A new era is approaching, in which the social and the individual start to respect each other and walk side by side, in order to conceive a fairer society that always has an eye on everyone's progress.

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THIS ARTICLE WAS TRANSLATED WITH THE SUPPORT OF THE FUNDAÇÃO DE APOIO À PESQUISA DO ESTADO DE MINAS GERAIS. |

ESTE ARTÍCULO HA SIDO TRADUCIDO CON EL APOYO DE LA FUNDAÇÃO

DE APOIO À PESQUISA DO ESTADO DE MINAS GERAIS. | ESTE ARTIGO FOI

TRADUZIDO COM O APOIO DA FUNDAÇÃO DE APOIO À PESQUISA DO

ESTADO DE MINAS GERAIS (FAPEMIG).

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