

The Struggle for Fundamental Rights in Brazil: its actors and limits

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The organizers of this important international seminar have kindly asked me to deliver a few pages on the topic of "*The Three Most Important Things about my Country's Legal System That Others Should Know*." It is not easy to decide what to write about, as this inevitably depends on subjective positions. It is always hard to choose a given topic or aspect related to our own experience, as there will necessarily be repercussions that might interest one's colleagues in other countries and still be related to one's own legal organization.

I would say that there are three topics that could be discussed here today, due to their specific aspects and development, recalling that the discussion must be as objective and concise as possible. These topics are: 1) the broadening of Brazilian society's access to the nation's law (in its role of establishing and guaranteeing fundamental rights) as expressed in the Constitution of 1988,² with a brief explanation of this jurisdiction; 2) a greater number of people can now have their concrete fundamental rights protected on the basis of class-action suits, carried ahead by one or another of their legitimate representatives, such as NGOs and the Public Prosecutor's Office; and (3) the role of the Judicial Branch in the jurisdictional control over the legality and constitutionality of public policies. A common phenomenon can be seen in these three topics, namely, an increase in responsibilities and participation of the Judicial Branch in matters that go beyond the common defense of rights seen from a merely individual perspective. What the courts do in Brazil, a "peripheral" country, would not be admissible or perhaps not even necessary in Europe or North America or other countries of South America. This type of action, to some degree encouraged and called for by the Constitution and the legal system itself, would not be usual, and might even be considered improper in these other countries. This in itself would be a good reason to call attention to the phenomenon.

Our system of control by constitutionality is called "mixed" because it brings together not only experiences from the diffuse and concrete American-based system, which have been part of Brazil's legal structure since the Brazilian Constitution of 1891, but also from the concentrated and abstract model inspired on Kelsen's writings, which would give the Federal Supreme Court the function of declaring the unconstitutionality of federal, state or municipal laws or regulations, in effect either prior to or after the Constitution itself was enacted.

The diffuse and concrete system, of American inspiration, developed during the entire 20th century. It was set up as an instrument of defense of fundamental civil and political rights expressed in the Constitution of 1891, and evolved to the point of being seen as an

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² The Brazilian Constitution of 1988 is of the analytic type, as it is highly detailed and programmatic. This type is also known as a *Directive Constitution* [*Constituição Dirigente*]

instrument for the protection of social, economic and cultural rights,³ as provided in the Brazilian constitutions of 1934, 1937, 1946, 1967/69 and 1988.⁴ The Federal Supreme Court is also charged with annulling unconstitutional or otherwise illegal measures taken by the State. In addition, for some time, it has also had jurisdiction to determine that the State act (positive measure, for action) or fails to act (the obligation not to do). However, this system, born within the individualist context of the late 19th century, was based on a certain inescapable void, since our "copy" of the American model failed to adopt the technique of binding precedents, whose effects produce the decisions of the United States Supreme Court. This lacuna was first filled in by Constitutional Amendment Number 45, of 2004, which instituted *Binding Precedents*⁵ in Brazil, as regulated by Law 11417/2006. Therefore some decisions by the Federal Supreme Court related to constitutional matters, when decided by a majority of 2/3 of the voting members,⁶ now become binding on all other courts and on the federal, state and municipal public administration. The aforementioned Amendment 45 also required that the appeal system to the Supreme Court include the question of *general repercussion*. Therefore, for an extraordinary appeal to be judged, the appellant must now prove that the matter has importance for (that is, it has repercussions on) all of Brazilian society, and not solely for the parties in litigation, as a special type of Brazilian *writ of certiorari*. This means that the diffuse system is no longer concerned only with the individual, and has taken on the position of an instrument for defending the rights of groups of the population and in some way for all of Brazilian society.

Besides the diffuse and concrete system, Brazil incorporated (on the basis of Amendment 16/1965 to the 1946 Constitution) something of the abstract and concentrated model for controlling, in thesis, any federal or state law that violates the Federal Constitution. From then on until the Constitution of 1988, only the Federal Attorney-General, an authority who, until that time, had been named and dismissed at will by the President of the Republic, could

³ In the area of health, the jurisprudential trend has been to eliminate abusive clauses in insurance policies, denounced as a type of health care that refuses, or even directly or indirectly bars, treatment of infectious contagious diseases. Recent decisions have invoked the principle of the most favorable interpretation for the consumer, due to the asymmetrical relationship between consumer and seller or provider. The right to basic education is also recognized as a duty of the State, including guaranteeing, for example, day-care and pre-school services to children between birth and the age of six. It also recognizes the right to higher education, even to students who are unable to register for a new year at a private college if they are in arrears from a previous year. In other words, the right to registration in subsequent years is guaranteed. The legal protection of a more vulnerable party in a relationship has been consolidated, as has long been the case of labor laws, in favor of workers.

⁴ Besides these constitutions (1891, 1934, 1937, 1946, 1967/69 and 1988), all of which have been republican and federative, Brazil had one previous Constitution, that of 1824, which was in effect while the country was still an imperial and unitarian state.

⁵ See CONCI, Luiz Guilherme Arcaro and LAMY, Marcelo. *Reflexões sobre a Súmula Vinculante*. In: Tavares, André Ramos *et alli* (Coords.). *Reforma do Judiciário*. São Paulo: Método, 2005, pp. 295-318.

⁶ The Federal Supreme Court consists of eleven members, or justices, who are named by the President of the Republic and approved by the Federal Senate (see Article 84, XIV, cc Article 101, Sole paragraph of the Brazilian Constitution). Pursuant to Article 97, unconstitutionality is declared by the vote of the absolute majority of the members of the Supreme Court.

file a representation of unconstitutionality. In other words, the legitimacy of the Attorney-General depended on the political interests of the Federal Executive Branch. With the Constitution of 1988, other authorities besides the Attorney-General were legitimated for this function.⁷ This system includes (a) Direct Action of Unconstitutionality (a follow-up to the representation of unconstitutionality, which, since 1988, may aim, on the one hand, at annulling federal and state laws and normative acts that violate the Federal Constitution and, on the other, at controlling unconstitutional omissions⁸); (b) a Declaratory Action of Constitutionality (which, since 1993, has aimed at examining the constitutionality of federal laws and normative acts for which there may be jurisprudential discrepancy among lower courts,⁹ and the Allegation of Failure to Comply with a Basic Provision,¹⁰ an action that is subsidiary to others (it aimed at annulling federal and state laws and normative acts, prior to the Constitution of 1988, and municipal laws and normative acts (prior or later)).

Among those legitimated for filing both concentrated and abstract actions of control, and diffuse and concrete actions, one should note the presence of numerous other political and social actors that participate in the concept of participated democracy in Brazil. These include NGOs and national professional associations, with respect to the diffuse system, and the Brazilian Bar Association, political parties represented in the Federal Congress, the Federal Attorney-General and national professional associations, for the concentrated system (directly in the Federal Supreme Court). It is therefore important to stress that the 1988 Constitution increased the number of those actors legitimated to access to the courts in cases of violation of fundamental rights perpetrated by decisions of the Legislative or Executive Branch. In other words, it broadened the number of agencies with the jurisdiction to protect the rights and interests of minorities, which often have no representation either in Congress or in the Executive Branch.

We would also like to call attention to the legitimation of the Federal Public Prosecutor's Office and of associations of civil society, represented, as mentioned above, by nationwide associations, labor unions and professional associations, if one takes the term "associations" in the broad sense.

⁷ Today this is not an office of free designation and removal, since both nomination and removal depend on decisions by the Federal Senate (Arts. 52, III, and c.c. 52, XI of the Federal Constitution).

⁸ See, for example, Writs of Injunction Numbers 283-5, of 1991, and MI 284-3/92, where, unfortunately, notwithstanding some progress, declaration of omission is still defined as mere notification to the accused party to the effect that said party should take the necessary measures. But it failed to advance further to become a solution in concrete cases, as most Brazilian jurisprudence has called for. In cases of unconstitutionality by omission, the Supreme Court notifies Congress to "take the necessary measures," but the Supreme Court may not oblige Congress to enact a pertinent law. In the case of administrative organs, the Constitution states that the measures be determined within 30 days (Article 103, Paragraph 2).

⁹ To broaden one's information, the following books might be of interest: "*A ação declaratória de constitucionalidade, inovação infeliz e inconstitucional*," Saraiva, São Paulo, 1994; and "*O controle de constitucionalidade: algumas notas e preocupações*," Rio, Forense, 2003.

¹⁰ There is still no consensus as to the meaning of the term "fundamental precept," since the law that regulated this concept (9882/99) failed to list the various points of view. It can be said, therefore, that the Supreme Court has the duty to define the constitutional precepts that make up the backbone of the Constitution. Such precepts would include the fundamental rights and fundamental principles, among other points. In other words, for concrete cases, the Supreme Court must state what these precepts of the Constitution are.

The legitimation of the Public Prosecutor's Office occurs in both the concentrated and abstract model, in the person of the Attorney-General, chief nationwide authority over the institution. In the diffuse and concrete model, each member of the institution has legitimacy to access the Judicial Branch in order to materialize fundamental rights, usually through class-action suits.

It might be well to mention that, besides the stimulus given to the concept of association by the Constitution of 1988, the legitimation of associations was expanded, both in the diffuse model, for filing class-action suits and, based on changes made in 2005 to the jurisprudence emanating from the Supreme Court, some associations with nationwide representation took on concentrated and abstract constitutional jurisdiction.¹¹

With legitimacy to file class-action suits,¹² associations, public prosecutor's offices at all levels, and the Judicial Branch began drawing greater attention from the Brazilian political community.¹³

¹¹ Precedent established by **AG. REG. NA AÇÃO DIRETA DE INCONSTITUCIONALIDADE 3153-8**.

¹² Created by Law 7347/85, Class-action Suits are aimed at protecting a broad range of values, especially the environment and consumer rights, as well as artistic, aesthetic, historical, touristic and natural property and values. Later, its object was expanded, when the Consumer Protection Act, in its Article 110, went on to provide that Subsection IV of Article 1 of Law 7347/85 be included to state that the law may also protect "*Any other diffuse or collective interest.*" It is clear that such protection of any other diffuse or collective interest should be understood only within the objective of public civil law, and that the legislators did not intend to authorize that such actions might serve as protection of merely individual rights. The legitimate agencies for filing class-action suits include not only Public Prosecutor's Offices, which have the duty to do so, but also public and private organs and associations that have been in existence for at least one year and that include among their institutional objectives protection of the environment, the consumer, the economic order, free competition, or the artistic, aesthetic, historical, touristic or natural property. The Law on Class-actions in Brazil has been a powerful ally in the struggle against corruption, in favor of administrative responsibility and defense of public property, as broadly considered. In almost all cases, the State or Federal Public Prosecutor's Offices have been the authors of such actions.

¹³ The following is a brief description of several decisions handed down in relation to fundamental rights:

1) The Federal Office of Education in the town of Rio Claro, in the State of São Paulo, informed a prosecuting attorney that, in the upcoming academic year, namely, 1998, there were approximately 500 fewer openings in the first grade of elementary school than there were children to be enrolled. There was not enough room for all the children. The institution documented the facts and sued the city to oblige the mayor to provide the needed openings, based on Articles 211 and 212 of the Federal Constitution. These articles oblige municipalities to give priority to elementary education by investing at least 25% of all their tax revenue to such education. Specifically, elementary education must be provided free of charge to all children (see Article 208 of the Act for Children and Adolescents, ECA). In fact, parents may be held criminally responsible if they fail to register their children at school (see Article 246 of the Brazilian Penal Code). The procedure did not call for any preliminary hearing of reconciliation, but such was held, with the effect that the case caught the attention of the press. Although the mayor was reluctant to create the openings, the preliminary order was granted and the mayor allowed the excluded children to enter public schools, without appealing the order.

2) In the Greater São Paulo Area, suburban trains often traveled with the doors open because of the great number of passengers, including many who had to ride on the roofs of the cars to get to their jobs downtown. Obviously, there were frequent fatal accidents and many serious injuries. A class-action suit was filed by the same State Public Prosecutor's Office to oblige the company operating the train concession to offer adequate regular and safe transportation to the users. The action was accepted by the court, new trains were bought and old ones were refurbished, with the final result that considerably better transportation for users was provided.

Although there is still little recourse to the courts for decisions regarding the implementation of fundamental rights, including economic and social rights¹⁴ (in proportion to the population's needs), there has been significant progress in suits based on the Consumer

3) A similar action was filed to force the Public Administration to distribute, free of charge, needed medication for the poor who were unable to buy it, especially medication for bearers of the HIV virus.

4) Environment: untreated domestic wastes were being channeled into an urban waterway that supplied the local population with water. The treatment of sewage is the responsibility of the municipality and the public sanitation company, which, in this case, had a contract with the city government to provide such services. The suit was accepted by the court and the concessionaire and municipality were sentenced to treat the effluents before being channeled into the river.

5) The right to health: the supplying of electric energy for operating oxygen-therapy equipment. This was a matter of life and health, a constitutional guarantee and a duty of the state. The right to health is assured to all, and the poor must receive proper treatment from the State. It is clear that the government, specifically the Executive Branch, must comply with the provisions of the Constitution and, in case of failure to act, may be sued in a court of law. The government was ordered to supply the electric energy needed to operate the mentioned medical equipment, thus assuring the right to life.

6) Class-action suit. Consumers' Rights. Correct information regarding the risks and potential damage to health caused by the consumption of alcoholic beverages. A note to this effect is now printed on all labels of alcoholic beverages.

The Judicial Branch may oblige suppliers to follow certain types of conduct, even if such is not provided in law, if the conduct is in line with public policies arising directly from the Constitution and from the principle of Full Information to Consumers (Article 6, II, III and IV, of Law 8078/90); this is in accordance with Article 196 of the Constitution, which establishes the duties of the State, of which the court is one of the powers. The consumption of alcoholic beverages is of concern not only in regard to the communication, advertising and business of the manufacturers of such products, but also to the question of public health, protection of minors, traffic safety, the right to information, and the protection of consumers. Article 9 of the Consumer Protection Act lists the basic right of consumers to adequate and clear information about products and the risks involved in their use, especially, regarding products that are known to be dangerous to health. Such information must be provided ostensibly, even though Article 4, Paragraph 2, of Law 9294/96 determines that the labels on alcoholic beverages must contain warnings to consumers to avoid excessive alcohol consumption. The defendant (the Federal Government) was sentenced to require that such warnings be contained on the labels of all alcoholic beverages produced or sold in the country, regarding their alcoholic content, in clear and adequately visible print, with the expression, "ALCOHOL CAN CAUSE DEPENDENCE AND, IN EXCESS, IS HARMFUL TO HEALTH." THE BRAZILIAN ASSOCIATION OF BEVERAGE PRODUCERS HAS ALSO BEEN OBLIGED TO COMMUNICATE THIS INFORMATION TO ALL ITS MEMBERS AND TO ADVISE ALL OTHER ALCOHOLIC PRODUCERS REGARDING THE NEED TO COMPLY WITH THE RULING.

7). Class-action suit. Duplication of the number of lanes on a Federal Highway. Intervention by the Judiciary Branch into Public Administration. Possibility. Anticipation of protection.

Modern jurisprudence admits of intervention by the Judicial Branch into Public Administration, thus allowing the anticipation of protection to determine the duplication of a federal highway, in view of the government's civil responsibility for deaths and serious sequels from traffic accidents on said highway, which is under federal jurisdiction.

¹⁴ Social rights can be found throughout the Brazilian Constitution. Article 6, for example, provides that, "Education, health, employment, housing, leisure, safety and security, social security, protection for mothers and children, and aid to the abandoned are all social rights." Article 7 contains 34 Subsections referring to the same topic. We also find a long section entitled "social order," which runs from Article 193 to Article 232.

Protection Act, as well as in the areas of health, education, services, distribution of medication,¹⁵ protection of the environment, and others.

What do such actions have in common?¹⁶

First, they seem to have the purpose of obliging the public authorities to alter patterns of behavior based on alleged illegality or even the unconstitutionality of acts, programs or public policies. But they can also correct deviations and change conceptions or objectives in implementing certain government programs. They doubtless involve many segments of government, such as those related to health, education and other public services.

Such decisions have brought up countless controversial questions. Those most commonly found in the jurisprudence are: 1) direct infringement of the principle of the separation of powers, since the Judicial Branch, under the pretext of dealing with infringement of rights, runs the risk of encroaching on spheres of jurisdiction reserved to the other branches, thus itself falling into unconstitutionality; 2) it is not the charge of the Judicial Branch, under the pretext of correcting illegal or unconstitutional acts, to approve or formulate alternative public policies, as this is the role of the elected and democratic authorities, and not that of the Judicial Branch;¹⁷ 3) court decisions cannot replace public budgets or create or alter duly established expenses determined by the proper authorities; 4) there is also the question as to whether the Judicial Branch has the duty to bring about distributive and equitable justice in such a creative and innovative way, might we say; under what terms and within what limits?

These are all complex questions and cannot be gone into further here. We will simply describe briefly how Brazil has faced them, since there is no doubt that the question of "public policies" is intimately related to the achievement of these rights that are considered essential for a free and dignified life. For this reason, based on a relatively liberal reading of Article 5, Paragraph 1 of the Constitution (1988),¹⁸ some state that there is subjective attribution of all fundamental rights, including social rights.

¹⁶ For this part we have taken material from a study and corresponding paper on judicial control over public policies, presented at the University of Coimbra, Portugal, during the Summer Seminar. This author's presentation was given on June 11, 2007.

¹⁷ The composition of the Brazilian Judicial Branch is founded on a system of merit that, on the one hand, begins with the entrance of the lawyer into the career at the first function as substitute judge, determined by a competitive selection process consisting of examinations and titles. There is also a process of promotion for entering and accessing the courts, partly by seniority and partly by merit (see Article 93 of the Federal Constitution). In addition, the procedure is based on a system of guarantees of independence that assures to judges lifelong permanence, they cannot be removed from office nor can their wages be reduced, and they have the advantage of impartiality: judges are barred from exercising any other position except teaching. They are also barred from receiving any type of advantage from their function and may not be involved in any type of party politics.

¹⁸ After presenting a long list of fundamental rights, Article 5, Paragraph 1, of the Federal Constitution provides that "The laws and norms that define the fundamental rights and guarantees *are immediately applicable*." This is closely related to the theme of the effectiveness and applicability of the fundamental rights and the very question of the different texture of these same rights. It can be asserted that the efforts involved in the Brazilian legal literature and jurisprudence have moved in the direction of giving the Constitution all possible and generous application, attentive to the natural difficulties of implementing of the different types of rights and guarantees.

Obviously, as was already stressed above, the greatest obstacle is always the economic question. It is held, not without reason, that there are no rights without costs. In addition, in the area of public policies of a social nature, there are material limitations to the simultaneous concrete recognition of all social programs. In the final analysis, it is the responsibility of the Executive and Legislative Branches to decide what the financial and political priorities are and to distribute the resources according to law. The so-called "economic reserve for the possible" is also often invoked as an objective argument and applicable limit to the problem.¹⁹ Before discussing the "economic reserve of the possible," it would seem well to set down premises for the economic question to operate as a dike against thinking, thus thwarting the possibility for new creation. Because, after all, if economic reasoning is always the limit for attaining and enjoying any right, everything would be calmly decided upon by invoking this argument. If there are resources, there are rights, and if there are no resources, there are no rights. It seems clear that this sort of position oversimplifies everything, and that the question cannot be put solely in these terms. In this particular, I consider that Judges Stephen Holmes and Cass R. Sustein opened up the way for an understanding of this issue. In their book "The Cost of Rights - Why Liberty Depends on Taxes," these scholars clarify all the implications involving the cost of rights,²⁰ and hold that not only social rights imply costs.²¹

As was stated above, three major lines of thought can be seen in Brazil regarding the need for the various types of social rights. Some authors hold that all social rights provided as fundamental in the Constitution are immediately demandable. Others hold that only negative rights are demandable, because the positive rights will only be available under the reserve of the possible and, even then, conditioned to mediation by the Legislative Branch. Finally, there are those who hold to the existence of a core of positive rights related to the existential

¹⁹ The reasoning in itself is not new. As the Romans used to say, "*ad impossibilia nemo tenetur.*" No one is obliged to do the impossible.

²⁰ Holmes, Stephen and Sustein, Cass R. *The Cost of Rights - Why Liberty Depends on Taxes*. W. W. Norton & Company, New York, London, 1999.

²¹ Among other aspects, the following excerpts may be useful to clarify certain pertinent questions. Alert citizens must know how public resources are allocated. The nation has the right to know where each cent is applied. Americans seem to easily forget that freedom and individual rights depend essentially on the vigorous action of the State. Rights have costs and depend on economic resources. All rights knock on the doors of the public treasury and resources are finite. Unfortunately, individuals who do not live under governments capable of taxing, and of issuing court orders and measures, do not, in practice, have their rights guaranteed. An absent State usually means a State where no one's rights are guaranteed. The cost of rights has different weights; they "have worth" in different ways. Freedom of the press is more valuable to someone who is already well positioned in society than to a person who lives under a bridge. Rights have a social cost, and a budget. Attention to the costs of rights is not limited only to knowing their value, as it is also necessary to know "who" decides to allocate them, in the protection of "what types" of rights, and "for whom." All rights have built-in costs, both the so-called negative and the so-called positive costs, since all imply and presuppose the payment of taxes to finance, implement and execute them. Public debates and decisions involving the spending of public resources should focus on the following questions: A) How much do we want and how much can we spend on each right? B) What is the best way to spend the resources? C) What is the best way to spend the resources with maximum protection and minimum cost? D) Was the entire process broadly motivated and justified?

minimum that are always demandable, with the others remaining under the reserve of the possible.

I feel that the discussion should first be delimited according to standards of the constitutional regime itself.

In the case of Brazil, one should first recall the following points: a) the importance of the principle that broad jurisdictional control cannot be abolished;²² b) Brazil has democratic supremacy of law, which is a broad and substantial concept that must be decoded by the Judicial Branch in order to generously apply the fundamental values and rights, since the country is a peripheral and unequal country regarding wealth; c) one must always recall that the fundamental rights and guarantees are the basis for interpreting the Constitution and those it protects, including the State itself; d) one must understand the effort to confer maximum applicability and effectiveness to those rights addressed to the principle of human dignity in the broadest and most pluralistic dimension possible; e) the fundamental rights considered indispensable for a dignified life (health, education, housing, etc.) are of variable effectiveness and applicability and often demand integration among numerous powers and authorities for their total enjoyment by the individuals. When these premises of understanding are present, the principle of the separation of powers must also be recognized, with its contemporary and renewed dimension, and must be applied not out any love of the mechanics of classical constitutionalism but, especially, out of reverence for the democratic spaces of each function and power of the State, even though these spaces seem to be coming closer to one another.

Public policies cannot be formulated originally by the Judicial Branch, out of respect for citizenship itself. On the other hand, legal control must not be extended, or dilated, to the point that we remove from existence the specific field, the essential core, of jurisdictions attributed to each branch and function of the State. Contemporary constitutionalism does not eliminate such functions but, rather, represents their evolution.²³

To conclude: a) the Brazilian Constitution of 1988 broadened the legitimation for calling the Judicial Branch into action in matters related to the fundamental rights, thus broadening the control of the actions and omissions of the State; (b) among such legitimated actors, it would be well to recall that associations and the Public Prosecution System have been vigorously

²² Article 5, Subsection XXXV states that "The law does not exclude consideration by the Judicial Branch of damage or threat to a right."

²³ One can certainly agree with Andreas J. Krell in "*Discrecionariade Administrativa e Proteção Ambiental - O controle dos conceitos jurídicos indeterminados e a competência dos órgãos ambientais,*" *A comparative study* - Editora Livraria do Advogado, Porto Alegre, 2004, pp. 135 and 136). The aforementioned author states that, "At the same time, the justified demand for more effective control of administrative acts to be exercised by the courts in defense of fundamental rights and guarantees should not come to the point of wishing to attribute "all power to the judges." It is naive to think that the relationships of economic and political power, stratified in a society that is (still) peripheral, and the lack of professional qualification, are not also reproduced in the sphere of the Third Power." "The sentencing of the Executive Branch, through a class-action suit, to carry out works of sanitation and provide efficient public social services cannot be obstructed by invoking the principle of the separation of powers, the lack of financial resources, or the supposed invasion of the 'merit' of such decisions. In these cases, the discretionary role of governmental organs would be reduced to nothing since the very constitutional laws and norms expressly provide for the duties of implementing the respective public policies. It is the responsibility of the courts to correct omissions of the other branches of government.

facing the issues described above; and (c) the desired position and role of the Judicial Branch must be more thoroughly discussed, recognizing that, due to the existence of a compromise Constitution, Brazil is a State in peripheral development in the matters discussed above, especially regarding the materialization of economic, social and cultural rights. But we must also reflect on the limits imposed not only by the institutions, but also by traditional legal knowledge in facing problems arising from fundamental rights in class-actions.²⁴

²⁴ I am grateful for the revision and opportune comments and suggestions by my colleague Luís Guilherme Arcaro Conci.