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## INTRODUCTION

The debate on the responsibility of the State is constantly the subject of articles and academic studies. Its need is evident, especially in times of economic, social or health adversity. In 2020, the pandemic caused by the new Coronavirus (Covid 19) once again highlighted the discussion around the State's model of action.

In the first section, the analysis will be carried out from the perspective of two crises of global proportions, one economic that occurred in 2008 and the second, of health nature. Unlike an economic crises, whose measures are financial, health crises require political and social decisions, both to safeguard health and economic aspects.

The approach will be from a perspective of assessing economic and social impact measures. For this reason, the second section will address the State's responsibility and its interventions in Brazil, focusing on this country, and analyzing the actions of other Latin American countries, such as Peru and Argentina, in a comparative law analysis.

The role of the state as protector of fundamental rights and guarantees will be delimited to identify how it can act to contain crises. Thus, in the third section, a study on the different lines of the State's action rate should be taken into consideration for this analysis. The models addressed will be the minimal state, the intervening state and the regulatory state.

The study is based on a qualitative research and its objectives were presented in a descriptive form, since it will seek to describe, explain, classify, and clarify the issue, and exploratory, since it aims to improve ideas through information on the topic in focus.

## 1. GLOBAL CRISES: THE 2020 PANDEMIC AND THE 2008 ECONOMIC CRISIS

All nation-states go through difficult times, regardless of the nature of the crises, which can have a wide variety of origins, including economic, health and social, without prejudice to others with their own characteristics. These are difficult times for everyone who experiences them, and all of them require a rapid containment plan to minimize their negative effects. The two crises covered in this chapter were of global proportions and had social and economic consequences.

In contrast to health crises, economic crises require immediate, urgent measures, but these in turn involve another type of remedial method, whose focus is the stability of the financial system. In this article, we use the financial collapse of 2008 as a parameter for our study. The recipe for bankruptcy and economic decline in this case occurred when the demand for credit became high and banks proceeded with granting loans and financing, most of the time without collateral, in an uncontrolled spiral.

The constant and easy use of credit, combined with the burden of the commitment to pay installments, made it difficult to maintain the settlement of debts with banking institutions, leading debtors to fail to settle their

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commitments to banks. Added to this was the devaluation of commodity prices and their low demand, paving the way for the 2008 economic crisis.

The United States, considered the pivot of the crisis, reacted immediately, and the state provided assistance to banks and other institutions on the brink of bankruptcy. Regardless of the reason, whether to remedy the harmful effects or to avoid social consequences reminiscent of the 1929 crisis, the state once again intervened in private capital.

Brazil was directly affected, resulting in a reduction in international liquidity and credit lines, which consequently led to a drop in household consumption and widespread debt. Not only Brazil, but given the globalized business chain, all countries that had any commercial relations with the United States suffered their share of disadvantages.

Measures had to be taken immediately to contain the crisis, and one of them was to make market rules more flexible to adapt them to the needs of the financial system's recovery, which had collapsed. Adapting because market rules, for example, could easily be modified to facilitate economic flow, and innovating because it would require a new way of thinking about existing markets, such as reversing capital flows. Some of these innovative changes were the way derivatives were traded and the transformation of corporate debts into tradable assets.

However, the most notable actions concern those that involve the direct participation of the State, that is, fiscal policies. In Brazil, the changes were in the fiscal, credit and monetary areas. Changes in fiscal rules are essential for the recovery of the economy and investor confidence. The Brazilian government initially decided to increase the primary surplus target as a remedial measure.

The measures to face the crisis demonstrate the government's concern in maintaining demand capacity with policies to stimulate consumption, which, associated with the macroeconomic solidity provided by the floating exchange rate, the considerable volume of external reserves, the de-dollarized external debt, inflation under control, the primary surplus and lower leverage in the financial system, reduced the exposure of the national financial system to the international crisis, at least initially. (RAMOS, GONÇALVES, 2017, p. 15)

It is important to emphasize that the social impacts suffered in 2008 were different in nature from crises that focus on humanitarian issues, such as health crises. They are reflections of the main cause, which focuses on economic activity, causing society to suffer damages such as high unemployment, lower wages and a low human development index, not to mention the slowdown in growth and the lack of progress on the environmental agenda.

In contrast, the containment of health crises has at its forefront socio-humanitarian concerns and the

maintenance of the population's well-being, and nevertheless, economic stability is a strategic factor in enabling the search for minimum levels of civilization. "The materialization of social rights occurs, therefore, with the implementation of guarantees, for all citizens, of a level of education, well-being and social security, equivalent to the need to compensate for inequalities produced, often, by economic factors" (POMPEU, ANDRADE, 2011).

In 2020, a pandemic began, perhaps one of the biggest in history and certainly the biggest of the century, only equivalent to the Spanish fever epidemic in 1917/18. At the end of 2019, China was faced with a new version of an already known virus, which would soon become known to the rest of the world.

Starting in February 2020, Brazil would experience for itself how fatal and devastating this discovery would be. The new Coronavirus (COVID-19), thus named, quickly spread throughout all Brazilian states, requiring the Government to take quick and effective measures. Data from the epidemiological bulletin of the Health Department of the State of Ceará, dated May 19 of this year, reported a total of 16,792 deaths from Covid-19 in Brazil, 254,220 cases, with 26,951 cases and 1,847 deaths in the State of Ceará alone.

## II. THE SOCIAL RESPONSIBILITY OF STATES IN THE FACE OF THE 2020 PANDEMIC

### a) *Brazilian Performance*

As seen in the previous section, both crises described brought countless losses to the nations that experienced their most harmful effects, both economically and socially. In Brazil, regarding the 2008 crisis, its measures were more intense for the Federal Government. When related to the States and other Powers, unlike what happened in the 2020 crisis.

In situations like this, the demand for responses comes immediately. At a federal level, the response was not as effective and quick. However, in February, a federal Law No. 13,979, of February 6, 2020, was enacted, providing measures to deal with the public health emergency of international importance resulting from the Coronavirus (COVID 19), responsible for the 2019 outbreak.

The law in question provides basic guidelines on possible actions to combat the virus, despite being limited to vague definitions and concepts on the subject. Its most important definition concerns the acquisition of goods and supplies in the health area without a bidding process<sup>1</sup>, which, given the circumstances, proved to be

<sup>1</sup> Art. 4. Bidding is not required for the acquisition of goods, services, including engineering services, and supplies intended to address the public health emergency of international importance resulting from the Coronavirus as set out in this Law. (As amended by Provisional Measure No. 926 of 2020)

a measure of the most importance. Its main reason is based on the speed with which personal protective equipment (PPE) must be acquired. Its use is essential to maintain the safety of professionals working on the front lines of the fight against the disease.

It is important to emphasize that the right to healthcare is constitutionally protected and established on the Federal Constitution. In the first situation, it is recognized as a social right and in the second it is provided for by the State, which must ensure the means for its promotion to the community, in order to reduce social inequalities. This function is shared by the nation, states and cities. It was based on health protection that the isolation/social distancing measures were justified.

The rules of isolation/social distancing were and still are the most debated measures and the subject of disagreement between the Federal Government and the States, despite being recommended, at various times, by the World Health Organization - WHO. Its controversy involves the suspension of commercial and industrial activities whose purpose is to avoid human contact and the circulation of people, with only activities considered essential remaining in operation during this period. As stated by MAZZUOLI (2020):

There is no doubt that this halt in economic activities has caused multiple losses to the states, especially the less favored ones, hindering their future resumption of growth. According to a report in the newspaper *El País*, a study commissioned by the National Confederation of Services (CNS) indicated that the effects of the coronavirus pandemic and restrictions on the operation of various economic activities could lead to losses of more than 320 billion to the Brazilian economy and cause 6.5 million workers to lose their jobs MAZZUOLI (2020, P. 1-2).

The decision to suspend activities for several labor segments required the Government to immediately assist self-employed and informal workers, in addition to those already registered in the Bolsa Família Program's assistance registry in a differentiated manner, meeting their most basic needs. Thus, the Government granted emergency financial aid consisting of three installments of R\$600.00 (six hundred reais), to be paid over a period of three months, which was regulated by Decree No. 10,316, of April 7, 2020. According to an announcement by the Federal Government, the benefit has already reached approximately 46 million people, totaling an investment of R\$32.8 (thirty-two billion and 800 million reais).

The lack of more energetic attitudes on the part of the Federal Government, which did not consider the local aspect, gave rise to a controversy over the competence to legislate on the subject, despite the fact that the competence is clearly concurrent in matters of health, as provided for in the Federal Constitution. Thus, states and cities began to issue their own rules for containing the virus, rules that took into account the regional nuances of Brazilian locations. The functions of

the public power delimit tasks and are required from entity to entity and by society:

From a mechanism for containing power, the functional organization itself begins to fulfill certain recommended tasks thanks to the attribution of new values. In effect, the community begins to participate, in concert, more directly in decision-making and control - or, at the very least, begins to demand that they be made and controlled in this way - giving rise to proceduralized state action; new spaces for action (regional, national, state, local) emerge, even for the creation of normative application, which are demanding control on the part of the State. (TOMAZ, DIZ AND CALDAS, 2019, p. 4)

In view of the situation, the intervention of the Judiciary has been shown to be necessary, urged to resolve a conflict of jurisdiction. This was expressed, through the Federal Supreme Court, in a precautionary decision issued in the context of Direct Action of Unconstitutionality No. 6341, to the effect that the measures determined by the Federal Government did not remove the jurisdiction of states and cities to issue their own legislation on the matter.

The phase of community contamination, the increase in the number of casualties and the difficulty in acquiring equipment for the hospital network were crucial for the change in the states' attitude the editions of their local norms, having a starting point the measure of containment of the virus with the greatest divergence between states and the Federal Government, namely, isolation and social distancing, already remedied through judicial means carried out by the Federal Supreme Court - STF.

Thus, the state of Ceará adopted social distancing/isolation practices, deciding on the guidelines of international organizations and the contextual analysis of the situation in the state of Ceará itself, issuing, to this end, several state regulations, starting with Decree No. 33,510, of March 16, 2020, which declares a state of health emergency and provides measures to confront and contain human infection by the new Coronavirus.

Soon after the situation got worse, it was decided to issue Decree No. 33,519, of March 19, 2020, which intensified measures to combat human infection by the new Coronavirus, opting for stricter social isolation measures, respectively, such as the closure of several segments of commerce. Subsequently, the Legislative Assembly of Ceará approved State Legislative Decree No. 543, of April 3, 2020, recognizing the Public Calamity in the State of Ceará, followed by several other Legislative Decrees, in the same sense, for several municipalities in Ceará.

Of these positive actions, both state and local, it is important to highlight some that were of great value to society, such as the payment of water and energy bills during the emergency period and the provision of cooking gas to low-income urban and rural residents of





the state. Direct income transfer programs were also instituted through cash assistance for students in the state public school system, with the sole purpose of purchasing food from commercial establishments.

#### b) *Peruvian Performance*

Immediately, upon learning of the first case of Coronavirus in Peru, the following government measures were adopted: suspension of the resumption of classes in schools and universities; prohibition of gatherings of more than 300 people; and quarantine for all arrivals from Asian and European countries with outbreaks of the disease. These measures were very similar to those taken by the Brazilian government, as seen in the previous sections, with the difference being the state autonomies established by the federative pact.

Likewise, given the exponential increase in patients with symptoms of COVID-19, on March 15, with Supreme Decree 044-2020-PCM, the government declared a state of emergency for fifteen days throughout the country, due to the health catastrophe, suspending the rights to personal freedom and movement, inviolability of home and the right to assembly, in accordance with the provisions of art. 137.1 of the Peruvian Constitution.

Several extensions were made, but since March, the government has closed borders - air, land and sea - and interprovincial (interstate) traffic, which can be considered causes of the acceleration of social isolation. In addition to imposing a curfew, the intensity of which varied between regions, it did not affect essential activities. Restrictions on rights and freedoms, not only personal but also social, were limited and restricted by decision of the authorities, as well as by the action of the police and military forces.

For freedom rights, the provisions were stricter. Internal social isolation rules and the prohibition of freedom of movement, with the imposition of a curfew, led the Government to provide for harsh penalties for disobedience of these rules, such as detention of offenders. However, detentions could only last 24 hours until civil identification, in addition to a financial fine. Peruvians who were abroad were assigned repatriation flights.

Regarding social rights, the fight against the coronavirus required the Peruvian health system to have an exponential structure, which it lacked due to historical failures in its management system. This failure required the injection of large sums of money, aimed at improving hospitals and investing in testing. Although the fundamental rights restricted in the declaration of the state of emergency are the rights to freedom and personal security, the right to movement, inviolability of residence and the right to assembly were also relativized, in addition to the right to freely exercise work activities.

Work functions were basically limited to maintaining the supply chain to avoid shortages of primary inputs. Teleworking was adopted in some cases, but the vast majority (almost 200,000 workers) had their employment contracts suspended. In Peru, as in Brazil, financial aid was also granted. This was in the amount of R\$110, to be paid in four installments, divided by social category: Poor according to the law; rural workers; and the universal family modality (for those who do not fit into any of the other categories). Due to the precarious information system and databases, only 75% of the planned amount could be implemented.

In terms of education, in-person classes were also suspended, leading the government to require communication channels to provide one hour a day to support remote classes. In private schools, tuition fees were reduced. The same occurred with public universities.

Given these attitudes, it is considered that, even for there to be restrictions on fundamental rights, these must be included in legal provisions and serve a legitimate purpose. To curb abuses of authority, the Peruvian constitution provides for remedies such as habeas corpus and other protective actions, provided for in art. 200 of its constitution, and raises the possibility of rethinking a structural reform of the Constitutional State to address health emergencies.

In fact, the current Peruvian constitutional system of states of exception includes the cause in the legal determination, but does not specify it as a health cause, nor is it determined by the competent agents, since it limits itself to seeking to guarantee public order, limiting some civil liberties of citizens, proving ineffective from a practical point of view in combating epidemics. To improve the effectiveness of emergency decrees, Professor César Landa Arroyo suggests the creation of a specific legal device to declare a health emergency.

The implementation of a new constitutional system of emergencies due to sanitary catastrophe in general and epidemiological in particular should count on the declaration of a state of exception from the highest level of the Executive Power, with the decision of the President and his Council of Ministers, which would enable him to issue urgent decrees on the ground in economic and financial matters, when required. The national interest is also used to dictate urgent decrees in health and socio-economic matters, in accordance with regional needs or interests, and on national soil. (ARROYO, 2020, p. 23.)

However, the Peruvian state of emergency in the event of pandemics does not allow for the issuance of emergency regulations, such as emergency decrees, that serve the affected populations in their rights to well-being, that is, to guarantee the strengthening of public health services, mobilization of health agents and acquisition and distribution of subsistence goods for vulnerable populations in social isolation due to the health emergency.

The implementation of a new constitutional system of emergencies due to health catastrophes in general and epidemiological catastrophes in particular must have the state of exception declaration by the highest level of the Executive Branch, with a decision by the President and his Council of Ministers, which would allow him to issue emergency decrees not only in economic and financial matters, when the national interest so requires, but also to issue emergency decrees in health and socio-economic matters, as seen in the excerpt cited above, observing regional nuances, with a focus on the most affected, such as the high-Andean areas.

This would, in fact, help to better organize the security forces and adequately manage the crisis, rethinking the democratic state in the face of the crisis. The legal review of the function of the state of emergency would bring about an alliance between containment and social well-being, in addition to financial investment where it is most needed.

#### c) *Argentina's Performance*

In a similar manner, the Latin American countries studied in this article had similarities in their measures to contain the epidemic and implement social actions. The imposition of social isolation, the use of masks, the suspension of work activities and the closing of borders are the common intersections between most countries, denoting the joint effort by the countries.

In Argentina, the Decree of Necessity and Urgency DECNU – 2020 – 297 – APN – PTE of March 19, 2020, initiated the strictest measures to combat the pandemic. Unlike other countries, such as Brazil, these measures were decreed immediately, with a ban on movement on public roads <sup>2</sup>, including travel to work. As of midnight on March 20, people were no longer allowed to travel, not even to their homes, and had to remain where they were.

Inspections were imposed, however, the intensity of patrols to enforce quarantine varied according to the peculiarities of each country. In Argentina, social isolation was monitored jointly by the provinces and the federal government, as in Brazil. Therefore, the strictness imposed in other Latin American countries was not observed, despite Argentine law stating that breaking social isolation constitutes an offense under the Penal Code and provisional detention of vehicles in circulation.

<sup>2</sup> ARTICLE 2.- During the term of the "social, preventive and obligatory isolation", the persons must remain in their usual residences or in the residence where they are located at 00:00 hours on March 20, 2020, the moment in which the measure is being launched. They must refrain from applying for their places of work and cannot travel along roads, roads and public spaces, all with the aim of preventing the circulation and contagion of the COVID-19 virus and the consequent impact on public health and other derivative subjective rights, such as their lives and their physical integrity. personas.

The exceptions, as in other countries, were due to the continuity of activities considered essential. Medical services and professionals who were focused on combating the epidemic could operate, observing health and safety standards. Many activities were exempted from the quarantine rules, in a list much larger than those contained in most Brazilian states, and much less strict than the Peruvian determinations.

The Argentine measures were characterized by the speed with which they were enacted, unlike Brazil, which adopted more lenient measures and later decided to make social isolation and quarantine more rigorous. The Argentine social isolation was marked by the assistance provided to micro and small businesses, independent professionals and health institutions. The price freeze on basic products and rent was of great value in helping families during this period.

Like many Latin American economies, Argentina had its own income distribution program, with a food card for mothers with children up to six years old, which aims to help with child nutrition. During the pandemic, this benefit was extended to pregnant women and people with disabilities. In addition, the cash benefit was granted to all workers, both formal and informal.

### III. STATE RESPONSIBILITY AND THE REGULATORY STATE

Theories about the state's participation in society and in the economic system of governments have been the subject of debate for centuries, sparking heated debates both from those who defend its maximum participation and from those who defend it minimally. Not to mention the moderate defenders, who argue that its action should only be sufficient when necessary.

The concept of the minimal state was initially formulated in the 18th and 19th centuries and defended the theory of minimum state participation, gathering followers to this day. Its ideas of free markets and economic activities carried out by private and unbureaucratic entities may seem very good and effective in terms of market incentives, until the moment when an entity with regulatory competence is needed to remedy a situation brought about at a time of collapse and when social protections are put to the test.

In these situations where collapse was inevitable and unpredictable, the minimal state model would prove to be completely obsolete and incapable of intervening positively, aiming to protect all citizens, to the point of maintaining the unwavering guarantees of the democratic rule of law. There is no compatibility between extreme liberalism and the social protection sought when the interests of the community clash with the interests of profit.

On the other hand, in the opposite direction, the state whose intervention is present in all spheres of



government has also not proven efficient in guaranteeing adequate living conditions while granting markets the necessary freedom for exponential growth. Economic planning, a model commonly chosen by totalitarian states, dissociates the factors essential to market growth, a flaw that does not occur in liberal systems.

The regulatory state has not only doctrinal and historical provisions, but also constitutional provisions, as set forth in Article 174<sup>3</sup> of the Federal Constitution. The determination provides for the supervision and intervention of the state when indispensable. In the economy, for example, intervention is commonly carried out regarding pricing policies or to avoid unfair competition between companies. The obligation imposed on the state, therefore, consists of acting as a regulatory agent for economic activities.

Regardless the government regime, concessions will inevitably be made by representatives and those they represent. A regime becomes inadequate when these concessions are no longer supported by the community. In a capitalist society, there is extreme competitiveness and social well-being is put on the back burner, while in socialism there is a limitation of freedom and substantial failures in economic growth. In both, there are necessary limits imposed for the sake of a common good, whose choice of priorities must be made by a manager who prioritizes essential goods. In the words of F. A. Hayek:

The citizens will be practically unanimous in admitting the exercise of certain functions of the state: about others, there may be the agreement of a considerable majority: and so on, until we reach spheres in which, although each individual may wish the state to proceed in this or that way, the opinions on what the government should do will be almost as numerous as the different people. (HAYEK, 2010, p. 78)

To corroborate the statement that everyone's participation is essential, the Public Administration felt obliged to limit its own spending to maximize and optimize public resources in a maximum representation of the principle of efficiency. Nevertheless, all the social measures listed in this article, such as the payment of water and energy bills, distribution of food and cooking gas, and income transfer, have a high cost to the public treasury and many of these emergency social assistance measures were not included in the budget planning.

The reallocation of resources cannot harm ongoing social actions and should seek a mechanism to balance new actions with those already underway. Therefore, in a joint action by the Legislative and Executive Branches, the Public Defender's Office and

the Court of Auditors of the State of Ceará forwarded a project that culminated in Complementary Law No. 215, April 17, 2020, which provides for measures to contain public spending by the Executive and Legislative Branches, the Court of Auditors and the Public Defender's Office of the State, during the emergency period and public calamity resulting from the pandemic caused by the new Coronavirus.

The Public Prosecutor's Office and the Judiciary, in turn, after approval by their internal bodies, forwarded bills in a similar direction to the Legislative Assembly for budget cuts. The provisions include measures such as the suspension of public examinations, the appointment of successful candidates and the postponement of job promotions. However, it is observed that there is no predominance of budget cuts in sources other than those linked to civil servants' payrolls. Little was said about the privileges of all branches of government, which have long been questioned by society.

Nevertheless, transparency is the main mechanism for monitoring public spending and contracts with special rules for the pandemic period. Data from the Transparency International website, from May 2020, shows that the state of Ceará is in fifth place in the ranking of transparency in emergency contracts, with 73.4 points in the "good" category. First place went to the state of Espírito Santo, and last place went to the state of Roraima.

The fact is, as demonstrated in the previous section, where crises were listed, that the presence of a greater entity is essential in various situations, especially when the need makes those who are most vulnerable cry out, demanding an active position from the responsible power. This, in fact, is one of the dilemmas brought about by the health collapse of 2020, which was not only more damaging to the world in terms of numbers, but also because it required solutions from governments to guarantee society's livelihoods, contain the spread of the virus, and take measures to maintain and recover the economy, all of which were carried out simultaneously.

The example given in the previous section is the economic crisis of 2008, which had a direct impact on citizens' quality of life, with businesses closing, high unemployment, a drop in credit and the consequent drop in consumption and people's quality of life. All this in a social scenario with a high poverty rate. In other words, this segment of society was unable to show economic recovery because it had not yet emerged from its situation of extreme vulnerability. "State regulation, both at the national and international levels, can also play an important role in solving the growth dilemma" (YUNUS, 2008, p. 223).

In fact, the consequential damages are equally harmful to the social security of citizens. There is no attempt to diminish their importance, but what must be

<sup>3</sup> Art. 174. As a normative and regulatory agent of economic activity, the State will exercise, in accordance with the law, the functions of inspection, incentive and planning, the latter being decisive for the public sector and indicative for the private sector.

considered is that these same citizens have the capacity to work and recover, when guided by the State's rules that should regulate economic recovery. In high-risk pandemic crises, this chance for recovery through work force does not have a set date to begin.

It is worth noting that the situations recently experienced by states put to the test extreme concepts about the ultra-capitalist vision, highlighted by some political scientists, such as Robert Reich, and called by the author supercapitalism. In this theory, which highlights what is most liberal and advocates for the minimum state and the maximization of profits, when faced with a crisis, capital disappears from the scene, leaving the humanization of the situation to the regulatory state.

In the liberal system, due to the lack of state presence when necessary to intervene, there are so-called protection gaps. For example, when there are companies that carry out acquisitions and mergers of markets, with such freedom, one over the other, that at a given moment the consumer finds himself helpless when it comes to the pursuit of his rights in regressive actions that have no end. Another example is when insurance companies acquire others, or reinsurance companies. Thus, once again it is necessary a regulation by a state entity that protects the most vulnerable side of the commercial relationship, without its financial contribution, would not even exist.

However, what must be considered of the utmost importance, and never forgotten by society or those who coordinate it, is the capacity for adaptation that, whatever the state model chosen to govern, must exist, and the understanding, of those in power, that the mission is for everyone to be able to grow in harmony, with decent salaries, adequate quality of life and a private sector that is constantly growing.

In these difficult situations, we have a breakdown in the stability enjoyed by a part of society, which suffers from the consequences of a difficult time, but also needs state guidance to guarantee its most basic rights, as fast as possible. In reality, the desired end is to break the cycle of poverty to which many nations are accustomed, leading to catastrophic consequences when the delicate balance of continuity of actions aimed at breaking this cycle is affected.

Ensuring minimum essential rights to those who do not have the economic means to do so has been an interventionist state task that relies on the presence of the state. Establishing guidelines to contain crises, which we referred to in the previous section, are typical normative actions of a state that only appears when its presence is somehow required, such as to regulate essential actions.

The State, as a collective action mechanism that enables the task of intervening in or liberalizing the economy, depends on strong institutions capable of safeguarding the

rights of society and promoting economic development. By defining social values and norms, institutions end up determining social behavior and the conduct of the economy. Therefore, institutions, to the extent that they are inserted in the economic and social structure, reflect a very specific social culture, which legitimizes them and outlines political objectives, so that they adapt to the national reality and generate development strategies. (POMPEU, ANDRADE, 2011, p. 16)

Despite the currents for and against, neither for the minimum state nor for the regulatory state, the state presence is non-existent or utopian, but rather minimal, in the pure sense of the word, maintaining its essential functions, for the first, and moderate, for the second. The fundamental concept is that the notion of social protection must be in line with the ideals defended by a doctrine that is common to all, covering all segments of society, with a focus on the most vulnerable.

Thus, the regulation of essential services in this state model belongs to the public authorities, which exercise it through their regulatory agencies or, depending on the chosen programmatic system. Services such as the supply of electricity, the supply of drinking water and the sale of gas are the examples closest to the Brazilian reality. The granting of these benefits by the public authorities to the low-income population during the Covid-19 pandemic was a powerful instrument used by the regulatory state to those in need.

In addition to the regulatory agencies, it should not be forgotten that in the Brazilian system, as well as in the system adopted in many other countries, it is up to the powers, organized civil society and social control institutions to monitor each other, while respecting the division of functions of each, still in the notion of separation of powers provided for by Montesquieu. The important role played by the federal police in operations to monitor public resources is noted.

The discussion becomes more profound when the state has exclusive jurisdiction over services such as public safety and health. Privatizing these services could take away from society a basic right to those who cannot afford to pay for them, but who do so through mandatory taxation. This reality can only become viable when the standard of living and income distribution of citizens is sufficient to guarantee them a dignified life, ensuring the minimum standards of civilization.

The ownership of these services, therefore, in compliance with the supremacy of the public interest, could not belong to any entity other than the public domain, and the concession, not the privatization of the exploitation of these services, and not their total transfer, would be appropriate. In this way, the power to interrupt the adoption of conduct incompatible with the community continues to be with the highest power, the one responsible for ensuring social protection: the state.





#### IV. CONCLUSION

Both society's and public authorities's capacity for adaptation is demonstrated in difficult situations faced by a state, as well as the strength of a people's recovery and the extent to which their chosen state model is adequate to the response found by the state to the desires of its people. What is learned from these experiences should serve as guidance for future generations and as a constant learning experience for decisions to resolve the current difficult situation.

This article has shown the importance of states acting within their regulatory powers to make decisions that are effective and quick to maintain the quality of life of citizens. In many situations, it can be seen that the non-interference of the state would be absolutely harmful to the guarantee of fundamental rights. The state is the only one that allows guidelines for the implementation of public policies that guarantee social protections. Something that would not have been allowed in ultra-liberal states .

Thus, the actions of the Brazilian states and the Federal Government were fundamental in adapting measures to practical effectiveness; the presence of the regulatory state has proven to be not only effective but also essential. A similar situation was experienced by other Latin American countries, such as the one analyzed in this article, Peru and Argentina. In this sense, two aspects must be considered for the success of recovery: the protection of social well-being and the containment of the spreading factor of the crisis, which, in 2020, was caused by a virus of global proportions.

Defending the state's regulatory activity not its minimal presence means, given the analysis set out in this article, that its active presence in the preparation of regulations and guidelines safeguards constitutional provisions. These must be capable of ensuring the strengthening of society and the effectiveness of the measures adopted, and their provision in the abstract is not enough, but their practical applicability. The granting of benefits that ensure rights involves costs and responsibilities for those who grant them and for those who benefit from them.

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