THE LEGAL ORDER AND ECONOMICS

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The relationship between legal order and economics is always a very interesting subject. Nowadays, when the economic aspects of problems are excessively impasized, many times with the sacrifice of a just solution, this matter offers us the opportunity to look at some of the principal economical orientations, and above all, the relationship with the legal order. It is important to see how the constitution as a paramount law regulates this very important field, exactly because we have adopted the system of a written constitution, the American system, as it was defended by Hamilton, in the Federalist no. 78, and applied by chief-justice Marshall in the famous case Marbury v. Madison. Also, the various economy control sources deserve mention, be it with relation to induction (fiscal incentives), or even obligatory or cogent contracts. These types reveal different regulation scales of the market, even though, being a mixed-economy regime, the maintain, in general, the market intact. The market is understood not as a static entity in front of the State, but as a process in which sometimes the State itself takes part.

I. *The mutual influence of Economics and Law*

There exists, of course, a mutual influence of economics and law. Even though this proposition, that the legislation is a result of the desire of the ruling class, is not acceptable, it has been admitted that certain economical situations orient and induce the adoption and defense of certain ideas. In a broader sense, the relationship between economy and law depends upon political decisions taken and transformed into a legal norm. There is sometimes, however, a disparity between the adopted principles and its practical realization. For this reason, the fact that the State does not identify itself with and ideological orientation or definite economics is always necessary in a pluralist society. For example: observe what happened with the Portuguese

Constitution, where the socjalist formula was adopted.[1] This caused great operational difficulties of the other parties wich did not have the same orientation or even fought against it. In this case, various consequences resulted from this political decision regarding other dispositions of the Constitution. This does not seem to be adequate to a democratic system. A democratic system requires a plurality of parties, revealing a remarkable diversity of ideological and consequantly economic orientations. Then we have the *"principle of non-identification"* of the Constitution with a determinate doctrine, accepting that each one of the winning parties can implement their economic policies.

It is common knowledge that this solution does not always conform to the reality because of peculiar situations in each country. Concerning economy there is however a mutual relation between economy and law although we cannot say that law is a pure result of the economic facts related to it. Law is not a simple description or admittance of economic facts, but, much more than this, law prescribes behaviour based on the facts. Often the law exercises a rectifying role with relation to certain acts. But, doubtless, economic situations are reflected in law. Juridical ideas, otherwise, project themselves into economic theories as they do not always aim only at gaining a maximum profit. So the economic solutions should reflect the concept of justice to be basically accepted. They should be susceptible to consentment and not to imposition. It is not necessary to use Aristotelian philosophy to prove that distributive justice, which presides over the relations between the State and private persons is subject to clearly defined ethical principles. The superiority of commutative justice, that is justice of the individual, over the distributive is our appears to be not only the result of protestant ethics, but one of the fundamen-

[1] Although contradictory, art. 2 of the Constitution of Portugal states that *"the Portuguese Republic is a democratic state based on popular sovereignity in the respect and in the guaranty of fundamental rights and liberties and in pluralism of expression and democratic political organization"*, but concludes that everything *"has the objective of assuaring a transition to socialism by means of creating conditions for a democratic exercise of power by the working classes"*. Article No. 1 affirms at the end that the Portuguese State *"is pledged to the transformation to a classless society"*. As a result of this decision, various dispositions resulted immediatly on the economic plane. Dispositions such as those of Art. 10, No. 2, over *"the economic property of the principal means of production"* complemented by the dispositions of Art. 80 and the following, especially the articles which deal with *"plano"*, Arts. 91 to 95 of the socialist planning model, however, with criticism from Deputy Victor Moreira and a reply from the socialist representative Carlos Lage, because he didn't consider contradictory the dispositions of the articles related to *"Economic Organization"* (See Caldeira Silva, Constituiçao Política da República Portuguesa de 1976 –*Political Constitution of the 1976 Portuguese Republic*, Lisboa, pp. 610 ff, 1976).

tal principles of the doctrine of the second scholasticism, the spanish scholasticism of Molina, Lessius, Suarez and many others as Paolo Grossi stated.[2] It reveals the appearance of individualism in law even before Hugo Grotitus Dutch School. The tendency of everything remaining in the hands of private person, including the economy itself, characterized a completely oldfashioned capitalism. It was verified that certain economic situations were not neutral before the law, but an important aspect in the determination of the people rationalization and their role in society. These situations end up interfering in the field of regulation. On the other hand, the economic ideologies, which cover an extensive range of doctrinal discussions, are reduced to a few articles when transformed into a legislative text. This small number of norms does not, by any chance, cover all the functions of the State, because it is necessary to use elements of the State to give a better interpretation and application of these norms and here we have all the secondary sources of law, beginning with the regulations which should certainly apply faithfully those rules.

The economy, because of its mutability, allowed the appearance of many other more rapid control measures, which the State uses all the time to control or induce the economic facts in a certain direction. The position of the modern State is not neutral, as it considers the market as a process. Even though its nucleous should not be subject to regulation, either definite or permanent. The State establishes the preliminary conditions, or the conditions prior to development of this same market. Sometimes the State does this directly, though in stages and for limited periods. The limits of this regulation are outlined in the constitution (fomal economic constitution) and the normal legislation, which gives a larger or smaller margin of liberty to the State to manage the economics facts.

Moreover the *"formal constitution"* of economy does not consist, as Franz Böhm wrote[3] in one group of economic facts, but in a system of norms, with the scope of ordaining the mutual relation of economic forces.

[2] La proprietà nel sistema privalistico della Seconda Escolastica (The property in the private system of the Second Scholasticism) in: *La Seconda escolatica nella formazione del diritto privato moderno* (The Second scholasticism in the formation of modern private law), Milan, 1973, p. 131.

[3] Ordnung der Wirtschaft als geschichtliche Aufgabe und rechtsschöpferische Leistung 1937, p. 54. See specially Ludwig Raiser, Wirtschafterfassung als Rechtsprobleme, in: *Die Aufgabe des Privatrechts.* Athenäum Verlag, 1976, p. 22-37. About the present situation of the neo-liberal theory in Germany, see also: Fritz Rittner, "Zum gegenwärtigen Stand neoliberaler Rechtstheorie", in: *Archiv für die civilistische Praxis* No. 180 (1980) pp. 392-402. In the essay F. Rittner analyses the work of Mestmäcker, Recht und ôkonomisches Gesetz.

In the Brasilian law, it was the Constitution of July 16th 1934, that by the first time regulated the *"Economic and Social Order"* and pointed out that economics were governed by justice, stating in art. 115 that *"the economic order must be organized respecting the principles of justice and the needs of national life, with dignity"*. Afterwards it begins to discipline, in all aspects, the *"formal constitution of economy"* in a nationalist sense (especially in art. 117, 118, § 4°) and labour approach (art. 121) with the improvement of the people's economy, creating a special court for the workers (art. 122), and allowing a deep interference of the State in economy. These principles remained in general, in the Constitutions of 1946 (art. 145 and followings ones) and of 1967 (art. 157 and followings ones) and in the Constitutional Amendment No. 1, of 1969 (art. 160), framing a mixed model of constitution, with a free market, at last in principle, and even more important, welfare legislation, among many other elements for classification.

II. *The deficiency of a simple Economic Interpretation of Law*

Concerning the growing importance of economy with relation to law, there are more than a few authours who think they can construct an economic interpretation for law; instead of the criteria of just or injust, we have solutions that are more less useful to the interested parties. This school of thinking, which has had intense repercussion all over the world, almost always takes into consideration the social and economic price of governmental measures. More than this, it always submits the action of State and private persons in all aspects to the criteria of utility and optimization of the available resources, or as an object of option based on the same rules. It is interesting to note that Posner's theory is based on the fact that *"it is implicit in the definition of man as a rational maximizer of his self-interest that people respond to incentives"*.[4] Man is described as *"homo economicus"*. Actually, there is no doubt that interest is an expressive guiding element of human behaviour, and among the many stimuli that a person can receive, the economical one is of the most important.

[4] Economic Analysis of Law, Boston, 1972, p. 1. See also: the essay *"The rights of creditor of affiliated corporationes" University of Chicago Law Review, 43 (1975) pp 142 ff.* Yet Posner (Economic Analysis p. 4) recognizes, for instance, that *"the economist cannot telle us whether the existing distribution of income and wealth is just"*, which represents the total exclusion of the justice criterium. In relation to the present situation in Germany where the *"economical analyses of law" is very important*, see: Maximilain Fuchs, Die Behandlung von Ehe und Scheidung, in der *"ökomischen Analyse des Rechts"*, FamRZ 26 (1979) pp. 553-557.

Even the family law —which at present as always gives importance to the application of ethical criteria— will be equally subject to the utility rule.

Everyone surely knows of the existence of two fundamental domestic relations, personal and patrimonial family law. Nevertheless, even in patrimonial law, there are certain ethical aspects. It is not possible to affirm that the actions of parties of a marriage or of a dissolution of a marriage are always motivated by economic aspects. On the other hand, everyone is aware of the *"economical basis"* of family law, which is cristalized in the duty to pay alimony and in matrimonial property, and that the duty to pay maintenance, which is mutual, is of fundamental importance for the existence of the marriage. This statement does not exclude the *"ethical basis"* or the *"personal basis"* as equally necessary for the existence of the family. It is true that the criteria of utility and profit are present even at the birth of a discipline: the commercial law. We cannot, however. *"base everything on a single part"*, and consider the criteria of utility, which is an important element for certain sectors of law, valid for a merely or predominantly economic interpretation of all law. As can be seen, this economic theory does not solve the juridical problem and not even the problem of a mutual relation between the legal order and economics since it only enhances the economic rationalization, that is, the economic interpretation of the legal order. In spite of the significance that modern authors give to this theory, and even when it takes other factors into account, we can conclude that the rule of economy has been exagerated, and this, consequently, submits law to a rationalization which is not proper of it. When law is submitted to a different hermeneutical model, for example, the model of natural sciences, certain conclusions are doubtless very interesting. But, an the whole, the juridical phenomenon is degraded, losing its importance. All the authors who are skilled in law, but who put aside justice or do not accept a legal idea, make the same mistake. Do no think, however, that this idea of putting aside this concept is not usual among authors in other sciences. There are many sociologists, who, writing about Sociology of law, transform law into a mere mechanism of social regulation apart from any value which does not result directly from the actual adopted model.[5] This point of view, either concerning the

[5] H. Schelski ("Die Sociologen und das Recht", in: *Rechtstheorie*, n. 9 (1978) pp. 1-21) studied critically the most recent german sociology and mentioned that Arnold Gehlen, Ralph Dahrendorf, Habermas, and Luhmann did not take into consideration the concept of law in their theories. We could say the same of an economical interpretation of law, because in this case, if well observed the facts, we would have a legal economy without law.

optimization or the utility of juridical solutions, as a predominant factor of the activity of private persons or of the State, does not deserve to be supported in its entirety.

III. *Formal Economic Constitution and its projection on the economic reality*

Having dismissed an economic conception of law because of its one-sidedness, although it can be seen that economics has great importance among many other factors, it would be convenient to examine the elements of the economic norms which orients the economy in a determined country. The *"formal economic constitution"* means the constitutional principles which determine and command the economic facts, that is, all the economic ideologies put into practice. *Facing the "principle of non-identification"* it's possible that there is no sense accepting a definite ideology in the constitution itself; by not doing this, it could be said that an absolutely liberal economic system had been decided. Possibly to avoid this risk, some constitutions —not all— outline the type of economic rules adopted. In totalitarian countries, which are strongly ideological, the *"identification"* is the proper nature of the system, and it manifests itself above all in the *"formal economic constitution"*. Because of this, it is not considered as a democratic solution, at least of the liberal kind (and is there any other type of democracy ?) and ends up inevitably by establishing a dictatorship in the sense that any ideology —especially a pluralist one— will be out of constitutional control.

It is known that the inclusion of a socialist doctrine in the constitution should, if the constitution is inflexible on this point, result in all the parties becoming socialist, or the parties which have a different orientation would be parties in opposition to it. There should therefore be harmony between politics and economy in the sense that each type of State determines or tends to determine a specific model of *"formal economic constitution"*. But the tendency is for a flexible system, which adapts itself progressively to the modifications of the economy, without representing a systematic application of an ideology, at least in the multiparty countries. It was discussed whether it was correct to say *"contitution of economy"*. If we identify the State and society, we should speak of the whole constitution as a pure State Constitution. But we think that it is acceptable the expression *"constitution of economy"* because it is the State itself that *"opened a hole"*, and this let us observe that the Constitution has a part named

"constitution of economy"[6] We can affirm, in other words, that the model of the constitution is, up to a certain point, a self-referential one. It is clear in their application, taking into account the generality of the norms, the *"pint d'appui"* changes being supported by one or other of the principles inherent in the model, since they are not contradictory but simple complementary.

IV. *The Influence of the Neo-Liberal School and the Social School and their Projection on the Legal Order*

Neo-liberal thinking is related to the school of Walter Eucken[7] This school affirms that there can be no mixed or intermediate solutions in terms of economy, since everything is proposed as an alternative: as a centrally planned economy or a competitive economy. Consequently, it is hot an appropriate solution, for example, the Keynesian position, which states the following: *"The ideal measure for the organization and control of the economy should be searched for at a point somewhere between the individual and the modern state".*[8] Acording to Keynes, the question cannot be put in an alternative form; on the contrary, a solution for the problems of organization of the economy will not be in the state nor in the individual, but somewhere between both. Classic capitalism is the source of everything.

The old spirit of capitalism is well-described in F. Engels' passage when he considers the situation of the workers in England:[9]

"One day I walked with one of the middle-class gentlemen into Manchester. I spoke to him about these disgraceful, unhealthy slums, and drew his attention to the disguting condition of that part of town in which the factory workers lived. I declared that I had never seen so badly built a town in all muy life. He listened patiently, and at corner of the street at which we parted company, he remarked: "And yet, there is a great deal of money made here. Good morning, Sir".

This situation no longer exists, as various social ideas have implanted themselves within the capitalism system, caracterizing it as a mixed model, with liberal ideas and some socialistic principles in a

6 Gerd Rinck, *Wirtschaftsrecht,* Köln, 1977, p. 18, ff.

7 Grundsätze der Wirtschaftspolitik, Tübingen, 1959, pp. 153 ff.

8 Keynes, *Das Ende des Laissez-Faire,* 1916, p. 31, ff.

9 Condition of the working class in England, Chapter VII, which analyses the workers situation in 1800; this analysis can be done in many countries, for example, in Poland. See: Luckan Blit, *The origins of Polish Socialism,* London, 1971, pp. 5 ff.

permanent state of tension.[10] It is a *"flexible"* model, in which economic and justicial reason are combined to solve cases and to motivate measures of the State and of the private persons.

As we have seen, the neo-liberal school is inclined towards a radical position of the problem, meaning that a *"free economical order"* should prevail limiting state intervention, with respect to economic activity, to a small part. Evidently, this theory is vehemently opposed to the formation of monopolies and, thus, in favor of the demand for anti-monopolist legislation. In general, however, the State function is greatly reduced, whereas, by placing the solution in a extremely radical alternative between centralized and market economy, the mixed models are out of the question. The problem is whether it is state duty to actively regulate the economy, and to what extent it should do so. In a mexied model, all the active aspects of the State cannot be described *"a priori"*, since they operate in so many different forms, depending on the economic situation in each country.[11] Maybe for this reason, it is difficult to systematecally explain a mixed economic model. Even in liberaltype economic constitutions, it is undeniable that the facts begin to demand an ever-increasing presence of the State, which is the reason that a *"material economic constitution"* ends up transformed in a mixed economy. State intervention is much more ample than a simple organization of measures to control monopolies or monopolistic practices. In mixed models, an ample part of market induction also falls into the State.

A mixed model is, therefore, a model which contain neo-liberal elements, but it goes further by demanding a more active role by the State. In such a system, the State not only assures the market organization, but operates actively, being able to elaborate plans to build, indirectly or even directly, this same market.

The progressive and constant increase of state intervention can, with time, put an end to the economical system of the market, and because of this it is necessary that the constitution outiline its limits.

[10] This tension is characterized as a *"dialetic of complementarity"* in the sense pointed out by Miguel Reale in a magnificent book (Experiencia e Cultura *"Experience and Culture"*, Sâo Paulo, 1977, pp. 162, ff.), that is, as an *"open dialetics"* that cannot be reduced to a *"closed dialetics"*, be it Hegelian or Marxist. In consequence of this, we have a economical *"dynamic model"*, in which liberal and social aspects are mutually considered in such a manner that sometimes one or another of these elements is the owerwhelming.

[11] The *"Promoter State"* acts in such a diversified manner that when the GATT tried to classify the different types of *"grants-in-aids"*, It had to abandon the idea to do it based on their objectives (see D. Scheuing, *Les Aides Financiere Publiques*, Paris, 1974, p. 49, note 87).

These limits are determined in part by guarantees and individual rights, A guarantee, for example, of property and consequently of subjective rights, against any kind of expropriation in which the fair and the current value of the expropriated asset is not paid. We have already seen that the situation of socialism and capitalism present nuances, since there is not longer radical opposition between the two systems in the sense that every economic order is or tends to be a mixed one. Nevertheless, the capitalist system has a greater chance of evolving in the form of a more social conception of capitalism itself than a social list system in favor of a more capitalist conception of its social model. This is true as long as it is possible to affirm that, even in a strongly ideological system, the fundamental is not so much the discussion of the actual dogmas, but instead the existence of faithful followers at the party's orders.[12]

The organization begins to become more importance than its proper ideology. The statement is made *"cum grano salis"*. To sum up, considering the previously mentioned elements of the constitution itself; the importance given to property on one hand, and the ample admissable State intervention in the economic domain on the other, the guarantees to the workers, and finally an ample social system, the Brazilian economic organization has to be classified as a mixed model.

V. *The Brazilian Economic Model*

Our model is, as had already been explained, of a mixed nature, as it tries to combine a market economy with principles and institutions of a social order. Because of its general nature, it is not sufficient only to examine the constitutional dispositions to have an exact idea of the reality. To the *"formal constitution of economy"* there is the law formed by the economy itself, that is uses and customs, its concrete instruments and its manner of operating. And in this particular matter, the Brazilian economy created its own model covering all the diverse sectors. On one side, it established an ample inductive planning, and on the other, it prescribed a monetary correction of

12 Unger, *The Totalitarian Party*, London, 1974, pp. 16 ff. This study is interesting because it shows the similarities and identicalties between national socialism and communism with emphasis on disciplinary aspects. With respect to this subject, Marcel Waline's L'Individualisme et le Droit, Paris, lualisme et le Droit, Paris, 1949, specially pp. 55 ff., is still a classic. Concerning the medieval origin of *"ideological discipline"*, expressed in the saying *"Discentes, id est, Laici"*, see: Walter Ulmann, *The Individual and Society in the Middle Ages*, Baltimore, 1966, specially pp. 17, ff., and, *Principles of Government and Politics in the Middles Ages*, London, 1966, pp. 67 ff.

value (indexation), without which, the existence of on incipient capital market would not be possible.[13] It was an economic conception of taxation which permitted the establishment of an ample system of credit incentives, using the idea emphasized by Posner that people's tendency is to maximize their own interests.

It is interesting to note that these credit incentives began to appear with greater amplitude in the economic history of Brazil after 1964. Before this date, the fundamental instrument for economic development was not the inductive planning resulting from the mentioned incentives (cogency *"ex vita"*) but the *"cogent contracts"* (cogency *"ex lege"*) even though this was not well known.[14] The question about the constitutionality of the denominated *"compulsory loans"* became famous and drew attention to the problem.[15] Later came the incentives, and the principal areas covered were tourism, florestation, re-florestation fishing in the national environment, and investment in the northeast and in the Amazon.[16] Also, an attempt was made to dynamize the capital market thuorgh Law-decree No. 157, dated 10/02/1967, and many other dispositions. The mentioned Law-decree No. 157 permitted in its second article, which was later modified, financing institutions to sell share purchase certificates.[17] One of the objectives was to transform closely held corporations into

13 See our study: *A Fundamentacao Jurídica do Mercado de Capitais* (Juridical Fundamentals of The Capital Market), Porto Alegre, 1973, pp. 16 ff. The monetary correction extended its use extraordinarily after 1964. Law No. 4.937 (1964) instituted it for the credits of the Federal Union. In 1966, Decree No. 58.400 ordered its application to Income Tax creditis. With relation to the Capital market, monetary correction was applied to various opperations by Law No. 4.728, in 1965, arts. 26; 27, I; 28; 29, IV; Res. No. 18 in 1966; and Law Decree No. 403, in 1968, art. 3, § 2o., and in may other hypotheses. The problem of inflation is now beginning to motivate studies all over the world, including the United States. See Keith S. Rosenn, *Protecting Contracts from Inflation*, The Business Lawyer, No. 33, 2 (1978) pp. 729 ff.

14 Concerning the cogent contracts, see the pioneer study of San Tiago Dantas, *Problemas de Direito Positivo* (Problems of Positive Law) Rio, 1953, pp. 13, ff.

15 Cogent contracts were still evident after 1964, but credit incentives became much more common as a subsidy technique. Nevertheless, the following cogent contracts, among many others, can be mentioned in Brazilian Law when its constitutionality was debated (RMS 11.252 Esteves e Irmaos S.A. vs. Estado do Paraná; *"Esteves and Brothers S.A. vs. Parana State"*; RDA 80/172; Sumula 418; at present, the subject is ruled by Constitutional Amendment No. 1, art. 22, § 2o.) : the obligatory sale of coffee to the Brazilian Coffee Institute, the cogent contract of work accicent insurance, obligatory purchase of Petrobras shares, obligatory sale of export cambials, obligatory deposit of funds by private banks in the Bank of Brazil, etc. See our essay, "A Natureza Jurídica dos Contratos Cogentes e dos Incentivos Fiscais" *(The Nature of Cogent Contracts and Fiscal Benefits)* in *Revista Jurídica* No. 118, Rio, 1972, pp. 52 ff.

16 Law-Decree No. 1376/74, art. 1, 2, 3 and following.

17 See Law-Decree No. 157, art. 3o., Law Decree No. 1214/72; Law-Decree No. 1338/74, art. 3o.

public ones, since the shares were only acquired from companies which had promised to put a substantial part of the shares, resulting from their capital increase, on the market. Yet nothing would be possible if there were not a stable currency. Monetary correction of value was progressively being introduced in determinate sectors as a way of surmounting the problems resulting from inflaction.[18] It was applied sectorially, in the terms of the specific dispositions of the laws, so as to constitute an important canalization element of the people's savings to the sector which the government wanted to dynamize. Thus, an economy of two currencies was created in the country; in one sector, nominalis, and in the other, valorism.

When comparing the various sectors of Law, undoubtedly, it is in the *"economic"* conception of tax that Posner's reasoning makes itself strongly felt. This same reasoning motivated the government of the United States in 1961, to reformulate the American economy. It sent a message to Congress[19] proposing an ample tax fiscal deduction favoring the companies, mainly for renewing their equipment. Congress turned down the proposal; and stangely, highly reputable specialistics of the time, like professors Dan Troop Smith and Hogan, as well as the more powerful business associations, were against the proposal. The tax deduction on a big scale apparently would have favored about 85% of the American business.[20] It cannot be affirmed that these ideas at the beginning of the 60's inspired the creation of ample system of incentives by Brazilian legislators. The specific idea in Brazilian economy is not an inductive planning based on fiscal benefits, nor the adoption of valorism (monetary correction) in determinate sectors, but a combination of both. This resulted in a system of *"two currencies"*, which used the currency as one of the stronger elements to guide the national savings. This was the economic solution; would it have been a fair answer?

For business among individuals, out of the sphere determined by the laws, the principle is, as always, nominalism in which the lessening purchasing power of the currency is not taken into consideration. In this way, the creditor would lose a lot in transactions; until jurispru-

[18] One of the important aspects was the application of monetary correction to the companie's balance-sheets, thereby creating a uniquely Brazilian tecnique (Law No. 6.404, dated 15/2/1976, art. 5, 185, etc.). This has begun to call the attention of foreign specialists (See: Tassilo Ernest, *Das neue Brasilianische Aktiengesetz*, A.G. 1977, pp. 274, ff.).

[19] Message from the President of the United States relative to our Federal Tax System, April, 20, 1961, 87th Congress, First Session (1961).

[20] Cristoph Bellstedt, *Die Steur als Instrument der Politik*, Berlin, 1966, pp. 336, ff. In this important study, the author compares the German and American systems of credit incentives.

dence began moving from the principle that there would not be monetary correction without a law to establish it. With relation to this, the first step was determining that indemnity for torts would have to be calculated with monetary correction on the amount owed. But, damages for breach of contract of a monetary debt would be subject to nominalism, meaning, monetary correction would not be applied. Afterwards, the courts resolved to *"modify"* this, and ordered the sum owed to be corrected as an indemnity[21] Recently, a law was published to institute compulsory monetary correction in claims made in court in keeping with the solutions given by the judges.[22]

Regarding as a whole the economic and the legal reasoning, we can conclude that the latter overwhelmed the former, since the fair solution is, in the majority of cases, much more important than the mere useful one.

[21] The Supreme Court (STF) decided in this way in the case, Companhia Miribo de Mineraçao vs. Geo Mineraçao S/A, in RTJ 91(1980) pp. 1167, ff. and also in other cases.
[22] Law No. 6.899, April, 8, 1981, arts. 1 and 2.