

# Economic Constitution and Democracy

Marisa Mitiyo Nakayama Leon Anibal 

Economic Law Department, Pontificia Universidade Católica de São Paulo, São Paulo, Brazil

Email: mnakayama@sp.gov.br

**How to cite this paper:** Anibal, M. M. N. L. (2025). Economic Constitution and Democracy. *Beijing Law Review*, 16, 643-652. <https://doi.org/10.4236/blr.2025.161030>

**Received:** January 10, 2025

**Accepted:** March 28, 2025

**Published:** March 31, 2025

Copyright © 2025 by author(s) and Scientific Research Publishing Inc. This work is licensed under the Creative Commons Attribution International License (CC BY 4.0). <http://creativecommons.org/licenses/by/4.0/>



Open Access

## Abstract

This article aims to explore the relationships between economic Constitution and Democracy, particularly the interdependent connection between the two. Starting from Norberto Bobbio's idea of material democracy, where there is concrete and effective participation in political decision-making, it is essential to delve into the guarantee of the principles of freedom and equality, not only in an instrumental way but in a concrete manner. Thus, the concepts of formal and material democracy, formal and material equality, and human dignity are analyzed. Furthermore, a consideration is made as to whether the guiding Constitution proposed by Professor Gomes Canotilho can enable material democracy, and the answer is negative. Consequently, drawing from the work of Gilberto Bercovici, the concept of economic Constitution is analyzed, including the norms that compose it and its objectives. It is verified that in the Brazilian Constitution of 1988, the economic Constitution is composed of norms that establish clear rules respecting the valorization of human labor and dignified existence, in addition to promoting social justice. It is observed that there has been an evolution from the liberal state to the social state, with the consequent incorporation of economic elements into the constitutional text. As it enables the reduction of social inequalities, the economic Constitution is a crucial tool for the construction of Democracy.

## Keywords

Democracy, Equality, Dignity of the Human Person, Economic Constitution, Economic Law

## 1. Introduction

When studying the concept of economic Constitution, one often ends up absorbing ideals of non-interventionism and minimalism; that is, the economic Constitution would be economic liberalism applied to the Constitution.

In this sense, the Constitution would be concise, lean, and minimal. However,

this view would lead to a poor and limited concept of economic Constitution. Thus, studying the relationship between the economic Constitution and Democracy proves useful in order to better understand its content and ensure an effective interpretation of the provisions of the 1988 Constitution.

#### 1) Democracy in Material Sense

Democracy can be analyzed in its formal and material aspects.

The formal aspect of democracy is related to equality of conditions and parity of arms. It relates to isonomy, the same possibility of action for individuals, through suffrage, periodic elections, and the guarantee of the right to free association. It is intrinsically linked to the liberal Democracy of the 18th century, in the similarity of forms of participation, or the opportunity to reach power.

However, history has proven that mere suffrage, the holding of elections, and the creation of political parties do not lead to total democracy. It is necessary to go beyond classical democratic instruments. The concept of democracy has grown; it is not limited to form and has come to encompass the material aspect as well.

Material democracy goes beyond the formal. It presupposes “the existence of broad and secure participation of the majority of citizens, both directly and indirectly, in decisions that concern the entire community” (Bobbio, 1983: pp. 55-56; Bueno, 2010).

Here, democracy is more than just political-party activity.

Material democracy “presupposes the free development of human faculties” (Bobbio, 1983: p. 62; Bueno, 2010), meaning it requires affirmative actions from the individual. The individual must act concretely in a material democracy.

Thus, simple elections would not suffice; democracy is not a mere instrument, it is action. Material democracy creates conditions for individuals to promote their own well-being.

Material democracy is linked to the ethical conception of democracy: the individual precedes the state organization and must find in it the appropriate structure for the satisfaction of their needs and respect for their human condition (Bobbio, 2001; Bueno, 2010).

Giovanni Sartori argues that equality is inherent to Democracy (Sartori, 1994). According to him, Democracy without an ideal dies. It must always strive to realize this ideal of equality.

Bobbio even highlights the closeness between freedom and equality, as promoting equality defends freedom (Bobbio, 1991; Bueno, 2010).

Therefore, it is necessary to combine substantial democracy with formal democracy to enable and guarantee the freedoms that complex societies demand.

#### 2) Tools for the Construction of Democracy: The Directive Constitution

Bobbio presupposes individual dissent and argues that democracy is the legitimization of dissent. Thus, democracy would serve to guarantee pluralities, as it enables the peaceful coexistence of divergent ideas.

In effect, democracy is sympathetic to pluralism but is refractory to inequalities.

Since its origins in Ancient Greece, democracy can be seen as an ideal for overcoming inequalities (Dahl, 2022).

In this vein, Bobbio raises the issue of the necessity of legality for democracy. For him, the Constitution can be a good instrument for the preservation of democratic values.

In this context, the theory of the directive Constitution proposed by Professor Gomes Canotilho emerged to give concreteness to the democratic ideals of reducing inequalities (Oliveira, 2003). According to this theory, the Constitution would define the ends and objectives for the State and society. The Brazilian Constitution of 1988 would be an example of a directive Constitution, as it defines, through so-called programmatic constitutional norms, ends and future action programs aimed at improving the social and economic conditions of the population.

The Brazilian Constitution of 1988 establishes some basic guarantees, such as housing, labor, education, health, leisure, and social security. Therefore, the State must provide means for people to acquire homes, have access to hospitals, study in good schools, and have their basic needs met. The constitutional directive serves as a guide for the government, which must follow it.

Similarly, the population has a list of demands that can be requested from the government or the courts. Since these guarantees are constitutional, the authorities must meet these demands. The courts are even allowed to set a deadline for the government to fulfill these rights, under the penalty of a fine.

Using the programmatic norms outlined in the directive Constitution, many actions were filed in the courts, and based on this, many political actions were carried out through the construction of schools, universities, hospitals, etc. The constitution principles were fundamental to future actions that directed the rulers to build facilities to the citizens.

Since the enactment of the 1988 Constitution, Brazil has established 63 federal universities. This expansion process was mainly driven by policies aimed at democratizing access to higher education and promoting regional development. The creation of these universities aimed to decentralize higher education, providing access in various parts of the country, including regions far from major urban centers.

Since the enactment of the Federal Constitution of 1988, Brazil has created around 30 federal hospitals. This expansion occurred primarily in the context of the expansion of the Unified Health System (SUS), aiming to increase the availability of quality healthcare services, especially in regions less served by the public healthcare system. The creation of federal hospitals also sought to address specific healthcare needs and contributed to the development of the country's healthcare infrastructure.

It's worth noting that this number may vary depending on sources and updates, but it provides an approximate estimate of the impact of the 1988 Constitution on the expansion of the federal hospital network.

These developments in educational and health areas were possible because

there was a Directive Constitution that guided the actions of the Executive, Legislative and the Courts.

The lesson from the Portuguese jurist is an evolution of the theory of Constitutionalism, as it presents an advancement in the nature of constitutional norms. These would not only address the organization of Powers or the State but could also encompass programmatic content for the legislator, signaling the values and directions that society should follow in the coming years.

The Directive Constitution was very important to the fulfill the basic needs of the Brazilians. However, the theory of the directive constitution has some opponents. They say that the achievement of programmatic norms depends on the effort and goodwill of the legislator. This is because they do not have immediate concreteness, as they depend on the creation of another regulatory norm. Thus, programmatic norms would not have a material nature but a formal one like other constitutional norms.

Moreover, the theory of the directive Constitution seems to stifle the discussion of certain topics. Once the program gains constitutional rigidity, any modifications would need to be made through constitutional amendment, which requires complex constitutional voting.

Furthermore, the directive Constitution appears to exhaust democratic discussion, as it would be up to society only to embrace and realize it. Democratic activity would be limited to the prior discussion before the promulgation of the fundamental text, without room for the discretion of the interpreter.

In this sense, the directive Constitution would be at the same time a fundamental pillar of democracy, as it would bring binding minimum guarantees to the legislator, but also a limiting democratic agent, as it would stifle the discussion of programs already included in the constitutional body.

Here, the doctrine of the “existential minimum” also arises, in which the Constitution provides for the basic rights and conditions of the individual. This doctrine postulates that the Constitution just present what is essential to the survival of the individual, and the interpreter is restricted to what the Constitution guarantees. In some way it is a progress to the Constitution theory, because the basic needs of the individual are provided but at the same time the jurist can not go further and give more than the Constitution says.

The Portuguese jurist himself has revised his positions, arguing that the Constitution cannot be reduced to an “instrument of government” and advocates for the material notion of the Constitution. Consequently, the theory of the directive Constitution would give way to the theory of the open Constitution, where the Constitution can be seen as a framework order, a fundamental order, and not an exhaustively regulatory constitutional code.

Thus, material democracy needs an instrument that goes beyond the notion of the directive Constitution. One way to achieve material democracy is through the economic Constitution.

### 3) Tools for the Construction of Democracy: The Economic Constitution

Democracy can be seen as a system for solving the problems of the State, through the protection of the rights of various social strata, seeking to significantly reduce inequalities. The idea of equality is naturally intrinsic to the idea of democracy.

Democracy is an instrument for the people to influence the decisions of the State for their own benefit, ensuring minimum rules of isonomy. It is also a mechanism for society to solve its own problems peacefully—without one group needing to eliminate another to govern. It is a system that presupposes tolerance and coexistence of different groups in a State. Through the protection of individual rights, democracy is crucial for the survival and integrity of society.

A phrase from Professor Alberto do Amaral Junior, a Full Professor of International Law at USP, summarizes democracy in a few words: “Democracy is the government of the majority, with the protection of the minority.”

However, for full participation in the political process, individuals need to be in minimum conditions of equality. They must be in full enjoyment of their physical and mental capacities.

For this, the human person needs to live under conditions adequate for their survival. They need housing, food, and leisure, requirements for a satisfactory existence. Only then, with these minimum conditions met, will the human being have the capacity to participate effectively in political decisions, and thus achieve the material democracy that is expected.

Certainly, economic Constitutionalism is a necessary measure for the realization of democracy in its material sense. Let us see.

Among many definitions of economic Constitutionalism, we choose that of Natalino Irti, who defines the economic Constitution as the state political Constitution applied to economic relations, or the constitutional rules that have economic content. In this sense, the economic Constitution is an integral part, not autonomous or isolated, of the total Constitution. The economic Constitution would have the presence of the economic in its text, integrated into the constitutional ideology. It is with the constitutional text containing economic content and the adopted ideology that the interpreter can adopt a state economic policy.

For André Ramos Tavares, “The formal economic Constitution can be considered as the part of the Constitution that houses and interprets the economic (material) system, that is, that gives form to the economic system (in the Brazilian case, essentially capitalist). The Brazilian formal economic Constitution is embodied in the part of the Federal Constitution that contains the rights that legitimize the actions of economic agents, the content and limits of these rights, and the responsibilities that are inherent to the exercise of the country’s economic activity” (Tavares, 2006: p. 78).

Thus, the economic Constitution identifies the basis of the system, identifies the rights that legitimize the actions of economic agents, and responsibilities for abuses. Therefore, the economic constitution has been used to reduce social inequalities in Brazil, as it allows the confiscation of unproductive land, creates the

microenterprise, a legal person that have tax facilities, and restrain the monopoly and economic abuse.

Refer to the Brazilian Constitution in its Title I, on Fundamental Principles, Article 1, which presents the dignity of the human person as the foundation of the Federative Republic of Brazil, and in Article 3, where the objectives of the Republic are presented, which are the construction of a free, just, and solidary society; the guarantee of national development; the eradication of poverty and marginalization and the reduction of social and regional inequalities, and the promotion of the well-being of all, without prejudice.

These two provisions give form and consistency not only to the State but also to all legal and economic relations in Brazilian territory. It is clear that the dignity of the human person is a foundation of the State—the human being is the center of all administrative bureaucracy. And all state action is aimed at fulfilling the democratic ideals of freedom and equality, with the creation of a free, just, and solidary society, without poverty and without marginalized individuals.

In addition, the Constitution of 1988 provided in its Title VII, Chapter I, on the general principles of economic activity, Article 170: “The economic order, based on the valorization of human labor and free initiative, aims to ensure a dignified existence for all, according to the dictates of social justice, observed the following principles (...)”.

The constitutional text indicates the path to be followed by Brazilian society in terms of economy, in the sense of valuing human labor, with the production of wealth that will circulate so that all citizens have a dignified existence, in accordance with social justice. In item VII of Article 170, the reduction of regional and social inequalities is provided as a general principle of the economic order.

It is important to emphasize that before listing the principles of the economic order, the Constitution stated that the economic order is founded on the valorization of human labor and free initiative, has as its purpose a dignified existence, and has social justice as its parameter.

Only after presenting these ideas, the pillars of economic constitutional law, does it proceed to discuss sovereignty, private property, consumer protection, the environment, the reduction of social inequalities, and protection for microenterprises.

In this context, we can affirm that the dignity of the human person is not a mere principle that governs the interpretation of laws that deal with economic content. It is the very end of the entire economic order. In other words, economic relations among various market agents exist solely to ensure the wealth that sustains full human existence.

There was no local, temporal, or meritocratic distinction—the economic order serves the dignity of all human existence, without any type of exclusion.

Moreover, the Constitution, in this important provision, presents social justice as a dictate of the economic order, complementing what was previously stated—that a dignified existence must be ensured for all. There is an explicit concern to

value the human being (in a universal sense) within the economic order and to guide the entire economic order from the perspective of social justice, which implies a better distribution of resources throughout society.

In this aspect, the Constitution values a better circulation of the produced wealth, in such a way as to ensure everyone a dignified existence, and with a view to including the lower and less powerful layers of society in the market. Everyone must be part of the economic order; wealth must circulate at all levels; to achieve its purpose, which is dignified human existence.

It is worth noting that there are other constitutional principles with economic implications that are part of the so-called economic Constitution, such as the principle of the rule of law, the principle of the federal State, principles of the social values of labor and free initiative (Article 1, IV of the CF); the principle of social development (Article 3, II); the principle of the eradication of poverty (Article 3, III); and the principle of the reduction of social and regional inequalities (Article 3, III).

For Tavares, “in a very broad conception, all are economic-constitutional principles, and not just those expressly indicated by the Constitution in its chapter specifically dedicated to this (Chapter I Title VII)” (Tavares, 2006: p. 126).

#### 4) Material Equality

The economic Constitution, inspired by the Weimar Constitution, serves to broaden the concept of democracy, bringing equality from the political field to the economic field. Democracy presupposes not only political equality but also material equality.

With the clear emphasis on valuing human dignity, reducing inequalities, and social justice, it seeks to guarantee material equality among citizens and strengthen the democratic principle.

Here, the idea of “existential minimum”, often related to Professor Canotilho’s theory of the directive Constitution, is surpassed for the realization of economic and social democracy. The Constitution is not restricted to the basic needs of people, it should go further.

For Gilberto Bercovici, “what matters is to affirm that the relations between human dignity and the economic Constitution cannot be limited to the discourse of the existential minimum. On the contrary, these relations, under the 1988 Constitution, go beyond and are not configured as ‘only’ the universalization of fundamental rights (of all fundamental rights, including and especially economic and social rights). The relations between human dignity and the economic Constitution also require the realization of economic and social democracy” (Bercovici, 2022: p. 148).

The concept of formal democracy related to the liberal State of the 18th century gives way to material democracy, in which material equality among citizens is pursued through rules that apply to economic relations that curb abuse and predatory activity.

There is no formal equality without material equality. Formal equality refers to



the equality of all before the law, while material equality refers to equality of opportunities. It relates to the social leveling of the socio-economic standard. It implies a significant reduction of poverty.

Thus, the economic Constitution is a tool for achieving material equality because it organizes economic relations in a way that diminishes disparities, fostering the circulation of wealth among all. With economic development through equitable economic relations, the basic needs of the individual will be met, leading to their dignity and autonomy. With this economic strengthening, their capacity for participation in political decisions increases. Formal democracy becomes material.

The individual is seen not only in their political aspect but also in their economic one. When an individual rises from extreme poverty, they begin to have the time and disposition to aspire to higher ideals and truly contribute to the collective. Ignoring the economic condition of citizens is to view democracy superficially. For there to be democracy at its highest degree, social leveling, promoted by the economic Constitution, is necessary.

Professor Gilberto Bercovici argues that “The citizen must be, at the same time, a citizen of the State and a citizen of the economy. (...) The political freedom and equality of democracy also represent a material demand for equality, and its survival depends on a greater degree of social homogeneity. As Hermann Heller already warned, it is not possible to guarantee the survival of democracy in a country where immense portions of the people no longer recognize themselves in the State, as they have been abandoned by it. Social homogeneity is, therefore, a form of democratic political integration. It is, at bottom, the expansion of popular sovereignty to the economic sphere, (...)” (Bercovici, 2022: pp. 148-149).

In summary, there is no true democracy if radical social differences persist. The flattening of the social pyramid needs to occur if a country wants to be considered more democratic. Democracy is incompatible with social inequality. The concept of formal equality brought by the liberal revolution of the 18th century has long been surpassed. The concept of democracy has evolved to encompass material equality, which involves social leveling and the granting of the same opportunities.

Political equality depends on material equality. The desired freedom depends on a level of material equality that will only be achieved through the reduction of economic inequalities. Even if the law treats a poor person and a rich person the same way, the poor person, who struggles to survive, will not be able to utilize the same instruments and in the same way as someone with economic power. Thus, economic power needs to be minimally divided between both so that they can exercise their political faculties equitably.

##### 5) Democracy and Economic Constitution: Interdependence

What can be observed from the analysis of the themes of democracy, formal democracy, material democracy, formal and material equality, and the economic Constitution is that there is no democracy without an economic Constitution.

The economic Constitution, which presents rights, principles, and guarantees



that reflect in economic relations and organizes the economy, is crucial for the maintenance and defense of Democracy.

The Brazilian constitution has some mechanisms to reduce poverty, like the possibility of confiscation of unproduced land and the protection of the consumer. Therefore, the economic constitution is a set of basic rights, that enable affirmative actions by the poorest.

Furthermore, the Brazilian economic Constitution establishes rules that prevent economic abuses, such as monopolies and dumping, in order to avoid excessive market concentration.

The United States also has an economic constitution, outlined in the document OMB Circular A-4 (OMB 2003), prepared by the Budget and the Council of Economic Advisers. This document provides guidelines that executive agencies must follow in exercising their regulatory power (Sunstein, 2024).

The Italian Constitution, in its Title III, regulates economic relations, emphasizing the right to work. In its Article 36, it states that “Workers have the right to a remuneration proportional to the quantity and quality of their work and, in any case, sufficient to ensuring them and their families a free and dignified existence. The law shall establish the maximum daily working hours. Workers shall have the right to a weekly rest day and paid annual holidays, which they cannot waive”. It has economic importance because obligate the entrepreneurs to pay fair salaries to the workers.

Material democracy, as Bobbio states, presupposes the freedom of human action, which will only occur in its full form when the principle of the dignity of the human person is respected. Human dignity involves self-disposability (absence of external impediments) and self-determination, which is the free historical projection of human reason, rather than a predetermination given by nature (Perez Luño, 1995; Tavares, 2006: p. 132).

However, human dignity is only achieved through the eradication of poverty, which in turn is obtained through the maximum circulation of wealth. Thus, the economic Constitution proves essential in regulating economic relations and curbing distortions, seeking to level the economic standard of the population.

The success of an economic constitution in promoting democracy involves examining several key criteria and metrics, such as protection of fundamental rights, economic equality and social justice, access to economic opportunities, economic participation and inclusivity, property rights and human development indicators. If we focus on human development indicators, Brazil jumped from an HDI level of 0.693 in 1990 to 0.754 in 2021. Thus it is possible to say that the economic constitution helped to promote democracy because the HDI levels increased since the promulgation of 1988 constitution (1990-2021).

The realization of an economic Constitution's goals can be hindered by various obstacles, which may affect the implementation of policies designed to promote economic development, equality, and social justice. To provide a balanced perspective, it's essential to consider both internal and external factors that could impede the success of these constitutional objectives: political instability, corruption,

economic inequality, lack of institutional capacity, global economic forces, legal and constitutional gaps, technological structural changes, cultural and social factors and environmental constraints.

Only when the basic needs of man are met, and his existence is more pleasant and satisfactory, will he be endowed with self-disposability and self-determination to effectively express his will and interests. At this point, when everyone has a dignified existence, they will be able to truly exercise their political rights, as assured in a formal democracy.

In summary, as the Spaniard Elias Díaz maintains, political democracy demands economic democracy as its foundation (Díaz, 1998; Bercovici, 2022: p. 66).

## 2. Conclusion

In conclusion, it is possible to say that there is no democracy without an economic Constitution, since material democracy presupposes material equality, and this is obtained through the creation and organization of the economic order.

Without economic relations, there is no creation or circulation of wealth; resources need to be distributed among all so that the basic needs of man are met and he can overcome the concern for his survival and collaborate in the political decisions of the collective.

Thus, the economic Constitution has a fundamentally democratic character as it acts to reduce social inequalities and value human dignity. Once these pillars are achieved, material equality is ensured for individuals, as there will be autonomy to pursue their own ends.

## Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

## References

- Bercovici, G. (2022). *Constituição Econômica e Desenvolvimento*. Almedina.
- Bobbio, N. (1983). *Qual socialismo?* Paz e Terra.
- Bobbio, N. (1991). *El tiempo de los derechos*. Sistema.
- Bobbio, N. (2001). *Entre duas repúblicas*. Editora Universidade de Brasília.
- Bueno, R. (2010). *A democracia e seus fundamentos em Norberto Bobbio*. Eidos, Barranquilla, 88-118.
- Dahl, R. (2022). *La Democracia*. Editorial Ariel.
- Díaz, E. (1998). *Estado de Derecho Y Sociedad Democrática*. Taurus.
- Perez Luño, A.E. (1995). *Derechos Humanos, estado de derecho y Constitución*. Tecnos.
- Oliveira, F. (2003). *A Constituição dirigente: Morte e vida no pensamento do Doutor Gomes Canotilho*. Revista brasileira de direito comparado.
- Sartori, G. (1994). *A teoria da democracia revisitada*. Atica.
- Sunstein, C. R. (2024). The Economic Constitution of the United States. *Journal of Economic Perspectives*, 38, 25-42. <https://doi.org/10.1257/jep.38.2.25>
- Tavares, A. R. (2006). *Direito constitucional econômico*. Método.