

**“COMPENDIUM OF THIRD SECTOR LEGISLATION -  
ANALYSIS OF THE EXISTING LAWS AND REGULATION IN BRAZIL”**

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*“There aren't barbaric norms. The  
barbaric is the absence of norms  
and of a possible appeal.”*

ORTEGA Y GASSET

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## I. BRIEF HISTORICAL CONTEXT

### 1.1. THE THIRD SECTOR

The term Third Sector is fairly recent in Brazil. During the 1990's it began being used to describe non-profit organizations in civil society that work in the social area. However, the philanthropic nature from which Third Sector work originates is a much older phenomena.

The work of philanthropic entities in Brazil dates back to the 16<sup>th</sup> Century with the birth of the "*Santas Casas de Misericórdia*" (hospitals for the needy), which still exist in the Country today. Since then, the assistance to the poor has been institutionalized. For over three centuries, philanthropy has developed itself under an assistentialist logic, with the predominance of Christian charity<sup>1</sup>. Organizations such as schools, hospitals, old-age homes and infirmaries were created from the 18<sup>th</sup> century onwards. At the end of the 19<sup>th</sup> century and the beginning of the 20<sup>th</sup> century, the institutions of social assistance and aid to the needy population underwent changes in its form of organization and administration. During this period the role of the State in the social area was intensified, especially in the urban areas and particularly concerning health, hygiene and education. This also included intervening in the in the administration and financing of assistential and philanthropic institutions. From around the year 1910, social assistance institutions began depending on the Government for economic support. The Government, in its turn, began to subject such institutions to measures of control their administrative, practical and normative actions.

The Brazilian scenario altered with the phenomena of industrialization and urbanization, which took place in the 20's and 30's. The workforce, cities and social problems all grew. As a result, the number of non-profit organizations connected to the Government, searching for solutions to the problems of poverty and social exclusion, increased. At this time, unions, professional associations, federations and confederations were created, linking the private sector to the practice of assistentialism and mutual aid to immigrants, workers, employees and the public workforce.

During the 60's and 70's, base communities proliferated, many of which gave rise to a new kind of organization in Brazilian society: the non-governmental organization (NGO). The introduction of this class of organization into the country is attributed to, amongst others, the progressive Christian sector. A new vision of greater importance was introduced into Brazil: the idea of organizing and mobilizing society at base level, independently of the existing political parties. This work was supported by european non-governmental development agencies, linked to catholic and protestant churches. A number of organizations were created to defend political, civil and human rights, threatened by the long-lasting period of military dictatorship in Brazil and Latin America. Such organizations called themselves "non-governmental", emphasising their independence from government actions. Our traditional assistentialism thus paved the way for private organizations that defend public interests. These NGOs emerged in the midst of political resistance, and formed what we call the **Third Sector**.

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<sup>1</sup> One can see that the origins of the Third Sector, such as that of Law, go back to the religious area. Because it develops values such as solidarity, love of the other, ethics, responsibility, among other fundamental values of the human being, the Third Sector is intimately tied to religious feelings.

Such organizations played a fundamental role in the development of public awareness of the concept of citizenship<sup>2</sup> for the strengthening of civil society, in the entrance of economic resources from international foundations.

The NGOs<sup>3</sup> created in the 80's configured a new model of organization and resource management, having established an economic tie with international financing institutions. The political and economical opening of countries in Western Europe and social crises in Africa made international foundations redirect part of their resources to finance programs of development in those areas of the world. This forced Latin American organizations to search for alternative means of sustainability<sup>4</sup>. At the same time, the State's economic resources became scarcer due to several reasons, among which money embezzlement.

During the 90's, the Third Sector in Brazil established itself as a strong sector with different traits and logic from the first and second sectors. It took up a "theoretically" intermediate position because it renders public interest services without the (sometimes unavoidable) limitations of the Government, and without the (often unacceptable) ambitions of the market. This period marked new trends and challenges for non-profit organizations in the country, and was an important historical time for the Third Sector because the old rules had to be reevaluated and new rules made based on the professionalization and institutionalization of social actions.

Currently, the regulation of non-profit organizations is better outlined, in view of the new Brazilian Civil Code effective as of January, 2003 as well as the law for Civil Society Organizations of Public Interest – CSOPI (*"Lei das Organizações da Sociedade Civil de Interesse Público – OSCIP"*), which details will be further discussed.

## **II. RESEARCH METHODOLOGY**

### **2.1. FIRST PHASE: PREVIOUS DOCTRINAL AND LEGAL STUDY**

To elaborate a compendium of norms, the method used in the first phase consisted of a doctrinal legal study of everything that existed concerning the topic in Brazil<sup>5</sup>, chiefly the cited normative references.

Due to Brazil's political structure (Federative Republic), all its federative members have the autonomy to legislate – the Federal Government, the States, the Municipalities and the Federal District. The present research was conducted on the three levels of government. However, only the federal data was published, attributing a broader character to the compendium. In

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<sup>2</sup> Celso Antônio Bandeira de Mello, in a conference to students of the Pontific Catholic University of São Paulo defined citizenship as being the "conscient militancy of rights and responsibilities."

<sup>3</sup> Leilah Landim affirms in her article *Militant Experience: history of the so-called NGO's* that: "the use of this or that expression and the investment in social acknowledgement of terms and categories, reflect different conceptions and strategies in the discussion that is being developed, having as an empirical reference the so-called non-governmental organizations. In this sense, it is important to follow the trajectory of the NGO category in such changes which tend to grow, in the field of private social action for the next few years." In LANDIN, Leilah (organizadora). *Actions in society: militancy, charity, assistance, etc.* Rio de Janeiro: Nau Editora, 1998. p. 24-25; 79.

<sup>4</sup> About sustainability, see item 2.3.5. Funds, Resources and Councils.

<sup>5</sup> Please note the richness of context, data, and normative citations of the work which guided our research: *Foundations and social interest entities*, written by José Eduardo Sabo de Paes, from the Brasília Foundations Trust (*Curadoria de Fundações de Brasília – DF*). (2<sup>nd</sup> edition. Brasília. Brasília Jurídica, 2000).

general, the legislation of each State and Municipality are very different from each another, especially due to its organizational structure. For these reasons, the present study will only approach Brazilian Federal legislation.

## **2.2. SECOND PHASE: MAPPING OUT THE LEGAL STRUCTURE**

In this second phase – mapping out the norms – the legal provisions concerning the Third Sector were organized in hierarchical order: Constitution, Complementary Laws, Ordinary Laws, Delegated Laws, Provisional Measures, Decrees, Ordinances, Resolutions, Normative Instructions and Service Orders. Below are brief explanations regarding the normative classes and the Brazilian legal system.

### **2.2.1. FEDERAL CONSTITUTION**

The Federal Constitution, the maximum authority at the top of the normative hierarchy, defines the principles, the legality of the norms and limits the powers of the State. In Brazil, its 8<sup>th</sup> Constitution was enacted in 1988, better known as the Citizen Constitution. It was created in the midst of a very important political transition period in Brazil, after the military dictatorship, thus consolidating the democratical process of the Country. Each segment of the society intended to have its interest-right contemplated in the document. The result was a Bill with a greater social-economic character than any other that existed in Brazil. The Brazilian Federal Constitution is among the only ones that recognize the principle of human dignity in its text.

### **2.2.2. COMPLEMENTARY, ORDINARY, AND DELEGATED LAWS**

There are three kinds of laws defined in the Constitution that are different from each other. The first kind is the complementary law, which is a sub-constitutional normative class, aimed at developing the regulability of certain Constitutional guidelines. It is directed to specific topics and is subject to the National Congress' approval<sup>6</sup>. They are laws of great relevance and are more difficult to be enacted, since they need an absolute majority of the two Houses of Congress in order to be approved. Its competence is defined in the Constitution itself. The ordinary laws, in their turn, are meant for regulating aspects that are on the “daily agenda”, as the name of the law itself says: ordinary. The initiative of complementary and ordinary laws is attributed to the Houses of Congress, to the President, to the Superior Courts, to the Attorney General of the Republic and to the citizens<sup>7</sup>. The delegated laws are attributed exclusively to the President. Both, ordinary and delegated laws are approved by simple majority of the National Congress, being preferentially proposed in the House of Representatives and reviewed by the Federal Senate. The President is granted the power to sanction or veto all or part of the law.

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<sup>6</sup> In MELLO FILHO, José Celso. *Constituição Federal Anotada*. São Paulo

<sup>7</sup> According to article 61 of the Brazilian Federal Constitution: “Those who can propose complementary and ordinary laws are: any member or Committee of the House of Representatives, of the Senate or of the National Congress; the President; the Supreme Federal Court; the Superior Courts; the Attorney General and the citizens, as set forth in this Constitution (...) § 2 Popular initiative may be exercised by presenting a project of Law, signed by at least, one percent of the national electorate, distributed among at least five States, with no less than three tenths percent of the electorate of each of those States.” In practice, popular initiative in Brazil has little applicability, due to the lack of tradition of popular participation in the process of proposing and elaborating laws, as well as to the extreme difficulty to meet all the requirement established in the Constitution.

### **2.2.3. PROVISIONAL MEASURES, DECREES AND RESOLUTIONS**

The Provisional Measures consist in a legislative novelty brought by the Constitution of 1988. They are acts of the Executive Power that have the force of a law and are enacted by the President in cases of relevance and urgency. During Fernando Henrique Cardoso's Government (1994-1998 and 1998-2002), several provisional measures were enacted by the President, who practically began legislating without previous intervention from the National Congress, based on provisional measures. Recently amendment no. 32 to the Constitution was approved which altered this legislating possibility, putting an end to the excessive re-enactments which allowed the President to keep revalidating the same norm during months – in some cases the same provisional measure was reenacted for four (4) consecutive years – as well as it limited the topics which they may regulate. Today, Provisional Measures are disciplined in a more adequate manner to its legal nature.

Decree is the formula through which the Chief of the Executive Power (Federal, State, Municipal or from a Federal Territory) passes acts of his private attribution (article 84 of the Constitution<sup>8</sup>). Thus, by means of a decree both general norms, such as the regulations, and individual norms, that is, concrete acts of the Chief of the Executive's attribution are passed. A decree may regulate the income tax – normative acts – or a “declaration of public utility of a property for purposes of desapropriation” or the “nomination” of a public worker<sup>9</sup>. The Decree is not fit for altering Laws but instead for explaining them.

Resolution is the formula through which the decisions of collegiated bodies. Generally, the Councils of Public Policies in Brazil publish their decisions under this normative class.

### **2.2.4. ORDINANCES, SERVICE ORDERS AND NORMATIVE INSTRUCTIONS**

The Ordinance is the form through authorities of inferior hierarchy to the Chief of the Executive, of any level, instruct their subordinates, transmitting decisions of internal effect, whether regarding the control of the activities which concern such authorities, whether regarding the functional life of the civil servants. They are even used to file administrative procedures. As one can see, it is a formal act of very fluid and ample content.

The Normative Instruction is the form of enacting general norms of internal guidelines of government departments, which emanate from their respective authorities, in order to prescribe the manner in which their subordinates should conduct their work.

Service Order is the form used to tell the subordinates how they should conduct certain services. Sometimes service orders may be passed by the form of a Circular Bill<sup>10</sup> (“*Circular*”).

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<sup>8</sup> Article 84 of the Federal Constitution states that: “It is a personal attribution of the President to (...) VI– establish – trough a decree, a) rules regarding the organization and operation of federal administration, when it does not represent an increase the expenses, nor creates or extinguishes public entities; b) the extinction or creation of public offices, when empty.

<sup>9</sup> BANDEIRA DE MELLO, Celso Antônio. *Curso de Direito Administrativo*. 12ªed. São Paulo : Editora Malheiros, 2000.

<sup>10</sup> Normative acts must not be mistaken with administrative acts. We have included the latter in the Compendium, for educational and organization purposes, since the legislative system in Brazil is complex. However, it is important to clarify that, theoretically, due to the nature of the Executive Power to act as an administrative manager, and not as a legislator, such acts should not be a part of a compendium of norms.

## 2.3. THIRD PHASE: NORMATIVE SYSTEMAZATION

In general, the rules of the Third Sector protect public interest inside private structures. It is important, however, to find out which rules to use in a certain situation, since there are norms of public and private interest. Since the norms emanate from diverse Powers of the government, it is difficult to find all the normative acts that protect certain topics. The systematization of the norms has, hence, become an imperative step to understand the normative complex of the Third Sector in Brazil.

Therefore, in this third phase, all the norms discovered were systematized. In addition to those that technically regulate the sector, also those, which regulate public policies in the areas of work of the entities, were included. The result was a compilation of norms that concern topics of judicial protection of citizenship, in almost all of its aspects.

To facilitate the research a systematic summary was elaborated, as follows below, which lists the subjects by blocks of norms. The presentation of the compendium is divided in eight blocks that we will briefly explain:

For each one of these blocks, we tried to identify the existing legislation pertaining to social assistance, child and teenager<sup>11</sup>, culture, human rights, consumer defense<sup>12</sup>, education, sports, elderly population, environment, disabled persons, health, telecommunications, work, among other topics were systematized was identified. The topics of each of these blocks represent the objects of the non-profit organizations and the existing instruments for making the exercise of citizenship a reality.

### 2.3.1. GENERAL ASPECTS OF LEGAL ENTITIES

In Brazil, the two traditional legal forms of which entities of the Third Sector may take on are an **association**, when the group of people is united in the defense of a certain non-economical objective, needless of previous existing assets; and a **foundation**, when there are assets destined to a certain objective. In the association, the fundamental element is the staff, that is, the legal entity. In an association, the personal element is the chief element, that is, the legal entity is organized around the group of people which comprise it. In the foundation, the assets are its chief element, that is, it is characterized by the destination of assets for the performance of a certain objectives. Another difference between an association and a foundation is their form of organization. The association is born upon the approval of its statutes and indication of its directors, while the creation of a foundation depends upon the will manifested by its founder, whether through a public document or by a testament. Furthermore, the association is looked after by its partners whereas the foundation is subject to inspection by the General Attorney's Office ("*Ministério Público*"). Under Brazilian law, the association, because of its simplified organization and maintenance, is the more adequate and common type of legal entity to represent a Third Sector body.

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<sup>11</sup> We must cite Law no. 8078/90, that provides protection for children and adolescents – **The Child and Adolescent Statute** (*Estatuto da Criança e do Adolescente*). It is one of the most complete laws on the subject in the world. Its inapplicability is regretted.

In the new Brazilian Civil Code, effective as of January 11<sup>th</sup>, 2003, the associative forms are more clear, differing the legal entities of private law under an economical aspect, being considered as non-economical, the associations and foundations, and as economical the other corporate types.

Additionally, the new Civil Code determines that the by-laws of an association must contain express terms and conditions, under penalty of being null, such as: its denomination; scope; headquarters; admission, dismissal and exclusion requirements; rights and obligations of the associated parties; the origin of the resources for its maintenance; its manner of organization and operation of its deliberative and administrative bodies; conditions for altering the by-laws and for dissolving the entity. The associations and foundations already organized under the former law are given a one-year deadline to adapt their by-laws to the new legal regime. There were good changes introduced for the associations since what, in fact, happened was the positivation of a standard form of by-law. The changes specifically related to foundations did not receive such a warm welcome. The current Civil Code restricts its objects to religious, moral, cultural or assistentialist purposes. There already is a project for altering the new Civil Code in Congress which suggests the alteration of this disposition. Meanwhile, it is in effect.

It is also important to point out the differences between an institute and non-profit organizations (NGO). An **Institute**, although this name can make up the corporate name of a company, is usually dedicated to name entities related to education, research or scientific production, and does not correspond to a legal entity. It may be used by government or private entities, profitable or non-profit. It is merely a name that carries a strong educational connotation but is not defined in law. In the same manner, the term **non-profit organization** is not defined, and is much more a sociological denomination than a technical denomination in the field of law.

We must not forget to mention the existing controversy concerning **co-operatives**. Do they constitute a legal figure that qualifies as a Third Sector entity? Co-operatives clearly have an economical purpose<sup>13</sup> and a major topic of discussion is whether to include them or not in the Third Sector. Prof. Waldírio Bulgarelli explains that co-operatives are entities inspired by democracy, in which the the capital is not the determining factor of associative participation, but is a mere instrument for the exercise of its objectives; they are democratically directed and are controlled by all associates, since to each associate a vote is attributed, they do not aim to profit and their excedents are proportionally distributed to the operations of each associate; they are politically and religiously neutral, the capital is paid by a minimum tax of limited interest, and they emphasize the improvement of man, by the development of education<sup>14</sup>. The National Policy of Cooperativism in Brazil recognizes the public interest in such activity. In this manner, considering that they are non-profit entities, their activities may be considered as being of public interest. We have included the so-called **social co-operatives**, recently created

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<sup>13</sup> Law no. 5764/71: "Art. 3 – The co-operative organizatin agreement is celebrated by individuals who reciprocally obligate themselves to contribute with goos or services for the performance of an economical activity, of common enjoyment, without the intent to profit."

<sup>14</sup> The Co-operative principles approved in 1995 in Manchester by the Internatinoal Co-operative Alliance are: "1. Voluntary and open membership; 2. democratic member contro; 3. member economic participation; 4. autonomy and independence; 5. education, training and information; 6. co-operatin among co-operatives; 7. concern for community." In BULGARELLY, Waldirio. *As Sociedades Cooperativas e sua disciplina juridica*. 2ª ed. Renovar, 2000 P.18-19.

in Brazil by law 9.867/9 to insert those in disadvantage<sup>15</sup> in the economic market through work, based on the general interest of the community in promoting the human being and the social integration of citizens. However, we have no particular knowledge of social co-operatives construed under such law. Finally, a co-operative may be a form of association, though economic, due to its social nature, and due to this new concept of social co-operatives inserted in Brazil, and thus the Compendium includes the topic of cooperativism. Thus, in this block Constitutional provisions, articles of the Brazilian Civil Code<sup>16</sup> and other specific infra-constitutional laws which address the form which a legal entity may take on within the Third Sector were put together.

### **2.3.2. CERTIFICATES, TITLES AND DECLARATIONS**

One legal characteristic of the Brazilian Third Sector is the certification, title or declaration rendered by the Government to a certain legal entity. It works as a kind of legal stamp of moral integrity, acknowledgement and identification of non-profit entities which perform activities of public interest. They grant the eligibility to such entities for receiving donations and making use of benefits, having preference in partnerships with the Government, among other advantages which are acquired according to the entities title. Obviously, there is a counter compensation for the concession of such benefits, such as: the demonstration of the accounts of the service of public interest and the maintenance of the entity's moral integrity, until then recognized. Below, is a brief explanation of each of the existing titles in Brazil.

The oldest one of them – still effective today – is the **Declaration of Public Utility – DPU** (“Declaração de Utilidade Pública – DUP”), created by Law no. 91/35, which establishes specific requisites<sup>17</sup> for an entity to be considered as such, with the basic premise that the entity serves the community without self-interest. Upon concession of the title, the entity becomes apt to receive donations from legal entities, as a form of fundraising, and is granted with specific tax benefits. The entity will be eligible to receive aid from the Government, as well as have the possibility to perform the drawings described in the next block. The DPU is granted upon previous evaluation of the requirements and of the related documentation. If approved, the title is granted through a publication in the respective Official Gazette (“*Diário Oficial*”) of either the federal, state, or municipal level.

Another possibility of titles, is the enrolment in the **National Council of Social Assistance – NCSA** (Conselho Nacional de Assistência Social – CNAS), allowed for entities which promote protection of the family, of childhood, maternity, adolescence, and elders; support to needy children and teenagers; preventive, living, and rehabilitation actions, integration living in community of disabled people; integration into the employment market; educational or health assistance; development of culture, addressing and aiding the beneficiaries of the Social

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<sup>15</sup> Law no. 9.867/99: “Art. 3 – For purposes of this law, the persons in disadvantage are: I – the physically and sensitive challenged; II – the mentally and psychologically challenged, the people dependent on permanent psychological aid, the former psychiatric hospital patients; III – the chemically dependant ; IV – former convicts; V – (vetoed); VI – those who serve other than detention punishments; VII – adolescents who have reached the required age for working and undergo a difficult family situation, from an economic, social or affective viewpoint.”

<sup>16</sup> Please note that since January 11, 2003 the new legislation regarding foundations and associations will become effective in Brazil, in view of the recent approval of the New Brazilian Civil Code: Law no. 10.406/2002.

<sup>17</sup> Law no. 91/35, article 1, are the following: “The civil organizations and foundations constituted in the Country, with the exclusive aim to needlessly serve the community may be declared as being of public utility, given the following requirements are met: a) that they are legal entities; b) that they are fully operative and needlessly serve the community; c) that its directors, audit, deliberative or consulting committees are non compensated”

Assistance Organic Law<sup>18</sup>; and the defence and guarantee of rights. An advantage of such enrollment is the possibility to access public resources by means of agreements or conventions with the NCSA and its respective funds.

Once the enrolment in the NCSA is done, after a period of three years<sup>19</sup>, the entity of social assistance may request the **Certificate of Philanthropic Entities – CPE** (“Certificado de Entidades de Fins Filantrópicos – CEFF”), which main benefit is the exemption from paying the patronal quota of the social welfare contribution incident on the entitie’s payroll, and is dependant on a specific procedure held at the local post of the **National Department of Social Welfare – NDSW** (“Instituto Nacional de Previdência Social – INSS”), which is the department responsible for collecting such contribution.

With a distinct purpose, there is now a new title called **Social Organization – SO** (“Organização Social – SO”) – which should also be mentioned in the context of the Third Sector – regulated by Law no. 9.637/98. It is, however, a title granted to entities which activities are directed to the protection and preservation of the environment, of culture or health. It has a peculiar characteristic that makes the entity insert members of the Public Administration in their Deliberative Committee<sup>20</sup>. Such entities may sign Management Agreements (“Contratos de Gestão) with Government, with the purpose of, according to the Government’s Ministry of Administration and State Reform<sup>21</sup>, contributing or reinforcing the attainment of the goals of public policies, through the development of a management program aimed at reaching a superior level of the quality of the product or service made available to the citizen. Many times, it is referred to in the social arena as part of the privatization process of public services in Brazil.

As new as the SO, the **Civil Society Organization of Public Interest – CSOPI** (Organização da Sociedade Civil de Interesse Público) is a title granted by the Ministry of Justice of the Federal Government to non-profit private legal entities<sup>22</sup> which not only perform the social assistance activities, promotion of gratuitous health and education, but also activities

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<sup>18</sup> The Organic Law of Social Assistance (Law no. 8.742/93), also known as LOAS, created the National Council of Social Assistance and provided the Council the power to regulate the concession of membership. Resolution no. 31/99, article 3, establishes that: “membership will be granted to the organization of which bylaws provide that: I – its revenue, resources and eventual operational result is fully invested in the national territory and in the maintenance and development of its institutional objectives; II - it does not divide profit, dividends, bonuses, participations nor parts of its equity, under any manner; III – its directors, counselors, members, creators, among others, do not receive any compensation, advantages or benefits, directly or indirectly, under any title, for the attributions, functions or activities performed by them; IV – in the event of termination or extinction, the remaining equity shall be destined to a similar membership organization of CNAS or to a public entity; V – the entity provides permanent services without discrimination (...).”

<sup>19</sup> The procedure to obtain the Certificate of Philanthropic Entity is similar to that of the CNAS. It should be demonstrated, in addition to the requirements above-mentioned, that it was legally constituted in the country, three years before the request and fully operative; that it was previously enrolled in the Social Assistance Council of the corresponding Municipality, if any, or in the respective State Council; and that it was previously registered in the CNAS.

<sup>20</sup> Law no. 9.637/98: “Article 2 – The following are specific requirements for the private entities referred to in the previous chapter, to become eligible to qualify as a social organization: I – have proof of registry of its bylaws, which shall provide the following: a) the social nature of its purpose regarding the corresponding area of action; b) its non-profit character with the obligation to invest its financial excedents in the development of its own activities; c) express provision that the entity maintain superior deliberative and managing committees, and administrative committee and a board of directors, defined in the bylaws, who shall be attributed basic normative control, according to this law; d) **provide the participation – in the superior deliberative committee – of Government representatives and of members of the community, of notorial professional capacity and moral integrity**; e) the composition and attributions of the board of directors; f) the obligation to annually publish in the Federal Official Gazette, balance statements and the management agreement reports; g) in the event of a civil organization, the acceptance of new members, according to the bylaws; h) prevention to distribute assets or part of the net equity under any circumstance, including in the event of exclusion...

<sup>21</sup> MARE – Ministry of Government Administration and Reform. *Organizações Sociais*. n.o. 2, 4 ed. Brasília. Imprensa Nacional. 1998, p. 36

<sup>22</sup> Law no. 9790/99, article 1, I, defines non-profit entities as the organization that does not distribute eventual gross or net operational excedents, dividends, bonuses, participations, or part of its revenue among its members or associates, counselors, directors, employees or donors, gained during the exercise of its activities, and that fully applies them in the implementation of its respective social objective.”

such as: the promotion of culture; the defense and conservation of historical and artistic heritage; promotion of food and nutritional security; the defense, preservation, and conservation of the environment and promotion of sustainable development; the promotion of volunteer work, social and economic development, fight against poverty; non-profit experiments of new social productive models and alternative production systems; commerce and credit; the promotion of the established rights; the construction of new rights and free legal assistance of supplementary interest; the promotion of ethics; of peace, citizenship, of the human rights, of democracy and of other universal values; studies and researches, development of alternative technologies, promotion and publication of technical and scientific information and knowledge related to said activities, which, until the enactment of Law no. 9.790/99, considered as the “Legal Milestone of the Third Sector in Brazil”<sup>23</sup>, were not contemplated by any specific legal title. Many times they were organized as social assistance entities in order to get the tax benefits granted. This law stimulated the growth of the Third Sector, motivating the strength of civil society in the area of defense of rights, as well as to propose a new limitation to the Third Sector, expressly excluding from its scope, labor unions or class associations or of professional representation; religious institutions or those aimed at disseminating beliefs; political party organizations and their like, including related foundations, health institutions, private schools and its supporters; social organizations; co-operatives and public foundations, among others.

The CSOPI Law brought new concepts to the recognition of the entity which performs an activity of public interest. It determines that in order to qualify as a CSOPI, the entity’s bylaws shall expressly establish the observance of the principles of legality, impersonality, morality, publicity, economics and efficiency, which principles are already established in Brazilian Administrative Law. Moreover, its bylaws shall establish the adoption of practices of administrative management, necessary and sufficient to prevent the individual or collective attainment of personal benefits or advantages of up to third degree relatives, and of related legal entities, due to the participation in the respective decision making process; the constitution of a financial committee with attributions to decide about financial balances, issuing opinions to the entity’s superior bodies; the provision that in the event of the entity’s dissolution, the respective net equity be transferred to another entity under the same title, preferably with a similar social objective as that of the extinct entity; that in the event of loss of the CSOPI title, the capital collected from public resources during that period be reverted to another qualified entity; rules of accounts rendering which shall, at least, meet the fundamental accounting principles and the Brazilian Norms of Accounting, and which shall be published by any efficient mean, which will be subject to an audit. These are requirements which ensure that the entity’s object is effectively one of public interest and that the entity shall be made professional in order to well manage its activities, as well as that its accounting is organized and public. All of this follows the worldwide changes occurred in the beginning of the century, according to the concept that what is public is not a monopoly of the State, since civil society is able to mobilize means, trigger initiatives and promote partnerships for the benefit of human development. The main advantage of this new title is the possibility to sign a Term of

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<sup>23</sup> “It means building a new institutional milestone that enables the progressive change the design of government public policy so as to transform them into policies of partnership between the State and Civil Society in all of its levels, with the incorporation of organizations and citizens for their elaboration, execution, monitoring, evaluation and supervision.” Excerpt written by Augusto de Franco, Counselor and Member of the Executive Committee of the Solidary Community, in the preface entitled: “What is behind the New Law of the Third Sector”. In. FERRAREZI, Elisabete e Valéria Rezende. *OSCIP – Organização da Sociedade Civil de Interesse Público: A Lei 9.790/99 como alternativa para o Terceiro Setor*. Comunidade Solidária, 2000.

Partnership with the Government for the execution of activities of public interest, under co-operative regime.

There are, however, a few contradictory aspects between the Law and the other norms in effect. An example of such contradictions is that the new Law allows for the compensation of directors<sup>24</sup>, but the specific tax legislation, which defines the constitutional right to immunity or exemption, expressly prohibits such compensation. Thus, the Legal Milestone of the Third Sector is an initial pointer of a long process that Brazil will progressively face, until new legislation is consolidated within all areas of law.

### **2.3.3. DISTRIBUTION OF AWARDS, DRAWINGS, AND PRIZES**

The distribution prizes in Brasil is not as simple a task as it might seem. In our justice system, non-profit organizations have to ask authorization from the government to run charitable promotions, hold drawings, and distribute awards. Such activities constitute a large source of revenue for these organizations, and are also considered a traditional source of fundraising for social assistance and religious entities. This is especially true at the end of the year and the advent of Christmas, when these organizations rally together in displays of solidarity to try and provide some sort of material assistance to their beneficiaries.

### **2.3.4. GOVERNMENT GUIDELINES, POLICIES, AND NATIONAL PROGRAMS.**

Being matters of great relevance in the political scenario of any country, government guidelines, public policy and national social programs constitute an important tool for non-profit organizations in achieving their social objectives. By first understanding the structure, the purpose and the methods of using tools for public planning, justification, and participation, Third Sector entities can create and execute social programs together with their governments in a coordinated effort to solve common social objectives through the most adequate methods. We should list, therefore, the various active areas of the entities in order to be able to produce a set of national goals in regards to the public interest. It is important to clarify that it is these **guidelines** that direct the Third Sector associations and foundations for implementing **public policies** through **national programs**.

Both public policies as well as national programs share the same end: the establishment of the fundamental rights of the citizen. The modern concept of the state presumes that public policies should not be generated or implemented only by the government, but also by civil society, organized in non-governmental entities. Public policy is considered here an activity composed of acts, decisions and norms of a heterogeneous nature that are submitted to legal disciplinary rules<sup>25</sup> that assure the enjoyment of the entire sphere of liberties on both a collective and individual level. In the end, it is the individual groups working in conjunction that define the agenda of the social sector through their intersectorial communication.

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<sup>24</sup> See item 2.3.8 – Employment Relationships and Social Welfare

<sup>25</sup> Maria Paula Dallari Bucci inquires if – at this stage – in order to have judicial control of public policies, is it not necessary to identify what is the legal expression of public policies: “if the policy from the act or norm, but is the activity that results from a collection of acts and norms, what should be subject to judicial contrast: the act, the norm or the activity?” In BUCCI. Maria Paula Dallari. *Direito Administrativo e politicas públicas*. Doctoral Dissertation defended before the Law School of the Pontific Catholic University of São Paulo in September of 2000. (Editora Saraiva ).

### 2.3.5 FUNDS, RESOURCES, AND COUNCILS

The origin and volume of resources destined for social private investment are important determinants of the vitality of the Third Sector. It is therefore imperative to deepen understanding and spur debate councils of public policies<sup>26</sup>, which decide about the budget belonging to its respective fund to assist the implementation of the public policy to which it is destined and regarding private organizations which donate resources to programs and social projects. The Third Sector always winds up having to go to the Government and the Market in order to obtain a significant participation of its financial resources, creating situations of collaboration, dependence and even subordination.

Among the fonts of resources for Third Sector entities, are public funds, passed on to execute functions that would normally be attributed to the Government; generation of their own revenue<sup>27</sup> by selling services to associates or others; and donations from companies or individuals. A part of Third Sector resources come from other organizations of the Third Sector, known as the grantmakers (donating non-profit organizations). Thus, for non-profit organizations the main source of resources is the government<sup>28</sup>. In second place are the resources generated by their own revenue, through services or fees, and additionally fundraising for specific projects. The existence of assets capable of generating revenue (equity funds or real estate) is one of the most important forms of ensuring the autonomy and financial support of Third Sector entities.

It is speculated that the combination of some aspects, such as the need to battle poverty and the need to attend to huge urgent social demands, prevents the Government from saving reserves for the social area. Brazil is not necessarily a poor country. There is, in fact, accumulation and concentration of riches in sufficient amounts to create voluminous equity funds, but there lacks political resolve. In addition, due to the lack of advertisement and publicity, the existing funds are not known, and when known, its results are not published, what causes great discredit. Many times it is not known to where the money of the public funds in Brazil go. It is evident that the people must demand generous legislation which allows for private donations to non-profit organizations, through tax incentives and a greater effort of transparency in the acts of such organizations, what implies in an effort of self-regulation of the Third Sector.

The theme *funds, resources and councils* also intends to spread the idea that there are committees in which public policies are discussed, to give support to government actions; decide the course of the Administration and additionally, establish the participation of civil society through organized entities.

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<sup>26</sup>“The Councils aren’t merely state or communitary spaces. From a legal standpoint, I don’t know if it is easy to classify them because our legal system has a very separate view of private law and administrative law.” DANIEL, Celso. “*Conselhos, esfera pública e co-gestão.*” Interview granted in november 7, 2000 to Ana Cláudia Teixeira, Maria do Carmo Carvalho, e Natalino Ribeiro, in CARVALHO, Maria do Carmo A.A. e Ana Cláudia C. Teixeira (organizer). *Conselhos Gestores de Políticas Públicas*. 1º ed., São Paulo: Polis, 2000. p129.

<sup>27</sup> We understand that it is important for Third Sector Entities to develop their own capacity of resource creation, independently from the other sectors and from international sources, in order to find a channel of participation and dialogue, based on the equality with the other sectors.

<sup>28</sup> “However, in Brazil the amount of equity funds is practically ludicrous to maintain the level of donations.” In FALCONER, Andres Pablo and Roberto Vilela. *Recursos Privados para fins públicos: as grantmakers brasileiras*. 1ª ed. São Paulo: Editora Fundação Peirópolis: Grupo de Institutos Empresas e Fundações – GIFE, 2001. p. 17.

### 2.3.6. IMMUNITY, EXEMPTIONS AND TAX INCENTIVES

Non-profit organizations represent today, intermediate organs between the Government and the individual. It is a new social tendency to attribute to the Public Power, the function of prompting social interest entities, through tax benefits because the activities performed by them are complementary to those of the Government itself.

In the Brazilian legal system, tax immunity is granted by the Constitutional text which limits the capacity to tax, and to whom such taxing is not addressed such as non-profit institutions and those that have an eminently educative or social assistance purpose. The immune entities must perform activities that are directly connected to the institutional objectives established in their bylaws, which shall also contain the demands for the recognition of the immunity and for the use of related tax benefits established in Complementary Law no. 5.172/66 - Brazilian Tax Code ("Código Tributário Nacional"). Tax immunity aims at assuring the non-occurrence of taxing on equity, revenue or services, for institutions that, because of such benefit, can apply such renounced funds to educational or social objectives, complementary to the essential duties of the Government. The immunity implies a limitation to the taxing Government, as far as the conditions established in law for its use by the Associations and Foundations are observed.

On a different plan are the tax exemptions, in which the State waives the power to tax due to the protection of specific values and for a limited amount of time, therefore dismissing Third Sector entities from paying the tax. Thus, for example, the income tax exemption applies to non-profit legal entities that are not those immune entities dedicated to education or social assistance, but that have a philanthropic, leisure, cultural or scientific nature when their financial result is made available to its beneficiaries, according to the specific legislation. Within the Brazilian federative system, each taxing organ (Federal Government, States and Municipalities) decide about the exemption of taxes in the scope of their attribution. In this manner, exemptions may include the whole territory of the taxing federal body, or exist only in certain areas. They may reach a number of taxes or only a specific one. It is recommended that non-profit entities previously consult the tax collection department corresponding to the tax for which it seeks exemption, to obtain information as how to become entitled to make use of the tax benefits.

Lastly, there are the **tax incentives**, which consist of a tax waiver from the State of part of the taxes due, for the benefit of the global development of the society. It is a way to promote fundraising involving the participation of the Government, by waiving its right as well as that of the society, through donations from companies or from citizens. In Brazil, the main Tax Incentives granted to the Third Sector are the deduction from donations to entities that are qualified as of public interest or qualified as CSOPI in addition to the incentives to Culture, according to Law no. 8.313/91, also known as the Rouanet Law. According to such law, individuals and legal entities that contribute to cultural projects, with donations and sponsorships<sup>29</sup> may use the incentive by deducting the respective amount from part of their income tax.

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<sup>29</sup> The law distinguishes donation from sponsorship. The former is the free transfer, in permanent character, to the individual or the non-profit legal entity of cultural nature, of money, goods or services to exercise cultural projects. **It is strictly forbidden to make use of paid publicity for the advertisement of such act**; the latter is the permanent gratuitous transfer to the individual or legal entity of cultural nature,

### 2.3.7. JUDICIAL AND ADMINISTRATIVE PROCEDURES

In this block, we included some judicial and administrative procedures essential to the defense of citizenship and to the effectiveness of certain laws. We may say that these are the administrative and judicial tools for the defense of rights, especially collective ones that the NGOs are able to use inside our legal system.

One example is the **Class Action (“Ação Civil Pública”)**, defined in Law no. 7.437/85, which aims to preserve the public or social heritage, the environment, consumer rights, cultural heritage as well as define the responsibility for damages caused to such collective interests. Such claims may be filed by associations of foundations, constituted for over 1 (one) year, which include among its institutional objectives, the protection to the diffuse interests above-referred. So that no doubt is left regarding the legitimacy of such non-profit civil organizations, it is recommended that they expressly provide in their bylaws, objectives such as the protection of those areas mentioned in the law.

There is also the **Popular Action**, described in the Constitution in its article 5, LXXIII, which enables any member of the society, with greater or lesser approach, invoke jurisdictional protection to collective interests. It is considered to be – together with the popular vote and legislative initiative – an instrument of direct democracy.<sup>30</sup>

Another great instrument of influence in the realization of collective rights is the **Collective Injunction (“Mandado de Segurança”)**, also instituted by the 1988 Constitution. This procedural instrument is based on two elements: an institutional one, characterized by the attribution of legitimacy to associative institutions for the defense of its members’ interests or associates; and an objective one, consisting on the use of a judicial remedy for the defense of collective interests. The Collective Injunction is also used for the defense of individual subjective rights of those integrants of the legitimate institutional party. In this case, the condition for the entity to file the collective injunction for the defence of subjective individual rights, is that it is a clear and legal right. However, when the injunction is used to defend collective rights, there needs to be an illegality appointed in the public interest in which it is fundamented, as well as a damaged caused to it.

### 2.3.8. WORK RELATIONSHIPS AND SOCIAL WELFARE

In view of the growth of people working with the Third Sector, there is a growing concern as how to adequately regulate the relationship of non-profit entities with its work force, which can be divided into two groups: paid and non-paid work.

The non-paid work is present in the great majority of traditional social interest entities. This results from two facts: (i) the very nature of such institutions, and of the legal and social ends which reflect the absence of profit in its activities; (ii) the attitude of those who, voluntarily and

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with or without the aim to profit, of money for the realization of cultural projects, with the institutional and promotional purpose of advertisement. The coverage of costs or the use of the sponsor’s real or personal property without the transfer of the title, for the execution of non-profit cultural projects is also considered sponsorship.

<sup>30</sup> SPITZCOVSKY, Celso e Leda Pereira Mota. *Direito Constitucional* 1ª ed. São Paulo: Editora Terra, 1996.

gratuitously dedicate their time and talent to such entities as associates, directors or counselors; (iii) it is an express requirement in law to be eligible for immunities or exemptions. Such work is performed by volunteers, individuals who provide service without compensation to public entities of any nature or to private non-profit institutions which have civil, cultural, educational, scientific, recreational, or social assistance purposes. According to Law no. 9.608/98 – **Law of Volunteer Service** – volunteer work does not constitute a formal work relationship, nor does it result in labor or social welfare obligations of any sort. The characteristics of volunteer work are: 1) that it may not be imposed or demanded in exchange of any benefit granted by the institution to the service provider or his family; 2) that it be gratuitous; 3) that it be provided by individuals, independently; 4) that it be provided to a non-profit government or private institution, aimed at public objectives.

Pursuant to the formality of volunteer work, it has to be established in a written agreement, containing the correct identification of the provider and taker of the services, the nature of the services and the conditions for its exercise. The law also provides for the reimbursement of expenses incurred by the volunteer, if authorized by the employing entity.

With regards to paid work in Third Sector entities, there is no express legal impediment for directors be compensated for their work by receiving a salary or gratifications. Nonetheless, as aforementioned, by offering compensation to such persons, the recognition of such entity as one of Public Utility by the Government is jeopardized, together with its eligibility to receive subsidies, aid, and tax exemption. With the advent of Law no. 9.790/00, it is expressly allowed to provide compensation for directors of legal entities qualified as CSOPs (Civil Society Organization of Public Interest) which effectively work in its executive management. However, such title does not bring any tax advantage itself, as previously explained.

Paid work is ruled in Brazil by the Consolidation of the Labor Laws – CLL (*Consolidação das Leis do Trabalho – CLT*). It provides rules regarding employee protection and the employment relationship, setting forth the rights and obligations of the employee and of the employer. The entities that opt to contract employees shall strictly follow the rules of the CLL and of Collective Labor Agreements and Conventions.

## **2.4. FOURTH PHASE: LAUNCH OF THE CDROM**

The present research was conducted in Brazil at the São Paulo Business School of Fundação Getúlio Vargas (EAESP-FGV – *Escola de Administração de Empresas de São Paulo da Fundação Getúlio Vargas*) in the Center of Third Sector Studies (CETS – *Centro de Estudos do Terceiro Setor*), sponsored by the “W.K. Kellogg Foundation” and logistic supported by “Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados” law firm. It was coordinated by professors Luiz Carlos Mereghe e Roberto Quiroga Mosquera. The latter was also the supervisor of said research. It lasted 6 months, from June 2000 to November of the same year. In May of 2001, the author was invited to go back to Center of Studies to update the Compendium that was launched in June of 2001 in the form of a CDrom.

The Cdrom has a search mechanism by any character, number or word, what facilitates the research of the norms. A systematic index was developed, according to the blocks described herein: a normative index in hierarchical and numerical order, as well as an index, which translated all of the abbreviations used in the Compendium.

The launch of the **“Compendium of Third Sector Legislation”** aimed at facilitating the development and administration of non-profit organizations, through optimizing the work of its entities that, as busy as they are with the execution of their own activities, might find obstacles that can be solved through the existing regulation. The chief importance of such compilation was, hence, to facilitate the identification of the legal norms that regulate the Third Sector, since there are large quantities of legal and infra-legal rules which regulate its activities, and are hard to be found, as they emanate from different bodies.

### **III. CONCLUSIONS FROM THE COMPENDIUM**

Considering each rule as a sign, the present work offers, besides the compendium of legislation, the history of the professionalization of the Third Sector in Brazil, translated through the semiotics of its normative system: the creation, implementation and effectiveness of the law.

The chief idea in this essay is that a citizen needs to be familiar with the laws in order to fight for his rights, demand public policies from government authorities and, also, propose new regulations. It is a great incentive for the organizations to search the effectiveness of their rights, to develop a conscience of their responsibilities and aid the Government, the Market and the Third Sector to legislate for a better world.

### **IV. AND WHAT COMES NEXT ?**

After the elaboration of this Compendium, and its diffusion, the author participated in a number of public conferences and debates related to the subject, as well as has followed the implementation and use of said legislation in many non-profit entities. The classified knowledge of the Third Sector’s positive law is – in itself – a significant contribution to the society in general, to common citizens who fight for social causes as well as to professionals of law interested in the subject.

After exactly one year after the publication of the work, the importance of classifying the Third Sector regulation in Brazil and the spread of the legal instruments collected for Society is reaffirmed. This will contribute to the democratization of law before non-profit entities.

Today the Subsidiary State is being discussed, teaching the idea of respect of the individual rights, by recognizing that private initiative is more important than that of the state. Therefore, the State should refrain from performing activities which particulars are perfectly capable of performing on their own. At the same time, the State is responsible for nourishing, incentivating, coordinating, planning, regulating, subsidizing and supervising. Thus, the role of the State is reduced and limited, among other reasons, because of globalization<sup>31</sup>, of the financial crisis in developing nations, of corruption and bad quality

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<sup>31</sup> Ladislau Dowbor, commenting the structural tendencies of our future says that: “Technology quickly advances while the institutions slowly advance, and such combination is explosive. The economy is globalized while government systems remain national, creating a general loss of governance. The distance between the poor and the rich increases dramatically, while the planet shrinks and urbanization unites the extremes of society, forcing a contradictory living together that is less and less sustainable. Urbanization

of public services in badly administrated governments. The law brings many important changes, specially because of the strengthening of private entities before the State; of the growth of international and communitarian law; of considering the Constitution as a supreme legal norm; putting the law in a second plane. It is the substitution of legality by constitutionality. The State's legislative initiative increased the normative sources of Law, creating many types of rules enacted by different organs – a fact which confuses the comprehension of the citizens. Thus the reiterated importance of the present Compendium, which unites, in a single place, the norms from all the different organisms.

The possibility of developing other academic studies in this field was also envisioned, especially with respect to the analysis of concepts, causes and effects in the regulation of the Third Sector, including the legitimacy of the Third Sector to propose and manage public policies. The statement that the Third Sector is not representative because there is no elective popular representation intrigued us. To say that the Third Sector empties political discussion when it crushes the elaboration process of public policies and proposes solutions that are not always thought of in conjunction with the community in which it acts, also made us think how to implement and enforce rights in a less bureaucratic manner (as is the manner of the government) and more representatively (legitimizing the Third Sector entities). How to defend the globalist discourse, when, in order to survive, many Third Sector organizations act according to the rules of free-competition, and create small feudal groups in networks and partnerships, excluding those of lesser management power, resource collection capacity, and lesser effectiveness of their activities? We understand that all such ideological conflicts come from the idea of politics X efficiency. And at the end we are left with the fundamental question, before moving on to other answers: After all, does the Third Sector complement or substitute the State?

Any suggestion or comment to enrich this debate may be sent to any of the addresses below, to the author, who is available to further discussion. Your contributions are very welcome.

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dislocated the managing space of our everyday life to a local sphere, while government systems remain in the centralized logic of the first half of the century. Finally, the same system that promotes technical modernity generates social exclusion, transforming the world in a huge majority of passive spectators who should be marveled with the new technology. The conclusion to take from this whole vision, of from these five contradictory axis is that humanity needs to urgently pull the leash on its development and acquire institutional elements capable of effectively capturing scientific advances for a human development.” In DOWBOR, Ladislau, Octaviano Ianni e Paulo Edgar A. Resende (organizadores). *Desafios da Globalização*. 3ª ed. Petrópolis, Rio de Janeiro: Editora Vozes, 2000.

## V. BIBLIOGRAFIA

- ALVES, Francisco de Assis. *Fundações, Organizações Sociais, Agências Executivas* 1ª ed. São Paulo: Ltr, 2000.
- ASHOKA, Empreendedores Sociais e Mckinsey & Company, Inc. *Empreendimentos Sociais Sustentáveis: como elaborar planos de negócio para organizações sociais*. 1ª ed. São Paulo: Editora Fundação Peirópolis, 2001.
- ASSIS, Olney Queiroz e Lafaiete Pussoli. *Pessoa deficiente: direitos e garantias*. 1ª ed. São Paulo: Edipro, 1992.
- BANDEIRA DE MELLO, Celso Antônio. *Curso de Direito Administrativo*. 12ª ed. São Paulo: Editora Malheiros, 2000.
- \_\_\_\_\_. *Conteúdo Jurídico do Princípio da Igualdade*. 3ª ed. São Paulo: Editora Malheiros, 1998.
- BARBOSA, Maria Nazaré Lins e Carolina Felipe de Oliveira. *Manual de ONG's – guia prático de orientação jurídica*. 1ª ed. Rio de Janeiro: Editora Fundação Getúlio Vargas, 2001.
- BRESSER PEREIRA, Luiz Carlos e Nuria Cunill Grau (Organizadores). *Público Não-Estatal - na reforma do Estado*. 1ª ed. Rio de Janeiro: Ed. Fundação Getúlio Vargas, 1999.
- BOBBIO, Norberto. *Teoria da Norma Jurídica*. (Tradução: Fernando Pavan Baptista e Ariani Bueno Sudatti) 1ª ed. São Paulo: Edipro, 2001.
- BONAVIDES, Paulo. *Ciência Política*. 1ª ed. Rio de Janeiro: Editora Fundação Getúlio Vargas, 1967.
- BUCCI, Maria Paula Dallari. *Direito Administrativo e políticas públicas*. Tese de doutorado defendida perante a Faculdade de Direito da Universidade de São Paulo, em setembro de 2000. (Editora Saraiva, no prelo)
- BULGARELLI, Waldírio. *As Sociedades Cooperativas e sua disciplina jurídica*. 2ª ed. Rio de Janeiro: Ed. Renovar, 2000.
- CARDOSO, Fernando Henrique. *Programa Nacional de Direitos Humanos*. 1ª ed. Brasília: Imprensa Nacional, 1996.
- CARRAZA, Roque Antônio. *Curso de Direito Constitucional Tributário*. 12ª ed. São Paulo: Ed. Malheiros, 1999.
- CARVALHO, Maria do Carmo A.A. e Ana Cláudia C. Teixeira (organizadoras). *Conselhos Gestores de Políticas Públicas*. 1ª ed. São Paulo: Pólis, 2000.
- CHEVALLIER, Jean-Jacques. *L'état de droit*. In *Reveu du droit public et de la science politique en France et à l'étranger*, mar./abr. 1988, v.2.
- COELHO, Simone de Castro Tavares. *Um estudo comparado entre Brasil e Estados Unidos*. 1ª ed. São Paulo: Editora SENAC São Paulo, 2000.
- COSTA, Regina Helena. *Imunidades Tributárias*. 1ª ed. São Paulo: Editora Malheiros, 2001.
- CRETELLA, Jr., José. *Elementos de Direito Constitucional*. 4ª ed. São Paulo: Editora Revista dos Tribunais, 2000.
- CUSTÓDIO, Helita Barreira. *Associações e fundações de utilidade pública*. São Paulo: Editora Revista dos Tribunais, 1979.
- DI GIORGI, Beatriz, Celso Ferrandes Campilongo e Flávia Piovesan (Organizadores). *Direito Cidadania e Justiça*. 1ª ed. São Paulo: Editora Revista dos Tribunais, 1995.
- DI PIETRO, Maria Sylvia Zanella. *Direito Administrativo*. 12ª ed. São Paulo: Editora Atlas, 2000.
- \_\_\_\_\_. *Parcerias na Administração Pública*. 3ª ed. São Paulo: Editora Atlas, 1999.
- DOWBOR, Ladislau. *A Reprodução Social: propostas para uma gestão descentralizada*. 1ª ed. Petrópolis, Rio de Janeiro: Editora Vozes, 1998.
- \_\_\_\_\_. Octavio Ianni e Paulo-Edgar A. Resende (organizadores). *Desafios da Globalização*. 3ª ed. Petrópolis, Rio de Janeiro: Editora Vozes, 2000.
- DWORKIN, Ronald. *Taking Rights Seriously*. Cambridge, Massachusetts: Harvard University Press, 1978.

FALCONER, Andres Pablo e Roberto Vilela. *Recursos Privados para fins públicos: as grantmakers brasileiras*. 1ª ed. São Paulo: Editora Fundação Peirópolis: Grupo de Institutos Empresas e Fundações - GIFE, 2001.

FELIPPE, Márcio Sotelo. *Razão Jurídica e Dignidade Humana*. 1ª ed. São Paulo: Max Limonad, 1996.

FERRAREZI Elisabete e Valéria Rezende. *OSCIP – Organização da Sociedade Civil de Interesse Público: a Lei 9.790/99 como alternativa para o Terceiro Setor*. 1ª ed. Brasília: Comunidade Solidária, 2000.

FERRAZ JUNIOR, Tércio Sampaio. *Introdução ao Estado de Direito*. 2ª ed. São Paulo: Editora Atlas, 1994.

FERREIRA FILHO, Manoel Gonçalves. *Estado de Direito e Constituição*. 2ª ed. São Paulo: Saraiva, 1999.

FRANCO SOBRINHO, Manoel de Oliveira. *Fundações e empresas públicas*. 1ª ed. São Paulo: Editora Revista dos Tribunais, 1972.

FRISCHEISEN, Luiza Cristina Fonseca. *Políticas Públicas - A responsabilidade do administrador e do ministério público*. São Paulo: Max Limonad, 2000.

FUSTEL DE COLANGES, Numa Denis. *A cidade antiga*. (Tradução: Fernando de Aguiar) 4ª ed. São Paulo: Martins Fontes, 1998.

LANDIM, Leilah (organizadora). *Ações em sociedade: militância, caridade, assistência etc*. Rio de Janeiro: Nau Editora, 1998.

LUNARDELLI, Pedro Guilherme Accorsi. *Isonções Tributárias*. São Paulo: Dialética, 1999.

MARE, Ministério da Administração e Reforma do Estado. *Organizações sociais* nº 2, 4ª ed. Brasília: Imprensa Nacional, 1998, p.36.

MARTINS, Ives Gandra da Silva. *Imunidades Tributárias*. Pesquisas tributárias. Nova série, n.º 4. São Paulo: Editora Revista dos Tribunais: Centro de Extensão Universitária, 1998.

MAQUIAVEL, Nicolau. *O Príncipe*. (Tradução: Livio Xavier) 5ª ed. São Paulo: Atena, 1960.

MELLO FILHO, José Celso. *Constituição Federal Anotada*. São Paulo: Saraiva, 1984, p.53.

MONTESQUIEU, Charles de Secondat, Baron de. *O espírito das leis*. (Tradução: Pedro Vieira Mota) 4ª ed. São Paulo: Saraiva, 1996.

ORTOLANI, Juliana de Carvalho. “Ação Civil Pública” - *Boletim de Direito Administrativo* nº 7. São Paulo: Ed. NJD Ltda, 1997.

PAES, José Eduardo Sabo. *Fundações e entidades de interesse social*. 2ª ed. Brasília: Brasília Jurídica, 2000.

RAFAEL, Edson José. *Fundações e direito*. 1ª ed. São Paulo: Melhoramentos, 1997.

RESENDE, Tomáz de Aquino. *Roteiro do Terceiro Setor*. 1ª ed. Belo Horizonte: Publicare, 1999.

RIOS, Josué. *Guia dos seus direitos*. 1ª ed. São Paulo: Editora Globo, 1998.

SALOMÃO FILHO, Calixto. *Regulação da atividade econômica*. 1ª ed. São Paulo: Editora Malheiros, 2001.

SEN, Amartya Kumar. *Desenvolvimento como liberdade*. (Tradução: Laura Texeira Motta) 1ª ed. São Paulo: Companhia das Letras, 2000.

SILVA, José Afonso da. *Curso de Direito Constitucional Positivo*. 10ª ed. São Paulo: Editora Malheiros, 1995.

SPITZCOVSKY, Celso e Leda Pereira Mota. *Direito Constitucional*. 1ª ed. São Paulo: Editora Terra, 1996.

SZAZI, Eduardo. *Terceiro Setor – Regulação no Brasil*. 1ª ed. São Paulo: Editora Peirópolis, 2000.

VIEIRA, Oscar Vilhena. *Supremo Tribunal Federal – Jurisprudência política*. 1ª ed. São Paulo: Editora Revista dos Tribunais, 1994.