

I appreciate, in my name and on behalf of Justice Luiz Fux the speeches pronounced here, which will integrate the history and annals of the Federal Supreme Court.

Ladies and gentlemen,

## DEMOCRACY AND EDUCATION: THE FOUNDATIONS

1905, Manoel Bomfim, in his literary work "Latin America: evils of origin", denounced the biased view that undermined our historical miscegenation.

Our evils were other!

He said: "A democracy has no reason to exist except to give everyone freedom and self-consciousness"<sup>1</sup>.

And which way?

Through basic education.

A revolution in education was what he prophesied.

He said: "A person can't progress without instruction, which directs education and prepares freedom, duty, science, comfort, the arts, and morals"<sup>2</sup>.

This was an affront to the prevailing opinion.

Perhaps for this reason, his ideas were silenced (and forgotten) for so many years in Brazil.

The absence of a good and extensive education has always been the major obstacle to building our citizenship.

A permanent element for exclusion and for social, political and economic inequality.

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<sup>1</sup> Rio de Janeiro: Virtual Library of Human Sciences, Edelstein Center for Social Research, 2008. p. 278.

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<sup>2</sup> P.273

Just to remember:

**Colony - Empire:** indirect, census, and elitist vote. Being excluded the women and slaves.

Until the Saraiva Law (1881), the illiterate vote was allowed.

Celebrated and liberal, she instituted the direct vote, but only for the literate.

The abolition of slavery was a matter of time!

It was, therefore, appropriate to keep illiterates away from suffrage.

Slaves, as a rule, were illiterate.

There was a cut of 90% of the electorate.

Only 0.8% of the population voted in the parliamentary elections of 1886<sup>3</sup>.

The exclusion of a large portion of the Brazilian population was long-lasting.

It lasted for longer than a century.

Republic: the vote is no longer based on income.

But it was still restricted to lawyers and the women were excluded.

1932: the conquest of the female vote.

1945: Elections for Presidency and Constituent Assembly.

For the first time in history, 13% of the Brazilian population voted.

1985: finally the universal suffrage!

After a century of exclusion, more than 65% of the population elected our Constituent Congress.

We got the right to vote, we had a voice!

But in the pertinent words of José Murilo de Carvalho, "*we must continue to democratize the republic for social inclusion*".<sup>4</sup>

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<sup>3</sup> CARVALHO, José Murilo. Citizenship in Brazil: the long road. Rio de Janeiro: Brazilian Civilization, 2017.

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<sup>4</sup> P.245

We are all agents of social inclusion and welfare; and we're also agents for social, cultural and economic development.

We have, however, a great obstacle!

According to the OECD study, "A Look at Education", more than half Brazilians (52%) aged between 25 and 64 years did not even complete their high school education.

Promoting development and economic inclusion without education is *"intend to reap the rewards without preparing the sowing"*, in the lesson, once again, by Manoel Bomfim.<sup>5</sup>

In today's fragmented world, we need cultural bridges, which only knowledge can offer us.

## THE CITIZEN'S CONSTITUTION AND THE JUDICIARY

New social actors.

Insertion of a mass of citizens hitherto excluded from the political process.

A people that longed for rights and guarantees!

Wide proclamation of individual, collective, social, economic, cultural and minority rights.

In order to guarantee its fulfillment and effectiveness, the means of access to justice have been expanded.

Collective actions.

Transindividual rights.

The Judiciary as a new channel of public mobilization, expression and deliberation.

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<sup>5</sup> P. 139

In the expression of Werneck Vianna, the Judiciary left the "greenhouse"<sup>6</sup>.

Here is a "new" Judiciary in Brazil, with an active role in the life of the country.

## THE FEDERAL SUPREME COURT

Supreme guardian of the Constitution. Court of the Federation.

Moderator of political, social and economic conflicts.

Guarantor of the fundamental rights and of the human dignity.

Protector of the vulnerable and of the minorities.

The safe and prudent helmsman of this new Judicial Power!

In the precise words of the dean, Justice Celso de Mello, here is our MISSION:

*In the discharge of its high institutional functions and as guarantor of the intangibility of the constitutional order, the Federal Supreme Court is responsible for the grave commitment - which was delegated to it by the National Constituent Assembly - to ensure the **integrity of fundamental rights, to repeal abusive governmental conduct, to give precedence to the essential human dignity, to enforce the international covenants that protect vulnerable groups exposed to unfair persecution and discriminatory practices, to neutralize any attempt of state oppression, and to nullify the excesses of power and deviant behavior of its agents and authorities, which so deform the democratic meaning of the Fundamental Law of the Republic itself.***

## WE LIVE THE 30 YEARS OF THE CONSTITUTION OF 1988

Long live our Constitution!

As reminded for the dear professor Eros Grau, *"The 1988 Constitution of Brazil is not, in fact, from 1988. It's the Constitution of today, here, now, as expressed, as a rule of law, by our judges and our courts"*.

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<sup>6</sup> VIANNA, Luiz Werneck; CARVALHO, Maria Alice Rezende de; MELO, Manuel Palacios Cunha; and BURGOS, Marcelo Baumann. *Body and soul of the Brazilian judiciary*. 3. ed., Rio de Janeiro: Revan, 1997. p. 15.

As a vertex of the Judiciary and as a Supreme Guard of the Constitution, Hannah Arendt pointed out that the authority of the Supreme Court *"is exercised through a continuous formulation of the Constitution, since the Supreme Court is, in the words of Woodrow Wilson's, 'a sort of constitutional assembly in a permanent meeting'"*<sup>7</sup>

If we exercise, in the words of José Afonso da Silva, in an article published in 1985, *"a role of true balance between the other powers"*, this function must occur *"without predominance"*<sup>8</sup>

The **harmony** and **mutual** respect between the Powers of the Republic are constitutional commandments.

We are no more nor less than the other Powers.

With them and beside them, harmoniously, we serve the Brazilian Nation.

Therefore, we judges must have PRUDENCE.

WE ARE NOT IN CRISIS, WE ARE IN TRANSFORMATION.

"The future is not like it used to be," sang Renato Russo.

In the synthesis of Jorge Forbes, Miguel Reale Júnior and Tercio Sampaio Ferraz Junior, *"We are passengers of an unprecedented historical change"*<sup>9</sup>.

Or, as Umberto Eco said: we are living *"a kind of a ferry that will take us to a gift still without a name"*.<sup>10</sup>

The liquid modernity of Baumann.<sup>11</sup>

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<sup>7</sup> ARENDT, Hannah. *Of the revolution*. Brasília: UnB, 1988. p. 160-161. However, *Constitutional Courts and Constitutional Jurisdiction*. Brazilian Journal of Political Studies. Belo Horizonte, n. 60/61, p. 495-524, jan./jul. 1985. p. 520.

<sup>8</sup> SILVA, José Afonso. *Constitutional Courts and Constitutional Jurisdiction*. Brazilian Journal of Political Studies. Belo Horizonte, n. 60/61, p. 495-524, jan./jul. 1985. p. 520.

<sup>9</sup> FORBES, Jorge; REALE JÚNIOR, Miguel and FERRAZ JÚNIOR, Tercio Sampaio (org.). *The invention of the future: a debate on postmodernity and hypermodernity*. Barueri: Manole, 2005.

<sup>10</sup> ECO, Umberto. *Pape Satàn Aleppe - chronicles of a liquid society*. Record. 2017. 11 BAUMAN, Zygmunt. *Culture in the modern liquid world*. Rio de Janeiro: Zahar, 2013. 12 *Factory Floor Episode*. Earth Two. Tv Culture.

<sup>11</sup> BAUMAN, Zygmunt. *A cultura no mundo líquido moderno*. Rio de Janeiro: Zahar, 2013.

Today I will use the name Jorge Forbes: "Earth Two", the name of the program he presented on TV Cultura.

Earth One is past!

Today, we live on Earth Two!

In Earth Two, the standards are diluted.

The references are multiple and are opposed.

Horizontal society.

No hierarchical values.

Fuzzy information.

There is no room for formal explanations.

In this changing world, he says, *"The present leader is the best articulator of differences, not the guide of a single path."*<sup>12</sup>

There are a multiplicity of paths to follow.

We are all leaders of our lives and masters of our choices. Political and opinion-makers.

Insisting on the Earth One model is keeping the old concepts and practices.

It's insisting on a world of corruption.

It's a broken form of living, of thinking and of acting, that no longer finds space on Earth Two.

Without the frontiers and standards of before, we need to create new spaces.

New limits.

We need to be creative.

**Creativity** - this is the grail of contemporary society.

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<sup>12</sup> Episódio Chão de Fábrica. Terra Dois. Tv Cultura.

And to do so, we must lose the fear of making decisions among the many possible ones.

Fear enslaves.

It creates walls and barriers.

Isolates.

Distrusts.

Dehumanize!

It packs hate,

The snake egg!

Habermas, Hannah Arendt, and Celso Lafer, each in its own way, points out that Power has its foundation in plurality.

Power that is not plural is violence!

Said Habermas: "The fundamental phenomenon of power is not the instrumentalization of the will of others, but the formation of a common will in a communication aimed at reaching an agreement"<sup>13</sup>.

Covenants happen constantly.

Hence the need for dialogue.

From the eye to the eye.

And fear drives us away!

### **What if the politics fails?**

There remains the founding pact: the authority of the Constitution and the Law.

And we, as the Supreme Federal Court, are the guarantors of this covenant!

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<sup>13</sup> HABERMAS, Jürgen (1986). "Hannah Arendt's Communications Concept of Power". In S. Lukes (ed.), Power: Readings in Social and Political Theory. New York, New York University Press, pp. 75-93

Returning to Forbes, how, in Earth Two, can we save us from the fear of the other?

If there is no longer a universal moral to guide society, we need to viralize the intersubjective ethics.

The ethics of one who cares about the others, even if they think, act and live differently from us.

"True freedom is not fantasy without rules," said Manoel Bomfim<sup>14</sup>.

We need to connect more and more with each other.

Affectivity.

Sensitivity.

Empathy.

Volunteering.

Gentleness and cordiality with the neighbor.

Love.

We need to viralize the idea of the deepest respect for the neighbor, of the plurality and harmonious coexistence of different opinions, identities, ways of living and living with one another.

This is the essence of Democracy!

I believe that's what we need to live on Earth Two.

## LEGAL CERTANTY

**"The greatest human dream today is security,"** said Leandro Karnal.<sup>15</sup>

How to have legal security in this transforming world?

How to have legal certainty in a world without standards?

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<sup>14</sup> p. 282.

<sup>15</sup> Cultural Coffee Program - TV Cultura, 10/9/18.

How can we be the "safe ferry" Eco tells us about?

This is the challenge of the Judiciary of the 21st Century!

We can't replace "*the rule of law for the imponderable government of men*," Celso Lafer said in his column in the O Estado de São Paulo newspaper. He also warns:

*"The law, in its application, is not a data that only carries one interpretation. (...) But there are parameters for the latitude and scope of interpretation. They are those that come from positive Law, the law, from which it comes the legal dogma. (...) Ensure consistency and integrity of the case law, and it's easy to remember with Bobbio that coherence is a legal virtue" <sup>16</sup>*

In Earth Two, the Judiciary needs to rescue legal certainty among differences.

But within the "**parameters for latitude and the scope of interpretation**".

Here, too often, tradition is rupture.

It's not a guide, a single path.

The Courts are and should be plurals, with the natural coexistence of judges with their multiple conceptions of world and law.

It's no wonder that not only in Brazil but in the United States and other Supreme Courts, the main decisions are made by a majority, not by unanimity.

In a collegiate, there are no winners and losers, no victories or defeats.

There is plural.

There's the other one, that it's me either!

Justice must be dynamic, cooperative and participatory.

Closer to the citizen and to the social reality.

More accessible: new actors, new agendas, new networks and communication channels.

Public and private spaces for dialogue.

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<sup>16</sup> LAFER, Celso. Legal uncertainty. The State of São Paulo, March 18. 2018, p. A02.

Exchanges of experiences.

Central spaces of dialogue that concern all, this is what Renato Janine Ribeiro stands for.<sup>17</sup>

We need to be vigilant.

Arendt had already warned,

*Totalitarian solutions may as well survive the fall of totalitarian regimes under the form of a strong temptation that will arise whenever it seems impossible to alleviate political, social or economic misery in a manner worthy way.*<sup>18</sup>

The democratic game brings uncertainties.

The courage to submit to these uncertainties makes the greatness of a nation!

We can not be stuck in the past.

We can not let fear and hatred come into our lives, as in the metaphor of the classic "The Secret in Their Eyes."

We must look to the future and keep hope on the path of freedom, equality, and fraternity, as in the "Trilogy of Colors".

Magistrates,

In this world of Earth Two, justice must also transform itself.

Legal certainty will be the result of our action, not of a relationship of command.

The acting of the Judiciary must be a socially responsible act, as far as it thinks of the whole and of all, not only in the subjective cases.

Our legitimacy will be a consequence of the quality of our performance.

Here are the keys to this transformation:

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<sup>17</sup> RIBEIRO, Renato Janine. Good Politics: Essays on Democracy in the Internet Age. São Paulo: Companhia das Letras, 2017.

<sup>18</sup> Origins of totalitarianism: anti-Semitism, imperialism, totalitarianism. São Paulo: Company of Pocket, 2013.

EFFICIENCY, TRANSPARENCY, RESPONSIBILITY;

And see Ladies and Gentlemen,

CONTEMPORANEITY!

Conflicts arise at an increasingly intense rhythm. Everything becomes governed by time.

It's the duty of the judiciary to pacify conflicts in a socially tolerable time.

"Because time, time does not stop," Cazuza had already said.

It's the time for the culture of pacification and social harmonization, of the stimulus to consensual solutions, of mediation and conciliation.

Time to value the understanding and dialogue! Modernization, dynamism, interactivity.

Digital revolution.

Globalized, and digitally connected society.

Digital citizenship.

New technological tools - virtual judgments, procedural communication through social networks, artificial intelligence programs, cloud computing architecture.

So, we need to adapt to new technologies and new media.

**The virtual is now real.**

It's true that the new media and social network have broadened the space of the public square, and this puts in focus the transparency, the communication and the forms of participation of the society.

*Accountability.*

Judges and courts must account for the exercise of their state functions, whether judicial or administrative.

Advertising and information.

Bring necessary conditions for the exercise of citizenship. Instruments for monitoring and collecting predictability and consistency of judicial decisions.

I quote Bobbio: "Consistency is a legal virtue."<sup>19</sup>

Integration, systematization and modernization of the collection and statistical analysis of data by the Judiciary.

Accurate, efficient and agile exchange of information.

Communication of the National Judiciary.

We need to communicate more and better with the media and society.

Democratization of legal language.

Judicial decisions must truly reach society, **and not just the procedural actors.**

TV Justice entered the home of Brazilian families.

Televised judgments.

Decisions subjected not only to a judicial review but to public scrutiny.

Applauded by some, disapproved by others, as it's characteristic of democracies.

As the supreme court of the Judiciary, the Federal Supreme Court is no longer "this other unknown" of those days of Aliomar Baleeiro.

Modernization of the programming of Radio and TV Justice.

Ceasing the circles of the magistrates, prosecutors, and lawyers. Serving citizenship.

Mission: to make Brazilians aware - children, young people, adults and the elderly - of their rights and duties.

Information, education, culture, citizen awareness, freedom.

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<sup>19</sup> LAFER, Celso. Legal uncertainty. The State of São Paulo, March 18. 2018, p. A02.

## NATIONAL JUSTICE COUNCIL

The agent of this transformation.

Manager of the National Judicial Branch.

Organize, plan, coordinate, indicate ways, horizons and goals in the improvement and modernization of the management of the courts.

The winner is not only the jurisdiction but the Judiciary itself, the State and the Brazilian Nation!

In the National Council of Justice, we will continue the programs created in the previous administrations, as well as launch new programs and challenges, as I had already announced.

This action will be guided by full confidence in the CNJ Councilors and the development of a joint work, which well represents the various segments of the Brazilian judiciary and the essential functions to justice - advocacy and public prosecution - the people and states of the Federation, by means of representatives nominated, respectively, by the Chamber of Deputies and by the Senate of the Republic.

We will also seek to act in communion with the National Council of the Public Prosecutor's Office, the Federal Justice Council, the Labor Justice Council and the training schools of the national magistrature.

It's not possible, in this inaugural speech, to present all the programs and projects, but I make some highlights:

Speed in the resolution of judicialized public policies.

Individualization and biometric identification of all prisoners in the country.

DEFENSE OF VICTIMS OF VIOLENCE:

To continue and improve the relevant work already carried out by Justice Cármen Lúcia in the fight against domestic violence.

The Judiciary can not close its eyes to the epidemy of violence against children and adolescents.

We can not cope with impunity!

This is a special struggle to be waged that must involve the entire Judicial System, the State and the Brazilian society, including families, educators and communication sectors.

May the sweet voice of our children - like the Ecumenical Choir of the Legion of Good Will, which today thrills us with this beautiful presentation of the national anthem - resound beyond this Plenary!

Dear Ladies, dear Sirs,

The challenges are many! I do not have ready-made solutions. I place them on the table for debate.

I call on all those present, taking advantage of the plurality and broad representation of this Plenary: Mr. President of the Republic; Mr. President of the Federal Senate and the National Congress; Mr. Chairman of the Chamber of Deputies; Ministers and Justices of this House and of the High Courts; CNJ and CNMP advisors; parliamentarians; governors; judges; members of the public prosecutor's office, public and private attorneys, public defenders, court of auditors; politicians; public managers; militaries; members of the diplomatic corps; universities; political parties; servers; jurists; academics; philosophers; anthropologists; economists; environmentalists; press; trade unions; class associations; representatives of the financial system, industry, trade and service provision; agriculturists and farmers; doctors; students; artists; sportsmen; anti-corruption organizations; representatives of civil society, of various religions, cults and beliefs present, of indigenous people, of blacks, of LGBT groups, of women, children and youth, of people with special needs.

First of all, we are all Brazilians!

Let's go to the dialogue!

Let's go to the plural and democratic debate!

We are not just passengers of this historical change. We are also builders of the way forward.

Brazil is bigger than the state.

I propose the elaboration of a common agenda - maintaining the integrity of the spheres of power, but maintaining the partnership of a larger goal.

From the start, nothing is new. Just comply with the preamble of our Constitution:

"Ensuring the exercise of social and individual rights, freedom, security, well-being, development, equality, and justice as the supreme values of a fraternal, pluralistic and unprejudiced society founded on social harmony and commitment, internal and international order, with the peaceful settlement of disputes. "

That all - regardless of profession, gender, color, belief, political and partisan ideology, social class - be together in the construction of a more tolerant, more joint and more open to dialogue society.

After all, we have been forged in the heterogeneity of our people, our customs, our traditions, ideas and feelings. Different? Yes! But united by a feeling of Brazilianness "almost spiritual". transcendent. This is our value. This is our great wealth!

AND,

On this ferry,

From this crossing,

Law and dogmatics will be the headlights.

And in this Supreme Court, the authority is aware its reason of being.

With prudence.

But firm!

Towering!

Guaranteeing democracy and its founding pacts. Fulfilling Your Mission.

## ACKNOWLEDGEMENTS

I acknowledge, honored:

To all the Justices of this House, from yesterday, from today and for always. To the Justice Carmen Lúcia, whom I have the honor to succeed in this presidency. For me, it's a big responsibility.

I also stress the joy of assuming the Presidency of this Court at the time when Justice Rosa Weber holds the Presidency of the TSE - our Court of Democracy - and in which the Prosecutor General and Attorney General of the Republic - essential functions to the Democratic State of Law and to Justice, are led by two notable women: Dr. Raquel Dodge and Justice Grace Mendonça. In the name of these I fulfill all members of the Public Prosecution and Public Advocacy.

I am hoping to see women's participation broadened to the point where we no longer need to invoke the need for such equality.

And to the women, who, bravely and affectionately, have been following this path, I quote Cora Coralina, which translates, in my mind, the distinction in the feminine walk throughout life: "I am the woman who made the mountain climb of life by removing stones and planting flowers. "

Let us all follow your example!

Thanks also to my dear friend Luiz Fux. Those will be two years of sharing of tasks and actions for the benefit of Justice, of the Federal Supreme Court and of the National Justice Council.

To the dear friend Roberto Barroso, for the words addressed to me, result of his generosity and fraternity.

To the president of the Federal Council of the Brazilian Bar Association, Dr. Claudio Lamachia. I, who have come from this rostrum, thank you for the appreciation of all the lawyers, who are the first judges of all causes.

To all former Presidents of the Republic, whom I thank on behalf of President José Sarney, present here.

To the President of the Republic Michel Temer, the Presidents of the National Congress, Senator Eunício de Oliveira, and the Chamber of Deputies, Deputy Rodrigo Maia, on behalf of whom I thank all the ministers of state and parliamentarians present, calling them to a National Pact between the Powers of the Republic, through frank and purposeful dialogue. We are partners in the commitment and duty to build, in Brazil, a freer, more just and solidary society.

To the National Corregidor of Justice, Justice Humberto Martins, and to the Counselors of the National Justice Council, companions of this day of great challenges.

To the Justices of the High Courts, I would like to greet all of you in the person of the President of the Superior Court of Justice, my friend João Otávio de Noronha.

We will count on the judges and the courts, whom bring justice to the confines of the Brazilian nation. We do not have full democracy without an independent and valued national judiciary; we do not have full democracy if there are no judges who, with courage and independence, say what the law are.

To the Commander of the Army, General Eduardo Villas Bôas, on behalf of whom I thank the presence of all the military.

To the President of the Court of Auditors of Brazil, Justice Raimundo Carreiro, in the person of whom I fulfill the Justices of that Court.

To the Counselors of the National Council of the Public Prosecutor's Office.

To the Apostolic Nuncio to Brazil, Archbishop Giovanni d'Aniello, and to the Italian Ambassador, Antonio Bernardine, on behalf of whom I thank the Ambassadors and members of the diplomatic corps.

To the Archbishop of Brasília, Dom Sérgio, Cardinal Rocha, and the religious authorities of all creeds.

To the General Public Defender, welcoming all members of the Public Defender's Office.

To the State Governors and other state, district and municipal authorities.

To Judge Peter Messitte, who represents the Supreme Court of the United States of America on behalf of whom I thank all the authorities and foreign friends present.

To the presidents of the national associations of the magistrature and to the representatives of the class entities and of the magistrature.

Gabriel Monteiro da Silva public school and the Cristo Rei School of Marília, thank you for my basic and fundamental education.

To the teachers and friends of Largo do São Francisco, the old and always new Law School.

To the journalists here present, especially to those who work here daily, and to photographic reporters and videographers: I am fully convinced that a society is only truly democratic if there's a free and independent press, which is a reality in Brazilian democracy today.

To the servants and collaborators of this Supreme Court, the National Council of Justice and all the National Judiciary, people dedicated and committed to the public cause. Aware of the value and importance of you, ladies and gentlemen, my respect and my intention to engage for better working conditions.

To all of those who are or have ever been part of my cabinet team in this Court. Without the indispensable contribution of the convoked magistrates, the

advisors, the servants, the collaborators, and the trainees, it would not be possible to achieve the results that we obtained.

To the new members of the teams in the STF and the CNJ, be very welcome! We are partners in the commitment to undertake a joint effort to reach the maximum quality and maximum efficiency of the judicial provision to the Brazilian citizen.

To the collaborators who work behind the scenes - ceremonial, security, support teams, volunteers - that make this solemnity of possession happen, my appreciation! Your participation is fundamental.

To the present and absent family members of whom I am so proud, and true friends that are present here. What I have learned and learn with my parents, with my family and friends, know for sure, it's the standard of my personal and professional life. I thank everyone in the person of my younger brother, José Eduardo.

In Drummond's words,

*"Time is my subject,  
the present time,  
the present men,  
the present life"<sup>20</sup> .*

Make sure that, in these two years, I will devote myself

of body and soul to Justice and to the Brazilian Nation. The Constitution of the Republic will be my guide.

I end with a personal note:

I declare this session closed!

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<sup>20</sup> Poem "mãos dadas".