Economic policy and State

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Introduction

THE ECONOMIC policies imposed by the state apparatus have their purposes, goals and principles engraved by the constitutional texts in general, including the Brazilian Constitution of 1988, through the doctrinarily established, Economic Constitution. The distinguished jurist from Minas Gerais Washington Peluso Albino de Souza (2005, p.209) teaches us regarding the former:

> The presence of economic themes, either scattered in isolated articles all over the text of the constitutions, or located in one of its "Titles" or "Chapters", has been called "Economic Constitution".
> That means, therefore, that the economic issue takes on legal sense, or that it becomes "juridicized", in the constitutional level.

The economic policies can be developed both by the public powers and by the private initiative. They always interpenetrate each other and are subject to the plans. In the case of those carried out by the State, they're coordinated actions, dictated by legal rules, through which the public organs act in the present and future economic life, and automatically in the social relations, searching, hypothetically, for rendering effective the commands of the Economic Constitution. In short, state economic policy is a set of public decisions directed towards meeting the social and individual needs, with less effort, in a context of a lack of means. Besides, it's a species of the genus public policies.

> To define it, public policies is a set of actions coordinated by the state beings, carried out by them to a great extent, the goal of which is to change the existing social relations. As a state practice, it emerges and consolidates itself by means of legal rule. The public policy is made up of competent state actions and administrative decisions. (Derani, 2004, p.22)

The public powers can take countless actions in the economic sphere, such as: purchase and selling of foreign currency; raising or reduction of taxes; raising of the volume of the national currency in the economy; publication of legal rules concerning the remittance of profit abroad, of repression to the economic power and of defense of the consumer; issuing of public bonds in the financial system that will consequently have influence in the interests to be paid by the State.

And they can also mean: granting of subsidized credits to economic sectors; transferring of public estates or reduction of bureaucratic requirements

with the purpose of encouraging tourism; execution of governmental undertakings in favor of the modernizing growth; transferring to the state or nationalization of economic activities; creation of regulatory agencies that produce legal marks for the market; opening of state-owned companies that produce goods and render services, directed towards the sustainable development, among others.

Of course the economic policies can't be analyzed in isolation, outside an international context, because they're subject to the influences of the transnational economic power, of the Developed and Communitarian States, International Beings (World Trade Organization, International Monetary Fund, World Bank), without leaving out, however, the interdependence of the those with the economic policies of the national private capital. By the way, the contemporary democracies have been affected because of the depreciation of the state economic performances in the face of the power of the private sector.

> The profound crisis that our liberal democracies are undergoing, which is namely marked by the loss of confidence of the populations in the political world and the weakening of the public powers in the face of private powers, often multinational enterprises, led to a fear of the general interest in the face of the private interests. (Remiche, 1999, p.284)

The regulation and the rule

During the cold war, in the last century (1945 to 1990), the regulation neoliberal economic policies dominated the market economy, in which the National State became a Social State, acting in the economic domain directly, by means of the public enterprise, the mixed economy society and foundations, or indirectly, by means of the legal rules of law. All on behalf of development or growth.

At those regulation times, the private capitals were invested abroad in the consumer industry, but also in the profitable arms industry. Thus, the national and international private economic power needed the state action in sectors with low profitability, of financial risks or in the sectors that lacked technological investments, such as the infrastructure (power, roads, drinking water, telephone) and social (education, health, social welfare) areas, with the purpose to enable the progress of the market economy, restrain the demanding social movements (of the workers, for example) and remove the specter of socialism. The public economic actions took place in that direction, reserving to the private initiative the extension of its profits.

By the end of the 20th and beginning of the 21st Centuries, the neoliberal regulation policies began to limit the expansion and the mobility of the capital. The new world environment of the end of the cold war, of the fall of real socialism and of high technological evolution results in pressures for other economic policies that please the capital owners. The National States began to undertake the rule neo-liberalism transferring services and activities to the

private initiative (through privatization and denationalization), now attractive to capital due to the "reduction" of the profits obtained with the arms industry of the cold war and of the scientific advances. Technology turned profitable some sectors which used to have low profitability, or didn't have it at all, and which were controlled by the State.

With the rule, used as the only medicine that could save the world and protected from great disputes by the press of the "power owners" (Faoro, 2000), the State began to take on a new action technique in the economic life, that is, rule neo-liberalism. The state power continued to intervene indirectly in the economic domain, by means of the legal rules (laws, decrees, order); as well as in an intermediate manner, by means of ruling agencies. However, unlike the state enterprises, the agencies don't produce goods and they don't render services to the population, but they only inspect and regulate the market imposing "technical commands" of expansion, quality, price adjustment indexes etc.

However, it's prudent to emphasize that the interventionist ruling technique allows the existence of certain state-owned enterprises, in smaller quantity, acting within the scope of the market, but without playing the former role and having a reduced capability to interfere in the economic life.

> In the face of the discussions encouraged by the advocates of a "ruling", as a form of "modernity" (translating the more conspicuously liberal prevalences) of Neo-liberalism, in the face of the figure of the regulation (which would be committed to the less conspicuous interventionist techniques in that sense), we find a panorama of oscillations that characterize that mixed ideology. Since we consider them as a form of "action", we will admit, at most, that they differ according to the degree taken on in the relationship between State and society, or to the forms of Maximum and Minimum State. Unless it's Zero State, absolutely absentee (already diverted to the ideology of Anarchism), the legal instruments used by both move away from the hypothesis of the self-regulatory operation of the market. In the case of an option for the free operation of the market forces, against the "regulation" or the "ruling" that would direct them, the principle must be based on the "natural order" (introduced in the economic doctrine of the Physiocrats), that leads to the "jurigenous force of the fact ". Even so, the "fact" that results from it should be "juridified" to legitimate the "legal effects of abstention ", that is, of "omission".
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> Otherwise, it would cease to produce effects that are essential to its acknowledgement in the social relations, even in terms of rights of the parties negotiating in the market.
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> The "goals" of the "ruling", therefore, fit in the same operational system of "intervention". In a certain way, the Ruling moves away from the densely interventionist form of the Welfare State, or from the direct contributions of the Entrepreneur State. It moves towards absenteeism, without ever fully reaching it,

> under penalty of denying its existence, since it's, itself, a form of "action" of the State... (Souza, 2005, p.331)

Once again, the public economic policies are changed by the influences of private capital. The National State itself undergoes mutations in its power to influence and manage the social and economic life of the people with the transition from regulation neo-liberalism to that of ruling. The public powers minimized their forces in those areas, and the social and economic ruling was mainly transferred to the Communitarian States, International Beings and transnational companies.

However, within a thought that is dialectic and aware that the Constitutions were changed on behalf of ruling, in the national sphere the contemporary state economic policies must also follow the rules of the Constitution in order to enable its effectiveness. Therefore, the participation of the consumer movements, of the workers' trade unions, of the environmental associations and of business entities in the elaboration, undertaking and challenge of the economic policy rules is fundamental for building the State and democracy.

The economic policies and democracy

The social complexities, the antagonisms of interests and the democratic winds, within post-modern society, no longer allow the production of state legal rules, mainly those concerning economic law, formulated unilaterally by the rulers and their bureaucratic staffs, always subject to influences of "invisible" pressure groups. However, as far as democracy is concerned, we can't forget its limits nowadays.

> Naturally, the presence of elites in power doesn't eliminate the difference between democratic and autocratic regimes. That was known even to Mosca, a conservative who claimed to be a liberal, though not a democratic one, and who imagined a complex typology of government forms with the goal to show that, despite never eliminating the oligarchies in power, the several government forms distinguish based on their different formation and organization. But since starting from a predominantly procedural definition of democracy it can't be forgotten that one of the drivers of this interpretation, Joseph Schumpeter, was right on target when he claimed that the characteristic of a democratic government is not the absence of elites but the presence of many elites competing against each other to conquer the popular vote... (Bobbio, 2004, p.39)

There's no participative democracy if the organized social segments, and even the disorganized ones, don't build collectively the legal parameters of the economic policies dictated by the economic law. It's in that sphere of law that we make sustainable development feasible, or only the modernizing growth of the nations; or, still, we opt for the increase of the export market to the detriment of the national one; or, still, we embrace the challenges of equalizing the income

distribution, in view of its historical concentration, mainly in the developing States. In short, it's economic law that enables the carrying out of the social, cultural and economic rights in the social fabric, which are crucial within a real Democratic State of Law or within any other kind of State.

> The Economic Law dictates the "must way it must be done" to the economic activities, since it imposes legal rules of behavior on the economic agents who perform in that sphere, encouraged by the imperious interest of stopping their multiple needs /deprivations, both individual and collective, in face of the scarcity of resources. Certainly, the object of Economic Law is the regulation of the economic policies of the economic agents (enterprises, States, individuals, non-governmental organizations) with the intent that everyone, or at least the majority, can meet their needs... (Clark, 2001, p.7)

Photo: Agence France Presse

Joseph Schumpeter (1883-1950)

Despite the power of private capital and its strong influence on the production gear and on the consumer markets of the National States, due to "globalization", there's the possibility of the formulation of endogenous economic policies by those States, distinct from those engendered by the international economic power, to be built by the national social actors, within the various internal spaces of power (parliaments, boards, forums, sector chambers,

judiciary), and affirmed in the international sphere, in such a way that state economic policies mentioned above don't move away from the commands of the Economic Constitutions and from the social and economic needs of the people.

> Globalization is a myth that exaggerates the weight and the reach of the international economic forces. The national States, mainly in the successful countries, are not undefended in the face of uncontrollable or irresistible "global" economic processes.
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> Unlike what the fatalism related to the ideology of globalization suggests, the performance of the economies and the maneuvering range of the governments still depend to a crucial extent on national choices.
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> The fascination of "globalization" reveals the state of mental prostration and intellectual disarmament of such countries as Brazil. To overcome it, we could start from a reassessment of the foreign picture and of the role of the national States, developed, without any inhibition, our own conception of the path that the international relations of the Brazilian economy must take. (Batista Jr., 2005, p.52)

The symbiosis between State and market economy

Capitalism and the State have always been interdependent. In fact, as Huberman (1986) teaches us, the current State was formatted to enable the increase of the emergent commercial activities, in synthesis of capitalism, mainly in the old European Continent.

> The richest is the one who worries the most about the number of guards in his neighborhood. Those who use roads to send their merchandises or money to other places are those who claim the most protection against muggings and toll tax exemptions. Confusion and insecurity are not good for business. The middle class wanted order and security.
> To whom could it turn? Who, in the feudal organization, could ensure order and security to it? In the past, protection was provided by the nobility, by the feudal lords. But it had been against the extortions of those same lords that the cities had fought. It was the feudal armies that plundered, destroyed and stole. Since they didn't receive regular payment for their services, the soldiers of the noblemen plundered and stole everything they could take. The struggles between the warrior lords often represented disgrace for the local population, regardless of who won. It was the presence of different lords in different places along the commercial roads that made business so difficult. There was the need for a central authority, a national State. A supreme power that could bring order to the feudal chaos. The old lords could no longer fulfill their social function. Their time was over. It was the opportune moment for a strong central power. (Huberman, 1986, p.70-1)

Therefore, there's a symbiosis between State and market economy. The latter doesn't exist without the former. By means of countless actions throughout time, in one moment the State expands its intervention in the economic domain, as in the period of the Mercantile economic policies, sponsored by the absolutist States of the 17th Century, in the next it limits it, such as in the liberal economic policies built by the States of Right of the 19th Century.

Currently, the Democratic State of Law of the 21st Century acts "in a limited way" in the economic life, by means of the ruling economic policy, unlike the times of the Social State of the 20th Century, where the former was called regulation and the public acting was more acute. However, historically, the State has always acted in the economic life with different forms and intensity.

Of course what took place in Brazil wasn't different. The building of the dependent exporting economic model is implemented by the State, together with the elites and with the international economic power, since the times when Brazil was an Empire, as taught by the much-missed Professor Raimundo Faoro (2000). However, such model, including its economic policies, had been planned and also undertaken in our colonial period.

> On a speech delivered in the celebration of the ten years of the Institute of Studies for the Industrial Development - IEDI, businessman José Ermírio de Moraes Filho told that the original copy of the famous permit issued in 1785 by Portuguese Queen D. Maria I, which severely restricted the installation of industries in Brazil, was being auctioned. According to that decision, all manufactures of threads, fabrics and embroideries in the colony were forbidden, with the only exception of thick cotton fabrics which were used for clothing of the slaves or for making bags.
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> D. Maria I eventually entered history as the Mad Queen. In 1785, however, she was still in full shape, defending with all her might the application of the colonial system. The famous decree was a response to the emerging development of some industrial plants in Brazil. When they substituted imports, those Brazilian plants harmed the industries of Portugal and the revenues of the Metropolitan government, which derived customs rights on the entrance in Brazil of textile products from England and from other countries. (Batista Jr., 2005, p.103)

The intervention of the Brazilian State on the economic domain has always been kept through the times, regardless of if we had an eminently agricultural or industrial economy, as demonstrated by Professor Alberto Venâncio Filho (1998), in his classical work called *The Intervention of the State on the economic domain*. Unfortunately, the above-mentioned interventionism always had as its trademark, already since its historical roots, the supremacy of the private interests over the social and the public ones.

> Considering, furthermore, that during the colonial life and throughout the period of the Empire it can be verified a prevalence of the private power over the

> public one we will have, then, the picture of the characteristics of the Brazilian State as framework of the examination of the intervention on the economic domain. (Venâncio Filho, 1998, p.38)

The Constitution and the state economic policy

It didn't take long for the issue of the action of the state apparatus in the economic life and others to arrive in a clear and articulated manner to the Constitutions. That was the formal birth of the consecrated Economic Constitution, which sets the must be to the economic life, that is, setting the constitutional parameters for the State economic policies and those of the individuals.

However, even though the previous constitutional texts dealt with the economic issue in a fragmented manner, until the beginning of the 20th Century, that didn't mean the inexistence of an infra-constitutional legislation concerning them. Indeed, on the contrary, from the Industrial Revolution on, to be about economic policy became constant. By the way, the Liberal Constitutions themselves had their Economic Constitutions.

> [...] The Economic Constitution is not an innovation of the "social constitutionalism" of the 20th Century, but it's present in all the Constitutions, even in the liberal ones, of the 18th and 19th Centuries.
> During liberalism, the prevailing view was that of a natural economic order, outside the legal and political spheres, which, supposedly, wouldn't need to be ensured by the Constitution. However, all the Liberal Constitutions had economic arrangements in their texts. The liberal Economic Constitution existed to sanction the existent, ensuring the principles of the liberal economic system by foreseeing provisions that preserved the freedom of trade, the freedom of industry, the freedom of contract and, most of all, the freedom of ownership. (Bercovici, 2005, p.32)

The first Political Charters to have an Economic Constitution joined together were the Mexican one of 1917 and the Weimar German one in 1919, following the tendency of the Social States, with their neoliberal economic policies of regulation.

The first Brazilian constitutional text to follow that line was that of 1934, through the Title on the Economic and Social Order, continued with the other Political Charters, including the one of 1988, through the Chapter on the Economic and Financial Order (Arts. 170 to 192 of the FC). From 1995 on, our current Economic Constitution, like some Constitutions of the Western world (Portugal and Argentina, for example), had its prescriptive content changed, through amendments, to admit the use of the interventionist regulation technique.

Nowadays, however, the constitutional outlines of the economic policy are explicit, either of the public or of the private powers, with purposes, principles

and goals to be carried out. Therefore, it's a power-duty for the ordinary legislators, members of the Executive and the Judiciary Powers, as well as for the civil society to take the Economic Constitution away from the imaginary universe of the must be and introduce it in the difficult and complex reality of being.

To be about the public economic policies through the cutting out of the obedience of the Constitution is crucial nowadays, when the role of the State in the economy is questioned, the social participation is valued and the magnitude of the private economic power, which is sometimes much greater than that of the public one, is discovered.

> A "parallel government" that overlooks the civil society is established by the international financial institutions (IFIs). The countries that don't accept the "performance targets" are placed in the black list.
> Despite being adopted on behalf of the "democracy" and of the so-called "good government", PAE requires the effort by the internal security apparatus: the political repression – together with the elites of the Third World – supports a parallel process of "economic repression".
> The "good government" and the maintenance of multi-party elections are additional conditions imposed by the donors and creditors. However, the very nature of the economic reforms hinders a genuine democratization – that is, its implementation always requires (unlike the spirit of the Anglo-Saxon liberalism) the support by the Army and by the authoritarian State. The structural adjustment encourages false institutions and a fictional parliamentary democracy [...]
> In the entire Third World, the situation is one of social despair and lack of perspective for a population made poor by the imperative game of the market forces. (Diniz, 2005, p.43)

In Brazil, a developing nation, the public economic policies are mainly produced by the Union, the great responsible for them, and carried out on behalf of the collectivity, with the scant money from our sacrificed taxpayers. That takes place with the purpose of carrying out, within the context of the social reality, the impositions of the current Constitution of participative democracy, distributive justice and national sovereignty. Unfortunately, the impositions mentioned above are not reached for several reasons, among which, for the concentration of the powers to legislate in the hands of the central sphere of power.

Despite having enlarged the competencies and the powers of the Municipalities and of the member-States, compared to the Constitution of 1967 and to the Constitutional Amendment n. 1 of 1969, with its "nominal federalism" (Silva, 1999), the Constitution of 1988 didn't do so in a sufficient manner as to enable their true autonomy in relation to the Central Power.

> The autonomy is limited, above all, due to the economic dependence of the member-States and the Municipalities in relation to the Union, as a result of

the scanty tax revenues, of the demagogical and anti-democratic practices in the relations among the instances of territorial power and the ruled ones, of the economic policies of the Union that destroy the finances and the capability of execution of own public policies by the Municipalities and member-States, of the actual lack of participation of the citizens in the decisions, of the inexistence of alternative instances of power and also of the limited legislative competencies. (Clark, 2001, p.87)

Conclusion

In fact, Brazil and the developing States have a social and economic reality that is chaotic and perverse to most of the social fabric, encouraged by the genocidal economic policies, orchestrated by the national and foreign elites, on behalf of the dictatorship of the market and of the democracy of money. The regulation economic policies move away from the social and economic commitments dictated by the Economic Constitutions, besides reinforcing, in post-modern basis, the old colonialism.

They are sculpted and imposed, at all costs, by the owners of the capital, multiplying their profits, in an unequal dispute among the classes in the different social spaces of power. However, the organization of the social forces and the democratic planning might be able to help us engender paths towards the extinction of the vicious cycles of illegalities, exploitations and deaths.

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ABSTRACT - This paper analyzes, in the light of the economic law, the effects of private economic policies (especially foreign capital) and of the international organizations on public economic policies, mainly those performed by the developing nations. It emphasizes the transformation of the regulation neo-liberalism into a ruling neo-liberalism in which regulation is a demand of private economic powers, and acknowledges the decline of the State and the disbelief in the democracy as some of the results of such a transformation. The present essay also defends the existence of places for the execution of endogenous economic actions by the National States, so as to make the efficacy of their economic constitutions viable and meet the needs of their peoples.

KEYWORDS - State Economic Policy, Regulation Neo-liberalism, Ruling Neo-liberalism, Economic Constitution, Transnational Economic Power, International Organizations.

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Translated by Rodrigo Sardenberg. The original in Portuguese is available at http://www.scielo.br/scielo.php?script=sci_issuetoc&pid=0103-401420080001&lng=pt&nrm=iso.

Received on 2.27.2006 and accepted on 3.2.2006.