

Public Policies, Privatization and Development



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ABSTRACT

In Brazil and in the world, the state social model of intense interventionism in economic regulation has compromised the efficiency of the very implementation of social policies. At this pace, faced with the economic crisis, which resulted in the federal chief executive impeachment process, the issue of privatization as an economic growth maintenance mechanism emerges. This article focuses on the shift from a Welfare State to a subsidiarity model.

Keywords: State. Economy. Welfare. Privatization. Subsidiarity.

1. INTRODUCTION

After decades of authoritarianism, democracy emerged in the Federal Constitution of 1988 (BRASIL, 1988) with a model of cooperative federalism gravitating around the effectiveness of a rich catalog of social rights and guarantees.

The State tentacles have grown in the last two decades, with the rising cost of public policy benefits assigned to ensure dignified living conditions.

For many years, the effectiveness of equality has been on the federal government agenda, which materialized the social grants program to lift a large part of society from the poverty and misery threshold.



On the other hand, one cannot overlook that public budgeting works according to the basic concept of every economy: government spending.

Thus, the progressive increase of the grants, together with the country's entry into international trade, increased the operating costs of industries and endangered their infrastructure.

This scenario resulted in the economic crisis being installed with endangered presidential term stability, which was highly harmful for maintaining balance of the public accounts.

In this context, Provisional Measure (Medida Provisória) No. 726 was adopted in May 2016 (BRASIL, 2016), bringing forward a privatization program with the clear purpose of promoting budget reform through public-private partnerships in order to acquire financial resources and relieve the Union's coffers.

In this article, the design of the Welfare State, its scopes and its moment of being created in the USA will be historically analyzed and updated in parallel to the social program adopted by constitutionalism.

Finally, a scenario will be woven into the State's relationship with the economy in a possible transition to a subsidiarity model of public capital in the institution of social policies.

2. ORIGINS AND SCOPES OF THE WELFARE STATE

It is impossible to dissociate the economic context from the States' evolutionary lines. Thus, it is correct to say that the evolution or revolution of the legal and political content has the identification of a certain model or fact that entails the public finance crisis as a backdrop.

For the federal State model to work, it demands inexorably more than a system of division of financial competences that enables each Member State to have its own independent organization, according to the scholium:

Federalism as an expression of the Constitutional Law was born with the US Constitution in 1787. It is based on the union of autonomous political communities. Federalism, in Constitutional Law, refers to a form of State called federation or federal State, characterized by the union of public communities endowed with political and constitutional autonomy, federative autonomy. (SILVA, 2002, p. 88).

It requires tax collection to be fruitful for effective maintenance of public policies, in addition to constantly implement measures to develop infrastructure, improve living conditions and ensure effectiveness of basic social rights.

Faced with a situation of insufficient resources, either from mismanagement or the swelling of public accounts, the system collapses with the general dissatisfaction of the people and civil society

organizations concerning the interruption of daily routine.

That is when the economy significantly interferes in the constitutional task, boosting change in the federal system or in the relation between State and people.

This happened in the last century in the United States of America, when the liberal paradigm was broken to give place to a new model of trade regulation by the State, as in the doctrine:

Much more than a mere product of mass democracy. It constitutes the fundamental transformation of the State itself, its structure, its functions and its legitimacy; it is not only a response to the demand for socioeconomic equality, but also a response to the demand for socioeconomic security (AURELIANO; DRAIBE, 1989, p. 108).

The State and the federal model exist because of its people, its subjects, and the situation of chaos or human life degeneration is unacceptable. This struggle implies adopting a new state model.

The need to equate the problem of the economic downturn and the inequality that plagued the country led to the design of the Welfare State, but in a different way.

As will be explained below.

The then president Roosevelt was forced to effectively intervene in the economy, but only for the time necessary to recover economic regulation and get economic expansion on track.

The New Deal was a plan designed for a specified period needed to adopt large impact measures on regulation and on the relation between the public and private sectors, differently from what we know today as Welfare State. The plan's goals were summarized as follows:

The New Deal was not initially an attempt to stimulate the economy and generate recovery through government spending, an idea that was scarcely present in the early 1930s. Rather it consisted of ad hoc salvage or bailout measures, principally aimed at helping business, coupled with work relief programs. The lion's share of New Deal expenditures at the outset were devoted to salvage operations. As Harvard economist Alvin Hansen, Keynes's leading early follower in the United States, explained in 1941 in his *Fiscal Policy and Business Cycles*. (FOSTER; MCCHESENEY, 2009).

In the first stage, the goal was to achieve relief by giving entrepreneurs bank credit so jobs would be maintained. Without it, the crisis could have been much larger, extinguishing the expectation of uplifting the economy.



In the background, it also aimed at recovering growth development with increased investment reliability policies to control prices, inflation and reduced working hours.

Finally, the last stage was the banking and tax reform, giving the State power over control and oversight of capital market and investments as a way to control the exploitation of the working class.

The New Deal was adopted by Roosevelt to last from 1930 to 1937, i.e., the need for the State to give private sector self-regulation, which would never be the State's responsibility, was not put aside.

Due to the success of interventionism, this model was eventually copied in States where constitutionalism flourished in the postwar period, as a vector of the inclusion of rich catalogs of fundamental social rights in constitutional documents, mainly in developing countries with wide margins of differentiated social strata.

In this same period, for example, the Mexican Constitution of February 5, 1917, was revered for its Welfare State model with the consecration of social nature rights that converge to authorize economic intervention as a shortcut for its effectiveness:

All authorities, in their areas of competence, are obliged to promote, respect, protect and guarantee the human rights, in accordance with the principles of universality, interdependence, indivisibility and progressiveness. Consequently, the State must prevent, investigate, penalize and remedy human rights violations, in accordance with the law. (MÉXICO, 1917)

Thus, the State came out of the backstage and adopted an interventionist stance, perhaps not exactly as a strategy, but as a model that came from a profound systemic crisis in the economy, which should be avoided at all costs.

3. A PORTRAIT OF THE CRISIS OF THE WELFARE STATE IN BRAZIL

Brazil was different because its Constitution of the *Estado Novo* (New State) of 1937 inaugurated the active presence of the State in regulation of the Economy, highlighting the intention of establishing a national economic committee, as follows:

Article 57. The National Economic Council is composed of representatives of the various branches of national

production. They are appointed from among persons qualified due to their special competence, professional associations or trade unions recognized in law. Equality in representation between employers and employees is ensured. (BRAZIL, 1937).

This Constitution not only authorized State intervention in the regulation of the economy but brought a direction to be adopted by the Chief Executive in the financial management of the country, as follows:

Article 135. Wealth and national prosperity are founded on individual initiative, on the power of creation, organization and invention of the individual, exercised within the boundaries of the public good. State intervention in the economic domain is only legitimate to make up for individual initiative weaknesses and to coordinate production factors, in order to avoid or resolve conflicts and to bring into the arena of individual competition the Nation's interests, as represented by the State. Intervention in the economic domain may be indirect and direct, taking the form of control, promotion or direct management (BRAZIL, 1937).

This model was used throughout the implementation of democracy in Brazil, continuing after the end of the dictatorship period with the inauguration of the Constitution of 1988, called *Constituição Cidadã* (Citizen-oriented Constitution) (BRASIL, 1988). The adjective "cidadã" is easily understood after reading its first articles.

The current Brazilian State adopts human dignity as its foundation. This standing, in both symbolic and teleological senses, has not only legal but also moral significance.

The public official is called upon to adopt policies that favor the person, individual well-being and that ensure the minimum necessary for a dignified existence in the territory of the Federation:

Because rights result from strategic choices about how best to deploy public resources, there are good democratic reasons why decisions about which rights to protect, and to what degree, should be made in as open a manner as possible, by a citizenry as informed as possible, to whom political officials, including judges, must address their reasonings and justifications. (HOLMES; SUNSTEIN, 1999, p. 227).



However, not only dignity is taken into account. The first seven articles of the Constitution include fundamental rights and social guarantees, extolling the need for the state to deliver these effectively, under penalty of failure of the adopted model.

Thus, state intervention is not only accepted, but also expressly proposed as an implementation tool for social rights that accumulate amid society. The distinctive feature, however, is that the New Deal was adopted in an isolated act in the political history of the United States of America as a remedial measure in a particular historical moment of fragility.

Interventionism as we know it in no way resembles the motive for which the Social Welfare State originated, which did not serve social parasitism or public office exploitation, but rather the effective implementation of human rights.

4. PRIVATIZATION POLICY IN IMPLEMENTATION OF THE SUBSIDIARY STATE

If the dictatorship quarantine was not easy, it is unquestionable that the return to democracy also is not. With the transition to the rule of law, Brazilian society enjoyed a freedom they had not experienced in a long time.

The joy of free thought, private initiative and wide protection of property and individual liberty led to a model of super Social Welfare State, in which the Union centralized management branch should provide for everything.

This is perhaps one of the most sensitive and complex traits to understand in Brazilian federalism. Despite being a federation and of continental dimensions, Brazil has adopted a legislative and administrative system, which invariably originates from Union initiative, called the centripetal model:

In the first part of American history, the Supreme Court could strive to maintain an equal position between federal and state authority. More recently, it has tended to place greater weight on the federal side of the scale. (SCHWARTZ, 1984, p. 47).

Member States retain only limited powers. On the other hand, including the municipality as a federal entity also did not go well, since given the huge number of these minority entities in the Federation, many experience pre-bankruptcy situations, constantly resorting to public funds to carry out major construction works.

The administrations of former President Luiz Inácio Lula da Silva and suspended President Dilma Roussef were defined by the implementation of wealth distribution social programs in scales

never before recorded in the history of Brazilian constitutionalism.

Yet unlike the US model, instead of lasting for a defined period and under certain conditions, grant and aid programs only tend to increase with swelling public structure, which needs to increase geometrically to face the arithmetic offer of services.

From a sociological point of view, there is no doubt human treatment has advanced in this light, given the equalization of living conditions and the rising of many people out of poverty. However, a public management point of view strictly observes that all expenditure generated by the state should be clarified in a transparent manner and the chance of societal ruin should be combated.

At this rate, since they experience a social growth, benefits and their maintenance costs have increased over the years, in light of a life expectancy index that has been increasing.

This means that the indefinite maintenance of people dependent on public policy needs to be weighed with their capacity to contribute to their livelihood and that of the State itself, under the known principle of efficiency:

As all law is yoked to the social and economic spheres and is not only a portion of it, the claim that the law begins to fulfill a new role of integration in all economic sectors leads to the consequent conclusion that the law undertakes a new social integration role. This conclusion seems paradoxical, however, as on the one hand, the law has always fulfilled the role of social integration, in the sense of harmonize and composing individual and social interests, and on the other, every individual is a social power. (GRAU, 1981, p. 58).

Withdrawing capital from the Federal Treasury coffers without developing the economy led to an effect opposite to the one of the New Deal: the risk of the socialist program breaking the country.

At the same time that it emerged as salvation, it almost became the ruin for the Tupiniquim population.

Clearly, no government wants to adopt the unpopular policy of cutting spending and reducing benefits because it would reflect in the polls with the loss of votes by poor Member States.

Thus, this situation led to the brink of bankruptcy by the federal government, with the swelling of public accounts to the point of affecting all sectors,

including those formerly protected, hence proving that there is no magic formula for managing public accounts.

If there is expenditure, there should also be revenue. Accordingly, participation of the private sector has been the fastest-growing measure in the current legal scenario for the growth of infrastructure and living conditions. Therefore, it is currently possible to talk about the migration from a Welfare State model to a Democratic model, with division of responsibility of management tasks.

Since the State has proved insufficient and unable to manage all events in its territory, public-private partnerships emerge as a measure to resume growth:

After all, after a long hegemonic period of the Welfare State, it was recognized that the private sector has greater ability to provide a high degree of efficiency and economy to its activities. Most importantly, this dismisses the government from secondary concerns in order to let it focus on primary activities and on solving problems of higher urgency and scale, currently including safety, education and health, and in increasingly, the development of public support, all which require careful planning (MOREIRA NETO, 2011, p. 486).

Through these contracts, a private company can provide a service that was monopolized by the



State, whose model was still rooted in the failed socialist premises.

To paraphrase the parable of the ant and the grasshopper, we note that once individuals are dependent on social benefits, they do not give them up, and in return, the state cannot create enough jobs to include those individuals in the market.

The conclusion is that the benefits granted in the Brazilian socialist system are continuous, not temporary, causing swelling of the reversal of values to unending social programs.

Although laudable, the fact is that this view of the economy restricts the country's growth, with progressive increases in costs and unemployment. Additionally, on the other hand, entrepreneurs are overwhelmed with increasing fiscal taxes and charges to cover such huge expenses.

To resolve this issue, Brazil has adopted a profile of institution democratization, namely the privatization of many public services, which whose regulation would be handed over to private enterprise. The milestone was Law 9,491, of September 9, 1997, enacted during the Fernando Henrique administration, which already provided for the sale of public or state-controlled companies. The goal was to legalize public service concession or permission contracts so they could be carried out by the private sector, governed by the rules of free enterprise and competition.

Unable to provide free and efficient service, the State declares itself incompetent and transfers services to companies, through fixed cost, long-term remuneration. This solution would allow all to participate in funding the costs of social programs to a greater or lesser extent, by acquiring the services provided.

This intention became evident with the publication of Provisional Measure 726, of May 12, 2016 (BRAZIL, 2016), which created the Investment Partnership Program (PPI), published on the first day that the vice president took over the Presidency of the Republic on an interim basis. Noteworthy in the Provisional Measure text is that PPI regulation will be laid down by presidential decree, which allows for quick decision-making to develop enterprises in the short and medium terms.

Although the target of much criticism, there is no denying that the initiative is laudable from an economic point of view and allowed in the legal framework, since in the present situation, Brazil autho-

rizes State intervention in the economy, under the terms of the Federal Constitution Article 173.

It is far from being a definitive solution to the crisis, but public account reduction is a specific measure to be adopted, and partnership with the private sector would make continued development and fulfillment of the social agenda possible.

Brazil has one of the worst ratings in infrastructure investment, ranking 53rd in 61 countries included in a study released by the International Institute for Management Development (IMD) in 2014.

In practice, this index reveals that Brazil invests around 2% to 4 % of its Gross Domestic Product (GDP) in infrastructure expansion, reflecting that the country's concern has truly been the implementation of public social policies, relegating other government agenda themes to the background.

Concession to the private sector will certainly be a source of relief to the federal government in the pursuit of expanded development, as this sector does not only create local wealth but is also a source of job creation and life improvement.

Recently, the Brazilian Association of Infrastructure and Basic Industries (Abdib, 2016) issued a statement on the government's intentions to enable around 100 concessions in the next two years, coinciding precisely with Michel Temer's period of executive leadership.

Areas focused on by presidential actions include highways, ports, airports and railways, with a clear concern to increase flow of the country's products, which are still maintained by agricultural, sugarcane-ethanol and livestock productions.

Brazilians still suffer from poor basic sanitation, victims of inefficient public management in a country of continental size with politics highly centralized by the federal command. Without a doubt, private initiative would enable reaching municipalities and sectors with disadvantaged shares of the federal budget, as highlighted by the specialized doctrine on the subject:

Reducing direct State investment commitments in sectors where direct operation by the private sector is feasible, (b) allow the state to concentrate on providing services that do not generate sufficient returns to interest the private sector and on regulating and overseeing public services which have had their operation transferred to the private sector. In addition, (c) there was an attempt to use the proceeds from the sale of state and other public goods

to reduce public debt. Finally, (d) the aim was to benefit society and the State with increased efficiency brought by privately managed services (RIBEIRO; PRADO, 2007, p. 38-39).

It is still too early to criticize the interim government, but it is certain that the measures adopted in the beginning already announce the direction in which the Brazilian state should move, from a Welfare State model to a subsidiary regime of division of responsibility between the public and private sectors.

5. CONCLUSION

The Welfare State was born to have a short life, to implement temporary policies for reducing socio-economic differences, without disregarding the need for growth in infrastructure and the market in general.

There is no magic formula for the payment of social programs except a gradual increase in taxes, which impairs job creation, not to mention paralyzing the growth of basic infrastructure, which is essential given population growth and territorial expansion.

Therefore, privatization cannot be penalized nor disregarded. It is an indirect state control mechanism to achieve public and social policies, given the chronic inability and inefficiency of public administration.

Thus, the trend that should be followed in Brazil after the absorption of Provisional Measure 726 (BRAZIL, 2016) is the successive implementation of public-private partnerships and concessions as tools that enable continued growth, without the necessity to reduce benefits once granted.

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