

Direito, desenvolvimento e desigualdade

Diogo R. Coutinho

Faculdade de Direito da USP

Outline

- What the Law got to do with development?
- Development and equality
- Brazil: inequality trap
- Roles of law in developmental strategies
- *Bolsa Família* from a legal perspective

Questions

- What kind of legal institutions are more conducive to development?
- Can successful laws and legal arrangements be transplanted?
- What is the role of legal assistance in development?
- Should judges pursue developmental goals when they decide?
- ✓ Is there a legal dimension behind inequality in Brazil?
- ✓ Are there legal innovations in Brazilian policies designed to fight poverty and inequality?

Skeptics

- Law may influence development, but its role is very limited
- Legal changes face obstacles posed by historical, economic, political or cultural factors
- Law produces unintended and unpredictable consequences when instrumentalized to promote development
- Legal reforms costs exceed benefits

Optimists

- “Law matters”: specific characteristics of a society’s legal system play a significant causal role in determining development
- Possibilities of reform: legal systems change in response to deliberate efforts to reform them
- Ability to identify: it is possible to identify the legal reforms that ultimately promote development
- Law plays an important role when it comes to social and economic change

What the law got to do with development?

- Law can be an enabling tool or an obstacle
 - Private law (contracts, corporate law)
 - Public law (regulations, economic, environmental and social policies)
- Law is what **judges** decide, but also what **legislators** and **public officials** do

What the law got to do with development?

- The legal apparatus:
 - Deeply influences economic production and distribution
 - Shapes macro-economic regulation
 - Is, therefore, everything but a neutral variable when it comes to redistribution, inequality and poverty

Development and equality

Inequality I

- **First DS:** distributive neutral growth & trickle down
- **Neoliberalism:** poverty fighting through social safety nets
- **New Developmental State?**
 - Growth + redistributive policies fight poverty
 - Redistribution as an end to boost development
 - Inequality is bad for development

Inequality II

- Fighting inequality does not substitute growth, but they can be combined in virtuous cycles
- Brazil: socio and economic rights foreseen by a transformative constitution require policies to be effective
- Such policies are intensely shaped by the law
- Law links principles to policies: technology to development
- *Bolsa Família* is playing an important role in reducing inequality in Brazil

Social policies: macro and micro approaches

- **Macro**
 - Social policies produce distributive impacts, both progressive and regressive
 - Challenge: maximize equity gains
- **Micro**
 - Social policies can be cost-effective
 - Challenge: minimize efficiency losses

Brazil: inequality trap I

- Inequality is historically and modernly determined
- The rich are rich not only because they possess most of the wealth, but also because they control the political means that could eventually alter the income distribution
- Social mobility is severely hindered
- There is room for redistribution

Brazil: inequality trap II

- Legal arrangements produce regressive effects, concentrating income:
 - Tax system: indirect
 - Pensions: captured by medium classes
 - Access to public higher education: for the top of the pyramid only
 - Judicial review of social and economic rights: first come, first served

Roles of law in development

Roles of Law in development policies

- Law as a goal
- Law as a toolbox
- Law as institutional arrangement

	Law as goal	Law as toolbox	Law as institutional arrangement
Concept	Legislation defining the policy goals	Choosing legal tools to implement goals	Defining tasks, structuring missions and competences
Main objectives	Crystallize political choices and define development content/outcomes	Using the toolbox effectively	Who does what? Avoiding gaps, overlaps and disputes
Example: social policy	Legal frameworks designed to reduce inequality	Income tax, pensions, minimum wage, affirmative actions, universal policies, CCTs and other legal instruments	Articulation between internal revenue, ministry of social affairs, federal and local agents and civil society
Rationale	Substantive	Procedural	Structural

**LANDS research project:
a new developmental State?**

Assumption

Policies selected present features which could go beyond the neo-liberal recommendations of the 1990s without returning to the typical import-substitution development model

Hypotheses

- A principal issue: knowledge of what to do
- Policies must be tailored to national context
- Market signals important but not decisive
- Search and experimentation crucial
- Close collaboration between public and private sector
- Comparative advantage are constructed - exploring policy space at WTO
- Law: revisability/adaptability/flexibility
- Legal arrangements can be subject to innovation

Hypotheses

- State helps steer investment, manages projects, provide information, mitigate risks, coordinate decisions
- Primary reliance on the private sector as investor
- But: State still directly invests in key-sectors
- Market picks winners, States boost them
- Strong interest in exports and relative openness to imports
- Emphasis on making firms competitive
- State as a venture capitalist
- **Poverty + inequality fighting**
- Promotion of domestic capital markets and financial sector

Bolsa Família

Family Assistance Program (PBF)

- *Bolsa Família* is the main social program of Lula government
- The federal government has channeled more than US\$ 20 billion in five years
- Eleven million families is the beneficiaries universe (approx. 45,8 million people, or 25% of the Brazilian population)
- PBF has as its declared objective, among others, to battle hunger and to promote the supply of food and nutrients, as an immediate relief against poverty
- PBF is also aimed to be non paternalistic and to preserve the beneficiary's autonomy to do whatever he or she wants to do with the cash transfer

Bolsa Família

- Alleviating short-term poverty and long-term human capital building
- Social assistance different from charity. Benefits are rights, not favors
- Non paternalistic: person chooses how to spend benefit
- Focus on family (woman gets the money) rather than on individuals
- Federal government doesn't impose enrollment: carrot regulation
- National database for all social policies

Bolsa Família

- Conditionalities related to **education and health**
- Steady incomes for the poor might function like a microcredit
- **Program should not negatively affect labor market**
- **Challenges:**
 - **Implement social and economic rights**
 - minimize exclusion errors
 - design clear exit doors
 - **ensure sustainability and legal protection**