Brazil's economic success: between the classic and the new developmental state models

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Abstract
In the aftermath of the Asian financial crisis, developing countries began questioning the neo-liberal development paradigm embedded in the so-called 'Washington Consensus' sponsored by international financial institutions such as the World Bank and the International Monetary Fund (IMF). The debate was reopened to discuss not only about which economic model was most suitable to promote development but also the role of the government and law in the development process.

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Introduction

In the aftermath of the Asian financial crisis, developing countries began questioning the neo-liberal development paradigm embedded in the so-called ‘Washington Consensus’ sponsored by international financial institutions such as the World Bank and the International Monetary Fund (IMF). The debate was reopened to discuss not only about which economic model was most suitable to promote development but also the role of the government and law in the development process.

The debate has been fruitful and since the beginning of the new millennium Latin America has witnessed a healthy economic growth and reduction of poverty and social inequality. Positive trends are not even throughout the region. Poverty in some countries such as Dominican Republic and El Salvador has increased; in other like Mexico, Guatemala and Costa Rica, poverty has slowly decreased at a speed of less than 1 % per year while Peru and Uruguay are reducing poverty a faster pace of more than 4% per year.

We cannot affirm that all countries in the region have followed the same path. They have followed different recipes from neoliberalism to what has been called the 21st Century Socialism, or a combination of neoliberal and welfare state policies. Brazil has been one of the examples that has attracted considerable attention from academics and experts globally and leading Law and Development scholars have argued that a new developmental state model is rising in Brazil. This paper aims at

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1 Dr Garcia is a Lecturer in the School of Law at the University of Wollongong. He is also a member of the Legal Intersections Research Centre (LIRC), University of Wollongong. This paper was presented in the LIRC Panel Discussion on ‘The Critical Turn in Law and Development in Latin America: A Review of the Current State of Affairs (2000-2013)’, University of Wollongong, Wollongong, 23 October 2013.

2 See e.g. David Trubek, Helena Alviar Garcia, Diogo Coutinho and Alvaro Santos (eds), Law and the New Developmental State, The Brazilian Experience in Latin American Context (Cambridge University Press, 2013)
reviewing this claim and responses whether a true ‘new’ approach has been advanced by the Brazilian state since 2002. The main argument supported by preliminary research is that the Brazilian approach seems to adopt some of the key features of the old Japanese developmental state.

**Latin America and the Developmental State**

The region has a long history of trials and errors of different approaches to economic growth and development in general. Latin America was a region highly influenced by the United States until the end of the 1990s. International financial institutions such as the International Monetary Fund and the World Bank as well as regional institutions like the Inter-American Development Bank played a very relevant role in the region in the same period. To illustrate, Latin America has been the most important client of the World Bank for its Law and Judicial program where the institution allocated 30% of the funds committed to the theme between 1987 and 2011 in comparison to 25% in Europe and Central Asia and 20% in Africa.

The original Law and Development movement was built on Max Weber’s work. For Weber, one of the factors that supported the successful industrialisation of Europe and the modernisation of its economy was the rational legal system adopted across that continent. For a rational legal system, Weber understood a system that was governed by formal law (legislation) where disputes were adjudicated by professional courts and well-educated lawyers constructed a bridge between the system and common people.

During the initial Law and Development wave emerged the original developmental state is Latin America in which the government assumed the control of the economy, designing and implementing industrial policy. The main objective of the policy was to nurture and protect domestic industries. It was the time of the import-substitution policies and the state enacted a complex network of laws and regulations to restrict

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5 Weber conceded that England was an exception of a country that achieved development without a rational legal system.
foreign investment, provide incentives for local industries and protect domestic enterprises from external competition.

The second moment of law and development came in the 1980s influenced by what is known as the Washington Consensus, an agenda inspired by neoliberal principles that sought to open goods and financial service markets to foreign investors and the dismantling of the developmental state. At this time, international actors stressed the importance of institutions for markets, including ‘good governance’ and ‘the rule of law’.⁶ Thus, law was used to reduce the role of the state in the economy and for example privatise state-owned enterprises while strengthening the regulatory and supervisory role of the state.

Late in the 1990s due to the failure of the neo-liberal agenda to deliver tangible results, experts started to look at what was called the comprehensive development framework that looks at development in a more holistic way.⁷ This framework brought the state back into the development equation and recognises that it plays a key role in achieving development goals. Under this model the law was used to lay the basis for good and clean governments. It was thought that better governments and institutional foundations would promote a market that was conducive to progress. At the same time, it was thought that good government couldn’t exit without democratic institutions. So, reforms were oriented to strengthening the rule of law that protects private rights as well as other human rights such as free speech, woman rights and secret and free vote (see Table 1).

It is in this third moment when Luis Inacio Lula da Silva is elected president in Brazil. According to Trubek and Santos, it is in this stage that started emerging a new developmentalism in Brazil. As it will be explained later, I agree with Trubek that Brazil has adopted a developmental state approach since the election of Lula but it is not clear whether it is accurate to label the approach as ‘new’. To confirm whether a

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⁶ See e.g., the Declaration issued by the IMF Interim Committee during the Fifty-First Annual Meeting of the International Monetary Fund (IMF) Board of Governors in 1996, that claimed as one of the goals to encourage sustainable global growth the promotion of ‘good governance in all its aspects, including by ensuring the rule of law, improving the efficiency and accountability of the public sector, and tackling corruption, as essential elements of a framework within which economies can prosper.’ IMF, *Summary Proceedings of the Fifty-First Annual Meeting of the Board of Governors* (1996) IMF.

new developmentalism is emerging in Brazil, it is necessary to first understand what a developmental state model is, how it works; and then, reviews the features of the model that has been applied recently in Brazil to decide whether it is a new approach that differs from old models.

Table 1. Law and Development Movements

<table>
<thead>
<tr>
<th>Movement</th>
<th>Features</th>
<th>Role of Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st movement</td>
<td>Modernisation theory, Developmental state, Import-substitution policies, Protection of domestic industries, Development understood in terms of economic growth, Original developmental state in Latin America</td>
<td>A rational legal system is essential to achieve development (Weber), Instrument of social change, Legal framework supported role of the state in the economy</td>
</tr>
<tr>
<td>2nd movement</td>
<td>Neoliberalism, Washington Consensus, ‘Institutions matter for development’, IMF and World Bank programs, Reduction of the state role in the economy, Development understood in terms of economic growth</td>
<td>Instrument of social change, Law contributed reducing the role of the state in the economy, Rule of law and good governance essential to protect investors and business people, Reform of business law to liberalise markets and trade, Privatisations</td>
</tr>
<tr>
<td>3rd movement</td>
<td>Comprehensive development approach, Development is not only about economic growth but also standard of living of people, New developmentalism</td>
<td>Law is not only an instrument to achieve policy goals but also is a goal itself, Rule of law should protect investors and businesses and well as human rights</td>
</tr>
</tbody>
</table>

The Japanese Developmental State

As it has been explained by Chalmers Johnson who undertook comprehensive studies of Japan industrialisation process, in a developmental state model, the state itself leads the process of industrialisation and development setting social and economic goals. The Japanese model was not a socialist developmental state or a communist state. In spite of being market oriented, it could not be classified as a pure capitalist model because the state using different tools directed the economy towards the achievement of a set of goals defined by the government.

One of the first feature of the Japanese developmental state was the use of Industrial policies to allocate productive resources rather than relying solely on the

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market. The state targeted specific industrial sectors, sometimes playing a key leadership role in prospecting potentially lucrative sectors and at other times playing a followership role in industrial sector in strengthening pre-existing private sector initiatives. This approach differs from the classic model adopted in Latin America that was basically driven by the state to protect domestic industries against foreign competition.

The Japanese model was managed by a professional bureaucracy. The Ministry of International Trade and Industry (MITI) and the Ministry Finance were the forces behind the successful implementation of economic and industrial policies. These departments recruited the brightest minds highly capable of policymaking, implementation, and policy monitoring and enforcement. Most professionals were recruited from the best Japanese universities. The highest positions in these ministries were prestigious in the society. A well-educated bureaucracy was essential for the success of the model.

Strong government-business collaboration was also a key element for the success of the developmental state in Japan. As referred by Peter Evans, the bureaucracy was not isolated from society but there were formal and informal mechanisms that facilitated the communication between the state and the private sector. Thus, the state promotes a collective project that was also assumed or supported by private companies. The public and private sectors collaborate to meet development goals defined by the government.

In the case of the role played by law in the development of Japan, most scholars agree that law as understood in the West was not a primary factor behind the Japanese successful development. On the contrary, the state used a kind of ‘soft law’ known as “administrative guidance”. This was like recommendations or not

10 Ibid, 21-22.
binding-advices used by the bureaucracy to direct the economy and the industrial sector. It was far from what we know as the rule of law. This discretionary powers enjoyed by the bureaucracy was unsupervised and sometimes it wasn’t able to be judicially challenged.

**Brazil and the New Developmental State**

Brazil’s democracy is young and it was born in 1985 when the last military regime ended; however, it was in 1990 when the first president elected by direct popular vote took office Fernando Collor de Mello, after the passing of a new Constitution in 1988. Collor de Mello and his successor Fernando Henrique Cardozo implemented neo-liberal economic and legal reforms inspired by the Washington Consensus. Between 1990 and 2001, the country suffered one economical and financial crisis after another and the country entered into five Stand-By Arrangements with the International Monetary Fund (IMF) during that period.

The political and economic environment started changing with the election of Luis Inacio Lula da Silva in 2002. Lula was not a fan of the IMF. He was a union leader who opposed IMF programs in Brazil. Prior to the 2002 elections when he was elected, the IMF convinced the outgoing government to sign an agreement in which any new government would be committed to continue working with the macroeconomic policies implemented by Brazil in coordination with the IMF since the 1990s. The idea was to reduce ‘fears’ of investors about the political future of the country and guarantee that if Lula won the elections, he would continue applying the same neo-liberal policies.

Lula’s government was clear that neoliberal ideas would not work by themselves in Brazil and it was necessary the state intervention to overcome structural obstacles to growth. It is from this point that Brazil started to follow its own path to development and what they have called new developmentalism or state activism.

After taking office, Lula was pragmatic and did not depart suddenly from the IMF tutelage and indeed he agreed to enter into a new Stand-by Arrangement in 2003; however, this new agreement made clear that the goal of the government was not only to strengthen macroeconomic stability and accelerate economic growth but also improve social condition. To achieve the social goal, the government launched a
transitory program called Zero Hunger. Two years later, in 2005, Brazil fully paid its debt with the IMF. Lula knew it was necessary to totally repay the IMF debt to regain autonomy in the design and implementation of public policies.

Lula and his advisors designed the new approach using as basis some of the policies of the predecessor presidents. For Lula’s government was important to maintain monetary stability and kept policies such as control of the inflation, openness of markets to foreign investors and independence of the central bank.

The second features of the new developmentalism is the reintroduction of industrial policy in 2004, the Industrial Technological and Foreign Trade Policy designed to foster selected domestic industries (e.g. semiconductors, software and medicines); and encourage innovation. The policy was later replaced in 2008 by the Program for Productive Development that sought to increase efficiency of the economy and promote specific industrial sectors such as aviation, mining, steel, oil and gas. The policy also targets education, increase investment in research and strengthen the legal framework for business and investment.

The most recent plan is the Greater Brazil launched in 2011 by president; Dilma Rouseff. This plan seeks to improve local industry competitiveness to sustain growth and job creation. Some critics argue that it is not a real industrial plan but a set of tax and trade-related measures offered to the local industry as a short-term relief from foreign competition (subsidies).

The design and implementation of industrial policies has been seen as a positive step by the Brazilian private sector that has been closely working with the government in the definition of these policies in informal setting as well as in various councils created by the state. The government didn’t renationalise private industries like the cases of Venezuela, Ecuador, Bolivia and Argentina. However, it has been reported that 72% of Brazilian companies had no knowledge of the Greater Brazil Plan.

14 For a more comprehensive accounts of the policies implemented in Brazil see, David Trubek, Diogo Coutinho and Mario Schapiro, ‘New State Activism in Brazil and the Challenge for Law’ in David Trubek, Helena Alviar Garcia, Diogo Coutinho and Alvaro Santos (eds), Law and the New Developmental State, The Brazilian Experience in Latin American Context (Cambridge University Press, 2013) 28.

The government also worked on improving the quality of the public service hiring people with technical expertise rather than political connections in order to professionalise the state’s bureaucracy.

One of the features of the new developmentalism that is perhaps real new and different from the classic developmental state is the importance places by Brazilian governments on a social agenda since 2003. A set of programs have targeted reduction of poverty, inequalities and the reinsertion of people that have been excluded from the formal economic system.

Bolsa Familia the flag social program could be considered as an equivalent of the Australian Family tax benefits which are novel for a Latin America country. BFP is a conditional cash transfer that benefits people who are considered extremely poor (a monthly income of less than $ 75, the minimum wage is Brazil is $ 300 per month). The payment is between $ 41 and 82 depending of several variables. For example a person who has a monthly income of $ 50 will received a basis fixed payment ($40) plus other payments depending of the number of teenagers in the family attending school and the number of other children. The main idea is that the family reaches a per capita monthly income of $41. To receive payments, people must meet certain health and education requirements such as children must commit to a vaccination schedule and medical monitoring of the growth of the children under 7 year of age, pregnant and breastfeeding women should have prenatal checks or regular medical check. In the case of education children and teenagers must be enrolled in the school and have at least 75% of class attendance.

Social legal scholars who have recently studied the economic success of Brazil have place great importance on the 1988 Constitution that have contributed to improve state capacity and provide the basis for the state activism; however, it is unclear how the new constitution have positively affected the development process. If experts can draw a clear link between both factors, this is, between the successful development record and the 1988 Constitution, Brazil will then differ from nations such as Venezuela and Bolivia that have adopted new Charters that have been built based

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16 See Trubek, Coutinho and Schapiro, above n 13.

on an humanistic approach to development but they both have failed to delivered more positive results in term of social, political and economic development.

Another legal aspect that has been identified as a contributor of the success of the new developmentalism in Brazil is the use of a ‘flexible’ approach to law. Under this conception, law is not seemed as an immovable instrument with lack of capacity to react to new challenges but it is a tool that provides flexibility for experimentation and collaboration. For example, Trubek, mentions a few examples such as partnership agreements with academic institutions where the government provides grants to develop new products, and the loan contracts drafted and signed by the Brazil Development Bank (BNDES) that include non-binding performing criteria, staged disbursement and constant monitoring of BNDES through shared governance mechanisms. The author of this paper does not see the novelty in these instruments of law and it reminds the flexibility granted by Japanese law to the professional bureaucracy to interpret and enforce law using administrative guidance.

Another legal aspect mentioned by the advocates of the new developmentalism is the way how Brazil has learned to use the mechanisms of international law, particularly the World Trade Organisation’s (WTO) mechanisms for the solution of trade disputes. The WTO is a child of the Washington Consensus. According to most of the agreements completed within the WTO, developing countries that joined the Organisations had extended transitional periods to implement the WTO provisions but they became enforceable after 2000 (except for least developed countries). Thus, these mechanisms rather than new were created at least ten years earlier and they are more a tool of neoliberalism. What it is true is that Brazil has been active in the WTO and has filed 26 cases and has acted as a third party in other 77 cases while it has been the respondent in 14 cases.

The influence of Brazil in other international forums has also grown particularly since it started joining forces with India, China, Russia and South Africa. At home, a combination of high inflation, a spurt in violence crime, poor public services and increase of public spending due to the Confederation Cup and the organisation of the World Cup in 2014 contributed to massive street protests in the biggest cities.
Conclusions

Some experts have argued that a new developmental state model is rising in Latin America, particularly in Brazil. Whilst a few components of the approach could be labelled ‘new’, other features such as an industrial policy, state and private sector collaboration, professional bureaucracy and ‘flexible’ law resemble the key elements of the Japanese developmental state as described by Chalmers Johnson in 1983. It is essential to undertake further comparative research to study in more detail the Brazilian model to arrive to more conclusive findings and decide whether a truly new model has been adopted.