Revista Direito e Praxis

[Dossier: Law and Political Economy in Latin America]

Legal-Political Institutionalization of Neoliberalism: The 'Declaration of Economic Freedom Rights' as a Case of 'Neoliberal Polity' in Brazil

Institucionalização Jurídico-Política do Neoliberalismo: A Declaração de Direitos da Liberdade Econômica como um caso de "neoliberal polity" no Brasil

Luiz Cláudio Pimenta Filho[1]

[1] Fundação Getúlio Vargas, São Paulo, São Paulo, Brasil. E-mail: luizpimentaf@gmail.com. ORCID: https://orcid.org/0000-0002-5165-6232.

Article received on 18/12/2024 and accepted on 09/05/2025.

Abstract

The criticism of the adoption of neoliberal ideas of "market supremacy" by law has been gaining traction in the literature, and in response, there has been a growing recognition of the need to reintegrate "political economy" into legal analysis. This article suggests that this literature, traditionally focused on neoliberal "policies," would benefit from incorporating the study of neoliberal "polities": the forms of policy deliberation and conflict resolution. As an example, I examine Brazil's Declaration of Economic Freedom Rights (DEFR) and its potential for institutional change, not through immediate material policies, but by altering the "rules of the game" (and the ideas that inform them). I discuss three aspects of the DEFR: its impact on litigation through new pro-market forms of contestation; its use as inspiration for the creation of similar norms; and the transformation in legal education and legal reasoning. Through these points, I aim to contribute to analyses grounded in political economy in law, revealing the long-term potential for institutional change of laws like the DEFR.

Keywords: Law and Political Economy; Neoliberalism; Institutionalism; Economic Freedom Law; Declaration of Economic Freedom Rights.

Resumo

A crítica à adoção pelo Direito de ideias neoliberais de “supremacia de mercado” vem ganhando espaço na literatura e, em resposta, também ganha espaço o diagnóstico da necessidade da retomada da “economia política” pelo Direito. Neste artigo proponho que esta literatura, tradicionalmente focada em “policys” neoliberais, tem a ganhar com análises que incorporem o estudo de “polities” neoliberais: as formas de deliberação de políticas e conflitos. Como exemplo, examino o caso da Declaração de Direitos da Liberdade Econômica (DDLE) no Brasil e seu potencial de mudança institucional, não por meio de políticas materiais imediatas, mas pela alteração das “regras do jogo” (e das ideias que as informam). Discuto três pontos da DDLE: impacto nos litígios, através de novas formas de contestação pró-mercado; uso como inspiração na criação de normas similares; e transformação do ensino jurídico e raciocínio legal. Por meio destes pretendo contribuir para análises fundamentadas na economia política no Direito e que podem revelar o potencial de mudança institucional a longo prazo de leis como a DDLE.

Palavras-chave: Direito e Economia Política; Neoliberalismo; Institucionalismo; Lei de Liberdade Econômica; Declaração de Direitos da Liberdade Econômica.

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

1. Introduction

What is the role of Law in creating and worsening (economic and social) inequality? Although a hard question to answer, it has motivated an intriguing body of literature that seeks to explain how Law establishes and operates mechanisms that contribute to the distribution of resources under capitalism, as well as to understand the political allocations made by the institutions responsible for this distribution.

In this article, I aim to connect the literature of the "Law and Political Economy" (LPE) movement, which endeavors to reestablish a dialogue between Law and Political Economy in a new avenue of academic research and political action, with studies on neoliberalism, particularly those that highlight the importance of changes in the "rules of the game" that have long-term effects, rather than immediate material changes.

Frequently, academic studies in Brazil about Law's role in these topics are, understandably, focused on matters producing immediate material changes, such as the Labor Reform, and on austerity measures, such as the Spending Cap and the Pension Reform. A search of scholarly output in academic journals, through the database made available by the Coordination for the Improvement of Higher Education Personnel (CAPES) concerning members of graduate programs in Law in Brazil for the period from 2019 to 2023[1], shows a total of 415 publications on the first topic[2], plus 34 on the second[3], and 67 on the third[4], amounting to 516 publications overall.

However, as identified in the literature on neoliberalism covered in this article, changes in what we generally recognize in Law as the "rules of the game", in other words, the institutions that will deliberate in the future on conflicts and resource distributions through economic policies, are also critical.

In this article, I argue that the transformation brought about by the Declaration of Economic Freedom Rights (DEFR) (Declaração de Direitos da Liberdade Econômica – DDLE) is of this second type, having received less attention from Brazilian legal thought. By way of illustration, using the same metric mentioned earlier, it was possible to find only 98 articles

[1] Coordenação de Aperfeiçoamento de Pessoal de Nível Superior. Dados Abertos CAPES - Avaliação da Pós-Graduação Stricto Sensu. Avaible in: <https://dadosabertos.capes.gov.br/organization/diretoria-de-avaliacao>. Acessed in: 17 jul. 2024

[2] The following terms were used, in Portuguese: "Labor Reform" e "Labor Protection".

[3] The following terms were used, in Portuguese: "Spending Cap", "Amendment 95", "Austerity" e "Fiscal Adjustment".

[4] The following terms were used, in Portuguese: "Pension Reform" e "Amendment 103".

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

on this subject during the period surveyed (against 516 on the previous subjects)[5], indicating a significant disparity (albeit based on a limited data set).

To this end, I draw on Madariaga's (2020a) conceptual categories, which distinguish "*neoliberal politics*" (that is, neoliberal economic policies) *from "neoliberal polities" ("institutions of democratic organization that enable and constrain the kinds of [economic] policies that can be pursued*" (MADARIAGA, 2020a, p. 12).

Accordingly, this article has a twofold goal: first, to offer a critical perspective on the DEFR based on concepts and tools provided by the LPE literature and studies of neoliberalism; and second, drawing on that critique and on empirical data about the DEFR's effects, to demonstrate that its potential to bring about institutional change deserves greater attention.

The article is organized into the following sections: (i) a brief introduction to the LPE movement and its dialogue with the literature on neoliberalism; (ii) a presentation of the framework adopted throughout, offering a more detailed account of the conceptual distinction between "neoliberal politics" and "neoliberal polities" and their intellectual origins; (iii) a critical examination of the DEFR, discussing its early path as the so-called "Economic Freedom Law" until its eventual approval in the form of a different Provisional Measure, with attention to the discursive and ideological elements in the explanatory memoranda as well as the law's final normative content; (iv) a direct look at how the DEFR brings about shifts within the "polity," both through legal education and reasoning, as well as through legislation it has inspired and by creating new avenues for litigation, drawing on empirical data where available; and (v) a concluding section, highlighting aspects of long-term institutional change overshadowed by the short-term material changes emphasized in Brazilian academic debate.

2. LPE and studies about neoliberalism

> We live in a time of rolling political, economic, social, and ecological crises. (…) legal discourse has helped consolidate these problems by serving as a powerful authorizing terrain for a set of "neoliberal" political projects that have fueled these same crises. (BRITTON-PURDY, J. et al., p. 1784)

[5] The following term was used, in Portuguese: "Economic Freedom".

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

This is how the authors of “Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis,” begin their text, considered to be the foundational academic[6] text of the Law and Political Economy (LPE) movement.

The authors' starting point is not an abstract theoretical discomfort internal to academia or law, but several material crises and the role of law in creating or worsening these. For the authors, the ideology of "market supremacy" is the central element that law incorporates and reproduces, legitimizing and enabling neoliberal political projects that contribute to these crises.

By reclaiming the historical sense of political economy as one that " investigates the relation of politics to the economy, understanding that the economy is always already political in both its origins and its consequences" (BRITTON-PURDY, J. et al., p. 1784), the authors seek to oppose the “twentieth-century consensus” of market supremacy by creating:

> a legal imaginary of democratic political economy, that takes seriously underlying concepts of power, equality, and democracy, can inform a wave of legal thought whose critique and policy imagination can amplify and accelerate these movements for structural reform—and, if we are lucky, help remake our polity in more deeply democratic ways. (BRITTON-PURDY, J. et al., p. 1835)

The full characterization of the movement, which has taken root in academia worldwide[7], and its exact repercussions and criticisms received (as in HURWITZ, 2022), is not the scope of this article. Instead, it seeks to engage with the intellectual contributions of scholars connected (directly or indirectly) to the movement to investigate the possible contribution of law to implementing and deepening neoliberalism, specifically from a Brazilian case: the promulgation of the Declaration of Economic Freedoms Rights (DEFR).

The foundational LPE text offers an interesting argument: law's incorporation of the ideology of "market supremacy," subordinating the political to the economic and its reproduction, would be the decisive factor in law's contribution to political, economic, social,

[6] The qualification of "academic text" is made because the movement's organization predates the publication of the text. A manifesto of the movement, laying the intellectual groundwork for much of what is discussed in the foundational 2020 text, was published in 2017 under the title "LPE – Towards a Manifesto" (https://lpeproject.org/lpe-manifesto).

[7] Among the main expressions of this global rooting, it is possible to highlight the creation of a collaborative research network within the Law and Society Research (CRN55 – Law and Political Economy) (https://www.lawandsociety.org/crn55), responsible for organizing an LPE workshop in Latin America in partnership with the University of São Paulo and FGV Law School; the creation of a European chapter of the movement (https://lpeineurope.org); the establishment of a study group on the subject at Gujarat University in India (https://lpeproject.org/student-groups/gujarat-national-law-university); and the creation of a global academic journal dedicated to the topic, the Law and Political Economy Journal (https://escholarship.org/uc/lawandpoliticaleconomy).

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

and ecological crises. Three ideas, originating in the intellectual movement "Law and Economics" (known in Brazil as “Direito e Economia” or “Análise Econômica do Direito”) became hegemonic in law: efficiency, neutrality, and antipolitics (BRITTON-PURDY, J. et al., p. 1832).

According to the author’s characterization, the first idea and primary as a premise, efficiency, elevates wealth maximization as the main decision-making criterion. This maximization would be achieved by the market, following simple logic: since each individual assigns value to what they own, a perfect market would allow free exchanges among individuals for maximum satisfaction for all. With money as the best (or only) expression of assigned values, law's role would be to approximate reality to a perfect market as closely as possible (BRITTON-PURDY, J. et al., p. 1797).

This emphasis on efficiency results in a powerful legitimizing argument for "Law and Economics", in the reading proposed by Britton-Purdy et. al.: since the goal is only to ensure voluntary exchanges, that would generate a wealth-maximizing equilibrium outcome, the theory is politically "neutral" and not politically normative. Decisions can either be correct, maximizing wealth, or incorrect, allocating resources unjustly.

The other two important concepts, externalities and transaction costs, would connect the core of neoclassical economic analysis to problems traditionally addressed by law. Externalities, or effects not priced by markets, exemplify "market failures," while transaction costs explain hierarchical organizations instead of market bargaining to satisfy all needs (BRITTON-PURDY, J. et al., p. 1799).

These other two theories contribute to Law and Economics’ second strong argument, in this reading, regarding neutrality: its ability to analyze and intervene in reality. By providing sophisticated explanations for encountered problems and correction techniques, the theory would merely be a pragmatic, effective tool. Conversely, politics would be the realm of ideologically based resource allocation without "technical" correctness, thus ineffective.

Ultimately, the market is seen as the only institution truly capable of fairness by respecting individual wills and capabilities. Furthermore, the market is inevitable: incorrect resource distributions tend to revert to a neutral, wealth-maximizing equilibrium (BRITTON-PURDY, J. et al., p. 1800).

This idea generates profound pessimism about the state's role, resulting in antipolitics. At best, the state becomes inefficient, misallocating resources destined to

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

naturally flow toward equilibrium; at worst, unjust, artificially inflating resource values and preventing wealth maximization.

This pessimism intensifies with public choice theories (with similar, but not identical intellectual roots to “Law and Economics”) that emphasize the state as an arena of rent-seeking par excellence. Capture by interest groups renders the state especially incapable of just or efficient resource distribution. If the state is ideally the agent by which democratically selected policies are executed, but it is captured, there is a pessimism about politics itself (aggravated by other factors).

Similarly, the emphasis on cost-benefit analyses as state action legitimators deepens submission to efficiency logic and democracy devaluation. State action can only base itself on political values and decisions to the extent they can be filtered and executed by technocracy, armed with efficiency tools. Thus, little or no space remains for politics in state actions, always guided by market logic (BRITTON-PURDY, J. et al., p. 1811). True democracy can only be the market.

The presented version of "Law and Economics" and public choice theories is undoubtedly extremely simplified, failing to account for the multiplicity of internal divergences and exaggerating their propositions. However, as discussed throughout the text by Britton-Purdy et al., it is possible to trace a series of changes in legal thought and practice stemming from these basic proposals.

Building upon this "synthesis" of twentieth-century American legal thought, the authors relate various contemporary social issues caused by neoliberalism (with special attention to inequalities, including gender, ethnicity, race, and especially economic inequality) and the role of law in structuring and legitimizing the form of capitalism that enables these problems.

Although this argument provides an extremely interesting analytical perspective on law broadly, the authors' focus on American legal thought (particularly on the predominance of the "Law and Economics" movement within it) and the social context in which it exists necessitates contextualizing these reflections to operationalize them in other realities, such as the Brazilian context.

In parallel, a diverse and extensive literature has critically discussed the phenomenon of neoliberalism long before the LPE movement (CROUCH, 2011; SLOBODIAN, 2018; MIROWSKI, 2009), including from a Brazilian perspective (SAAD-FILHO, MORAIS, 2018). The

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

term neoliberalism is notoriously polysemic, frequently cited, and poorly defined (MADARIAGA, 2020b, p. 5), a consequence of its study through various schools of thought with sometimes incompatible epistemological and methodological assumptions, such as the discursive institutionalism, historical institutionalism, and critical international political economy (MADARIAGA, 2020b, p. 7).

Precisely defining neoliberalism in all its contradictions and complexities is beyond the objectives of this article. Following the proposed dialogue with LPE literature and its identification of "market supremacy," it is sufficient for this article's purposes to define neoliberal policies based on the minimal consensus found in the literature: implementing policies aimed at constructing a "freer" market, premised on the idea of the market as the natural, inevitable, and ideal form of resource distribution (MIROWSKI, 2009, pp. 434 - 440).

Other authors also highlight the idea of an "encasement" of markets from society, isolating them from demands for resource redistribution and social justice (SLOBODIAN, 2018). There are still others who emphasize the phenomenon of "economization," that is, the colonization of all areas of life by the particular logic of markets (again, naturalizing their forms of reasoning and universalizing them) (BROWN, 2015, DARDOT and LAVAL, 2016). These ideas are mobilized through law or deeply interact with legal institutions, demanding attention from jurists.

In short, the minimal consensus allows neoliberalism to be defined as an: "*ideology and a political practice that aim to subordinate the state and all social domains to the market—to its logic and to the economic powers within it—thereby undermining democracy (...)*" (LARUFFA, 2024, p. 1) [8].

The idea of Law driven by efficiency, neutrality, and anti-politics, as previously described by Britton-Purdy et al., seems sufficiently aligned with this minimal yet broad description of neoliberalism to establish a dialogue between these literatures[9].

However, it is necessary to establish more detailed conceptual bases to understand the role of Law in the neoliberal project.

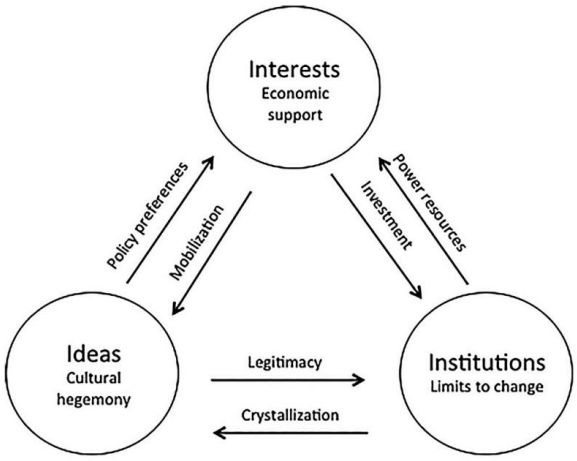
A good starting point is the classic three "I"s of institutional studies: ideas, institutions, and interests (HALL, 1997; HAY, 2004). Building upon a proposal of

[8] The author thanks the reviewer for the comments on this topic, concerning the lowest common denominator of neoliberalism, and for the literature provided.
[9] In addition, BRITTON PURDY ET AL. (2019) frequently refer to "market supremacy" as a "neoliberal project." This characterization is also made in other articles associated with the LPE movement, such as HARRIS (2020).

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

complementarity among the three, Madariaga (inspired by GERSCHEWSKI, 2013) proposes the sustaining pillars of neoliberalism's "market supremacy," in permanent interaction: business interests, economic ideas, and political institutions.

Figure 1. – The three pillars of neoliberalism



Fonte: MADARIAGA, 2020b, p. 7

It is from this premise of complementarity among the three main explanatory elements of neoliberalism that two points of interaction can be drawn between the neoliberalism literature and that of the LPE movement.

The first is the need to adopt a critical gaze toward law and to regard the resource and interest allocations produced by legal norms as political objects rather than neutral or natural facts. Recognizing the political character of the inequalities generated by the market, in opposition to naturalizing them as the outcome of a neutral markets, demands knowing the specific mechanisms through which they operate.

If we accept that law is constitutive of markets (VOGEL, 2018; MOUALLEM & COUTINHO, 2021) and of capital's very value (PISTOR, 2021), economic interests are inextricably bound up with law.

The second point, perhaps less obvious, is the need to attend to the other two pillars: ideas and institutions. Interests alone are an insufficient explanation for the endurance of neoliberalism, and the study of law better illuminates how institutions are designed to favor market interests (and how legal ideas, often inspired by economic or political ideas, inform the shape and design and operation of those institutions).

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

Others in the Brazilian legal scholarship have sought to foster dialogue with institutionalist literature. More generally, one may note authors such as Coutinho (2017), who broadly outlines the possibilities of this research agenda. There are also more specific studies on the institutional aspects of neoliberalism in Brazilian law (such as MIOLA, 2016), as well as studies that examine the relations between neoliberalism and a possible Brazilian developmental state (SCHAPIRO, 2018; TRUBEK, COUTINHO & SCHAPIRO, 2011).

It is from this dialogue—between institutional-focused studies of neoliberalism and the LPE literature—that I propose to analyze the DEFR from a critical perspective, seeking to illustrate its still-underexplored potential for institutional change.

The DEFR, discussed in detail in Section 3, has had little direct interaction with the most visible facet of neoliberalism—interests—because it did not implement economic policy with immediate redistributive effects.

On the other hand, there are good reasons to see the DEFR as exerting effects on institutions, by introducing possible new forms of litigation, and on ideas, through a potential transformation in judicial reasoning and legal education.

To better understand these possible effects of the DEFR, it is useful to draw on Madariaga's (2020a, 2020b) distinction between "neoliberal policies" and "neoliberal polities," presented in the following section.

3. Framework: Neoliberal policies vs Neoliberal polities

In his discussion of neoliberalism's resilience, Madariaga (2020a, 2020b) emphasizes an important distinction for understanding the phenomenon, despite its frequent crises, that between "neoliberal policies" and "neoliberal polities."

Neoliberal policies comprise all measures that materially channel resources to economic power or suppress the redistribution of resources to society, forming part of neoliberalism's economic programme. These policies may be discursively framed as a mere liberalization of capital flows and presented as distribution-neutral. Classic examples include tax cuts, fiscal-austerity programmes and labour-market reforms.

By contrast, "neoliberal polities" are the institutional features that permit or encourage the adoption of neoliberal economic policies. Delegating authority over economic

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

decisions to unelected bureaucratic bodies, such as independent regulatory agencies[10] or independent central banks (MADARIAGA 2020b, pp. 14, 47), can be thought as an example of distancing the polity from popular democratic power.

Shifting deliberation on state action, especially in the economic sphere, away from popular politics aligns with authors classically associated with the neoliberal movement. James Buchanan held that a good society based on a free market could never be secure in the hands of self-interested politicians (MADARIAGA 2020b, p. 35).

The only way to ensure this objective was by "*redesigning states, laws, and other institutions to protect the market*" (SLOBODIAN 2018, p. 6) and by "*increasing the veto power of the proprietor minority, decreasing the influence of electoral majorities, and constraining policymaking through the establishment of rules binding authorities*" (MADARIAGA 2020b, p. 36).

These neoliberal transformations of the polity can be carried out through law and allow neoliberalism to be implemented and persist over time by "biasing the representation of actors supporting and opposing it, empowering veto players to block policy changes, or inducing policy convergence through pragmatic accommodation" (MADARIAGA 2020a, p. 4).

In synthesis, as Schmitter and O'Donnell describe, the struggle among actors over institutions, in relation to their interests, has a dual character:

> actors struggle not just to satisfy their immediate interests and/ or the interests of those whom they purport to represent, but also to define rules and procedures whose configuration will determine likely winners and losers in the future. (O'DONNELL, SCHMITTER, 1986, p. 4-6).

However, as Madariaga points out, when we deal with institutions we cannot forgo a debate on the role of ideas within them. Attention to the role of ideas in institutions, though faintly present in every school of thought, became more prominent in the 1990s with the so-called "ideational turn," also known as "constructivism" in political science (PERISSINOTTO; STUMM, 2017).

One of the chief findings of this literature is the recognition that the interests of individuals and collectives are not intrinsic to actors' material conditions but are, in part,

[10] The characterization of the creation of regulatory agencies as a neoliberal policy is not consensual in the literature, as it expands the size of the State and its theoretical interference in the economy. However, I choose to include them here due to their transformative role in the sphere of political deliberation over the economy. Additionally, this characterization is common in the Brazilian context. In this regard, see MIOLA, COUTINHO, 2023, pp. 192–195.

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

contingently shaped by ideas and values. Likewise, these actors' actions are not purely materially determined; they are strategically guided by ideological notions such as legitimacy and effectiveness.

This means that grasping the phenomenon of neoliberalism, and its transformations of the polity that aim to deepen and sustain it, also requires understanding the ideas that underpin the institutions that insulate the market from democracy. It is in these two respects, the direct changes to the rules and the introduction of ideas that sustain those changes, that the DDLE marks a neoliberal-type shift in the polity. The next section revisits the law's history, highlighting its ideational and institutional aspects.

4. The 'Declaration of Economic Freedom Rights'

The Declaration of Economic Freedom Rights, enacted in 2019, is described as "*ultraliberal*," the product of a "*particularly radical liberal thought*" (MIOLA; COUTINHO, 2023, p. 191, translated from the original). The critique raised by these authors, one of the most thorough sociolegal critiques of the DDLE to date and which serves as basis for this article's reflections, focuses on the relationship between the neoliberal nature of the law and the authoritarianism in force at the time of its approval.

However, it is worth commenting briefly on the DDLE's "original" version, the National Economic Freedom Law (Lei Nacional da Liberdade Econômica), put forward by a group of administrative-law academics and professionals[11], connected to the Brazilian Society of Public Law (Sociedade Brasileira de Direito Público), as the outcome of debates and studies carried out between 2018 and 2019 (SUNDFELD et al., 2019).

A first point to note is that from its conception onward, the law aimed to be a "general law." In the "academic proposal" presented by the authors, they highlight that other "constitutional values" (set out in Article 170 of the Brazilian Constitution) such as the protection of labor, consumer rights, and the environment have each had dedicated general laws ensuring their protection, whereas "economic freedom" has not. The bill sought to close this supposed gap by establishing a "*law of introduction to economic law*" akin to the Law of

[11] Namely, Carlos Ari Sundfeld (FGV-SP, coordinator), Eduardo Jordão (FGV-RJ), Egon Bockmann Moreira (UFPR), Floriano Azevedo Marques Neto (USP), Gustavo Binenbojm (UERJ), Jacintho Arruda Câmara (PUC-SP), José Vicente Santos de Mendonça (UERJ) and Marçal Justen Filho (ex-UFPR)

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

Introduction to the Rules of Brazilian Law (Lei de Introdução às Normas do Direito Brasileiro), yet with the goal of shaping interpretations "*on law in the economic realm*" (SUNDFELD et al., 2019, p. 9, translated from the original).

In the end, the broad scope envisioned by the drafters of the original National Economic Freedom Law was in part retained in the DEFR, while its focus moved away from "*general rules for drafting, interpreting, and applying economic law*," as proposed in the earlier version (SUNDFELD et al., 2019, p. 14, translated from the original), towards a more individualized "Bill of Rights", broader in reach and with a stronger symbolic character.

The most innovative aspect of the Law was the periodic and systematic review of State economic regulations. (SUNDFELD, C. et. al., 2019, p. 7). This review, based on a framework of permanent cost-benefit analyses, would make the measure closely resemble the characteristics criticized by Britton-Purdy et al.: the triad of efficiency, neutrality, and antipolitics.

Such a review would operate on a cognitive level by sending the message that, a priori, policies are "*of questionable effectiveness*," hindering "*entrepreneurship, innovation, free competition, and gains in productivity*" and even creating "*opportunities for unlawful acts*" (SUNDFELD et al., 2019, p. 7, translated from the original). On a more institutional level, this rule would be manifested in automatic sunset clauses for any regulatory requirements not renewed after 10 years, after going through cost-benefit review.

Although adopting measures for periodically renewing regulatory policies and conducting regulatory impact analyses could be beneficial, the material and symbolic costs to the State in exercising its regulatory power must also be assessed. The demand for cost-benefit analysis, explicitly cited in the bill's "Explanatory Memorandum" (Exposição de Motivos, in the original) by referencing Ronald Reagan's Executive Order 12,291[12], has been viewed in the literature as problematic, in the manner noted by Britton-Purdy et al. and by authors such as Mark Blyth (who directly addresses the original American executive order):

> Among the first actions of the incoming administration was the decision under Executive Order 12291 to subject all new regulatory proposals to cost/benefit analysis.134 While seemingly neutral, cost/benefit analysis is in fact a very biased standard to apply since costs and benefits are only meaningfully measured relative to their distributional consequences, with such consequences generally being ignored in the calculus. Given this, the moral claim that polluters should

[12] Executive Order 12,291/81 marked a significant shift in the logic of American regulation by introducing cost-benefit analysis as a central requirement for regulatory review, altering the philosophy of governmental intervention towards a more restrained approach, thus allowing for "regulatory relief". In this regard, see BERMAN, 2022.

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

> pay because they do the polluting becomes untenable since there is no room within such a calculus for an external normative standard.135 Therefore, employing cost/benefit analysis naturally lends itself to market alternatives to formal regulatory structures (…)
> (BLYTH, 2002, p. 184)

It is also important to note that even with its liberal focus, the original draft of the National Economic Freedom Law reinforced that economic freedom would not be absolute. In various parts of its "Explanatory Memorandum," the authors stressed the need for regulation, noting that it was "*vital [for] environmental balance, social cohesion (...), not just for society but also for the market*" (SUNDFELD et al., 2019, p. 5, translated from the original).

However, it is certain that a National Economic Freedom Law would be subject to criticism, especially given the Brazilian context, because of the strong influence of Economic Law and Constitutional Law in academic circles typically grounded in the Brazilian transformative constitution (VIEIRA; DIMOULIS, 2018), from which the statute may be seen as diverging or because of the political and social environment marked by severe inequality and an under-resourced state apparatus.

As Miola and Coutinho (2023) highlight, converting the legislative proceedings from a common legislative bill (Bill 4.888/2019) into an executive provisional measure (881/2019) substantially curtailed public debate. This took place under a government widely criticized for its authoritarian traits, allowing for smoother enactment of the law.

That context is significant for showing that if the proposals in the original National Economic Freedom Law were already open to criticism, the enshrinement of "market supremacy" became exponentially more pronounced under the DEFR, even though the new measure abandoned the planned periodic review of regulatory acts.

To begin, given the necessary focus on ideational and discursive contexts surrounding the law, it is useful to look at certain aspects of the Explanatory Memorandum to the Provisional Measure later turned into the DEFR, starting with its more ideological, discursive elements and then examining the law's real institutional changes.

Symbolic significance had already been present in the "academic proposal," as seen in the call to repeal Delegated Law No. 4 of 1962, which deals with "intervention in the economic domain to ensure the free distribution of essential goods for popular consumption," on the grounds that it was:

> Not only because it was a more general law. **Also for symbolic reasons.** This law was authoritarian in orientation, entirely opposed to private economic activity.

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

> Today it is an anachronism that cannot coexist with the **new age of our economy, which must be grounded in freedom and robust competition among economic agents**. (SUNDFELD, et. al, 2019, translated from the original).

This passage was reproduced almost verbatim in the Explanatory Memorandum for the DEFR:

> not just because it was a more general law, **but also for symbolic reasons.** This law was plainly opposed to private economic activity. Today it is an anachronism that cannot coexist with the **new age of our economy, which must be grounded in freedom and robust competition among economic agents**. (BRASIL, 2019b, translated from the original)

However, the difference in language usage is more perceptible in the DDLE's Explanatory Memorandum, which invokes a key aspect of the "market supremacy" ideology: neutrality. According to that memorandum, the rules proposed:

> (...) chiefly affect specific microeconomic relations whose macroeconomic effects will be especially favorable to more vulnerable populations, because of the measure's expansive impact across all sectors: **nothing was stated to privilege one sector to the detriment of another, consistent with the spirit of a true market economy.** (BRASIL, 2019b, translated from the original)

It is apparent in the Explanatory Memorandum that the law is framed by a notion of 'scientism'. Although presented very vaguely, it references international economic freedom rankings, such as those produced by the Heritage Foundation/Wall Street Journal and the Cato Institute as well as a (non-cited) study:

> A specific study, which re-examined the record of several empirical surveys conducted since the 1980s**, reconfirmed the scientific conclusion that economic freedom**, and particularly the protection of private property, is more determinative of the population's well-being than, for example, a country's regional or demographic characteristics. (BRASIL, 2019b, translated from the original)

In an excerpt that combines the law's professed neutrality with its 'scientism', the DEFR is presented as:

> (...) **scientifically necessary and urgent prerequisite** so that all the public policies for education, technology, productivity, and innovation now being pursued by the new administration may indeed have a tangible effect on the country's economic reality, or else risk benefiting only an elite. (BRASIL, 2019b) (BRASIL, 2019b, translated from the original)

Although generic references to scientific validity may look trivial, serving merely as the usual rhetorical flourish of a government pushing to pass legislation, the high degree of

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

certainty bestowed on “economic freedom” is noteworthy, certainly surpassing the level of academic consensus.

These statements highlight a key feature of “market supremacy” ideology: technocracy. By asserting that economic freedom is scientifically proven to be the best model for organizing an economy, decisions on economic management are removed from the democratic sphere and entrusted to, for “scientific” reasons, to a specific group holding this purported expertise.

Such calls to science also matter for how the statute is presented, and will continue to be presented, to Brazilian jurists (both those in training and those who are more experienced). Rather than treating economic regulation as an area of considerable disagreement that demands academic scrutiny and political debate, the DEFR comes across as a settled “scientific” question admitting no “serious” or “reasonable” dispute.

Turning the “market supremacy” ideology into an operable legal category, that is, effecting genuine institutional change, happens in the DDLE’s main provision (an innovation not found in the original National Economic Freedom Law), Article 4º:

> Art. 4. It is the duty of the public administration and all other entities bound by this Law, when regulating any public legal provision that falls under the scope of this Law (except when strictly complying with an explicit legal provision), to avoid abuse of regulatory power (...) (BRASIL, 2019, translated from the original)

In its main clause, the article creates the concept of “abuse of regulatory power,” wielded by the government through the for Advocacy of Competition and Competitiveness (Secretaria de Advocacia da Concorrência e Competitividade - SEAE). This effectively allows the Executive Branch to act as a minimally democratic “super regulator” that, paradoxically, becomes even more discretionary and less consistent with “free market” notions, contradicting the already “neoliberal” regulatory environment established in Brazil since the 1990s (MIOLA; COUTINHO, 2023, p. 203).

Likewise, the article’s subsections (which the original bill lacked) broadly and generically define what constitutes abuse of regulatory power:

> I – creating a **market reserve** by favoring a particular economic or professional group in regulations, to the detriment of others; II – formulating rules that prevent **new domestic or foreign competitors** from entering the market; (...) IV – formulating rules that prevent or **delay innovation** or the adoption of new technologies, processes, or business models, except in cases deemed high-risk by regulation; V – raising **transaction costs** without demonstrating benefits; VI – **artificially or compulsorily creating demand** for a product, service, or professional activity, including the use of registries, public notaries, or rosters; VII

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

> – introducing limits to the **free formation of business entities or economic activity**; (...) (BRASIL, 2019a, translated from the original)

It is interesting to observe the direct incorporation of "Law and Economics" concepts in these subsections, with expressions such as "market reserve," "transaction costs," and "artificial or compulsory demand." It seems undeniable that there is an effort to trigger a shift in Brazilian Law to more closely align it with orthodox microeconomics, embedding free-market rationality in the foundation of economic regulation.

The generic nature, both of the DEFR as a "general law" and the content of its Article 4, with its duty for the administration to avoid "regulatory abuse" broadly defined as almost any economic intervention, is concerning from the standpoint of institutional practices based on the norm, such as administrative or judicial litigation, which can introduce doctrinal and jurisprudential shifts. As we will see below, the first indications of this possibility are already beginning to emerge.

Overall, it appears that the "lawmakers" behind both the original academic proposal and those responsible for the DEFR intended this new legislation to bring about changes in the ideational sphere that shapes institutional practices but also in those very practices themselves. Let us now consider the institutional transformations the DDLE may foster along both lines.

5. Neoliberal polities and long-term institutional change

This section is organized from the more ideational aspect, legal education and legal reasoning, to the more institutional aspect, the creation of new pro-market litigation avenues, with the inspiration for new laws as an intermediate component. I seek to present empirical data illustrating the impacts of the DEFR whenever possible.

5.1 Legal Education and Legal Reasoning

A particular feature of Law, compared to other fields of knowledge, is that one can identify an official (though not exclusive) source of the ideas driving institutional practice: the norms themselves.

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

This does not mean that there is an exact identity between legal provisions and institutional action, since the latter is necessarily contingent on continuous interpretation (for which ideas not strictly contained in the legal text itself are also important).

Nevertheless, this characteristic allows an assertion that would be difficult to make in other areas: since Law school curricula are structured around legal norms, the ideas contained in the DEFR will be introduced into the training of new jurists, with the special attribute of being "legal".

In a context in which the DEFR is not properly criticized, it is not hard to imagine a future similar to the one described by Britton-Purdy et al., in which a first-year law student "*is likely to "learn" quickly that serious legal thought in areas such as contracts and property prizes a certain version of efficiency over all else*" (BRITTON-PURDY, J. et al., p. 1789).

Moreover, the impact of this norm on the training of new jurists is reinforced by its principle-based nature, purporting to apply to the broad sphere of "*the exercise of economic activity*" (BRASIL, 2019) and to "*the interpretation of civil, business, economic, urban planning, and labor law (…) including over the exercise of professions, commerce, commercial registries, public records, transportation, traffic, and environmental protection*" (BRASIL, 2019, translated from the original).

In Hart's typology (HART, 1961), it is a secondary rule, specifically an adjudicative rule, in that it influences how primary rules (those imposing obligations and regulating individual behavior in society) are applied and interpreted.

This principled, wide-reaching character of the norm, affecting every institution subject to the law, closely aligns with the concept of "institutional lock-in" described by Madariaga (2020b). New rules that protect the neoliberal project remain in place even when governments opposed to that ideology come to power, making institutional changes more difficult (by creating potential veto powers through the judiciary) and discouraging the pursuit of policies that challenge neo-liberalism.

This "lock-in" becomes more evident if we observe that the DEFR not only established its own rules and principles for the legal system but also inspired a number of similar legal initiatives both at the federal level, featuring new rules and principles, and in state and municipal spheres.

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

5.2 Inspiration for new laws

One transformative aspect of the DEFR that bridges the ideational and the institutional is how it has inspired similar legal provisions across different levels of government. A new piece of legislation can be just the first domino that sets off a long chain of transformations, especially when it is a "general law" such as the DEFR.

After its enactment, at least 20 federal-level laws and regulations referring to it directly were identified.[13].

These norms address a wide range of economic and social issues, such as the creation of risk classifications for economic activity and tacit approval deadlines for licensing processes (Decree 10.178/2019), the regulation of regulatory impact analysis (Decree 10.411/2020), the creation of a permanent program for consolidating, simplifying, and debureaucratizing infra-legal labor norms (Decree 10.854/2021), and changes to the National Consumer Protection System (Decree 10.887/2021). Even the authorization of foreign trade transactions in a specific sector (lithium minerals, ores, and derivates) was based on the DEFR (Decree 11.120/2022).

There are still the bills still in Congress that have the DEFR as inspiration. At the federal level, 12 such bills have been identified, all using the term "Economic Freedom."[14].

The DEFR's impact can also be seen at the state and municipal levels. Research in the 27 state assemblies shows that more than half of Brazil's states, 14 in total, have passed laws with some measure of inspiration from the DEFR, bearing titles that directly reference "Declaration of Economic Freedom Rights" [15] or with more indirect names such as "Code of

[13] Namely: Decree 10.178/2019, Law 14.011/2020, Decree 10.411/2020, Decree 10.468/2020, Decree 10.229/2020, Decree 10.278/2020, Law 14.195/2021, Decree 10.854/2021, Decree 10.887/2021, Law 14.382/2022, Law 14.375/2022, Decree 10.965/2022, Law 14.375/2022, Law 14.382/2022, Decree 11.120/2022, Decree 11.205/2022, Decree 11.243/2022, Decree 11.259/2022, Law 14.515/2022 and Decree 12.031/2024.

[14] Eleven in the lower chamber, namely: PL 6514/2019, PL 3783/2021, PL 3783/2021, PL 1443/2021, PL 1443/2021, PL 1113/2021, PL 1113/2021, PL 3077/2022, PL 3077/2022, PL 2787/2023 and PL 2787/2023 and one in the higher chamber, namely PL 2339/2021.

[15] Namely, they are: Acre (Law nº 3.984/2022), Alagoas (Law nº 8.278/2020), Amapá (Law nº 2.963/2023), Espírito Santo (Law nº 11.499/2021), Goiás (Law nº 22.612/2024), Minas Gerais (Law nº 23.959/2021), Mato Grosso do Sul (Law nº 5.626/2020), Mato Grosso (Law nº 688/2021), Piauí (Law nº 8.025/2023), Paraná (Law nº 204.436/203) e Rio Grande do Sul (Law nº 15.431/2019).

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

Entrepreneurial Protection." [16] Beyond these 14, another five states have passed laws regulating the DEFR[17], and only eight showed no legislation in this regard[18].

At the municipal level, at least 357 municipalities have approved statutes echoing the state models, explicitly referencing "Economic Freedom" or "Entrepreneurial Protection" [19]. These legislative changes are significant in two respects: first, they shape the structure of the state and its future actions and policies. Second, as further discussed in the next section, they open a path for private parties to take legal action in defense of their "economic freedom," based on these laws.

5.3 Litigation

Regarding truly institutional mechanisms, we have the possibility of litigation. The possibility of utilization of a rule as "grounds for claim" through the courts serve as an important self-reinforcing mechanism for any law. Even if a law is not recognized by the academic community as valid or legitimate, private parties are free to test its force against the state, using their resources and the professional expertise of lawyers trained to advocate for their interests.

Typically, we envision litigation as occurring in the judiciary. It is this avenue that we can search for the first impacts of the DEFR.

Up to the time of this research, no other paradigmatic instances of judicial litigation concerning economic regulation based on the DDLE were found beyond ADI 6.764, which challenged "*state-level norms restricting the circulation of people and ordering the closure of nonessential commercial establishments in response to the COVID-19 pandemic*" (COUTINHO, MIOLA, 2023, translated from the original).

However, a broader inquiry into the case law of the Superior Tribunal de Justiça (Superior Court of Justice) reveals a reasonable amount of litigation (though centered mostly

[16] Namely, they are: Amazonas (Law. nº 5.787/2022), Maranhão (Law nº 12.127/2023) e São Paulo (Law nº 17.530/2022).
[17] Namely, they are: Distrito Federal (Law nº 6.725/2020), Pará (Decree nº 1.098/2020), Paraíba (Decree nº 44.671/2023), Pernambuco (Decree nº 52.006/2021) e Rio de Janeiro (Law nº 8.953/2020).
[18] Namely, they are: Bahia, Ceará, Rio Grande do Norte, Rondônia, Roraima, Santa Catarina, Sergipe, Tocantins.
[19] Given the large number of municipalities in Brazil, more than 5,500, and the varying quality of information organization in their legislative chambers, the decision was made to use data compiled by the Leis Municipais portal (https://leismunicipais.com.br/). The site does not gather the laws of every Brazilian municipality, so it is possible to state only a minimum number of municipalities.

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

on private-law aspects of the statute), with 49 rulings directly indexed to the law[20] and one jurisprudential notice[21], in addition to 15 rulings in the Supremo Tribunal Federal (Supreme Federal Court)[22].

There is also another category of dispute, much more difficult to detect, for which the DDLE may serve as a foundation: administrative litigation. As the very wording of the law illustrates, by creating the concept of "regulatory abuse," it provides a strong argument for economic agents in regulated sectors to contest the formulation and enforcement of rules by bodies such as regulatory agencies.

Although the procedure created to curb "regulatory abuse" created in the law via the Secretariat for Advocacy of Competition and Competitiveness (Secretaria de Advocacia da Concorrência e Competitividade - SEAE), acting as a "super-regulator" has not been implemented due to a change in the leadership of the Executive branch, the law's continued effect enables future governments to make use of it. Meanwhile, its more principled provisions can be tested both in court and within the administrative sphere against regulatory measures.

6. Conclusion

"The truth is that it is an innocuous Provisional Measure [Law]*. It is something more related to the desire of having a propaganda tool".* That is how the coordinator of the original National Law of Economic freedom defines the DEFR (CAGLIARI, 2019, citing Carlos Ari Sundfeld, translated from the original).

The expectation for a rapid and significant change via the DEFR may have stemmed from the strong normative and discursive content of the law and from how it was presented, as being responsible for "*(...) urgently altering the reality of Brazi*l" (BRASIL, 2019, translated from the original).

[20] The search was made in July, 14th of 2024, using the advanced search of the Court's Jurisprudence by Law, utilizing the key-term "13.874", the number of registration of the DEFR.
[21] Jurisprudencial Notice nº 745, of August 22th, based on the REsp 1.984.277-DF, Rel. Min. Luis Felipe Salomão, Fourth Panel, por unanimidade, ruled in 16/08/2022. Avaible in: <https://tinyurl.com/3k9pkbws>
[22] The Search as made in July, 14th of 2024, using the free search of the Court's Jurisprudence, using the key-term "13.874/2019", the number of registration and year of the DEFR.

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

While it seems clear that the DEFR has had relatively little impact when measured against these promises, it also appears too early to declare the measure completely irrelevant. Part of the impression of irrelevance may arise from the contrast between the emphatic content of a general statute (the first on Economic Law since the 1988's Constitution) and its limited immediate application in producing tangible economic policies that reallocate resources and interests.

Nonetheless, in the longer term, there seems to be more room for the law to exert effects on two levels: the ideational and the institutional. These aspects are, in a way, inherent in legal rules. Legislative changes require jurists to come to grips with the new provisions as well as the teleological reasons behind them. Of course, there is always the possibility of conflict between a particular statute and the Constitution or with the broader legal system, but there is a certain presumption of validity and a tendency to investigate "how" the new statute should be received and interpreted (though, in the case of the DEFR, an argument of unconstitutionality has been made, as in BERCOVICI, 2019, yet not properly tested in court).

However, the empirical findings presented in this article show that the DEFR is far from being an "innocuous" law. The incorporation of "economic freedom" as an essential part of Brazil's legal system, through the curricula of future jurists and the overall integration of its principles into legal reasoning (due to its status as a general statute), would, on its own, suffice to demonstrate the law's abstract relevance. Beyond that, we can already observe the emergence of new legislation inspired by the DEFR, as well as the initial signs of judicial litigation based on it. If we add to that the possibilities of litigation arising from the notion of "regulatory abuse" and the cost-benefit rationale applied to regulation, a scenario emerges in which this statute could have a major transformative potential.

If ideas are the weapons used to attack and delegitimize existing institutions (BLYTH, 2022, p. 27), then, from a legal standpoint, ideas translated into "general" legal norms may be among the most potent weapons available for institutional change. By altering the "polity," the DEFR can be one of these weapons even if it may initially act more quietly than "policies." Recognizing the nature of the change that the DEFR introduces not only provides a better understanding of its real effect but also enables new, more in-depth studies of the relationship between Law and political economy.

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

References

BERCOVICI, G. Parecer sobre a inconstitucionalidade da Medida Provisória da Liberdade Econômica (Medida Provisória nº 881, de 30 de abril de 2019). Revista Fórum de Direito Financeiro e Econômico, Belo Horizonte, ano 8, n. 15, p. 173-202, mar./ago. 2019.

BERMAN, E. P. Thinking like an economist: how efficiency replaced equality in U.S. public policy. Princeton: Princeton University Press, 2022.

BLYTH, M. Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century. Cambridge: Cambridge University Press, 2002.

BRASIL. Lei nº 13.874, de 20 de setembro de 2019. Declaração de Direitos da Liberdade Econômica. Diário Oficial da União, Brasília, DF, Edição Nº 183-B de 20/09/2019a.

BRASIL. Presidência. Exposição de Motivos n° 00083/2019 ME AGU MJSP. Institui a Declaração de Direitos de Liberdade Econômica, estabelece garantias de livre mercado, análise de impacto regulatório, e dá outras providências. Brasília, DF: Presidência, 2019b.

BRITTON-PURDY, J. et al. Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis. The Yale Law Journal, v. 129, p. 1784–1835, 2020.

BROWN, W. Undoing the demos: neoliberalism's stealth revolution. New York: Zone Books, 2015.

CAGLIARI, Arthur. MP da Liberdade econômica é inócua, diz jurista Carlos Ari Sundfeld. Folha de São Paulo, São Paulo, 22 de Agosto de 2019. Economia. Disponível em: https://tinyurl.com/4yupfjbt. Acesso em: 09 Jul 2024.

Coordenação de Aperfeiçoamento de Pessoal de Nível Superior. Dados Abertos CAPES - Avaliação da Pós-Graduação Stricto Sensu. Disponível em: < https://tinyurl.com/347e77xk >. Acesso em: 17 jul. 2024

COUTINHO, D. R. Direito e institucionalismo econômico: apontamentos sobre uma fértil agenda de pesquisa. Brazilian Journal of Political Economy, v. 37, n. 3, p. 565–586, jul. 2017.

CROUCH, C. The strange non-death of neoliberalism. Cambridge: Polity Press, 2011.

DARDOT, P.; LAVAL, C. A nova razão do mundo: ensaio sobre a sociedade neoliberal. Tradução: Mariana Echalar. São Paulo: Boitempo, 2016.

GERSCHEWSKI, J. The three pillars of stability: legitimation, repression, and co-optation in autocratic regimes. Democratization, v. 20, n. 1, p. 13–38, jan. 2013.

HALL, P. The role of interests, institutions, and ideas in the comparative political economy of industrialized nations. Em: LICHBACH, M. I.; ZUCKERMAN, A. S. (Eds.). Comparative politics: rationality, culture, and structure. Cambridge; New York: Cambridge University Press, 1997, p. 174-207.

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

HARRIS, A.; VARELLAS, J. J. Law and Political Economy in a Time of Accelerating Crises. Journal of Law and Political Economy, v. 1, n. 1, 15 out. 2020.

HART, H. L. O Conceito De Direito. Tradução: Antônio de Oliveira Sette-Câmara. São Paulo: Martins Fontes, 2022.

HAY, C. Review: Ideas, Interests and Institutions in the Comparative Political Economy of Great Transformations. Review of International Political Economy, v. 11, n. 1, p. 204–226, 2004.

HURWITZ, J. What Is a Law and Political Economy Movement without Law and Economics or Political Economy? Journal of Law, Economics & Policy, v.17, n.4, p.773-812, 2022.

LARUFFA, F. Making Sense of (Post)Neoliberalism. Politics & Society, v. 52, n. 4, p. 586–629, dez. 2024.

MADARIAGA, A. Neoliberal resilience: lessons in democracy and development from Latin America and Eastern Europe. Princeton: Princeton University Press, 2020a.

MADARIAGA, A. The three pillars of neoliberalism: Chile's economic policy trajectory in comparative perspective. Contemporary Politics, v. 26, n. 3, p. 308–329, maio 2020b.

MIOLA, I. Z. Direito da concorrência e neoliberalismo: a regulação da concentração econômica no Brasil. Revista Direito e Práxis, v. 7, n. 4, p. 643–689, 7 dez. 2016.

MIOLA, I. Z.; COUTINHO, D. R. Entre autoritarismo e ultraliberalismo: o Estado regulador no governo Bolsonaro. Em: VILHENA, O., et. al (Eds.). Estado de direito e populismo autoritário: Erosão e resistência institucional no Brasil (2018-22). Rio de Janeiro, RJ: Editora FGV, 2023, p. 190-210.

MIROWSKI, P. Postface - Defining Neoliberalism. Em: MIROWSKI, P.; PLEHWE, D. (Eds.). The road from Mont Pèlerin: the making of the neoliberal thought collective. Cambridge: Harvard university Press, 2009. p. 417–455.

MOUALLEM, P. S. B.; COUTINHO, D. R. Arquitetura de mercados como processo social: trazendo o direito para a sociologia econômica institucionalista. Revista Brasileira de Sociologia - RBS, v. 9, n. 22, p. 111–144, 1 set. 2021.

O'DONNELL, G. A.; SCHMITTER, P. C. Transitions from authoritarian rule. Tentative conclusions about uncertain democracies. Baltimore: Johns Hopkins University Press, 1986.

PALONEN, K. Four Times of Politics: Policy, Polity, Politicking, and Politicization. Alternatives: Global, Local, Political, v. 28, n. 2, p. 171–186, março 2003.

PERISSINOTTO, R.; STUMM, M. G. A virada ideacional: quando e como ideias importam. Revista de Sociologia e Política, v. 25, n. 64, p. 121–148, dez. 2017.

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i

PEREIRA, D. D. F. Henry Maksoud e a recepção de Hayek no Brasil: demarquia e a proposta de uma constituição neoliberal. Economia e Sociedade, v. 33, n. 2, p. e271215, 2024.
PISTOR, K. The code of capital: how the law creates wealth and inequality. Princeton: Princeton University Press, 2019.

SAAD-FILHO, A.; MORAIS, L. Brasil: neoliberalismo versus democracia. São Paulo, SP: Boitempo, 2018.

SCHAPIRO, M. G. Do Estado Desenvolvimentista Ao Estado Regulador? Transformação, Resiliência E Coexistência Entre Dois Modos De Intervenção. Revista Estudos Institucionais - REI, v. 4, n. 2, p. 574–614, 18 dez. 2018.

SLOBODIAN, Q. Globalists: the end of empire and the birth of neoliberalism. Cambridge, Massachusetts: Harvard University Press, 2018.

SUNDFELD, C. A.; et. al. Para uma Reforma Nacional em Favor da Liberdade Econômica e das Finalidades Públicas da Regulação. São Paulo: FGV, abril de 2019. Disponível em: https://tinyurl.com/3re6bswa

TRUBEK, D. M.; COUTINHO, D. R.; SCHAPIRO, M. G. New State Activism in Brazil and the Challenge for Law. Em: TRUBEK, D. M. et al. (Eds.). Law and the New Developmental State. 1. ed. Cambridge: Cambridge University Press, 2013. p. 28–62.

VIEIRA, O. V.; DIMOULIS, D., Transformative Constitutions as a Tool for Social Development. FGV Direito SP Research Paper Series n. 154, 2018.

VOGEL, S. K. Marketcraft: How Governments Make Markets Work. Oxford, Oxford University Press, 2018.

About the author
Luiz Cláudio Pimenta Filho is a PhD candidate in Law and Development at FGV Direito SP, funded by Fundação Getulio Vargas through the Mario Henrique Simonsen Teaching and Research Scholarship, and by CAPES through the PROSUP grant. E-mail: luizpimentaf@gmail.com and luiz.pimenta@fgv.br. ORCID: https://orcid.org/0000-0002-5165-6232.

Authorship credits
The author is solely responsible for writing the article.

Conflict of interest statement
There are no possible conflicts of interest in carrying out and communicating the research.

Information on funding
This research was carried out without funding.

Data Availability Statement
The data supporting the findings of this study are available within the article.

Editors Responsible for the Evaluation Process and Editing
Carolina Alves Vestena and Bruna Bataglia.

https://doi.org/10.1590/2179-8966/2025/88731i | ISSN: 2179-8966 | e88731i