

ANNEX III – DIREITO GV’S RESEARCH AREAS

This text provides a brief overview of DIREITO GV’s research agenda. It helps to grasp the great issues our Professors’ approach in their research projects, apart from enabling to identify the common thread underlying all those research projects. “Law and Development” is the broad research topic at DIREITO GV. This topic has naturally emerged, as Fundação Getúlio Vargas has been consolidating its academic reputation precisely for being the most active among Brazilian institutions to discuss the development issue, inside and outside our boundaries.

The identification of a broad research topic helps the general public to understand the larger sense of the studies conducted at DIREITO GV. By identifying it, we mean that all our Professors and researchers consider issues relating law and the subject of development when outlining their research projects, such as “how law may promote a society’s development?” or, in the opposite way, “why legal rules sometimes negatively affect a society’s development, even when they have been enacted in order to promote it”. Each research project addresses the subject of development in a particular way, one which is appropriate to the Professor’s academic interests. This causes us to have many different research projects, in different areas, which none the less share a common point, expressing our institution’s historical vocation and picturing the set of our researchers’ current concerns. In this sense, research projects addressing varied topics, such as corruption fighting, democracy enhancement, improvement of the judiciary institutional design and capital market development, may be seen as part of something bigger. Post-doctoral research projects must also conform to this scenario.

Due to the variety of research topics that fit in the “law and development” broad topic, it is subdivided into two “research areas”, which render research projects more

specific. The post-doctoral research project must also fit in one of these two “research areas”, which today are:

1 - Business Law and Economic and Social Development

2 - Institutions of the Rule of Law and Political and Social Development

Post-doctoral applications must fit in one of these two “research areas”, and the candidate must specify in the submitted research draft which is the relevant “research area” to his research project.

The following text introduces information about DIREITO GV’s broad research topic and two “research areas”.

I. Broad Research Topic: Law and Development

1. How the subject of development has been portrayed in lawyers agenda

Law and Development scholarship presupposes that a country’s social, political and economic development is affected by its institutions (e.g., rules which constrain social agents’ behavior). Legal institutions particularly play a prominent role in determining the conduct of diverse social players.

Understanding, from a legal point of view, the role of institutions as mechanisms that may promote or hinder economic, social and political development has been shown to be increasingly important. This theme has been given increasing space in the research agenda of lawyers from many countries, as only lawyers are able to solve an important part of this puzzle: sociologists, historians and political scientists lack the necessary academic training or professional practice to understand legal institutions, as Hart would say, from an internal point of view. In addition, the subject of law and

development has far exceeded the academic field in the last decades, and has been exerting an enormous influence on structural reforms programs driven by Developmental Agencies, such as the World Bank, the International Monetary Fund, the Inter - American Development Bank or even the United Nations Development Programme.¹ Law and Development is therefore a theme which comprises diverse approaches and perspectives: even if the importance of strengthening legal institutions is today recognized as a condition to economic, social and political development, there are several concerns brought about by critical studies, as well as part of those engaged in State reform programs, that cannot be overlooked. It is therefore a wide research field full of questions waiting for good research projects to engage in.

A first sort of concerns questions the overstated reliance on institutions' ability to effectively alter economic, social and political agents' expectancy and conduct. "Which are the law limitations in generating development?", some people wonder. This sort of inquiry emerge whenever the legal system is confronted to other scopes of life in society, such as social bonds of trust, historical social dynamic of a particular community, culture, educational standards, and even the States' insertion in a particular international context. In this sense, some studies seek to empirically demonstrate that orthodox institutional reforms mirrored in liberal western democracies are not always capable of generating the pursued economic growth in the distinct realities where they were implemented, while States that maintained its heterodox institutional structures, inconsistent with the idea we make of the Rule of Law, have made economic progress a few years back here. Yet from a methodological view, it is noted that the legal institutional framework must not be confused with the wide institutional scenario, for the former is too static while the latter, which take other fields of life and its relations into consideration, is naturally dynamic.

¹ This movement is commonly called the "second structural adjustments phase".

Another set of researches asks about what does “development” substantially mean. Scholars working in this perspective have been struggling to demonstrate that development should not be conceived exclusively as an economic issue, for law cannot be seen as mere instrument for economic growth. Development, these scholars say, is made not only by economic, but also social, political and cultural concerns, and the law of development must be conceived with a view to this broad sense, which is commonly called “integral development”. It is argued that it is impossible to speak of integral development when, in spite of economic growth, a large share of the population is uneducated, corruption is institutionalized, the State’s arbitrariness falls on vulnerable groups, minority rights are systematically violated or the environment is destroyed along with economic progress. Thus, development would be an integrated process which should encompass several social life scopes. Each of them has its own significance, but all must interact, and law helps to orientate this interaction, as the institutional means to better achieve it.

2. Law and Development Research Today: DIREITO GV’s research premises

It is possible to say that there is an apparent consensus that legal institutions matter a lot for those intending to think over and consider society's integral development as a legitimate goal that must be pursued. In particular, to propose "law and development" as a broad topic in the context of the Brazilian legal reality must be followed by a historical and theoretical reconstruction of this reality, starting from a reinterpretation of how we understand law theoretically (jurisprudence), as well as its interaction with other subjects (such as sociology, political sciences, history, business management, and economy).

It is important to notice that the theme to be specifically approached from a legal perspective must be well defined in order to enable reconstructing a law research field. Defining an interdisciplinary research field as well as a cross-cut approach for a single theme (in this case, development) presupposes the proper definition of what development is, even so one can be clear about how traditional views related to at which point legal concerns begin and end must be changed.

First, we assume that law is characterized as being made by rules. Legal rules do not merely point to regular occurrences; rather they constitute guidance for how we must do something - whether related to our own actions or the way we assign legal meaning to general human behavior. Ultimately, legal rules are norms. Thus, it is important to understand what does this normativity mean, as well as, from this normativity conception, how does it affect and is affected by development. For example, how could an integral development conception enrich the way we interpret statutes or contracts? In this theoretical perspective, classical themes like legal interpretation or the very meaning of law emerge as crucial research topics for those who study law in light of development.

The very subject of development implicates some theoretical issues to its delimitation. Thus, one must understand not only law's possible meanings and limitations, but those related to development as well. This diversity of meanings and approaches is embodied today in some well-defined scholarships, such as law and economic development (the relationship between law and economic efficiency), economic development and democratic institutions (institutions as means to social transformation), distributive justice and development, etc.

From an historical point of view, specifically in relation to the Brazilian context, it is possible to say that our path has been marked by a modernization effort. There was,

and there still is, a version according to which the main Brazilian national problem was its distance from sociability and power standards found in most developed and wealthy nations. Quite often, in the last two hundred years, modernization and development have been the focus of political, economic and legal reforms. Different patterns of market formation, discipline and control have been adopted since the monarchic period, as well as budgetary, fiscal and industrial promotion policies and business and public services legislation reform. Those subjects have been widely regulated during the monarchic period, when the State benefited from the international conjuncture to attract both poor laborers from Europe and commercial, industrial and financial capital, in an attempt to compete with both the central world economies and other new American countries. The first Republic believed institutional reforms would free productive forces that were constrained under the Second Monarchical reign centralist model, and the "Vargas age" nationalized part of the positivist experience of the "Castilhistas riograndenses", returning to the State centralization. The "National Security State" and the experience that followed it also embraced institutions and ways of making and operating law that should be investigated. This was not a pure institutional development, and there is much to gain by researching legal theories created nearly two centuries ago by Brazilian lawyers who held higher command and political prominence positions or worked in most common legal positions.

Based on all these premises, the broad "law and development" research topic represents a legal research field aimed at the dogmatic, critical, theoretical or historical study of the relations between legal institutions and development, primarily focused on the Brazilian legal environment. In this sense, it is understood that legal institutions are neither limited to enacted rules, nor to public rules, encompassing in fact a plurality of normative sources. Beyond codified rules, there are other decision making institutional mechanisms, both State and non-State (Central Banks, "Regulatory Offices",

international organizations, private bodies for dispute resolution, public and private governance mechanisms, etc.), that are also part of the legal institutional reality and that must be studied by those who want to understand law's role in the accomplishment of social, political and economic progress goals, especially if we consider the actual globalized context. It follows, as a result, that development must be considered in its broadest sense, to cover not just economic growth as such, but also other relevant social and political issues – the integral development conception, which has already been discussed above.

According to the foregoing, researches related to the “law and development” broad topic lie within a field extending from investigations about the way legal institutions (of private or public, national or international law) are built, rebuilt, framed and operationalized, taking development issues into account (economic liberalization, Regulatory State, public security plans, Judiciary reform, regional integration, etc.), to studies about law's role as an institution that may positively or negatively interfere in a country's development. These studies require analyzing the legislative process, State and non-State, the impact of national or international agencies decisions, implementation of institutional reforms, public policies formulation and implementation, legal framework for economic plans and, within the private sector, strategies for corporation and private dispute resolution institutional design.

In the context of such a variety of topics, the broad research topic has been divided in two “research areas”: (1) Business Law and Economic and Social Development and (2) Institutions of the Rule of Law and Political and Social Development.

II. Research Areas

1. *Business Law and Economic and Social Development*

Business environment is a possible standpoint to understand institutions as a whole set of rules responsible for driving the behavior of several actors and for furthering or hindering economic and social development. Legal institutions are seen as operational tools within business field.

Wealth is transferred and moved through several means. Economic actors choose, either to transfer their assets (production factors, goods or services), or to earn the related consideration, based on legal, economic and social incentives and constraints existing within markets - although the former also impacts the latter. Be as it may, institutions matter for business environment, and the way legal institutions frame this environment matters for development.

Enterprises acquired recently a greater role within legal relations concerning wealth transfer and mobility. They are responsible nowadays, not only for typical trade and industry operations, but also for services. Besides, business activity affects different interests, located in a varied range of fields, such as labor individual and collective rights, diffuse and homogeneous collective rights from whole society (consumers, environmental protection), investors' interests in the stock market, and even State interests – as a market regulator and a tax receiver from business activity. One must perceive all these issues integrated within business field in order to understand how legal institutions in business environment affect positively or negatively development.

In addition, one cannot ignore both the rise of self-regulating processes within enterprises (corporate governance codes, codes of ethics, alternative dispute resolution methods, etc.), and the growth of non-State regulation - originated from national and

international organizations (BOVESPA, OECD, UNIDROIT) – of several business activities. These issues stress the need of a broad analysis of State-enterprise relationships, including the possibility of integrating these two fields (such as verified in Public-private partnerships, Bilateral Investment Treaties or inside World Trade Organization), which might help constructing a whole comprehension of the role of legal institutions - within a business environment - to development.

In order to deal with this complex theme, research proposals should focus on (1) deepening knowledge of business law and corporate law, and (2) debates from Criminal, Tax, Administrative, Economic and International Law, which are directly related to business activities.

In the first case, possible research themes are legal issues concerning (i) the different organizing frames (associative or contractual) of enterprises, (ii) contractual and non-contractual relationships *inside* the enterprises (i.e. shareholders, managers, employees) and *outside* the enterprise, established with other actors – such as other contractors (i.e. creditors and consumers), civil society and State, and (iii) the variables taken into account in business decision processes - which are in accordance with the rules given by State and non-State regulators.

In the second case, possible research themes are related to criminal, tax and administrative regulation of business activities, the impact of intellectual property regulation on corporate structure, State enterprises in regulated markets, the role of national enterprises in international markets and in international bodies of conflict resolution - intergovernmental or private international bodies -, among others.

Research proposals within this research area aim to understand the legal-economic consequences – and the related social impacts – of the institutional organization of market and of business activities. This stresses the significance of

jurisprudence analysis, case studies, data collection and several other methods of empirical research – without disregarding the eventually needed theoretical and historical approaches. Research proposals should also consider the heterogeneity of normative sources of business regulation, focusing on both State and non-State (i.e., self-regulation and social rules) rules.

2. Institutions of the Rule of Law and Political and Social Development

This research area tries to understand how Rule of Law institutions affect development within a political and social perspective – although it does not ignore that economic issues are the base of many institutional-change agendas, which impacts also political and social reforms.

Rule of Law is regarded as a crucial variable to development. The recognition of the importance of a clear, prospective, public and impartial governance regime implemented by independent agencies seems to be a consensus within different ideologies. Rule of Law is usually related to legal conditions and constraints which legitimize the exercise of authority and also to institutions responsible for fostering social emancipation. This research area aims to understand the structure and the operation of these institutions, mainly of those institutions which are the key for the implementation and adjudication of rights.

In order to understand the relationship between Rule of Law institutions and development according to a more dynamic fashion, it is important to pay attention to powers and capabilities of those who interact within institutional field – for which it is crucial developing research on rights and Public Policies. Among social scientists, legal scholars are specifically trained to analyze in detail the interaction between institutions, rights and Public Policies, as well as their relationship with development. A right is a mean of entitling powers, freedoms, immunities or claims which are the ground of

correlated third-party duties – by the exercise of a right, Rule of Law institutions are triggered. Legal discourse became particularly significant to political, economic and moral discourses, given that it frames the allocation of prerogatives and duties, stabilizes social behavior expectations and fosters civil liberty. For this reason, rights are a key tool to structure Rule of Law, Democracy and even Economy.

After late-XIXth century and early-XXth century, legal discourse started to be the foundation of claims located beyond liberty and property (negative rights), such as equality, dignity, citizenship, among other social demands – given that rights also empowered legally individuals and other actors (enterprises, political parties, corporations). One should understand that it is exactly by exercising these powers and capabilities (subjective rights) that different actors interact with Rule of Law institutions.

In this sense, it is crucial to understand the intertwinement between legal discourse and development. But legal discourse is not the only key for legal scholars to understand the relationship between Rule of Law and development. The rise of the Democratic State, in lieu of Liberal State, lead State to be responsive to social demands, i.e., to intervene and regulate economic, political, social and cultural fields. Governments, Constitutions and Statues established goals to be achieved through governmental programs. Public Policies arose as tools for coordinating public and private means, in order to reach those politically and legally established goals.

Public Policies coordinate available means and direct them to foster development within a varied range of fields. And, by doing this, they must be compatible with limits and constraints within Rule of Law and its legal discourse - mainly for two reasons. Firstly, because rights are in most of the time the main foundations of Public Policies (see, for example, access to Justice or public safety). Secondly, because within Rule of

Law, the achievement of legitimate ends does allow the disregard of other rights – which are, for this reason, the main constraints for Public Policies.

Therefore, there is a complex range of themes within this research area which might be unfolded. They might try to understand the existing State framework in Brazil, its formation and the impact of State institutional design on development – especially after the consolidation of Regulatory State. One may also consider studying international rules and institutions, given that Rule of Law and Public Policies are also directly related to international legal order and that their relationship might impact on national development projects. Furthermore, it cannot be ignored that public and private rules and legal institutions are considered to shape Public Policies and, for this reason, they are also located within this research area when concerned with political and social development. Finally, constitutional guarantees related to access to Justice, the organization, the operation and the management of the Judiciary and of constitutional courts, as well as the role performed by these institutions to fulfill human rights and Public Policies are also issues related to this research area - given that it focuses on understanding institutions, rights and Public Policies within a developmental country context.