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THE SACRIFICES THAT MUST BE DONE: ECONOMY VERSUS LAW

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Is it up to the economy to dictate the pace of Law, especially the effectiveness of social rights? The answer seems to be that it is, but in a composed way, so that each one watches over the other. That is what the thesis tries to answer and it is briefly present here.

With that question in mind, it is desirable to take a turn in the way of understanding the whole science of Law, bringing it to other sciences. It all starts trying to set terms to a debate between two poles: on the one hand, some say that Social Rights should be carried out “at all costs”, who intend to classify these rules as fully effective (in the classification of Prof. José Afonso da Silva).

They could be associated with "vital minimum" (*existenzminimum*) idea; on the other hand, some defend economic viability “at all costs” intending to classify Social Rights as having limited (programmatic) effectiveness. These could be associate with “reserve for contingences” (*vorbehalt des möglichen*).

These two poles represent a debate of Law values (axiological). They arise from the interpretation of the legal norm, anchored on how they understand the law from its ethical construction of the world. Therefore, it is not so simple to say that one or the other is right. This is the difficulty of using a subjective rule to measure an element: there are as many possible answers as there are questioners.

Therefore, it could be suggested a new category that observes the variability of the economy and tries to realize Social Rights as much as possible: its effectiveness would be variable. The conclusion reached observed a fluctuation of the Brazilian macroeconomic indicators in a period of 1960-2018, in particular the GDP *per capita*, and, as so, other influential indicators.

The variation of the product were observed in a given period in the Brazilian economy and this behavior can be associated with a kind of “roller coaster”. This is not exclusive to Brazil.

Every capitalist economy moves in a similar way to what Kondratiev observed it. In an eggshell, this scientist developed this theory, objecting a criticism to capitalism: at first, he concluded that the movement of the product of capitalist economy would be sinusoidal; later, reviewing his thoughts, he associated it with an ascendant spirals movement.

From these macroeconomic indicators, it is possible to extract an econometric regressive equation (polynomial of fifth degree) that allowed us to observe the turning points of the economic roller coaster (inflection points). This equation was extracted from a regressive analysis of the Brazilian GDP *per capita* from 1960 to 2018: $y = -0,0005x^5 + 0,0791x^4 - 4,1941x^3 + 89,857x^2 - 503,95x + 4222,2$ ($R^2 = 0,9835$).

Although GDP *per capita* was the macroeconomic index chosen to measure the performance of the Brazilian state, it can also observe other indicators such as unemployment, size of the state, public spending, taxation,

interest rates, in short, other macroeconomic variables that interfere in that first.

From these more objective data (this research tries not to be, as much as it can, subject on the evaluative debate), maybe there is sufficient support to a Law studier to better define public policies for Social Rights.

With that in mind, observing the inflection points, it would be possible to stablish the limits of how far can effectively carry out

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some Rights without provoking a downfall of state's product.

The conclusion observed is that over-realization of Social Rights, when unaccompanied by economic sustainability, do not generate growth but, instead, generate economic retraction.

This study revealed that occasionally, a Keynesian policy is adequate and the same goes for a liberal policy. It all depends which one is better suited to the circumstances.

In fact, this is a crucial point. As a matter of effect, regardless the personal value to this or that school of economic thought, a positive response from both model - interventionist - neoliberalist - occurs.

To illustrate this scenario, it can be highlighted the economic period that culminated in the last recession (before COVID-19).

The local minimum of the Brazilian product was in 2014; the local maximum was around 2010-2011; the inflection point (economic saturation point) - which proved to be facing a logistical equation for that segment - occurred in 2008 approximately. In other words, deriving that polynomial equation above, that saturation occurred approximately in 2008 and all the growth after this was unsustainable. In fact, all the gains for 2011 were lost in 2014. Knowing, thus, the perspectives of projections, which molded from this regressive analysis, perhaps the government would review the social policies defined to make them responsive to these future perspectives.

Moreover, why should the actors from society given will accept up "full effectiveness" to "variable effectiveness", as proposed? The answer lies in game theory: society's actors must realize that the supposed tension between Law and Economics is not due to a zero-sum competitive game, but to a collaborative game.

From cooperation, it is possible to achieve mutual gains between all the actors, even if this does not happen immediately. In game theory, Parrondo's paradox explain the momentary loss strategy to guarantee future gain. There is a momentary loss, but the future gain is certain.

In addition, how are vested rights? There is no easy answer to this but, in short, there is no absolute right, although there are several other index that can be submitted to this variable effectiveness of Rights. It seems, there is some momentary sacrifices that the society must to do, from time to time.

This were some contribution to try to demonstrate that there are other ways of observing the effectiveness of Social Rights besides the tension between the "contingence reserve" and "existential minimum", a purely evaluative debate.

Occasionally, a Keynesian policy is adequate and the same goes for a liberal policy.

This study tries to associate the fluctuation that is typical of the economy to the realization of Rights, through objective and statistical data.

Considering this reason, the econometric equation seems to be very important to define rights. It seems, as so, that Law needs to chat a little more with other sciences...



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This article is a result of the author's ascertainment and analysis, without compulsorily reflecting CEST's opinion.