

# Planning, Development and Economic Law in Brazil

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## Abstract

The article seeks to analyze the legal problems of government planning in Brazil, with emphasis on the historical analysis of the Brazilian planning experience. From a constitutional reading on planning as an essential element of Public Administration, it is discussed the absolute lack of infra-constitutional legal constructions organized to operate planning, highlighting the dysfunctions and contradictions of the Federal Government's performance in the planning field. The reflections point to some limits to the coordination of central planning by the Federal Government due to such gaps, such as the negative impact that arises from this limitation of the more general perspective of planning to the extent that government planning becomes practically reduced to a budget law of expenditure forecast.

## Keywords

Planning, Development, Economic Law, Budget, Role of the State in the Economy

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## 1. Planning and Its Legal Nature

In Brazil, since the conceptions of CEPAL (Comisión Económica para América Latina-Economic Commission for Latin America), the State is understood, through planning, as the main promoter of development. In order to play the role of conductor of development, the State must have autonomy with regard to the social groups, expand its functions and readjust its bodies and structure (Rodríguez, 1993: pp. 177-184; Bielschowsky, 1995: pp. 151-154). The State's coordinating role provides an awareness of the political dimension of overcoming underdevelopment. Structural reforms are the essential aspect of economic policy in underdeveloped countries, a prior and necessary condition for development policy. Coordinating decisions through planning, the State should act in

a very broad and intense way, having as central objectives the modification of socio-economic structures, as well as the distribution and decentralization of income, integrating, socially and politically, the totality of the population in the development process.

Planning coordinates, rationalizes and gives a unified purpose to the State's actions, differentiating it from a cyclical or casuistic intervention (Comparato, 1989: pp. 102-103). The plan is the expression of the State's general policy. It is more than a program, it is an act of political direction, since it determines the State's will through a set of coordinated measures, and cannot be limited to a mere enumeration of claims (Souza, 1996: pp. 65-66; Moncada, 1985: pp. 206-209). And because it is the expression of this State will, the plan must be in accordance with the constitutional ideology adopted.

Planning is thus always axiologically compromised, both by the constitutional ideology and by the search for the transformation of the economic and social status quo. When the dominant interests are linked to the maintenance of this status quo, planning and development are emptied. Thus, there is no "neutral" planning, since it is a choice among several possibilities, a choice guided by political and ideological values (Ianni, 1989: p. 170; Grau: 1978: pp. 39-41; Souza, 1996: pp. 2-3, 31-32; Moncada, 1985: p. 46; Comparato, 1986: p. 420), enshrined, in the Brazilian case, in the constitutional text. Thus, the planning, still, should be understood within the context of the legitimization of the State by the ability to achieve predetermined goals. The foundation of the planning idea is the pursuit of purposes that change the economic and social situation experienced at that moment. It is a state action essentially turned to the future (Mannheim, 1972: pp. 49-50; Ianni, 1989: p. 170; Grau, 1978: pp. 62-65, 73-76, 251).

Planning, although it has technical content, is a political process, especially in societies that seek the transformation of economic and social structures. Through planning, it is possible to demonstrate the connection between political structure and economic structure, which are interconnected. Planning aims at the transformation or consolidation of a certain social-economic structure, therefore, of a certain political structure. The planning process begins and ends within the political relations, even more in a federative regime, such as the Brazilian one, where planning presupposes a process of negotiation and political decisions among the various members of the Federation and social sectors (Lafer, 1970; Böckenförde, 1972: pp. 434-435).

Following this political conception of planning, Celso Lafer, although writing in the 1970s, could identify three phases in the process of making a plan: the decision to plan, a political decision; the implementation of the plan, also an essentially political phenomenon, related to the Public Administration; and the plan itself, the only phase that can be analyzed under a technical approach, with a strict examination of the formal document (Lafer, 1970: pp. 1-3). Therefore, the plan is not a mere technical piece, but a document committed to political and ideological objectives.

In legal terms, there was a debate around the authors who defended the totally binding nature of the plan, such as the Soviet and East European jurists, among them Petko Stainov and Konstantin Katarov. The reason for this emphasis was in the very nature of the Soviet constitution, a “balance sheet constitution” (as the Soviet constitutional texts of 1918, 1936 and 1977 declared) and the importance of the total planning of the economy and the actions of GOSPLAN, the Soviet organ of central planning of the economy (Pollock, 1971: pp. 233-362; Katarov, 1960: pp. 331-370; Grau, 1978: pp. 84-86).

Other authors understand the plan simply as an obligation of a political nature, without any legally binding obligation for the Public Power (Grau, 1978: pp. 87-95). But there are jurists who, correctly, have sought to legally bind the plan, trying to understand its legal nature (Grau, 1978: pp. 95-118, 224-249).

The discussion on the legal nature of the plan has become very similar to the classic discussion of the legal nature of the budget. These jurists understand the law of the plan as a law in a formal sense, that is, a law that is approved by Parliament. At the same time this plan law has the nature of a norm-objective, that is, it is a norm that defines the ends, the guidelines, the objectives to be achieved by the State, not the means, which can be changed according to the economic situation.

## 2. The Planning Experience in Brazil

The Brazilian planning experience prior to the 1988 Constitution is marked by three major moments, only one of which was a successful experience. These moments are represented by the Target Plan (1956-1961), the Triennial Plan (1962-1963) and the Second National Development Plan (1975-1979).

The Target Plan (Plano de Metas) was drafted based on the conclusions, similar in many aspects, but with essential disagreements, especially as regards the scope of planning, of two study groups convened around the same time: the Joint Brazil-United States Commission<sup>1</sup> and the Joint BNDE-CEPAL Group<sup>2</sup>. The Brazil-United States Joint Commission defended the idea of sectorial or sectional planning. The Commission proposed transforming bottlenecks into growth points by means of investments that would irradiate economic expansion to the rest of the system. In this way, the State should establish priorities and concentrate investments in concrete and detailed programmes, which would be more useful than the global planning of the economy (Hirschman, 1973: pp. 17-19, 57, 203-204; Souza, 1984: pp. 45-46; Bielschowsky, 1995: pp. 152-153, 385-386; Sola, 1998: pp. 101-111) defended by CEPAL. The BNDE-CEPAL Joint Group, led by Celso Furtado, prepared a global diagnosis of the Brazilian economy with proposals for a development programme. However, the great innovation proposed by this group, the idea of global planning of the economy, was not

<sup>1</sup>The Brazil-United States Joint Commission resulted from negotiations between the Brazilian and American governments and operated between 1951 and 1953.

<sup>2</sup>The BNDE-CEPAL Joint Group was promoted by the newly created National Bank for Economic Development (BNDE) and operated between 1952 and 1955.

implemented (Rangel, 1980: pp. 33-35; Ianni, 1989: pp. 14-15; Souza, 1984: pp. 46; Bielschowsky, 1995: pp. 152-153, 387-389; Oliveira, 2003: p. 60)<sup>3</sup>.

Although it was not exactly a global plan, the Target Plan was the first effective planning experience in Brazil, giving a sense of unity to all the sectoral projects and programs it contained. The agencies responsible for formulating and executing the Target Plan were superimposed on the traditional administrative system, which avoided countless political grievances, but contributed to the fragmentation of public policymaking and implementation. Despite its flaws, we must take into account the depth of its impact and its ideological value in associating, in a fully successful way, planning with development (Lessa, 1983: p. 27; Lafer, 1970: pp. 48-50, 68-69; Rangel, 1980: p. 13, 15, 18-19, 34-35; Ianni, 1989: pp. 26-28; Souza, 1984: pp. 44-53; Sola, 1998: pp. 164-169)<sup>4</sup>.

The inadequacy of the administrative machinery became patent with the Target Plan. The Brazilian Public Administration, composed of an outdated structure with overlapping responsibilities and conflicting policies, had reached its limits. The creation of the Development Council and the so-called “Parallel Administration” to implement the Target Plan demonstrates the disconnect between the Brazilian Public Administration structure and planning.

According to Carlos Lessa, during the Juscelino Kubitschek Government (1956-1961), the old state apparatus was utilized, with partial pragmatic adjustments, without any overall redefinition of the state structure (Lessa, 1983: pp. 99-117, 140-142; Souza, 1984: pp. 44, 48-49; Draibe, 1985: pp. 84-85, 213-215, 244-248): “The disconnections present in the instrumental framework, pointed out in the previous section, accentuated by the pragmatism of the Target Plan, tended naturally to become increasingly visible as the legal margin inherited from the previous decades was overcome. From the sociological point of view, a new institutional structure was forged, with the presence of the ‘developmentalist’ State, without the corresponding changes at the legal level. It was seen that this state was set up in practice, almost outside of the legal texts” (Lessa, 1983: p. 140).

Still according to Carlos Lessa, the Target Plan was implemented by means of a combination of financial funds with government companies and autarchies, a combination that was only successful because an institution, the BNDE (National Bank for Economic Development), assumed the role of coordinating government programs. The BNDE was characterized by the linking of specific public resources, in the form of loans, destined for investments in strategic sectors of the national economy. Besides that, it made decisions and the execution of several sectorial programs of the Target Plan compatible and improved. Administratively, the BNDE was superimposed over the existing administrative structure to circumvent vetoes and political bargaining with Congress (Lessa, 1983:

<sup>3</sup>For a more in-depth comparison between the theoretical conceptions and proposals of both commissions, see Gumiero, 2013.

<sup>4</sup>On the implementation and results of the Target Plan, see Lessa, 1983: pp. 34-55; Lafer, 1970: pp. 160-210; Nunes, 1990: pp. 191-210.

pp. 104-105, 111; Venâncio Filho, 1968: pp. 327-329; Souza, 1984: pp. 37-38, 46; Sola, 1998: pp. 115-119).

The concern with planning led the Juscelino Kubitschek Government to create, right at the start, the Development Council through Decree 38.744 of February 1st, 1956. The purpose of the Council was to draw up, execute, coordinate and monitor implementation of the Target Plan, encompassing the use of practically all economic policy instruments. Its purpose was to act as the formulator and coordinator of national economic policy, especially as far as planning was concerned. The Development Council never managed to fulfil this aim, however, even though it did achieve great success in drafting specific sectorial programmes and monitoring the execution of the Target Plan (Lessa, 1983: pp. 165-166; Souza, 1984: pp. 48-49; Lafer, 1970: p. 70, 113).

Another experience of great symbolic impact was the Triennial Plan, of the João Goulart Government (1961-1964). The Triennial Plan, elaborated in 1962 by Celso Furtado, may be considered the first instrument to guide global economic policy until then formulated, with its proposal for economic reforms and basic reforms. The Triennial Plan highlighted the barriers to development and indicated how to overcome them. According to Octávio Ianni, it was the “most complete synthesis of all state economic policy ambitions in Brazil”. Its intention was to complete the conversion of the colonial economy into a national economy, with the Brazilian State taking over the decision-making centres essential to autonomous progress.

For President João Goulart, the plan would serve as a political agglutinator, and should mobilize strategic sectors, thus gaining credibility for his government. Resistance both within and outside the government helped undermine its effectiveness as a general planning instrument and economic policy guide. Opposition from powerful political forces, coupled with the moment of instability the country was undergoing, sealed the non-application of the Triennial Plan. Still according to Octávio Ianni, “one of the most effective instruments in the formation of what could be a national capitalism was no longer put into practice” (Ianni, 1989: pp. 20-22).

The last remarkable experience took place during the military dictatorship (1964-1985). The planning legal regime, instituted by Complementary Act 43 of 29 January 1969 conceived of the plan as the programme of a given government, so much so that the duration of the National Development Plan was equal to the term of office of the President of the Republic (article 1 of Complementary Act 43).

The central objective was to ensure accelerated economic growth, and from then on the national development plans were totally imposed by the Central Government, disregarding the participation and collaboration of the federated entities. The Congress, for its part, had a passive role, as it could not vote on plan proposals that were not sent by the Executive Branch, besides having its power of amendment restricted: Congress had the power only to formulate res-

ervations to the plan, which could be accepted or not by the Executive Branch, according to article 2 of Complementary Act 43, under the allegation that it could compromise the plan as a whole. As a last restriction, ninety days after the plan was sent to Congress, the plan could be approved due to expiry of its term (Grau, 1978: pp. 144-149; Souza, 1996: pp. 55-60, 77-81; Comparato, 1986: pp. 415-417). Following these procedures, the military elaborated two National Development Plans: the I PND, approved by Law 5.727, dated November 4, 1971, for the period from 1972 to 1974, and the II PND, approved by Law 6.151, dated December 4, 1974, for the period from 1975 to 1979.

The II PND was a broad-ranging state investment programme aimed at transforming the Brazilian productive structure and overcoming the underdevelopment barrier. A new pattern of industrialization was sought, strengthening the basic industries and the national capital, besides investments in the areas of energy and transport (Lessa, 1998: pp. 19-37). Income distribution and social problems, however, were relegated to the background, with the regime's official claim that with economic growth the population's income would increase (Lessa, 1998: pp. 50-58).

The II PND did not, however, take into account the reversal of the economic growth cycle, the resurgence of inflation and external difficulties. The result was extreme recourse to external funding, economic deceleration and the disarticulation of the plan as from 1977, with the world economic crisis. According to Carlos Lessa, the II PND's strategy was based solely on its formulators' desire to transform Brazil into an emerging power, seeking to legitimize the dictatorial regime. But the result of trying to implement the plan anyway in an unfavourable economic conjuncture was the beginning of the military regime's detachment from its corporate bases of support and the loss of control over economic agents (Lessa, 1998: pp. 11-13, 17-18, 58-60, 77-86; Carneiro, 2002: pp. 55-82). The failure of the II PND marked the last planning experience in Brazil.

Besides the failure of the II PND, a juridical planning regime ceased to exist as of January 1st 1979, in accordance with Amendment 11 of October 13, 1978 to the 1969 Charter, which revoked the institutional and complementary acts, among which the Complementary Act 43 (Souza, 1994: p. 311). During the 1980s, planning was abandoned by the State. Since then, state action has been devoid of an overall guideline for national development. Economic policy was limited to very short-term management of the various economic stabilization "plans". Thus, the Public Power was unable to implement coherent public policies, with only partial overlapping and implementation of several plans at the same time (Affonso, 1990: pp. 37-40, 49-53, 60).

Despite the crisis, the democratic 1988 Constitution provided for the obligation of the planning function for the State in its Article 174: "As a normative and regulatory agent of economic activity, the State shall exercise, as provided by law, the functions of supervision, incentive and planning, the latter being determinative for the public sector and indicative for the private sector". The Brazili-

an State, therefore, cannot limit itself to monitoring and encouraging private economic agents; it must also plan (Grau, 2003: pp. 262-264). The planning model provided for in the 1988 Constitution aims at the institution of a planning system with great participation of the Legislative Branch, a high level of compatibility between plan and budget, and its subordination to the fundamental objectives of the Republic, expressed, for example, in Article 3 of the constitutional text<sup>5</sup>. The Constitution lays the foundations for democratic planning, with increased transparency and control over public spending, by requiring coherence between the government's annual spending and medium and long-term planning. The great difficulty lies in the lack of will and/or political condition to implement state planning again (Biasoto Junior, 1995: pp. 172-173; Affonso, 1990, p. 62, 64). This lack of will and/or political condition to plan is evident in the non-compliance with the constitutional determination to establish a systematic planning legislation, according to Article 174, Section 1<sup>6</sup>, which, to date, has not been properly prepared. That is, since 1979, with the revocation of the institutional and complementary acts, Brazil has not had any law to regulate national planning. Law 10.180 of February 6th, 2001, although it intends to organize "in the form of a system" the planning activities, it does not establish a true National Planning System, under the terms of Article 174, Section 1 of the 1988 Constitution.

This law, in its Article 2, simply repeats the constitutional powers of the Union to prepare national and regional plans for territorial organization and economic and social development (Articles 21, IX, 23, 43, 48, II and IV and 165 of the 1988 Constitution). The other provisions deal with financial administration, accounting, budget and internal control of the Federal Executive Branch. As one can see, we are quite distant from legislation on the institution and operation of a National Planning System. Allied to this lack of will and/or political condition, we could also list some structural obstacles to planning in the current historical conjuncture: the Brazilian administrative structure, aggravated with the administrative reform of the 1990s, and the reduction of planning to the budget.

### 3. Obstacles to Planning I: The Administrative Structure

The classic forms of administrative law are often insufficient to meet the needs of the welfare state. The Brazilian Public Administration is far from the requirements of development. Its organization is traditional, with modifications generally carried out in an improvised manner, but without a fundamental transformation to enable the State to promote development. Public Administration (and administrative law) is geared towards the liberal model of protecting individual rights opposite the State, not towards implementing the principles

<sup>5</sup>On the issues raised by planning in the relations between government and parliament (primacy of the political or primacy of administration, for example) in Germany, see Böckenförde, 1972: pp. 443-458 and Grimm, 1994: pp. 355-361.

<sup>6</sup>Article 174, Section 1 of the 1988 Constitution: "The law shall establish the guidelines and bases for planning balanced national development, which shall incorporate and make compatible national and regional development plans".



and policies enshrined in the 1988 Constitution.

The State, according the administrative law doctrine, is a single legal entity that performs multiple functions (García de Enterría & Fernández, 2011: vol. 1, pp. 389-391)<sup>7</sup>. The Public Administration, consequently, must act in a harmonious way, from the definition of competencies in the constitutional text and in ordinary legislation. Thus, specific powers are attributed to the various administrative agencies, both to the members of the Direct Administration and to those of the Indirect Administration.

However, at the administrative level, the Brazilian state structure is not at all unified and cohesive. The internal divisions within the Public Administration constitute a serious obstacle to the success of a development policy. Each administrative agency represents distinct political interests, with different relative strengths at each moment. Thus the inability of technicians and bureaucrats to establish, within the Public Administration, the unity of the state's economic and social policies is patent.

This unity of direction is determined by the political forces that sustain, in an unstable balance, the Presidency of the Republic. It is from the Presidency that the internal fragmentation of the administrative machine is minimally overcome, mobilizing around it technical and bureaucratic sectors capable of giving meaning to state action. However, even with a strong Presidency, such as in Brazil, the lack of a planning and coordinating body with effective powers perpetuates political conflicts within the State. And these conflicts, although not always hindering the objectives of national policies, always manage to compromise the rhythm and the politically possible choices, at each moment, of the development policies, hindering a coordinated action by the Public Power (Draibe, 1985: pp. 50-55, 233-234).

This traditional format of the Brazilian administration generated one of the greatest obstacles to a development-oriented administrative structure: the myth of neutrality of the Public Administration. In other words, the Administration is understood as an apolitical, merely technical organization. The Government is political, not the Administration, generating an excess of meaningless formalism, to the detriment of the definition and execution of the public interest.

According to Nelson Mello e Souza, one of the problems in making Public Administration compatible with planning would be the confusion between plan and planning. Planning is the process, and the plan is the realization. The insistence on drafting plans that are not complied with is due to the idea that planning is only feasible with determined, meticulously quantified plans. For Nelson Mello e Souza, planning is the rational process of formulating economic and social policy decisions, which requires a harmonic and integrated state action to achieve explicit purposes, but not necessarily quantified. It would be the "plan-

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<sup>7</sup>Several authors emphasize the so-called "polycentric administration" (Otero, 2003: pp. 148-150, 315-317). Massimo Severo Giannini goes further and described the "disaggregation of the public administration", understanding the state as a complex administrative entity without a centre (Giannini, 2001: pp. 78-87).



ning without a plan”, which would allow the coherent instrumentalization of public policies by the state administrative machine (Souza, 1984: pp. 66-68; Böckenförde, 1972: pp. 432-433).

This whole situation worsened with the so-called “State Reform” or “State Managerial Reform” of the 1990s. “Regulation” of the economy (Chang, 1997: pp. 703-704; Eisner, 2000: pp. XIII-XVII, 1-26) became the fashionable topic, with its advocates rushing to proclaim a “new public law of the economy”, in line with the microeconomic reforms structured on the basis of the “Washington Consensus” (Williamson, 1990). The objectives of Managerial Reform, according to one of its formulators, former Minister Luiz Carlos Bresser Pereira, are to increase the efficiency and effectiveness of state agencies, improve the quality of strategic government decisions and orient the Administration towards the citizen-user (or citizen-client). The logic of Public Administration action would no longer be the control of procedures (or means) but rather the control of results, seeking the maximum possible efficiency. To this end, one of the key points of the Reform is to grant the public administrator part of the autonomy enjoyed by private administrators, with the creation of independent bodies (the “agencies”) of the traditional administrative structure, formed according to technical, not political, criteria (Bresser-Pereira, 2002: pp. 109-206).

With the Reform of the State, two distinct areas of action were created for the Public Power: on the one hand, the centralized Public Administration, which formulates and plans public policies. On the other, regulatory bodies (the “agencies”), which regulate and inspect the provision of public services. One of the consequences of this conception is the defence that the only, or the main, task of the state is to control the operation of the market (Bresser-Pereira, 2002: p. 107; Leisner, 2007: pp. 98-107). This contradicts the very foundation of public policies, which is the need for the realization of rights through positive state benefits, that is, through public services. Public policy and public service are interconnected and cannot be separated, under penalty of being emptied of their meaning. This state model, which acts only to guarantee competition and the free play of market forces, abstaining from most public policies of an economic and social nature, became known in the European debate as the “guarantor State” (“Gewährleistungsstaat”) (Knauff, 2004: pp. 60-91; Schuppert, 2005).

The transfer of state activities to private initiative is seen by many authors as a “republicization” of the State, based on the assumption that the public is not necessarily state (Bresser-Pereira, 2002: pp. 81-94). This vision is linked to the so-called “theory of capture”, which considers as or more pernicious than the “market failures”, the “government failures” arising from the co-optation of the state and regulatory agencies for private ends. In Brazil, this idea is particularly strong in the discourse that sought to legitimize the privatization of state-owned enterprises and the creation of “agencies”. State companies were described as privileged centres of power and their privatisation would make the state public, in addition to the creation of “independent” regulatory “agencies”, “technical”, “neutral” bodies, “free” of political interference in their conduct (Bresser-Pereira,

2002: pp. 156-160).

Neutrality” and “technicality” became, therefore, strong arguments for the defenders of “regulatory reforms”, reducing the decision-making space reserved for politics and seeking to limit state activities to a minimum. According to Michaela Manetti, the phenomenon of “neutral powers” (such as “agencies”) occurs especially at times of crisis in politics, when the perception of the rationality of public authorities’ actions diminishes. These “neutral powers” have as a remarkable characteristic the fact that they do not develop productive activities, but regulate and control these activities. In reality, what occurs is the independence of technocracy from any form of control, justifying this by its “neutrality” or “impartiality”. A restricted circle of technicians thus “captures” a large part of the administrative structure. Public agencies set up to ensure state intervention in the economic sphere have their instrumentality denied, paradoxically, by their own leaders. The claim of the “neutrality” argument is to guide collective choices on the basis of calculations of utility that individuals would make taking into account their own interests, as if there were no social values, making market interests prevail over democratic politics (Manetti, 1994: pp. 10-13, 39-52, 95-126, 135-156). In this context, the famous “cost-benefit” analysis gains unusual importance, lately so fashionable, or the interpretation of the “principle of efficiency”, that is, the adequacy between means and ends, exclusively as “economic efficiency”, as if the rationality of state action should be the same as that of private economic agents in the market (Leisner, 1994; Leisner, 2007: pp. 134-145).

The denial or criticism of the rationality of politics, however, cannot obscure the fact that the decisions of technicians are as debatable as those of politicians. As Manetti points out, beyond their specific competencies, the underlying assumptions and valuations of these technicians remain subjective, although they may formally be in accordance with the milieu to which the technicians are bound. The “technical” or “neutral” body is thus an instrument of representation of restricted groups of specialists, whose space and importance have been expanded at the expense of the democratic sphere (Manetti, 1994: pp. 151-156).

It is possible to conclude that the so-called “State Reform” of the 1990s did not, in fact, reform the Brazilian State. After all, the independent “agencies” which, in reality, are not independent (Sunstein, 1999: pp. 285-286, 293-294), were simply added to the Brazilian administrative structure, and did not modify the Public Administration. They merely gave an aura of modernity to the traditional patrimonialism that characterizes the Brazilian State. Walter Leisner, for example, emphasizes that the central point of the state reforms of the 1990s was the objective of finally achieving the “depoliticization of law”, thus removing juridical (and political and economic) decisions from the hands of politicians and returning them to “citizens”. It can be seen, therefore, that the “regulatory reform” consists of a new form of “capture” of the public fund, that is, the “new regulation” is nothing more than a new kind of patrimonialism (Massonetto, 2003), with the aggravating factor of promoting the withdrawal of extensive sectors of the economy from public and democratic debate in Parliament and from

the decision-making power of the people's elected representatives.

Fragmentation of the Public Administration became much more accentuated with the so-called "State Reform" of the 1990s. For every sector of eminently public activity, an escape valve was created, an exception, favoring solutions outside public law, when not outside legality itself.

In a State endowed with an administrative structure unstructured to this degree, planning is a virtually impossible task. The overlapping of competencies and different legal regimes, the various sectorial planning "systems" (health policy, basic education, social assistance, etc.), the performance of the remaining state companies (Petrobras, BNDES, Banco do Brasil) and the failure of the "agencies", without going into the federative disarticulation issues, created a true "schizophrenic State" in Brazil, with a performance often marked by the waste of public resources and the absolute lack of medium and long term guidelines.

As if these problems of administrative structure and political conduct were not enough, there is still another obstacle to planning in Brazil: the issue of reducing planning to the budget.

#### **4. Obstacles to Planning II: The Reduction of Planning to the Budget**

The planning activity is provided for in the Constitution (Article 174) as subject to the principle of legality. It is the condition of the plan as a law, debated and approved by representatives of the people, which gives the democratic character to planning (Grau, 1978: pp. 76-78). Moreover, the rulers should act obeying the hierarchy of priorities and resources set out in the plan, which obviously can be adapted to new circumstances, thus serving as guidance and effective coordination of government policy, avoiding the misuse of power and the privilege of particular interests in the Administration. Thus, planning is a possibility to control the state's actions, since it must define the direction and pace it will take (Draibe, 1985: pp. 371-372).

The key issue is the binding of the Public Power to the planning performed by it. The doctrine established the idea that planning is mandatory for the Government and indicative for the private sector (Grau, 1978: pp. 23-24, 29-31)<sup>8</sup>, a principle now enshrined in the Article 174 of the 1988 Constitution. In relation to the public sector, the main mode of control of planning activity is the need for integration between plan and budget, which is, according to Eros Grau, a positive feature of the Brazilian planning system (Grau, 1978: p. 189, 252). The realization of the plan depends on its budget forecast, even if partial. The implementation of the plans occurs through the realization of public investments that must be explicit in the budgets, implementing immediately or in the short term the medium and long term objectives contained in the plans.

Therefore, the concern of the 1987-88 Brazilian Constituent Assembly was to

<sup>8</sup>Planning is indicative for the private sector, but not the normative and regulatory activity of the State, foreseen in the same article 174 of the Constitution. In fact, there would be no reason for the State to issue norms that do not also apply to private agents. In this sense, see Comparato, 1991: 20.

modernize the budgetary instruments, seeking integration between planning and budgeting in the medium and long term (Biasoto Junior, 1995: pp. 161-162, 172-173). To this end, the 1988 Constitution provides for three budget laws, the multiannual plan, the budget guidelines and the annual budget, which should be integrated with each other and made compatible with the overall planning (according to Article 165, paragraph 4).

The multiannual plan, introduced by Articles 165, I and 165, Section 1 of the Constitution of 1988, is based on the linkage between the annual actions of the government (provided for in the annual budget) with a longer time horizon, necessary for effective planning. The problem of the multiannual plan is its viability, given the lack of concern with planning by the post-1988 governments. Moreover, its relations with the other plans provided for in the Constitution are not clear, despite Article 165, paragraph 4 determining its compatibility with the other national, regional and sectoral plans of the constitutional text (Biasoto Junior, 1995: pp. 162-164).

The notorious trend regarding the integration of planning and budgeting is the reduction of the plan to the budget. The instruments of budgetary control of planning provided for in the Constitution favored the limitation of planning to the budget through the multiannual plans, examples of which are the “Brazil in Action Plan”, of the Fernando Henrique Cardoso Government (1995-2003), and the PPAs (Multiannual Plans) of the governments of Luis Inácio Lula da Silva (2003-2011) and Dilma Rousseff (2011-2016).

These “plans” are structurally similar to the first state expenditure planning experiences in Brazil, developed by DASP (Administrative Department of Public Service) during the Estado Novo period (1937-1945): the Special Plan for Public Works and National Defence Equipment (1939) and the Plan for Works and Equipment (1943). In the conception of these plans, “the budget was the plan translated into money”. Both were limited to the budgetary proposal, without effectively guaranteeing the resources for its execution and without setting goals for state action. The plan was reduced to disciplining public investments, establishing the appropriations to be distributed among the various ministries (Souza, 1984: pp. 30-32; Draibe, 1985: pp. 104-108). The same principle was followed by the SALTE Plan (Health, Food, Transport and Energy Plan), in the government of Eurico Gaspar Dutra (1946-1951) and today has been taken up by “Brazil in Action” and the PPAs.

Law 10.180/2001 has this same understanding, privileging the budget process to the detriment of planning, understood only as a way to elaborate goals and guidelines to be incorporated into the bill of the multiannual plan and the goals and priorities of the Federal Administration to be integrated into the bill of the budget guidelines (Article 7 of Law 10.180/2001). The logic of planning is reduced to the budgetary logic of dispute, forecast, allocation and implementation of public spending.

Planning cannot be reduced to the budget, and for a very simple reason: be-

cause it loses its main feature, which is to set guidelines for the State's actions. These guidelines also serve to guide private sector investments. The multiannual plan is a simple forecast of spending, which may or may not occur, without any body to control its execution and without any guarantee of effectiveness. The reduction of the plan to the budget is only a way to coordinate public spending more rationally, not a true planning, aimed at development, that is, at the transformation of the socio-economic structures of Brazil.

This limitation of the planning activity exclusively to budgetary allocations is aggravated by the restrictions recently imposed on the State's activities at all levels by the Fiscal Responsibility Law (Complementary Law 101 of May 4th, 2000). Independently of the merit of seeking to control public spending, preventing its waste, this law visibly imposes a policy of balanced budget to all entities of the Federation. The only possible public policy becomes the control of fiscal management.

Correctly, the Constitution does not contemplate the principle of balanced budget. And it does not contemplate it in order not to make unfeasible the promotion of development, objective of the Republic established in its Article 3, II. The implementation of public policies requires, sometimes, the containment of expenditure; other times, it generates budget deficits. One cannot restrict the State's actions exclusively to obtain a balanced budget, in the liberal molds, even to the detriment of investments in the social area, which is what the Fiscal Responsibility Law does.

## **5. Final Considerations: The Crisis of the Brazilian State and the Planning Crisis**

The issue of not resuming planning in Brazil, however, goes beyond the structural obstacles mentioned above. It is linked to the Crisis of the Brazilian State. Without rethinking the Brazilian State, how we want to structure it and what its objectives should be, it is impossible to think about planning.

The 1988 Constitution attempted to establish the bases for a national development project. However, the lack of consensus around the Constitution itself prevents the implementation, from the constitutional bases, of a national development project. Without the minimum constitutional consensus and without understanding the Brazilian State, in all its specificity as a peripheral State (and this is all the more important in the case of Brazil, since any reflection on development policy requires that one refer to the State), without trying to get out of the impasse in which we find ourselves, it is impossible to think about planning.

The planning crisis in Brazil, despite the 1988 Constitution, will only be overcome with the reconstruction (not to say the restoration) of the Brazilian State, in the context of the much needed and delayed national development project. And this reflection on the State is even more fundamental if we take into consideration German historian Reinhart Koselleck's statement that one of the main characteristics of the modern State in its process of formation was to arrogate to

itself the monopoly of the domination of the future (Koselleck, 2000: pp. 25-26). A State that gives up planning for the future, in this way, gives up one of the fundamental characteristics of its own statehood and reason for existence.

### Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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