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THE REGULATORY FUNCTION IN BRAZIL'S FREE MARKET ECONOMY

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1-The role of the market in the Cardoso Government

In 1994, the election of Fernando Henrique Cardoso as President of Brazil, allied with the PFL, resulted of a center coalition, (PSDB and PFL), which has brought a new perspective in the Brazilian economic scenario. Based in a liberal platform, Cardoso stressed, among other issues, the necessity to build a new economy based on a free market, competition and efficiency.

This was the first government elected in the recent past of Brazilian history that had such liberal economic approach. Even though, Brazil's economic system has always assured aside for the private property, some sectors are monopolies performed by State owned companies.

Cardoso is an intellectual who defies neat categorization. His ideas are as nuance, as they are eclectic and fluid. He has an integrated political philosophy, but one that stressed change and the need to refine continuously ideas and political agendas as circumstance changes.

To many, Cardoso has embraced the co-called neoliberal gospel at the expense of the progressive social philosophy and reformist idealism that, in their view, defined the young scholar.

During the 1994 campaign, the left accused Cardoso of opportunism and abandoning his past. Antonio Carlos Magalhaes, the most powerful political figure on the Right, and leader of the party of Cardoso, allied with in the elections, said of Brazil's new president that "behind the brilliant Marxist sociologist was always an elitist and a man of the Right."

But what is the role of the market and the state in his [Cardoso's] social democratic vision? The PSDB's legislative agenda, ad Cardoso's actions as a policy maker, contain progressive, centrist and liberal elements. The party's ideas cannot be described as "neoliberal", nor do they embrace the so-called Washington consensus of the early 1990's. Cardoso's own ideas concerning the market and the state's relationship to the market predate the consensus of 1980s and differ from it in important ways. Freer markets and freer politics have been part of his thinking, but so has social egalitarianism.

Cardoso and the PSDB do not deny that the market has an essential hole. The construction of a viable utopia must, first and foremost, give primacy to the market and the private initiative, but both within limits. Cardoso and the PSDB envision a regulated free market economy or a mixed economy of the Western European variant. Aside from a stress on competition and efficiency in private and public sectors, there is some notion in the PSDB's political economy views that state intervention has to conform to general market principles. As defined by PSDB, social democracy places equal emphasis on growth and equity, though in practice they have consistently prioritized growth. " We know that economic growth in Brazil has resulted in more and more concentration and not the distribution of income. But it is here that one enters history. Alongside growth a social policy of the kind the PSDB proposes … redistributitive policy is necessary. Social democracy seeks to transform capitalist society through gradual reforms."

Cardoso himself has always been less convinced than others liberals about the perfection of the market. To some extent, the language of freer market is new to his thinking, as is the emphasis on efficiency and industrial policy. But they are not radical departures. He remains highly skeptical of the unregulated market in dependent capitalist economies. For him, the history of economic concentration does not support the pure economic liberalism trumpeted by "neoliberal" enthusiasts. The market alone, or market with only a skeletal state, will not solve the problems of hunger, mass poverty, illiteracy, and a myriad of other social ills that have persisted for decades. Indeed, Cardoso observes, not even "center capitalism has been able to move toward more egalitarian and socially just society with out a commitment to social policy."

Cardoso and the PSDB have not spelled out how they would intend to reconcile growth with equity or how to achieve democratic control over economic power. The party states that growth and prosperity, and the prerequisites for sustaining them, are key to social democracy.

Cardoso's social democratic agenda, therefore, has important implications for the role and the character of the State. The State had always provided the central focus for Cardoso's writings. The pattern of industrialization on the periphery produced, and was reinforced by, an expansive State that combined repressive and entrepreneurial aspects. His own personal experience with the large arbitrary State made him even more disdainful of such State. The Brazilian State, according to Cardoso, had an obstacle to both equality and liberty. "The heart of the national crisis… is the crisis of the State". Redefining the and rebuilding the State, along with the country's institutional arrangements, is the only way to make the political system more accountable and participatory, to resume economic growth, and to overcome the country's enormous social deficit.

Cardoso never denied that the State must have an important role in the economic and social spheres. In Cardoso's view, the State as it exists in Brazil the 1990s cannot be part of the solution. But the choice of Brazil is not between an expansive welfare state and the minimal skeletal State. The objective is a better, more transparent, and socially responsible State. "In order to redefine the role of the State and replace the liberal thesis of the *minimal state* for the *socially necessary state*, it is necessary to criticize the state as it actually is and, from this perspective, accept some of the criticisms of liberalism [but] show, at the same time, its limitations and distortions".

Cardoso has consistently defined Brazil’s economic crisis as mainly a crisis of the state. The Brazilian State today needs to be rebuilt and redefined because "the state is bankrupt, broken"

Cardoso’s socially necessary state is also an activist, participating in growth and competition-promoting activities. The reformed state must have an aggressive industrial policy to nurture growth at home and to guide Brazil’s integration in the global economy. The state is to have a pivotal role in making Brazil’s economy internationally competitive, not only at the level of macro policy but also, too more limited extent, at the level of production. Changes in the international economy, Cardoso believes, together with the impossibility of autarkic solutions, have forced a marriage between the state, science, education and markets. Only the state can provide the needed coordination and stimulus. Cardoso and PSDB envision a combined developmental and social welfare state. They see the state participating directly in targeted strategic industries such as aerospace, armaments, and energy, though most of these parastatals have been privatized under Cardoso. They are less concerned about the precise demarcation between private and public participation in production.

1.2.Privatization and deregulation

In this vein, privatization assumes huge importance. Privatization is necessary "but one cannot make the private sector the universal sector, the universal salvation, because it’s not". Cardoso suggests that privatization should follow both social necessity and efficiency criteria that emphasize production and competition.

To be sure there are many contradictions in the philosophy and policy agenda of Cardoso and the PSDB with respect to the relationship between the market, the state and social welfare. The important task is reconciling developmental and social welfare state with market and fix parameters to ensure that the state’s socially necessary activities do not distort the market.

Since the state owned companies have been privatized, there is the necessity to creating regulatory agencies to regulate these sectors. Hence, Brazil’s new agencies to control the Telecommunications, electric energy, petroleum and natural gas were recently created. The Oil Regulation law that ended Petrobras' monopoly was enacted in August 1997. The act creates the National Petroleum Agency (ANP). Similarly, the Electric Energy regulation law, that creates the National Electric Energy (ANEEL), an Agency which permits the privatization of the state electrical companies. ANATEL is the agency that will oversee the telecommunication sectors.

Abandoning the model of mixed economy of Western Europe, Cardoso opted for a regulated free market, within limits.

According to laws recently enacted the agencies regulation activity will be made in three areas: economic regulation, technical and customer service regulation and facilitation of competition.

Contrary to what we are left to believe, this is not the first Brazilian experience in economy regulating. In deed, several regulatory agencies were created in Brazil so far. Since the dictatorship of Vargas in 1930’s to 1962, CONTEL, (Telecommunications National Council) and CADE (Administrative Council of Economic Defense) were created. However, all regulatory agencies, except the CADE, failed, first, because there weren’t autonomous. The regulatory agency was always subordinated one Minister or Secretary who could undo the agencies decision, and, second, because all strategic companies were State owned companies, so The State acted directly it self in economy, and thus no competence was left for the Regulatory Agency. There are also regulatory agencies, councils and other administrative offices in charge of environmental aspects, heath and drugs, among others, but they don’t have economic nature.

2- The Regulatory Role in US

For several reasons, United States has been always taken as a parameter of free market enterprise, overall facing the recent very well succeeded example of efficiency and productivity accomplished by the US. The statement of free economies reserves a very important role to regulatory agencies in US. In what is supposed to be a free economy they have an important task imposing limits to the firms, to prevent anti-competitive behavior and to protector consumers, just as Cardoso has stressed.

The regulatory tradition has been adapted to many different ends and purposes. Regulation has served as a versatile tool whose handle has been seized at different time by reformers, business managers, bureaucrats, and lawyers - and manipulated as often for the particular interests of one of these special groups as for the general interest of the American public

Contemporary discussions of regulation often charge that there is excessive state intervention markets and in corporate affair. The term *regulation,* it would seem, describes much of what government does which it should not do. Such characterization would have come as a surprise in decades past, when regulatory policies were held to provide instruments for protecting the citizenry from the exploitation advances of the trusts, promoting economic stability under precarious circumstances, or holding corporations responsible for environmental degradation and threats to public health. Each generation interprets regulatory policies and state-economy relations from their own historic position as part of a specific political-economic milieu. According with Marcallen Eisner, the major regulatory regimes of the past hundred years and places the evolution of regulatory policies in a broader historical and social context.

As Eisner says, we can understand a regulatory regime as a historically specific configuration of policies and institutions which structures between social interests, the state, and economic actors in multiple sectors of the economy

As Eisner shows, regulatory policies were created in pursuit of a wide variety of objectives. Policy-makers designed and redesigned institution to facilitate effective administration and officials addressed specific regulatory problems and the technical demands of implementation.

His studies divides the history of regulation in the United States since 1880 into four regimes, each of which was created in response to economic changes that threatened the perceived self-interested of various groups. The market regime emerged in the decades surrounding the turn of the century. Through, policy-makers tried to compensate for the tremendous economic-structural changes of the period. Corporations had expanded so as to internalize many functions previously accomplished by the market transactions, and they adopted joint strategies to manage competition and expansion, albeit with mixed success. The emergence of a large-scale corporate economy forced the integration of formerly local economies and threatened the economic independence that many businesses and consumers had enjoyed in earlier decades. In response to popular demands, elected officials fashioned regulatory initiatives to do one do two things. First, as in the case of antitrust, policy-makers aspired to force a return to the market. They prohibited the forms of corporate conduct and organization that allowed for circumvention of market forces. Second, where the structure of an industry prevent a return to the market, as was the case with electric power generation and the railroads, legislation created administrative agencies to set rates that roughly approximate those that would have existed under market conditions. The regulatory regime of the progressive era is best termed the market regime, because of its use of the maker as a benchmark.

The market regime was a response to the rise of a new corporate economy. A second wave of regulation followed that economies collapse in the Great Depression. The economic and social dislocations of the depression led the Franklin Roosevelt’s government to focus on the question of recovery. The National Industrial Recovery Act was an important regulatory initiative that was central to the recovery effort. It was, in essence, an attempt to promote economic stability by means of integrated regulatory framework governing production and pricing across multiple sectors of the economy. During the same period, moreover, Congress and the president created or expanded regulatory subsystems in industrial relations and a variety of other sectors, including commercial banking, industrial finance, civil aeronautics, trucking, communications and agriculture. Many of the initiatives shared a common goal, patterned after the National Industrial Recovery Act. Policy-makers and administrators sought to use regulatory policies to promote industrial stability and to redistribute national income toward certain regulated groups. As part of this approach, the Roosevelt administration actively encouraged the organization of economic interests. Regulators gave economic associations a central role in defining and implementing regulatory policy. In so doing, they created a system of government-supervised self-regulation. By integrating interest groups into the regulatory process through the creation of quasi-corporatist arrangements, they promoted economic stability, allowed regulators to draw on the expertise and resources of the regulated and minimized confrontations. Although this new regime emerged during the New Deal, it had its origins in the associationalism of the 1920s. It is thus useful to refer to this regime as the "associational regime".

The regulatory regime of the New Deal was rooted in associationalism that was, in large part, a synthesis of Progressivism and the experience of economic planning during Word War I. Whereas the dominant strand of Progressivism sought to revitalize markets or produce marketlike results, a second strand promoted a more active role for the state in managing and guiding economic change by means of structures interaction with economic associations. The Federal Reserve Board, a Progressive Era agency, embodied this second strand of Progressivism and foreshadowed the institutional arrangements enshrined in the New Deal. Others agencies, such as the Interstate Commerce Commission and the Federal Trade Commission, were clearly designed to execute market-corrective functions. However, by the 1920s both agencies were vesting greater authority in economic associations and implementing policy to promote industry stability rather than reasonable rates or strict reliance on market mechanisms.

The regulatory initiatives of the 1960s and 1970s stand in contrast to those of the New Deal and the Progressive Era. Deep skepticism about the distribution of the economic power in society and about the excesses of capitalist production contributed to a rejection of the earlier goals of capitalist production. The major initiatives of this period, rather than promoting economic stability or revitalizing markets, were designed to protect citizens from the health and environmental hazards that were an outgrowth of large-scale industrial production. The so-called "new social regulation" extended regulatory authority into the production process itself. Aspects of production that had formerly been under the control of corporate managers them became the objects of regulatory concern. Thus, environmental legislation authorized the Environmental Protection Agency to set standards regulating the contents and quantity of plant emissions and effluents, and to mandate the adoption of pollution control technologies. The Occupational Safety and Health Administration to regulate workplace safety and occupational exposures to harmful substances. Because of this regime’s concern with the societal implications of industrial production, Eisner calls as "societal regime".

During the 1970s and 1980s, the political agenda was shaped by the nation’s poor macroeconomic performance. The combination of high inflation rates, sluggish growth, and mounting foreign economic competition forced policy makers to reconsider the justification for many policies. Public officials and policy analysts identified regulation as one of the factors contributing to stagflation. A series of presidents initiated executive review processes to force agencies to consider the costs and benefits of the regulations. Increasingly, the economic analysis of regulation was conducts by economy staffs or policy offices within the agencies themselves. At the same time, a number of deregulatory initiatives were implemented. In each case, efficiency was the key value to be promoted by policy. Throughout his book, he refers to the regime established during this period as the "efficiency regime".

The most relevant level of analysis for regulatory studies is the individual agency. Regulatory policies commonly originate in legislation that defines policy goals in the broadest possible terms. Administrators must give ambiguous expressions such as "the public interest" substantive content. In the late 1960s and the 1970s, Congress of the U.S. passed highly detailed legislation with strict implementation timetables and action-forcing provisions. However, this did not mean that delegations was eliminated, on the contrary, Congress failed to specify the precise policy goals, the assumptions underlying the standards, and the means of meeting the timetables. Thus, agencies such the Occupational Safety and Health Administration and the Environmental Protection Agency continued to exercise what amounted to unlimited discretion in these important areas.

Public policy is a goal-oriented pattern of action. Here Eisner is concerned with the pattern of action that is rarely specified by regulatory legislation. Thus, he focuses on the factors that shape agencies’ decision-making and implementation. Because administrators must to determine how to pursue statutory goals, one cannot easily divorce policy and administration. In addressing administrative capacities, three factors are particularly worth of discussion: bureaucratic expertise, the integration of interests into the policy process, and agencies’ autonomy from other governmental institutions

A bureaucracy is a highly specialized organization designed to execute a relatively limited set of tasks. This specialization and the requisite competence of administrators foster a unique synthesis of technical knowledge and extensive experience.

A listing of professional administrators would include accounts, attorneys, biologists, chemists, economists, engineers, environmental scientists, epidemiologist, industrial hygienists, nuclear physicists, physicians and statisticians, with multiple sub-divisions within each professional grouping and commonly, competing professional grouping - are important participants in all aspects of regulatory policy-making. The inclusion of natural and social scientists has improved the quality of regulatory policy and provided a basis for more comprehensive planning and management.

However, it also introduced new professional norms and disciplinary vary into agencies. This is of critical importance when one is attempting to understand bureaucratic behavior. As William Gormley explains: " Each professional brings with him a peculiar word view, a set of pre-dispositions, and certain blinds spots ... thus, if the level of resources determines a bureaucracy’s ability to cope with different kinds of problems, the mix of professionals determines how it copes with such problems"

Historically, norms of market liberalism have shaped the popular understanding of the proper relationship between public policy and economic activity. Market liberalism rests upon the pillars of private property and the market. James Willard Hurst notes that in the United States, private property was defined "in terms of a legally assured measure of autonomy for private decision makers as against the public power ... property was primarily a bundle of legal limits on the intrusion of official power into unofficial decision making" .

Although market liberalism has continued to exert ideological force, its influence has varied with the concrete demands of the time. Its effects have been, at least, ambiguous. Throughout American economic history there have been strong and incessant demands for a direct state role in the economy. In the early decades of the nineteenth century, national and subnational governments created as infrastructure for economic exchange by defining contract rights and liability, and by providing protection through bankruptcy laws. Beyond simply furnishing a positive legal environment for growth, the federal government invested a good deal of capital. During the nineteenth century, supposedly the heyday of laissez-faire capitalism, the federal government became involved in a number of mixed enterprises in the area of transportation. Special franchises, land grants, direct funding and in-kind support were critical in promoting the construction of turnpikes, canals, steamboats and a transcontinental railroad system. The resulting reduction in transportation costs was essential in stimulating economic demand and development.

Another factor to examine when considering institutions at the agency level is the role of interest groups in the regulatory process. The regulated interests successfully secured policies that excluded potential competitor by creating regulatory barriers and protected profitability by approving rates that exceeded costs.

All individuals and social groups have interests that are affected by economic change. They seek to execute certain economic functions with constrains imposed by existing institutional and regulations. The importance of organization varies from group to group. Corporations, for example, exist both as unitary actors and as members of organizations. Although social movements are important in the history of some new regulatory initiatives, organized interests tend to have the greatest effect on regulatory politics. Indeed, broad social movements are often reducible to collections of political and economic interest associations that are part of larger political coalitions.

Rapid changes in the American’s economic structure challenged the decentralized system that had existed in earlier decades.

In the 1970s and 1980s, conservative critics of regulation subjected policy to formal economic analysis in hopes of determining whether the results of policy were beneficial to those markets. At the same time, consumer advocates, responding to policies that allowed a few major corporations to extract excess profits and impose supra-competitive prices promoted market competition.

The new regulatory focus forced an ever-greater reliance on scientific and social-scientific experts within the agencies.

During the 1970s and 1980s, under the efficiency regime, new regulations were deemed appropriate only, if they yielded net social benefits, as determined through the economic regulations.

The efficiency regime adopted as a fundamental principle the assertion that the justification of all regulatory activity must depend on that activity's economic impact, as determined by cost-benefit analysis.

Because it is far easier to calculate compliance costs than social benefits, the reliance on cost-benefit-based evaluation methodologies and the centralization of regulatory authority threaten to redefine the nature of regulatory politics. The evolution of regulatory institutions and the new focus of regulatory policy-making may, in the end, limit the impact of the popular forces that have played such a critical role in the history of the regulation.

According to Richard H.K. Vietor, there are three theoretical approaches to regulation: Public-interest explanation, private-interest explanations, and organization explanations.

> *"The public-interest models now seem naive, the private-interest models, cynical. None of these models is broad enough to explain regulation as dynamic political-economic system, embracing causation, consequences and the impact on business organizations".*

In the public-interest view, regulation is a relatively altruistic response by government to undesirable business conduct. The idea is that when free enterprise fails to serve the public interest, broad public pressures, experts, and well-intentioned politicians seek administrative intervention or legislative reform. Economists who shared this view justified government intervention in terms of "market failures"- various structural departures from the neo-classical model of pure competition.

Political scientists first developed private-interest theories, which have all but superseded the public-interest approach, in the 1950s. Regulation that was supposed to serve public-interest, was subverted by a process of "capture", in which private interests gained influence or control over regulator

Technology is a key factor in shaping the conditions of supply, under both competition and regulation. It affects product attributes, operating systems, cost structure, distribution channels, and the availability of substitutes.

The third factor in the process of regulatory change is political entrepreneurship. This term includes individuals in the private sector as in government whom actively and creatively pursues regulatory change.

2.2. Deregulation era

In view of the fundamental and long-term effects that regulation had on market structure, industry organization, and firms, it is little wonder that deregulation and the reintroduction of price and entry competition had a tremendous impact after the late 1970s.

Deregulation unleashed competition with new technologies, new organizations, new suppliers and distribution - "competition which commands a decisive cost or quality advantage and which strikes not at the margins of the profits and the outputs of the existing firms but at their foundations and their very lives".

This sudden renewal of competition was a discovery process. Its effects are, in sum:

I<u>ndustry boundaries</u> were generally expanded. Industries defined by regulation gave way to broader structures defined by technology, customer demand, and supplier economies. Artificial barriers to entry, or to exit, were lowered or eliminated. Initially, this allowed start-up firms, usually with low-cost service, enter the business and skim the cream of price-sensitive customer off the high-cost or cross-subsidized price structures of incumbent vendors. To the great surprise of many economists, this period of intensified entry proved transitory. Once incumbent firms had adjusted their strategies and operations in response to competition, they created economic barriers to entry. Although some entrant from survived in the other industries, opportunities for continuing new entry were largely curtailed by the development of immense economies of scale and scope among the industry leaders.

Reconfigured deregulation established market segmentation. With the removal of regulatory segmentation, firms hastily devised strategies for resegmenting market along new lines dictated by technology, price or quality sensitivity, or scale and scope economies. Deregulation allowed distribution channels, which had been non-existent, atrophied, or inefficient under regulation, to develop as sophisticated competitive weapons.

Prices, on average and adjusted for inflation, went down with deregulation. The freedom to engage in price competition combined with the necessity of making substantial cost reductions, caused prices to drop in the case of Airlines, telecommunications, and gas.

Pricing mechanisms became more complex and diverse, as pricing, too, became a strategic tool for segmenting deregulated markets. Service quality, defined by traditional regulatory criteria, deteriorated on average. Some firms chose to maintain service quality, but at a premium price, as a means of segmenting the market.

Deregulation caused industry structure to change. In the artificial monopoly environment, deregulation led to more competitors in every segment. In the cartelized oligopolies, deregulation allowed scale and scope economies to restructure network and ownership, leaving fewer and larger firms to dominate the industry. Where regulation had enforced functional and geographic fragmentation, integration and concentration occurred as rapidly as deregulation allowed. All these changes in market structure were the consequences of individual firm’s adjusting to competition with mixed degrees of success. Faced with deregulation, business firms could choose among several strategies. By far, the dominant strategy for adjustment to deregulation was full-service differentiation on a national or superegional scale. The strength of this strategy lay in its potential for utilizing geographic scale and scope economies to lower unit costs, and to appeal with extraordinary sophistication to the diverse customer groups that were necessary for achieving scale economies. Although most of the firms adopted this strategy, relative competitive success lay in the process of complementation and the leadership of top management.

Vietor does not claim to be a regulator, but if he were, he would take four general lessons. First, government regulation, even when sought or controlled by business, shapes markets in a variety of ways, many of them unintended. These influences include not only the gains or losses to economic efficiency and social welfare, but effects on the relative competitiveness among firms and on the individuals, skills, and organizational incentives within firms. Additional attention to the impact of regulation on the firm itself, as well as on the market, should help make regulation more sensible and practicable. Second, the recent experience in United States clearly shows that regulation can depart only so far from economic or technological realities before becoming unworkable. Restrictions on entry, for example, cannot be maintained indefinitely if there are no significant economic barriers to entry. Third, both legislative authors of regulation and the bureaucrats who implement it should focus more on ends than on means. The problem starts with excessively detailed statutes that leave regulators with little discretion and flexibility, then, procedural issues, involving hearing examiners, iterative submissions, wide standing to intervene, and repeated judicial review, too often swamp the simple relationships linking supply, demand, and price, or broader issues of the public interest. Fourth, these three tendencies contribute to regulatory lag. Although regulation was never static, it nonetheless failed to respond quickly enough to important technological innovations or swings in the macro-economy. The ideal regulator would try to anticipate the broader impacts of his decisions and would assess them constantly, stresses Vietor. Such a regulator, Vietor continues, would design policies to manipulate and guide market forces, rather than reverse them, and to keep distortions within a tolerable range, competitive impact, and operational feasibility, avoiding policies that protected competitors or handicapped specific groups.

3- Brazilian regulatory system

In the last two years, we have witnessed a huge transformation in the Brazilian national’s economy. The President Fernando Henrique Cardoso, based on a liberal platform, after overcoming the inflation, had to deal with privatization and regulation of Brazilian economy. As he promised during the campaign in 1994, he has been proposing to Congress all measures to change the State. Several laws were enacted since than, reducing the power of government to intervene in economy. In compensation, the Government is trying to implement a new concept, a new culture based on the idea of a non-intervention government by regulating the economic activities, exercising controls, encouraging investments and planning.

In this vein, new agencies were created to control the sector of the public companies that the government has been selling to privates' entrepreneurs in auctions. The telecommunication regulation law enacted in July permits the government to privatize all companies of the Holding Telebras. In the next three years the new National Telecommunications Agency (ANATEL) will oversee the prices and regulate of the privatized telecommunications services. New agencies were also created to regulate the Oil and natural gas sector (ANP) and the Electric Energy (ANEEL).

As Cardoso stated, the market and the private initiative are essential in the new paper of the state in Brazil. In the one hand, the state sells its assets to private entrepreneur, and in the other hand, creates the Regulatory Agencies, with necessary and sufficient tools to regulate and oversee the market.

The regulation activity of these agencies will be made, basically, in three areas, ***i)*** economic regulation, ***ii)*** technical and customer service regulation and ***iii)*** facilitation of competition. Economic regulation means the determination of prices and revenue, both those for the natural monopolies where monopoly power will remain for the time being, secure the economic and financial balance of the relevant firms, limit tariff subsidies and to promote efficiency and Research and Development. Technical and customer service regulation, to maintain the quality of service and to ensure that customers are treated with care and attention to detail, especially where they have no choice over the entity from which they buy the service. Facilitation of competition, facilitate competition through the creation of a "level playing field" for the existing agents and new competitors and by ensuring there is adequate information for the regulatory authorities to supervise the market and prevent anti-competitive behavior.

The agencies should take a proactive stance in facilitating and extending competition where it is feasible and preventing anti-competitive behavior. CADE (*the antitrust agency*) and the Agencies will need to reach agreement on their respective roles in the area of monitoring for and preventing anti-competitive behavior. The agreement should recognize the respective agency special knowledge of the sector and the important role it can play in investigating potential problems, leaving CADE, the antitrust agency, in the position of examining the evidence and deciding what action to take.

Although, the new agencies have been created to regulate and oversee the prices, the CADE, the Brazilian Agency of Competition, retains its jurisdiction to analyze the behavior of the firms involved in order just to protect the market against the monopoly or oligopoly, and to keep the competition. This the most difficulty and challenging tasks of all these agencies, keep the competition alive.

All Agencies are autonomous, and their directors will be appointed by the President after being confirmed by Senate. The new agencies will oversee the market, bearing in mind the principals of free market enterprise, consumers' protection, free entry, and competition.

The regulatory model implemented by the current government is based on the ideals of on written rules and procedures, with limited discretion for the regulator in dealing with precise situations. The minimization of the scope of regulation and the extension of competition to protect customer interests; where possible, use of "price control" rather than "profit control" as the best alternative to competition where monopolies must remain and there is a need to provide incentives for efficiency; and setting standards for technical and customer service regulation and imposing penalties where these are not met.

Improvements in efficiency are primarily directed to the benefit of consumers, reserving to shareholders those resulting from efficiency improvement beyond the levels stipulated by the agencies. The benefits of efficiency improvements must be passed on to consumers.

Cardoso, regardless his early skepticism in free market shows that he has been convinced in a regulated free market. Despite the different context between Brazil and United States, the recent American deregulating experience take place. The Brazilian regulatory system fits in the recent conception of "efficient regime", described by Eisner, where he stresses that "efficiency was the key value". This also the case of Brazil’s new regulatory role. A process to force the agencies to consider the benefits and costs of regulation has characterized this period.

The efficiency regime adopted as its fundamental principle the assertion that the justification of all regulatory activity must depend on that activity’s economic impact, as determined by cost-benefit analysis.

The core assumption adopted in the efficiency regime’s regulatory oversight is that regulations should not detract significantly from economic growth and corporate profitability. The core principals of the efficiency regime are being rapidly incorporated into all regulatory agencies and into the executive regulation review process. Because it is far easier to calculate compliance costs than social benefits, the reliance on cost-benefit-based evaluation methodologies and the centralization of regulatory authority threaten to redefine the nature of regulatory politics.

The evolution of regulatory institutions and the new focus of regulatory policy-making may, in the end, limit the impact of the popular forces that have played such a critical role in the history of the regulation.

Another important aspect articulated by Eisner is the immense importance of an expertise staff, the length of time that an agency has been executing its mandate, and a data bank to avoid the reliance on the interested group’s information. Eisner also convies specific focus on interests groups that seek to execute certain economic functions with constrains imposed by existing institutional and regulations.

The interests groups, as emphasized by Vietor, illustrate the theory of regulation, where legislators and bureaucrats were cast as sellers of policies, which create "economic rents" and interests groups, which are the buyers.

At the end, we have opportunity to check Viertor’s personal perspective of regulatory policy. Regardless of his personal point of view, of not being a regulator, he gives some "lessons" to the regulator. As these agencies compromise with a new model of state, as conceived by Cardoso, they could become the pattern of new regulatory agencies of Brazil. "A simple and goal-oriented statute, where the regulator will strive to minimize formal procedure, limit paperwork, and achieve consensual settlements that avoid litigation, reassess regulatory methods and policies, making whatever revisions were necessary to keep up with evolving conditions".

4.Conclusion

We can conclude that, in the first phase, Brazil in Cardoso era, definitively, embraced market practices. Economic growth rates of 5 per cent were forecast for the country in 1997 and 1998 and inflation remains under control. Brazil has joined the world's capital markets and has received record inflows of direct investment.

The second stage is essential. This stage must focus on increasing social reforms, as Cardoso stated, while continuing economic reforms.

In spite of growth of per capita income, the majority of Brazilians haven't yet experienced the improvements in their lives that the reforms promised.

In Brazil, as most other countries, global competition and privatization have taken their toll on employment, producing disillusionment and social unrest, which threaten to undermine government's political will to continue disciplined reform.

The judiciary has to create a sound framework for a market-based economy. A fair system of justice is very important for building a free market economy.

The reform of State envisioned by Cardoso includes the state and municipal governments. The reforms at these levels lay the foundation for successful macroeconomic policy. The reforms desired by Cardoso and his central coalition agree that reforms cannot be limited to the central government, but must be extended throughout state and municipal governments, which need to be credible, efficient and accountable.

Health and education are important issues on the reform of State agenda. The Economic reform will allow the State, particularly after the privatization program, concentrate more attention in social areas. Adequate basic health services can be provided by the state. Education is very important to the needs of a market economy to foster competitiveness and productivity growth.

As the opening of the economy and privatization displace employees, sustained growth and increased private sector initiatives can create sufficient new jobs. This reality underscores the importance of labor market reform, including retraining of skills to encourage greater mobility. In this particular issue, both public and private sector can play important role. The Brazilian Agency of Competition (CADE) has been determined retraining program when verifies a huge impact on unemployment resulted from the merges.

A successful second stage is also vital to maintain the confidence of investors and sustain capital flows, particularly direct investment.

In this vein, Since the government must strengthen the economic reforms efforts, which includes trade reform, privatization, tax reforms, and deregulation, the new regulatory agencies will play a very important part. Their successes will provide solid groundwork for the challenge to achieve economic growth and to lessen the social inequity.

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idem n. 1, p.172

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Throughout this book, regime was labeled to reflect a defininig characteristic rather than the political period in question. This was done for two reasons. First, the regimes were embeded in institutions, and these outlive the

periods of origin. Elements of the market regime, for example, continue to exist some seventy-five years after the end of the Prograssive Era. Second, some periods (e.g., the late 1960s and the 1970s, which originated many social regulatory initiatives) simply lack useful labels(Author's note).

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James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth Century United States* (Madison: University of Madison Press,1956) p.9 *apud* Marc Allen Eisner, *ibid* n.11, p. 21.

See Marver Berstein, *Regulating Business by Independent Commission* (Priceton: University Press, 1955) *apud* Marc Allen Eisner, *ibid* n.11, p. 17.

Ibid. n. 11, p.208.

Richard H.K.Vietor, *Contrived Competition: Regulation and deregulation in America*

idem, n.20, p.311

The abandonment of public-interest was exemplifed by Gabriel Kolko and George Stigler, two scholars, in spite of their opposite ends of the political spectrum, agreed that govenment regulation *even in its origins* to the private interests of regulated firms.

Ibid. n. 20,p.316

Ibid. n. 20, p. 319

ibid. n. 11, p. 208.

ibid. n. 20, p. 319