

Technology, Law and Regulation: The Creation of a Framework For a “Sustainable” State and Social Justice

Track n. 19 - Technology for sustainability, social justice and well-being

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Abstract

The paper aims at defining a central issue of state reform and social and public policies through the use of legal techniques, management tools and technology. The central question is the definition of a new framework for public, collective and individual action, similar to the factory system or Fordism of the first and third industrial revolutions. What is at stake is a complex issue of defining the framework for action embedded in two technologies: (1) law and lawmaking and (2) reform of the state and regulation of activities through the implementation of new management techniques and technology and the definitions of criteria and benchmark to assess the action of workers, consumers (and even citizens, often reduced or idealized to the former), trade unions, associations, public servants, political parties and decision-makers, not to mention stakeholders (a keyword in discourse related to the process that I try to describe).

The prominent legal aspect in the present study is threefold: (1) making new laws and modifying existing laws directly, it is the law making process; (2) the modification of the role played by courts and mediation; and (3) the creation of norms through other institutional instruments such as regulatory agency, rules making by entities that are not checked directly by parliament or the political body, generally outside the public sphere and the democratic debate, eschewing the critique.

The starting point of the research had to do with the prominent role of legal and management experts in state reform in OECD countries from the early 1990s onwards, related to the subject of public service reform, new public management (NPM), de-regulation and regulation, privatization of public companies, private consultants, experts and counselors of decision-makers, policy assessment, specific constitutional reforms, and private-public partnership, among others.

All these aspects can be related three “technologies”: regulation and law (the creation of a new legal order), management (emergence and implementation of norms and managerial practices in the public services), and the specific techniques of information and communication. All three contribute to a restructured economic and social order to deal with social problems, justice, inequality, solidarity, equality, health and other basic needs.

The research identifies law, management and new technologies as ways to solve current and accumulated problems with the creation of a new ideology, the dominant ideology, centered on the

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paradigm of the market as a criterion for making decisions. This is an extension of the use of cost-benefit analysis after World War II as a technique for defining what is possible or admissible and what is not. This dominant ideology (system of ideas and norms) defines the future, our future, strengthening the “there is no alternative” or TINA dogma.

In the first part, after delimiting the object of the research, I will clarify the concepts used throughout the paper (law, regulation, public policy, management, experts, critique, social and economic order, dominant ideology, basic needs, justice). The clarification is aimed at excluding some frequent misunderstandings. I will develop further the analytical tools used here, namely the notions of law as technique, legal order, institutions, technology and management.

In the second part, I will review the recent contribution of the reform of the state, namely the pervasive introduction of market mechanisms, with the issue of social justice and basic needs. A specific attention will be given to the controversial notion of sustainability. It is controversial exactly because it is used in contradictory definitions of what is at stake with the reform recently and currently in course of changing the world we live in, as technology did (Hughes 2005).

Another central concept is the *framework*, as a central institution of the current social and economic changes which is related to the notion of order to characterize three interrelated worlds: the social world (social order, that is both global and local), the economy and the productive system of commodities and services (the economic order) and the law broadly construed as text and practice (I mean legal texts and the acting of courts, and this is the basis for the notion of legal order, derived partially from the analysis of Alain Supiot).

In the final part, I develop the analysis of the interactions between law, management (and the world of experts and expertise) and technology. The analysis relies on the notion of interest (Hirschman). The results focus on the eviction of the most of concrete and important the aspects of reforms from the public sphere and the democratic debate showing that a strong conception of sustainability is not satisfied. What is favored is a weak definition of sustainability more convenient for the world of management and the economic interest behind the dominant ideology of reform and the influence of meta-power (Hall and Burns).

Introduction

“Why are the most risky loan products sold to the least sophisticated borrowers? The question answers itself: the least sophisticated borrowers are probably duped into taking these products.” – Edward Gramlich, xxx

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definitions of criteria and benchmark to assess the action of workers, consumers (and even citizens, often reduced or idealized to the former), trade unions, associations, public servants, political parties and decision-makers, not to mention stakeholders (a keyword in discourse related to the process that I try to describe).

The prominent legal aspect in the present study is threefold: (1) making new laws and modifying existing laws directly, it is the law making process; (2) the modification of the role played by courts and mediation; and (3) the creation of norms through other institutional instruments such as regulatory agency, rules making by entities that are not checked directly by parliament or the political body, generally outside the public sphere and the democratic debate, eschewing the critique.²

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The research identifies law, management and new technologies as ways to solve current and accumulated problems with the creation of a new ideology, the dominant ideology, centered on the paradigm of the market as a criterion for making decisions. This is an extension of the use of cost-benefit analysis after World War II as a technique for defining what is possible or admissible and what is not. This dominant ideology (system of ideas and norms) defines the future, our future, strengthening the “there is no alternative” or TINA dogma.

In the first part, after delimiting the object of the research, I will clarify the concepts used throughout the paper (law, regulation, public policy, management, experts, critique, social and economic order, dominant ideology, basic needs, justice). The clarification is aimed and excluding some frequent misunderstandings. I will develop further the analytical tools used here, namely the notions of law as technique, legal order, institutions, technology and management.

In the second part, I will review the recent contribution of the reform of the state, namely the pervasive introduction of market mechanisms, with the issue of social justice and basic needs. A specific attention

² This is the case of punctual decisions of Secretaries of State, Ministries and regional authorities. In the preliminary research results, we have identified decisions such as “despachos ministeriais” or “portarias” in the case of Portugal and Brazil, XXX

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Another central concept is the *framework*, as a central institution of the current social and economic changes which is related to the notion of order to characterize three interrelated worlds: the social world (social order, that is both global and local), the economy and the productive system of commodities and services (the economic order) and the law broadly construed as text and practice (I mean legal texts and the acting of courts, and this is the basis for the notion of legal order, derived partially from the analysis of Alain Supiot (Supiot 2005)).

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