

**Negative economic-social effects  
from legislative inflation:  
hindrances to economic  
competition and to human  
economic autonomy fulfillment**

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# The paradox of the Welfare-State

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## From the Liberal to the Welfare-State paradigm

- New and bigger role of the State
- Undertaking of new tasks leads to the increase of legislation



## Legislation explosion

- Conflictive legal answers
- Eruption of real antinomies



## New social problems

- Inadequate intervention in social life
- Social defragmentation (Regulatory Trilemma)

- **Legislation “explosion” and “Crises of the Law”:**

- Frenetic pace of legislative production leads to poorly drafted norms.  **Loss of effectiveness** of the Law because of inadequacy with the concrete situation  **Loss of legitimacy.**

# Hindrances to economic competition

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- The uneven economic cost of compliance among SMEs (Small and Medium Enterprises) and Big Enterprises
  - More generally, **SMEs often bear a disproportionate burden** in complying with many types of regulations (labor, environmental, administrative, etc.)
  - Regulatory systems are in general developed in the image of large firms, reflecting their needs and characteristics, ***rewarding economies of scale and stability rather than flexibility.***
  - Bureaucratic regulations compell homogenisation of SMEs, affecting their competitive characteristics: **flexibility , uniqueness and innovation.**
  - Cumulative pressure of regulatory requirements can lead to business failure, in part due to the limited ability to underwrite the fixed costs of compliance. (Organization for Economic Cooperation and Development, *Regulatory Reform For Smaller Firms*)

# Long term and systemic negative outcomes

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- ***Incentives for Economic concentration***

**Legal bias against SMEs**

Desproportionate regulatory burden + undermining SMEs competitive characteristics



**Less competition**

Weaker power of SMEs compete + shorter “life expectancy” of SMEs



**Economic concentration**

-Regulatory and political protections of larger firms  
-Incentives for economies of scale over innovation

- ***Weaker economic power of job creation***

- SMEs creates proportionally more jobs : Brazil: 44% of formal jobs out of 27% of GDP, 60% to 70% of formal jobs in the OCDE members
- New “waves” of new jobs must come from SMEs given the stabilization of larger firms

# *Link between inadequate regulations and persistent poverty*

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- **Bureaucratic rules hinder the emancipation and economic inclusion of the poorest**
  - Persistent poverty feed by the legal obstacles to economic inclusion in the market
  - The cumulative legislative burden affects, among others, the regime of **property rights** and the **freedom to entrepreneurship of the poor**, denying law security and access to the market in *equal terms*
- **Unrealistic legal obligations over the economic activities of the poor.**
  - Most of social regulations are inadequate to these people concrete lives and businesses, ultimately undermining their economic activity or leading them to extralegality
  - Working in extralegality makes these population victim of “mafias” and administrative authority corruption
  - Extralegality determines unequal access to the consumer market and prevents access to financial credit
  - Extralegality stimulates inefficient economic behavior and impedes leveraging the enterprise, leading to long term unequal economic effects

# Property rights

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- “Ownership of property, alone or in association with others”, is a human right, and the quality of legislation determines the possibility of the poor enjoy it.

## Efficient legal framework

- **Security against expropriation:** it influences positively the economic behavior
- **Allocative efficiency:** access to the market, maximizing the number of possible partners for economic exchanges
- **Collateral effect of registered property:** possibility in raising funds for obtaining credit, which allows reinvestment
- **Increase of economic rationality:** observed changes in the economic behavior that leverages family well-being

## Economic effects derived from lack of legal protection

- **Insecurity:** Individuals and families applies personal efforts to keep their assets safes
- **Allocative inefficiency:** individuals are restrained to their acquaintances to make economic exchanges
- **Impossibility in obtain credit:** the individual cannot offer their asset as guarantee
- The persistent Insecurity and fear of expropriation leads to smaller productivity and refrain savings behavior, affecting the next generations

## *Realigning bureaucratic social regulations based on the principle of Human Autonomy*

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- The intervention of the State in order to fulfill Economic, Social and Cultural human rights must be articulated in steps. The first is respect the resources and economic freedom of individuals and families, **which includes giving them adequate legal tools and good administrative governance** – like facilitated register land titles and not obstaculize work of small entrepreneurs
- Principle of Autonomy opens both the International Covenant of Economic, social and Cultural Rights and the International Covenant on Political Civil Rights (art. 1 )
- The “Declaration on the Right to Development” give us a principle of integration and interpretation of economic-social policies: “the human person is the central **subject** of development” (art. 2.1).

# *Rethinking globally the legal system to solve chronic problems*

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- **Not just deburocratisation, but *adequation* to real life conditions**

- The previous examples reveals profound and chronic problems, resolve them requires a global perspective (philosophical one), including the principles of the Law and also the evaluation of the concrete effects derived from the law
- **Legisprudence** has assumed the task of *quality of the law analyzed by a real-life perspective: concrete observed effects + perspective from the affected people.*
- In order to progressively solve the “Welfare-State paradox”, is mandatory understand the social-economic processes derived from the norms, **and specially their nature dynamic and systemic (complex social processes)**
- Confronting the fundamental purpose of specific rules with its actual concrete effects in order to critically analyze the currently elected **means.**