

**Hayek Global College**

**Why business?**

**Professor:** Marco Poli

**Student:** Felipe Pessoa Ferro

## **Essay # 2**

**Task:** Check out the Index of Economic Freedom, and the Doing Business World Bank Report, find your country in them, and check out the constituent variables (Rule of Law, Government Size, Regulatory Efficiency etc.) that led to that score and rank positions. Write a 750-word (or about that) (Essay about your perception, as a citizen of that country, whether the indices get it right, and suggest what you could do in your country to improve one or more of that variables.

For this essay, I shall analyze the position of Brazil in Index of Economic Freedom and in the most recent edition of the Doing Business World Bank Report. The former ranks 184 countries around the world, having four main pillars for its score: Rule of Law, Regulatory Efficiency, Government Size and Open Markets. The latter, on the other hand, evaluates 190 economies by grading ten strategic topics, such as: starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency. In the next lines I make considerations on both references and suggest what, in my mind, should be the path for better results for Brazil.

Starting with the 2020 Doing Business Report, and considering Brazil's Economy profile by the World Bank, the first thing we note is that Brazil has a very unattractive business environment – we are 124th out of 190 economies. This might sound impressive, but Brazil best score (81.3 out of 100) is in the “starting a business” topic – which evaluates how easy is to open a company in the country – and still is terribly ranked in comparison to other countries (138th of 190). Other topic of interest is the “dealing with construction permits”, which is one of the worst result for Brazil (170th out of 190): this one evaluates how easy (procedure, time and cost) is to start constructing in Brazil given a specific case model. Of course the methodology and the correct assessment for each country is always subject to discussion, but, in general terms, it is fair to say the Doing Business Report makes a very fair evaluation of Brazil: regardless of others

countries performances, the “general feeling” of citizens is that the Public Administration in Brazil is not only prone to corruption, but intolerably inefficient.

We could make considerations on every topic, but going straight to the point, what I would recommend for a better performance is – for start, a first step – a major legal reform concerning all the topics of the Doing Business Report, paying attention to good international references and applying them to our context. And, with some legislative limitations, has been done by the government by the recent approval and entry into force of Law no. 14.195/2021<sup>1</sup>, also known as the “Business Environment Act”. This legal reform, it is important to stress, comes in the line of a previous – and even more urgent – reform: the legal design for protection of economic freedom, with the approval of Law no. 13.874/2019<sup>2</sup>, also known as the “Economic Freedom Act”.

The point is: regardless of excessive regulation, administrative inefficiencies, major intervention of the government in the economy and the spread of corruption and crony capitalism, which are all deadly symptoms, I firmly believe that the root for Brazil’s failure as a nation is a historic, cultural aversion to economic freedom and entrepreneurship. Even though our Constitution establishes “private property” and “free competition” as general principles of the economic activity, not only they remain mostly ignored by the government, but also they are crushed seven other principles which are all related to State intervention. In a few words, before we even try to promote reforms on federal, state and municipal levels, Brazil needs to go through a period of ideological transition. If not to become a country oriented by freedom principles – which I sadly believe to be an utopian objective for my lifetime – at least to find balance with other ideologies and to strengthen limitations to government power.

But not to miss specific reforms in this text, I would like to point out that Brazilian Administration as a whole is incredibly outdated and only recently is starting to digitalize and automatize its proceedings. For example, on the topic of “dealing with construction permits”, the Ministry of Economic approved last year an Administrative Rule<sup>3</sup> for integrated licensing which, in respect to the Economic Freedom Act, would exempt preliminary licensing for low-risk constructions – simplifying at least 80% of all constructions in the country by that. Because of political convenience, the mentioned norm has been revoked and is currently under review before being coming into force.

---

<sup>1</sup> Available at: < [http://www.planalto.gov.br/ccivil\\_03/\\_ato2019-2022/2021/lei/L14195.htm](http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2021/lei/L14195.htm) >

<sup>2</sup> Available at: < [http://www.planalto.gov.br/ccivil\\_03/\\_ato2019-2022/2019/lei/L13874.htm](http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/L13874.htm) >

<sup>3</sup> Available at: < <https://www.in.gov.br/en/web/dou/-/resolucao-cgsim-n-64-de-11-de-dezembro-de-2020-294084540> >

Now, for the Index of Economic Freedom, we notice that Brazil's worse scores are related to the Rule of Law topic. This is not, by any chance, a surprise for any Brazilian. As the Index states: *"The judiciary, though largely independent, is overburdened, inefficient, and often subject to intimidation and other external influences, especially in rural areas."* This sentence expresses quite bluntly what has been the subject of research and reforms for years in Brazil and, sadly, never actually came to a solution. The Special Courts in Brazil – the Supreme Federal Court (STF) and the Superior Court of Justice (STJ) – have adopted a series of what are called "filters of access". This has empirically reduced the numbers of complaints, but have not come close to solving the current situation of overburdening.

The topic also states: *"A politicized Supreme Court has launched numerous investigations based on allegations of wrongdoing by the Bolsonaro government."* Although it is true that our Constitutional Court frequently takes political stances out of its typical activities<sup>4</sup>, one perception that I had the privilege to have while working at a STF Minister's Cabinet from 2018 to 2019 is that much of the "heated rulings" that STF makes are because of poor and indisputably illegal decisions by lower court judges. Actually, the reversion of plainly illegal decisions has been empirically proven to be the main reason for the filing of *Habeas corpus* at the Supreme Federal Court.<sup>5</sup>

In conclusion to this already too long essay, I do believe that the root for Brazil's failure is not merely technical (regulatory, for example), but axiological: Brazil has an authoritarian tradition which spreads to every sort of topic, including the economy. As professor Deirdre McCloskey says in her works: liberalism was the cause for the Great Enrichment of the 19th century. Sadly, we are taking too long to figure that out – and the numbers will always remind us of that.

---

<sup>4</sup> There are no "solely technical" Constitutional Courts in the world, but they are limited by various mechanisms that Brazil is failing to implement.

<sup>5</sup> Available at (and only in Portuguese): < <https://valor.globo.com/legislacao/noticia/2021/09/14/prisao-mal-fundamentada-e-principal-causa-de-habeas-corpus-no-stf-diz-pesquisa.ghtml> > Also, I had the honor of assisting in this specific research while I worked in STF. The data was compiled in a series of scientific articles in the book **Habeas Corpus no Supremo Tribunal Federal**, currently in its second edition (2021) with updated information: < <https://www.livrariart.com.br/habeas-corpus-no-supremo-tribunal-federal-9786559917877/p> >