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Extreme Poverty and Development:
The Role of State in the Assurance of Minimal Existence Conditions

Dalton Tria Cusciano ¹

FUNDACENTRO – Brazilian Ministry of Labour and Employment

Arthur Roberto Capella Giannattasio²

São Paulo Law School of Fundação Getúlio Vargas – DIREITO GV

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¹ Legal Analyst at FUNDACENTRO. Master in Law and Development at São Paulo Law School of Fundação Getúlio Vargas (DIREITO GV).

² PhD Candidate in Public International Law at University of São Paulo (USP). Researcher of the Research Department of DIREITO GV.

Abstract: This paper follows the idea of Amartya Sen, Nobel Prize of economic, about the role of State in the assurance of minimal existence condition, and aim to answer how countries of Latin America (specifically Brazil) and countries of Europe (specifically United Kingdom) deal with the assurance of this minimal existence conditions.

According to Amartya Sen's view, development must be seen as a process of expanding substantive freedoms, such expansion being the primary purpose of each society and the main mean of development.

Substantive freedoms can be considered as basic capabilities allocated to individuals whereby they are entitled to be architects of their own lives, providing them conditions to "live as they wish".

These basic capabilities are divided by Amartya Sen in 5 (five) kinds of substantive freedoms, but for this article's purpose, we will consider just one of this 5 (five) kinds, specifically the Protective Safety capability.

Protective Safety capability may be defined as the assurance of basic means of survival for individuals who are in extreme poverty, at risk of starvation or hypothermia, or even impending famine. Among the means available that could be used to avoid such situations are the possibility of supplemental income to the needy, distributing food and clothing to the needy, supply of energy and water, among others.

But how countries deal with this protective safety? Aiming to answer this question, we selected the problem of "fuel poverty" and how Brazil and United Kingdom solve it (if they solve), in order to assess how the solution found impacts development. The analysis and the comparison between these countries will allow an answer to the question proposed.

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1 Introduction

The objective of this article is to assess how different countries from Latin America (specifically Brazil) and countries of Europe (specifically United Kingdom) deal with the assurance of a minimal existence condition, and it departs from the idea of Amartya Sen about the role of a developmental State in assuring a minimum condition to its citizens to expand their substantive freedoms (conditions to “live as they wish”), such as protective safety.

In the United Kingdom, it is possible to identify a specific governmental concern on policies towards those most likely to be considered poor or at risk in energy supply issues. There is a clear developmental conception of the role of the State in assuring a minimal existence condition in heating matters, without the need of a Judiciary intervention. Fuel poverty is one of the attempts whereby it seeks ensuring the minimum of a standard protective safety capacity required to maintain someone alive through a developmental policy.

Brazil, despite not using the concept of “fuel poverty”, faces an ongoing debate about a) the role (and if there is a role) of the State in guaranteeing a minimum supply of energy for households, and b) how to equalize entrepreneur’s profits in exploring energy industry with a minimum supply of energy for households unable to pay their light bills.

This paper assumes that each country’s perception of its own material needs - United Kingdom and the immediate survival need (heating); Brazilian general climate factor enables redirecting energy consumption to less immediate exigencies (food refrigeration, television power supply, etc.) – has paved different development strategies. This presupposition – which does not exclude other possible causes - offers an interesting hermeneutical key of national policies on development, as it unveils a determination given by inescapable material conditions to Developmental States.

For this reason, this paper postulates that it should not be surprising that United Kingdom has adopted a developmental strategy which is completely different from the one assumed by Brazil. Indeed, each one has a material condition which justifies the legal and political perception on the dispensability or indispensability of a centralized public institution for development process. Whereas United Kingdom opted for a strategy of a holistic and complex development Program designed by a central institution, Brazil has chosen a different path, namely, a fragmented and casuistic State intervention based on a Judiciary developmental scheme perspective.

This article is mainly structured in four parts.

The first one sketches the core aspects of Amartya Sen's concept of Development and emphasizes the idea of protective safety capability provided by a State intervention, in order to clarify the analytical instruments from which it is regarding development issues.

The second one is strictly directed to a brief presentation of United Kingdom's institutional developmental tactics and measures, in order to unveil how this specific country constructed a centralized and holistic scheme to handle with fuel poverty matters.

The third one is structured to delineate Brazilian developmental maneuvers to foster a casuistic and fragmented development strategy via Judiciary, which can be considered as the main feature of Brazil's role in assuring minimum existence conditions in energy supply issues.

Finally, the fourth one is centered in a general comparison between United Kingdom's and Brazilian institutional strategies.

It is expected that the authors can achieve the final purpose of this paper, which is to try to outline possible original contributions to contemporary developmental legal thought on the role of State, which cannot be seen anymore as disconnected of inescapable material conditions.

2 The concept of Development offered by Amartya Sen

According to Amartya Sen's view, development must be seen as a process of expanding substantive freedoms, such expansion being the primary purpose of each society and the main mean of development, so at the same time expanding substantive freedoms are both constitutive of development and instrumental to it

Substantive freedoms can be considered as basic capabilities allocated to individuals whereby they are entitled to be architects of their own lives, providing them conditions to "live as they wish".

These basic capabilities are divided by Amartya Sen in 5 (five) kinds of substantive freedoms, but for this article's purpose, we will consider just one of this 5 (five) kinds, specifically the Protective Safety capability.

Protective Safety capability may be defined as the assurance of basic means of survival for individuals who are in extreme poverty, at risk of starvation or hypothermia, or even impending famine. Among the means available that could be used to avoid such situations are the possibility of supplemental income to the needy, distributing food and clothing to the needy, supply of energy and water, among others.

3 United Kingdom's Developmental Strategy:

A Centralized and Holistic Program for Coping Fuel Poverty

Fuel poverty damages people's quality of life and imposes wider costs on the community. The most direct effects are in relation to the health of people living in cold homes. Although these risks apply to all people, older people, children, and those who are disabled or have a long-term illness are especially vulnerable. (UNITED KINGDOM, 2001: 3).

United Kingdom's **Warm Homes and Energy Conservation Act 2000**, of November 23rd, 2000, defined fuel poverty as a category which can be applied to classify a household as not being able to afford sufficient energy in order to keep itself adequately warm at a reasonable cost (Section 1, subsection 1). The idea of this Act was to require the Secretary of State to publish and implement a strategy for reducing fuel poverty, as it can be extracted from its Section 2, subsection 1:

It shall be the duty of the appropriate authority to prepare and publish, before the end of the period of twelve months beginning with the relevant commencement, a strategy setting out the authority's policies for ensuring, by means including the taking of measures to ensure the efficient use of energy, that as far as reasonably practicable persons do not live in fuel poverty.

According to Section 2, subsections 2 and 4, and Section 3, these strategic measures have to seek the efficient use of energy, even through the installation of appropriate equipment or insulation, define objectives and their targets dates, among others, and must be prepared by consulting local authorities, association of local authorities, persons appearing to the appropriate authority to represent the interests of persons living in fuel poverty, the Gas and Electricity Markets Authority and the Gas and Electricity Consumer Council, and other persons as the appropriate authority thinks fit.

This whole perspective aims to assure that as far as reasonably, practicable persons "do not live in fuel poverty" in United Kingdom, even if it demanded expenses from the Secretary of the State whose money would not be provided by the Parliament; after all, fuel poverty is directly related to the diminution of social well-being, as, for example, among the elderly

Fuel poverty can also exacerbate the social isolation felt by many older households; they cannot afford to go out; or are fearful of going out knowing they will come in,

already feeling cold, to a cold home; or are reluctant to invite friends into a cold house. These factors can diminish the social well-being and quality of life of older households. (UNITED KINGDOM, 2001: 9).

In order to implement these policies regarding fuel poverty homes, the Secretary of the State had to define the criteria which could describe the households to which these measures would apply (Section 2, subsection 2, letter a). For this purpose, when launching this developmental strategy by subsequent regulations, the Secretary of State could specify the elements which defined fuel poverty, such as lower income and reasonable costs, even through the substitution of the original concept. The goal is to determine a major concept which could define broadly the circumstances whereby a home is to regarded as being or not being warm (Section 1, subsection 2).

In November 2001, the Secretary of State launched the United Kingdom's Fuel Poverty Strategy, which was updated in 2004, and established the Department of Energy and Climate Change (DECC) as the key Department. This Strategy recognized fuel poverty as a major issue of public well-being, which had to be eliminated in the next years, as households which were qualified as fuel poor

suffer an increased chance of ill health, and find it more difficult to recover if they do fall ill. Fuel poverty imposes higher health costs and is a factor in the thousands of excess winter deaths each year, particularly amongst pensioners. It also contributes to social exclusion and affects children's education. (UNITED KINGDOM, 2001: 1).

These strategies focused primarily on measures to improve energy efficiency and to reduce the costs of fuel for fuel poor households, since income measures related to a long term solution of wealth distribution are connected to a wider poverty and social exclusion policies. It identified some features of the housing, such as the size of some properties, the number of people living in them, and the energy mix usage of each household as other causes of fuel poverty, as they demand a greater fuel expense than the actually needed. Even household's habits and living conditions are regarded, because fuel poor families (underoccupation) may remain in their homes for longer periods of the day, increasing the demand for keeping them warm (UNITED KINGDOM, 2001: 6, 2010a: 3-8, 2010b: 2).

The main targets of this strategy are, as far as reasonably practicable, (i) remove the majority of households living in social sector housing from fuel poverty, in order to meet standards of decency of thermal comfort, by 2010; (ii) remove all vulnerable households from fuel

poverty by 2010; (iii) no household in Britain should be living in fuel poverty by 2016-18; and (iv) substantially increase the number of vulnerable private-sector households living in decent homes by 2010. And, in order to enable these targets, there was addressed a budget of £620 million over the period 2005/2006 to 2007/2008. (UNITED KINGDOM, 2001: 3 and 10-1, 2003: 6, 2004: 33, 2006: 29 and 35).

The main actions designed to reduce and to eliminate fuel poverty from United Kingdom are a part of a range of social programmes and measures, according to its core causes, as this problem is recognized as a multi-dimensional problem.

These measures have to interact with each other, with the energy industry and with governmental policies for sustainable development and climate change: (i) programmes to improve the energy efficiency of fuel poor households; (ii) try to maintain the downward pressure on fuel bills, ensuring fair treatment for those with low purchasing power; (iii) support the development of energy industry initiatives to combat fuel poverty; (iv) tackle poverty and social exclusion; (v) avoid gas engineer shortage by new training schemes; (vi) expand gas network extension; (vii) explore how new technologies and renewable energy could improve an efficient energy consumption, particularly in poor areas without access to gas (UNITED KINGDOM, 2001: 4 and 10-3).

3.1 Fuel Poverty's Definition in United Kingdom's Policies

According to this strategy (UNITED KINGDOM, 2001: 3), a household has to be regarded as fuel poor if it needs to spend more than 10% of household income on all fuel use in order to keep the house comfortably warm, that is, to maintain a satisfactory heating regime³, which is “generally defined as 21°C in the living room and 18°C in the other occupied rooms - the temperatures recommended by the World Health Organisation” (UNITED KINGDOM, 2001: 6). There is also the concept of severe fuel poverty, applied for those households which need to spend more than 20% of their income on fuel for the same purpose (UNITED KINGDOM, 2003: 11).

3 This definition also includes spending on space heating, water heating, lights, appliance usage and cooking costs (UNITED KINGDOM, 2010a: 3, 2010b: 1).

The following formula calculates the fuel poverty ratio, and the household is considered fuel poor if its ratio is greater than 0,1 (UNITED KINGDOM, 2010a: 3):

$$\text{fuel poverty ratio} = \frac{\text{fuel costs (usage x price)}}{\text{income}}$$

From a summary analysis of the factors involved in the appraisal of the fuel poverty ratio, it must be perceived that (i) increasing household incomes (> £120/month) can minimize the result (as it affects the denominator); and (ii) the decrease of energy consumption (< £1.200/month) – to heat and power the home –, a more efficient energy consumption (SAP < 35)⁴ or the diminution of the prices (< £1.200/month) can also deplete of the fuel poverty ratio (as affects the numerator); these conditions can even determine the exclusion of a household from the fuel poor category (UNITED KINGDOM, 2010a: 22-3, 2010b: 1).

The interesting aspect of this definition is that a household is classified as fuel poor (or not fuel poor) on the basis of what it would need to spend to keep warm, not on the basis of what it does actually spend on heating, as this modelling establishes a baseline of adequate level of warmth toward which each household must direct itself (UNITED KINGDOM, 2010b: 1). It is important to observe that “many households actually under-heat their home relative to the adequate standard” (UNITED KINGDOM, 2010a: 4), as they “have to balance the need for fuel and other essentials, and very often cannot heat their homes properly.” (UNITED KINGDOM, 2001: 6).

It can also be argued that, if these fuel poor households maintain a satisfactory warmth condition at their homes, they have paid a high proportion of their income for that, which means that they are deprived of a full well-being situation, as they are not able to afford several other items which comprise the basket of essential utilities. In other words, the fuel poverty condition imposes a single choice of living “less badly” for a brief period of time (UNITED KINGDOM, 2001: 7-8).

It cannot be ignored that this governmental strategy to assess the number of fuel poor

4 SAP is the acronym of Standard Assessment Procedure, and it refers to a procedure adopted by United Kingdom's Government as the methodology for calculating the energy performance of dwellings; this appraisal is based on a range of factors which fosters energy efficiency, such as (i) materials used for construction of the dwelling; (ii) thermal insulation of the building fabric; (iii) ventilation characteristics of the dwelling and ventilation equipment; (iv) efficiency and control of the heating system(s); (v) solar gains through openings of the dwelling; (vi) the fuel used to provide space and water heating, ventilation and lighting; and (vii) renewable energy technologies. (UNITED KINGDOM, 2009: 4).

households does not identify individual households experiencing fuel poverty. Rather, it only seeks to construct an ideal picture of generic groups that are most likely to be at risk based on the evaluation of the living conditions, of the views of the households on housing, of their neighbourhoods and of the features of different types of households. Only through this general perspective the developmental state will be capable of building up, focusing and targeting adequate policies (UNITED KINGDOM, 2010a: 4-5, 2010b: 2).

3.2 The Social Extension of Fuel Poverty in the United Kingdom

In 2008, 4.5 million households in United Kingdom were classified as being fuel poverty (18% of all households). This number is more than twice the number of households that were in fuel poverty in 2003, and there have been significant increases in each year since 2003, as it can be extracted from the table below (UNITED KINGDOM, 2010a: 9).

Fuel Poverty in United Kingdom, 1996-2008

Year	Nº of Fuel Poor Households (million)
1996	6,5
1998	4,75
2001	2,5
2002	2,25
2003	2
2004	2
2005	2,5
2006	3,5
2007	4
2008	4,5

Source: UNITED KINGDOM, 2010, p. 3

It must not be forgotten that among these 4,5 million fuel poor households, 3,75 million are classified as vulnerable households due to the presence of elderly, children or somebody who is disabled or long term sick (UNITED KINGDOM, 2010a: 9), a segment of population which is easily and more directly affected by the absence or by the lack of energy supply for heating, because they suffer an increased chance of illness and have more difficult to recover from it if they do fall ill. Indeed, “[i]n the UK from December to March, year on year, there are between 20.000 and 50.000 excess deaths compared to the rest of the year.” (UNITED KINGDOM, 2001: 8).

The interesting pendulous movement of variance of the number of fuel poor households in United Kingdom in the last fifteen years is justified by the fact that, between 1996 and 2003, there was a combination of facts, such as falling of fuel prices, rising incomes and the installation of energy efficiency measures in dwellings (housing stocks). From 2003 to present times, energy prices have risen; despite of the fact that rising of incomes and improvement of energy efficiency had mitigated the rise of prices, it was not stoppable the correlated rise of fuel poverty in United Kingdom (UNITED KINGDOM, 2010a: 9, 16 and 18-21).

Unsurprisingly, the biggest contribution to the change in fuel poverty between 2007 and 2008 has come from rising prices. Without the counter effects of rising incomes and falling energy consumption, prices alone may have shifted around 800,000 households into fuel poverty. Rising incomes helped to keep just over 200,000 of those out of fuel poverty. An estimated reduction in fuel poverty of around 80,000 households can be attributed to energy efficiency improvements between 2007 and 2008[.] (UNITED KINGDOM, 2010a: 17).

3.3 Policies for Social Subsistence: Assistance to Fuel Poor Households through Efficiency, Market and Social Inclusion

Fuel poverty is regarded as a multi-dimensional problem which ravages United Kingdom, and several measures are designed to deal with this same matter from a multi-categorical perspective. In order to assure a protective safety capability to its citizens, different brands of policies were assigned to reduce or to eliminate the fuel poverty condition from United Kingdom through an intertwined State intervention, comprising energy efficiency measures, energy market measures and social inclusion measures, which will be briefly mentioned and described below.

However, it was already assessed that, although the following measures are able to generate significant reductions in fuel poverty situation in United Kingdom (approximate reduction of one third), “the current mix alone is unlikely to eradicate fuel poverty” (UNITED KINGDOM 2006: 29).

A further prominent reason for households remaining in fuel poverty in 2010 in the modelling was the fact that the majority of these households were in receipt of extremely low incomes; so much so that energy efficiency measures alone may not always be enough to take them out of fuel poverty. (UNITED KINGDOM, 2006: 29).

This means that United Kingdom's experience, though very interesting and profitable for an academic study on national developmental strategies, cannot be considered as a perfect model that has to be imitated, as further measures must be structured and comprised by a Fuel Poverty Eradication Strategy. Rather, this experience seems to be an insufficient, but clever, State responsive action in order to deal with a core social issue, because unravel the necessity of being always realistically attentive to its own traditions and to its current conditions, performances and problems that which demand a continuously innovative perspective of reviewing its own developmental strategies options. It is precisely this rationality that has to be more carefully understood in a comparative study, more than the following mutable and particular institutional strategies.

3.3.1 Energy Efficiency Measures

The main idea of these measures is to secure the exclusion of households form fuel poverty condition by improving the efficiency of energy consumption through better insulation and heating, according to a series of programmes to tackle poor energy efficiency among social and private sector housing. Several strategies were designed in order to consummate these measures.

The Energy Efficiency Commitment (EEC) is one of the examples, and ran until mid-2008, when replaced by Carbon Emissions Reduction Target (CERT). It established an obligation on licensed gas and electricity suppliers to encourage or assist domestic customers to take up energy (gas or electricity-based) efficiency measures, such as insulation and heating measures, and energy efficient appliances and light bulbs. The goal was to save at least 50% of energy from disadvantaged consumers, who received benefits, such as tax or pension credits (UNITED KINGDOM, 2001: 14): this “scheme provide[d] packages of insulation and heating measures worth up to £2,500 to private sector households” (UNITED KINGDOM, 2003: 10).

There was also a proposal to associate financial incentives to promote the adoption of energy efficiency measures: (i) the installation of energy saving materials in homes; and (ii) the installation, maintenance and repair of central heating systems in eligible over-60s households or in low-income households would provide them the reduced rate of VAT (Value Added Tax) of 5% (UNITED KINGDOM, 2001: 14).

It cannot be ignored also the spread of free, impartial, locally relevant and basic information on domestic energy efficiency among low-income or fuel poor households through the

Energy Efficiency Advice Centres (EEAC), in order to stimulate an efficient performance to warm their homes. The advice propagated by these 52 centres does not aim to save energy, but also to save these households' money through a clever use of energy for warming their own homes (UNITED KINGDOM, 2001: 14).

There is likewise the Government's Community Energy Programme, whereby State provides grants to support installation and refurbishment of community energy systems across the United Kingdom, in order to help low-income households to warm their homes by connecting them to these community heating devices (UNITED KINGDOM, 2004: 11).

The gas transporter company of United Kindgom (Transco), which has changed its name to National Grid Gas in October 10th, 2005, maintains the Affordable Warmth Programme, an innovative application of lease finance to foster the acquisition and the installation of high-efficiency gas central heating and energy efficiency measures. This inventive approach is characterized by a reduction in the tax rules related to the leasing of heating devices in order to make feasible the diminution of costs through a more flexible financing regime. Among the qualifying criteria to this cheaper acquisition, the applicant must be fuel poor and aged 70 years or over (NATIONAL GRID, n.d.; UNITED KINGDOM, 2001: 15).

The expansion of the competences of local authorities given by the **Home Energy Conservation Act**, June 28th, 1995, is perceived also as an interesting mechanism directed to improve efficiency energy consumption in fuel poor homes. Although local authorities' energy efficiency responsibilities are aimed to identify possible energy efficiency policies to all residential facilities in their area (social housing stocks or private owned homes), the improvement of heating equipments for an efficient energy consumption is understood as benefiting also the fuel poor (UNITED KINGDOM, 2001: 15-6). But, in order to accomplish these duties, local authorities must work for improving continuously their social housing beyond the Decent Home standard established in a Guidance of March, 2002, by upgrading from the benchmark of insulation, of heating equipment, and so on (UNITED KINGDOM, 2003: 12).

3.3.2 Energy Market Measures

The objective of these measures is to build through a regulatory structure a free and competitive energy market in United Kingdom, as it was identified that one of the main problems

faced by households was the constant rise of energy prices. However, it is clear that this regulatory market regime cannot structure a full free energy market, as this economic sector is naturally monopolized due to sunk costs related to the production, transmission and supply of energy and, of course, hinders the possibility of provision of energy to low-income households if left at its own instrumental economic logic.

The Government believes that the best way to ensure that fuel is affordable to consumers is through liberalising energy markets and promoting competition. Where markets have monopolistic features, for instance the distribution systems which provide the physical link between electricity generators or gas producers and customers, their costs should be subject to downward pressure through price controls. Although competition has brought real benefits to all consumers, including the less well off, through lower prices, the Government does not believe that the interests of the fuel poor can be left to the markets alone. It is determined that consumers on low incomes should not be regarded as less attractive customers, and should benefit equitably from these developments. (UNITED KINGDOM, 2001: 16-7).

In other words, dealing with fuel poverty demanded a double regulatory perspective to construct this energy market: it is necessary to reduce energy prices (as it composes the numerator of fuel poverty ratio formula above described) through a competitive market structure, but it cannot equally exclude, at the same time, fuel poor households: if the Regulator has to develop a Social Action Plan comprising private sector interests, industry has to include inside their long-term commercial strategy initiatives dealing with fuel poverty (corporate social responsibility) (UNITED KINGDOM, 2001: 17).

According to Sections 9 and 13 of the **Utilities Act**, July 28th, 2000, whereby regulation of electricity and gas industries was modified, Gas and Electricity Markets Authorities, in association of the Secretary of State, have to protect the interests of consumers wherever appropriate by promoting effective competition in both industries. This means that the regulatory environment is concerned with a competitive and open energy supply market structure - for example, with the possibility of switching to cheaper suppliers or choosing a cheapest payment method – whereby both a profitable perspective and a social inclusion standpoint are congregated by a social development point of view.

For instance, in 2001 there were around 4,5 million households in Great Britain without a gas supply - some 20% of the total, and around 1.3 million of these, considered being fuel poor -. The lack of access to gas supply reduces the choice of fuels for customers, and is regarded as leading to the use of “less convenient, less energy efficient, or more costly methods of keeping their homes warm. This suggests that a lack of access to gas may be an

impediment to the eradication of fuel poverty.” (UNITED KINGDOM, 2001: 19).

While it was essential the expansion of gas network extension in order to reduce the number of households without access to the gas network (from a fuel poor depletion view), economic instrumental rationality of cost-benefit could justify the absence of gas grid in some communities. On the other hand, it could not be withdrawn the necessity of assisting these fuel poor areas outside the network, what motivated the idea of developing and exploring a range of other energy supply options, such as renewable energy (biomass, fuel oil, solid fuel, etc.) (UNITED KINGDOM, 2001: 19-20).

It cannot be ignored that energy industry itself was encouraged to develop inventive strategies in order to deal with fuel poverty inside its corporate social responsibility, as it would possess an important role in addressing fuel poor’s needs due to its better understanding of disadvantaged consumers’ necessities, derived from a close relationship of demand attendance: the already mentioned Energy Efficiency Commitment and Transco’s Affordable Warmth Programme are examples of this responsive industry perspective.

The industry has responded with work on industry-wide issues and a range of commercial initiatives at a company level, which should have a real impact on people in fuel poverty. In addition, the Electricity Association established a **Fuel Poverty Task Force**, which also includes major players in the gas market. (UNITED KINGDOM, 2001: 22, stressed in the original).

Another focus of industry response to regulatory incentives to contribute towards provision of warmer homes for fuel poor households was the offer of facilities to pay bills fortnightly or more frequently; improving the promotion of the help available on energy efficiency advices, on special services for vulnerable customers, and on prevention of disconnection for debt (UNITED KINGDOM, 2001: 21). With the rise of energy prices in 2004, the Regulatory Authority suggested energy suppliers the necessity of protecting vulnerable and fuel poor consumers through innovative strategies of selective price freezing and other special tariffs offers (UNITED KINGDOM, 2005: 13).

For this reason, though interesting and economic stimulating, fiscal measures such as a tax reduction strategy (VAT on fuel) from 8% to 5% were perceived as an insufficient tool in order to promote the diminution of energy prices for low-income families, as they are general solutions which do not affect directly fuel poor households (UNITED KINGDOM, 2001: 17).

For the same reason, although directly affecting fuel poor families, wealth distribution

or direct transfer of public funds for those in debt and at risk of eviction, or disconnection of an essential utility supply, or imprisonment through the non-payment of certain debts are always considered to be the **last governmental resort** to assure protect safety capability for its citizens (UNITED KINGDOM, 2001, 22-3).

Fiscal exemption and direct financing are seen, thus, as less sufficient developmental measures for a competitive and equally social comprehensive energy supply market. These simple strategies must be associated with more complex and innovative ones in a wider web-structured actions directed to foster a profitable and fair energy generation, transportation and distribution, via competitive market.

Hence, in order to promote an efficient and socially broad energy market, it is indispensable a great information disclosure between the industry, the government and the consumers. This information flow is crucial, as the Regulator must have access to sufficient data related to suppliers' profit margins, seasonal increases in energy demand or generating capacity of generating companies of mothballed plants, in order to improve existent regulation. At the same time, it is important to refine consume awareness related to supplier switching processes, possibilities and rates, including price and quality comparison.

This consumer empowerment is the objective of “**Energywatch**”, the **Gas and Electricity Consumer Council** created by the above mentioned **Utilities Act** in its Schedule 2. This Council is “committed to developing safe, confident and assertive consumers, and to improving the services provided to all gas and electricity consumers” (UNITED KINGDOM, 2001: 20).

It has a particular focus on protecting fuel poor households, and has to act alongside other consumer bodies on behalf of them, especially for older consumers. It also works together with government, industry and the Regulator Authority in order to vocalize consumer's interests in new solutions related to energy supply matters, such as debt prevention, management, and even portability when switching to another energy supplier (no debt blocking) (UNITED KINGDOM, 2003: 13-5).

Since publication of the Fuel Poverty Strategy in November 2001, energywatch has been lobbying to raise the profile of the problems that low-income consumers face when paying for their energy. Energywatch has campaigned to tackle inequalities in tariffs and payment methods, and structural barriers such as debt blocking that combine to penalize those who do not, or cannot, benefit from the competitive market. (UNITED KINGDOM, 2003:15).

An interesting aspect of this informational disclosure is the specifically concern of promoting awareness about competition and energy efficiency among ethnic and minority groups. There is an emphasis on providing proper information on how to save energy and switch supplier among black and other ethnic minority groups by local volunteers (UNITED KINGDOM, 2004: 12).

In 2004, the Regulator Authority and the Energy Retail Association, representing the six main electricity and gas suppliers in the domestic market in Great Britain, reached an agreement on the disconnection due to debt issue, in reference to vulnerable consumers. The idea, which is in operation, was to develop a Safety Net procedure, in order to make sure that no vulnerable (fuel poor) consumer in Britain will be disconnected from their electricity or gas supply (UNITED KINGDOM, 2005: 13). The objective is to safeguard those who cannot afford the maintenance of energy supply due to financial hardship related to age, health, disability, severe financial insecurity; disconnection is still a sanction applicable for those who are not going to pay, despite the fact that they can afford the energy supply service (ENERGY RETAIL ASSOCIATION, n.d.a, n.d.b).

3.3.3. Social Inclusion Measures

The goal of these measures is to mitigate the increase of energy demand for warming homes of fuel poor households through the promotion of social inclusion, such as the diminishment of underoccupation rates. It departs from the presumption that fuel poverty is a matter which is intimately linked to several other levels of social marginalization, and demands a multilevel policy approach.

The strategies are founded on the principle that [fuel] poverty and social exclusion are multidimensional. These are complex problems caused by a range of interlinked issues many of which may contribute towards fuel poverty (low incomes, poor housing or restricted access to low-cost direct debit bank payment services) or be exacerbated by it (poor health). The strategies aim to address these factors by tackling their root causes, as well as alleviating the symptoms. (UNITED KINGDOM, 2001: 23).

Unemployment or underoccupation is one of the primary aspects that have to be dealt, as income is directly related to the fuel poverty condition. The idea is to enable people to

improve their incomes is the longer term through a series of capacity building policy. Indeed, to assure that people are better equipped to work by continuous education and training since school is to ensure the enlargement of employment possibilities through serious preparation for labour market (UNITED KINGDOM, 2001: 23).

The introduction of the National Minimum Wage (NMW), the minimum amount per hour that the most workers in United Kingdom are entitled to earn depending on their age and on the fact of being or not an apprentice, is also an interesting via to reduce directly fuel poverty. Introduced by the **National Minimum Wage Act 1998**, July 31st, 1998, this annually updated rate seeks to assure a certain minimum of income for the great majority of households and, at the same time, is an important factor that fosters developmental market rationality against recession (UNITED KINGDOM, 2001: 24, 2011: 2). The following table illustrates the range of NMW hourly rates since its introduction:

	Adult rate			Youth Development Rate			16–17 Year Old Rate		
	Rate		Increase	Rate		Increase	Rate		Increase
	£	Pence	%	£	Pence	%	£	Pence	%
Oct 2010–	5.93	13	2.2	4.92	9	1.9	3.64	7	2.0
Oct 2009–Sept 2010	5.80	7	1.2	4.83	6	1.3	3.57	4	1.1
Oct 2008–Sept 2009	5.73	21	3.8	4.77	17	3.7	3.53	13	3.8
Oct 2007–Sept 2008	5.52	17	3.2	4.60	15	3.4	3.40	10	3.0
Oct 2006–Sept 2007	5.35	30	5.9	4.45	20	4.7	3.30	30	10.0
Oct 2005–Sept 2006	5.05	20	4.1	4.25	15	3.7	3.00	0	0.0
Oct 2004–Sept 2005	4.85	35	7.8	4.10	30	7.9	3.00		
Oct 2003–Sept 2004	4.50	30	7.1	3.80	20	5.6			
Oct 2002–Sept 2003	4.20	10	2.4	3.60	10	2.9			
Oct 2001–Sept 2002	4.10	40	10.8	3.50	30	9.4			
Oct 2000–Sept 2001	3.70	10	2.8	3.20	0	0.0			
June 2000–Sept 2000	3.60	0	0.0	3.20	20	6.7			
April 1999–May 2000	3.60			3.00					

Source: UNITED KINGDOM, 2011: 2.

Alongside these employment measures, United Kingdom has also adopted some family and pensioners measures, in order to ensure a minimum annual income for each category through (i) fiscal exemptions for (a) families with children (Children's Tax Credit) and (b) working families (Working Families Tax Credits); and (ii) improvements in the Benefit System,

such as: (a) child benefit; (b) personal allowance for children aged under 11 years-old; (c) disability income guarantee for poorest severely disabled people under 60 years-old; (d) disability living allowance for severely disabled children and adults; (e) minimum income guarantee, replaced by pension credit in 2003, for people aged 65 and over with modest income or savings; (f) winter fuel payment for older people, etc.. The idea is that these measures must have an effective impact on the income for those households for whom work is not a realistic option (UNITED KINGDOM, 2001: 24-6).

4 Brazilian Legal Framework and the (Im)Possibility of Fuel Interruption:

The Judiciary Developmental State

The account and the statement of the Fiscal Crisis in the beginning of the 1990s coupled to the perception that it was a necessary to resume economic development was essential to construct a different developmental path in Brazilian's public strategies.

Indeed, there is a particular lasting conception on the place of State for assuring development which still features Brazilian development schemes, namely, the one that advocates that it is only feasible to conduct this process within a neoliberalizing deregulation perspective, for public institutions were not (and are not) fully felt as reliable or able means to promote development directly.

Rather, this intended economic condition would only be achieved through a direct market-oriented process faraway beacons by State's legal lighthouse regulatory framework: it was (and it is) not desirable, nor admitted, a direct or immediate State intervention on Economy to foster development using, for example, price control strategies in public services, such as those concerning energy supply.

Therefore, it is not surprising the absence of a precise and clear legal framework aiming to equalize entrepreneur's profits in exploring energy industry with the duty of assuring universal access through a minimum supply of energy for households unable to pay their light bills.

One of the principles of the Brazilian Constitution is the dignity of human person, being the objectives of the Republic the guarantee of national development, the eradication of poverty and marginalization, reducing social and regional inequalities.

Among with these constitutional provisions we have in infra-constitutional legislation, the Consumer Defense Code (Law 8078/90) and the Regulatory Law (Law No. 8.987/95) asserting the continuity of the provision of public services.

The term continuity express the idea that essential services must be provided permanently, without interruption, unless the occurrence of unforeseeable circumstances or force majeure, which determine its temporary shutdown.

However, although the continuity of essential services is foreseen by law, the Law No. 8987/95, when dealing with concessions of public services, foresees the possibility of interruption of the public service as a punishment to consumer that is in default, as well as disposed in the art. 6, *in verbis*:

Art. 6º. Any concession or permission presupposes the provision of adequate and full service for users, as provided in this Act in line with the relevant standards stated by the law and the respective contract. [...]

§ 3º It's not characterized as a discontinuity of service, the interruption in emergencies or after notice:

I - for reasons of technical or facility security, and

II - by default of payment by the user, considering the interest of the community.

In this line, the interruption of public service function as a defense of the creditor (State- provider) in face of the user in default, such creditor protection that allows the interruption of supply also receives the name of *exceptio non adimpleti contractus* or **exception of non-performance**.

However, we must analyze the plausibility of this institute of private law when applied to public law, especially against the provision of essential public service, run directly by the state or through concessionaires

The possibility allowed by the Brazilian law to the creditor to use the *exceptio non adimpleti contractus* against the debtor defaults should be used as the last resort, if any, because of the great disparity between the provision violated and provision to be fulfilled.

However, we must consider whether the use of *the exceptio non adimpleti contractus* on contracts for provision of essential services do not disrespects the principles of continuity of essential public services and human dignity, imposing obstacles to achieving the aims of the Brazilian Republic.

Another important issue is the possible violation that *exceptio non adimpleti contractus*

causes in the rule stated in Article 42 of the Consumer Protection Code which prohibits the use of harassing means in debt collection.

This reflection proposed, necessarily involves the study of the system of collection of the energy and the resources, provided by the State so that low-income users can be able to comply their debts and / or can have easier access to this service.

4.1 The System of Collecting Taxes and Electricity

The charging of electricity system used in Brazil brings a prerogative to the provider of essential public service of electricity to charge the minimal consumption (called the cost of availability), or charging a minimum monthly amount, regardless of using or not the service.

In this direction we have according to the Article 48 of resolution 456 of 29 November 2000, the minimum billable costs related to the cost of the availability of the electrical system applying to the monthly depends if the power is monophasic (most residential consumer units) or triphasic (most commercial and industrial consumer units).

If it's a residential unity consumer the minimum billable costs refers to a consumption of 50 KWh independently if any energy was really consumed.

If it's a commercial or industrial unity consumer the minimum billable costs refers to a consumption of 100 KWh independently if any energy was really consumed.

But if the residential unity is occupied by low-income indians or in are maroons communities will be granted full rebate for the energy consumption until 50 KWh, above 50 KWh and below 100 KWh these residential unity will be charged in local currency equivalent to 50 (fifty) kWh.

Therefore, as a rule, residents of all urban homes and rural areas are charged whether they used or not electricity, due to the cost of availability, by 50 kWh, even though they consumed less energy.

Interesting to notice the distinction based on the historical origin, since the total cost until 50 KWh will be full rebate for maroon communities and indigenous poor.

Therefore, for maroon communities and indigenous the collection will focus only on consumption that exceeds 50 kWh, that is, if consumption is 75 kWh, these individuals will pay only the amount corresponding to 25 kWh, plus taxes.

If consumers prove that they have low-income, but do not qualify as maroon communities or indigenous, they will be able to get a discount on the value of the cost of availability that can vary, according to Article 2 of Resolution No. 407 of July 27, 2010, in which:

I - for the portion of the monthly power consumption not exceeding 30 (thirty) kWh, the discount will be 65% (sixty five percent);

II - for the portion of the monthly consumption exceeding 30 (thirty) kWh and less than or equal to one hundred (100) kWh, the discount will be 40% (forty percent);

III - for the portion of the monthly consumption exceeding 100 (one hundred) kWh and less than or equal to 220 (two hundred and twenty) kWh, the discount will be 10% (ten percent) and

IV - for the portion of the monthly consumption exceeding 220 (two hundred and twenty) kWh, does not apply discount.

In addition of the charging for the service availability are taxes that are fully transferred to the public, without any exemption and /or rebates for taxation to the residents of low-income.

The tax burden for households in the electric bill, according to the study of the institute PriceWhiteCoppers and Acende Brasil, based on data from 2008, is 35% (thirty five) percent of the value of the account, applying equally for low, middle and high income, and making Brazil the 23rd country with the highest tax burden in the residential electrical sector.

According to, the graphic below, elaborated based on OECD report of 2004, we have a dimension of the size of this tax burden.

Electricity Tax Burden - residential consumers

The attempts perpetrated by states, specifically the state of Rio Grande do Sul and the state of Santa Catarina to reduce the tax burden by creating laws that exempted the unemployed people that belonged to low income families, were suspended by the Supreme Court

The main argument of those suspensions is based on the usurpation of jurisdiction of the Union and /or Cities by the States.

4.2 Low Income Families from Electric Perspective

The possibility of deductions in the collection of minimal consumption for low-income families has emerged after a regulation by ANEEL and the law 10.348/2002.

Until the beginning of 2010, the residential consumer units who consumed up to 80 kWh per month, were entitled to automatic 65% discount of the charge of the cost of availability.

The 80 kWh could be calculated by the average of the last 12 months since that, in at that time, there was no consumption above 120 kWh in two months.

Therefore, regardless the income, would be granted 65% discount on the cost of availability.

However, households that consumes 80 to 220 kWh, only receive discount if they were able to receive benefits from federal government for social programs for low-income families, so the discount would decrease gradually until reaching 10% when the residential unit uses 220 kWh, over this amount of consumption there would be no discount.

From July 2010, with Resolution No. 407, there was a breakthrough, because the criteria to define who was a low income became the subscription into welfare programs belonging to the State and not merely quantity of consumption, as in previous regime, which generated serious distortions.

4.3 The (Im)Possibility of Interruption of Electric Power Supply from the Perspective of the Courts

By analyzing the judgments of the Brazilian Superior Court (STJ), we realize the

existence of a lasting dispute between jurisprudential the 1st and 2nd Chambers from STJ, which only obtained solution in 2006.

The 1st appearing of the theme of interruption of electricity supply showed up in the trial of Appeal in Ordinary Injunction No 8.915/MA, judged on 12/5/1998, opportunity in which the minister José Delgado, member of the 1st Chamber considered that the electrical energy:

is essential for the population, constituting an essential public service, and based on the principle of continuity it's impossible to interrupt this essential service.

After that first decision, the Chambers of STJ started to sometimes enable the interruption and sometimes prevented, as we can draw the following summaries:

ADMINISTRATIVE. Regimental Appeal. ELECTRICITY. PUBLIC SERVICE ESSENTIAL. INTERRUPTION SUPPLY. CONSUMER DEFAULT. IMPOSSIBILITY.

This Court has recognized the consumer the right to the use of public services essential to their daily lives, such as electricity supply, due to the principle of continuity. The interruption of power supply, used by the Company to require the user to pay the default bills, exceeds the limits of legality, moreover there are other ways to get that debt paid.

ADMINISTRATIVE. SUPPLY OF ELECTRICITY. MUNICIPALITY IN DEFAULT. SUSPENSION OF SERVICE.. POSSIBILITY.

The interruption of power supply for default user, according to art. 6, § 3, II of Law No. 8987/95, not sets discontinuity in service, moreover this possibility has legal. application provision.

This controversy only began to be pacified when the 1st Section (which brings together the 1st and 2nd Chamber of the Superior Court of Justice) decided the case 363.943/MG.

In this trial, which occurred on December 10, 2003, it was settled the interpretation that the concessionaire is allowed to discontinue the provision of electric power, if, after notice, the consumer of electricity remain in default of their account (Law 8987 / 95, art. 6, § 3, II), despite the dissidents votes of Ministers Luiz Fux and Jose Delgado.

Only on June 29, 2006 the matter was fully pacified when judging the REsp 841 786 / RS, Ministers Delgado and Luiz Fux, due to the principle of legal certainty surrendered to the position of other ministers and accepted the possibility of interruption of electric power supply.

However, despite the possibility of interruption of electric power supply voted for the Superior Court, it should be noted that the Supreme Court itself has built a series of elements that isolated or cumulatively may withdraw the possibility of interruption.

These elements can then be systematized by the following:

a) The interruption of the provision of the essential public services is legitimated when the consumer in default is noticed previously.

In this case, the notice to consumers is a necessary condition to allow the interruption of supply for non-payment.

This notice according to 414 Resolution published in 2010 by the Brazilian Energy Department (ANEEL) should be made at least 15 (fifteen) days prior to the interruption of the supply. The interruption of provision can only occur during business hours and can only be made within 90 (ninety) days after the invoice due date, except in cases of judicial determination or otherwise justified.

b) It's is legitimate to cut electric power supply for technical reasons or safety of the premises, as long as preceded by notice.

According to the same 414 Resolution, the notification must be made with 03 (three) days in advance. However, in face of imminent risk of harm to people or the functioning of the electrical system, the suspension should be immediate.

c) It is illegal to interrupt the supply of electricity if may cause irreversible damage to the physical integrity of the user.

This element refers to the impossibility of the provider of the power electric service to stop providing this service to people who rely on electronic devices to keep themselves alive and/or healthy.

Furthermore, according to the 414 Resolution, the service provider is required to notify consumers in advance in written and with proof of delivery, about the possibility of disruption of provision of the service for technical reasons, and make appear in the billing term "Unit registered as consumer preference to warning."

In consumer units where the residential use of the electrical equipment is vital to the preservation of lives, the notice must be mandatory, and custom written with a minimum of five days, since the information about this special condition has been previously registered with the energy company

The providers of electric service must also develop and implement, on a routine basis and in an effective way, campaigns aimed to inform the consumer and the general public about

the importance of registering the existence of electric equipment essential to the lives of the residents in their homes.

d) It is illegal to interrupt electric power supply when the default is pending judicial review or it's uncertain.

The element “d” brings the illegality interruption in the supply of electricity in cases of disputed claims in court. The interruption could set constraint to consumers, who sought to discuss in the courts improper debt/uncertain debts, or debts that are pending judicial review.

e) It is illegal the interruption of electricity, after notice, if the consumer is an essential public unit, because of the prevalence of greater public interest in protecting life.

Here we have the prohibition of the interruption of electric power supply in essential public units, such as hospitals, emergency rooms, schools, daycare centers, sources of water supply and street lighting and public safety services, since such entities serve the public interest and therefore the society as whole.

f) It is illegal to interrupt the electric power supply due to negligible debt and the principles of proportionality and reasonableness, being applicable consumer compensation for moral damages.

Another element concerns the value of debt. If the debt is of small magnitude, it should be disregarded. In the case that originates this element, one account was paid by mistake twice, and the consumer didn't paid the invoice of the subsequent month asking by set-off, which was accepted by the energy company, resulting in a debt of \$0.85 (eighty-five cents) never paid, In face of this debt the energy company notice the consumer about the interruption of the service.

According to the Superior Court this value is not reasonable to enable the interruption of electric power supply.

g) It is unlawful to interrupt the electricity supply when the debt arises from alleged fraud in the energy meter, established unilaterally by the concessionaire.

The interruption of electricity supply may not occur for alleged misuse of power or violation of the measurement instrument, based on allegations unilaterally drawn by the electric company's employees, not pointing at any moment the authorship of the alleged fraud.

h) The interruption of electricity can only be on the property that originated the debt, and not on other properties owned by the defaulter.

The last item states that the interruption in electricity supply is an exceptional measure and should be interpreted restrictively so as to enable the interruption only on the property that originated the debt, and not on other properties owned by the defaulter.

Put all the elements that limit the possibility of applying the *exceptio non adimpleti contractus* we should finally look if there are additional measures to be taken to protect the low-income consumers, ensuring the possibility of human development and human dignity.

4.4 Additional Protective Measures

We believe that 02 (two) additional measures are necessary to give effect to protect the needy.

The first measurement refers to the exemption from taxation on all units of the federation on the provision of electricity to low-income families, which in itself would reduce any amount payable by approximately 35% as the study presented.

The low-income family represents an amount of 22 million in a country of more than 180 million.

The second measure is the application of § 4 of the article 48 of 456 Resolution of November 29, 2000, for all consumer units classified as Residential Low Income, and not just only for indigenous people and/or maroon communities.

Such measure would mean a full rebate for these low-income households to the limit of fifty (50) kWh of consumption, and if the consumption is until the limit of 100 kWh, applies a 50 kWh rebate.

We observe that the second measure is nothing more than the enlargement of a rule already provided, that must be enlarged under the principle of equality of constitutional stature.

These measures, if adopted, would reduce judicial litigation and would accomplish the goals of the Republic and the principle of human dignity, ensuring the development vision of Amartya Sen.

5 A Comparison Proposal between United Kingdom and Brazil: Qualitative Regulatory Differences on State's Developmental Strategies

It is possible to understand the material reasons why in energy supply matters Brazil opted for a Judiciary developmental state related to low-income households, whereas United Kingdom chose a centralized path of providing protective safety to fuel poor citizens: each country's different perception on their own material conditions. And these different institutional strategies adopted must be assessed in their own developmental needs.

In other words, each institutional strategy must be evaluated according to the particular conditions which demand a developmental strategy in both countries. This appraisal is essential because will permit analyze how countries deal with this developmental problem through each institutional solution (if they solve) to the fuel poverty problem. More simply, this policy difference identified in the institutional strategy contrast between these two countries requires an important recognition of the adequacy or inadequacy of each institutional solution to their own developmental needs.

The necessity of this important review opens a new and complex research agenda, which cannot be exhausted within the material limits of this paper, as it would require an interdisciplinary approach of the theme. However, it is possible to outline some fundamental issues which could be examined in further joint national and international researches, what will be made below. We leave here, from now, the record of an invitation for future researches.

First of all, it must be stressed that there is a different material cause which informs each country's developmental needs. While United Kingdom's concerns are associated with an immediate survival need (heating), Brazil usually has a climate factor which enables the redirection of energy consumption to a less immediate exigency (food refrigeration, television power supply, etc.)⁵.

There is, clearly, a difference on developmental needs between these two countries: United Kingdom's developmental needs in energy supply are related to a survival requirement, while Brazilian developmental perspective in the same economic sector is bounded to civilizational demands. And it is necessary to evaluate if each institutional strategy is adequate to

⁵ Despite, of course, some regional differences in this country, which, although not examined further in this paper, must not be forgotten.

comply with their own material development perspectives without moral, axiological or partial standpoint judgments. A serious scientific research is only able to point these distinctions and examine the adequacy between national policies and its particular needs.

For this reason, it must be stressed that United Kingdom's institutional strategy for energy supply regarded as a developmental need follows a centralized perspective of implementing development. Its policies are planned and executed from a State administrative centre (Secretary of State, Department of Social Development), although aided by devolved local administrations, by a private market rationality, or even by private enterprises.

It is important to highlight that these direct or indirect interventions of United Kingdom's Government does not negate or break the logic that development is controlled from a central planning centre nucleus situated inside the State. In fact, it seems to be one of the proper manners to deal with a public survival matter, as a strict private economic and instrumental logic alone could not guarantee a public developmental policy aimed to strengthen social bounds by assuring the spread of peaceful and warm survival possibilities of well-being through the elimination of fuel poor households.

For instance, it is worth to remember that United Kingdom's measures for ensuring low-price and efficient energy supply and consumption are not separate of social inclusion measures. This means that a central planning administrative State authority does not simply intend to preserve a minimum supply of energy for households through wealth distribution or non-committed transfer of funds for private actors or consumers.

Actually, this public policy is seen as multi-dimensional, and it involves a complex network of web-structured actions of (i) developing, financing and installing efficient heating devices and house appliances according to specific qualifying criteria; (ii) promoting an efficient energy market through a regulatory regime which try to equalize fuel poor households interests with private sector ones; and (iii) integrating underoccupied or unemployed people to market and society.

In this institutional strategy, it is possible to perceive that State assumes the role in guaranteeing a minimum supply of energy for households, while, at the same time, is concerned with entrepreneur's profits in exploring energy industry, according to a holistic developmental strategy. There is not a mere transfer of public or private funds, but a truly complex chain of actions aiming development through a public and private commitment of maintaining a market perspective and the social cohesion via reduction or elimination of fuel poor households.

On the other hand, it can be diagnosed that Brazilian developmental institutional strategy in energy supply matters does not assume a clear State role in assuring protective safety for poor households. There is not a central planning State authority who holds, in fact, the function of securing a minimum supply of energy for low-income families: it is the Judiciary who takes on the political burden of leading this developmental process/project.

Indeed, as mentioned above, it is possible to assign to 1990s liberalizing and deregulatory economic experience as one justification of the perception that a centralized development Project on energy supply issues is fated to failure. For this reason, the Judiciary arises as the only public institution capable to deal with the deficit of energy supply to poor households, as, for example, the absence of a precise and clear regulatory environment leaves energy market and its economic instrumental rationality as the sole criteria to allocate this resource – as Brazilian recent market experience regards this institution as the best one which optimizes scarce resources -.

A decentralized developmental strategy in assuring a minimum of energy supply to low-income families is ascribed in Brazil to the Judiciary, as State has not defined a central plan to secure protective safety capability through centrifugal and convergent complex public policies.

It is important to assess if this decentralized and judicial energy supply strategy is adequate to deal sufficiently with Brazilian developmental needs of compliance with civilizational energy demands, without any attempt of transplanting foreigner models or formulas which are not associated to Brazilian institutional (formal) and civilizational (material) experiences (causes).

This means that this comparative study of different institutional developmental strategies (United Kingdom's choice and Brazilian option) has not the intention to mimic institutional solutions inside dissimilar formal and material cultures/experiences. In other words, if United Kingdom's strategy is adequate to follow and achieve its exigency of energy supply (survival) through a centralized plan, it does not mean that Brazil has to pursue the same steps, as its demand of energy supply implies the attendance of particular cultural impositions (civilizing needs) through a decentralized perspective.

In fact, the idea resides precisely in stressing the necessity to appraise how one society has found a responsive or not-responsive solution to its own developmental needs and objectives by handling and architecting seriously and cleverly its institutions in accordance with its own material experiences. Whereas United Kingdom has a climate factor which imposes an

immediate survival concern, Brazil does not face the same conditions, although has to comply with a more difficult imposition to get rid of, which was given historically by its colonial condition of cultural repository of civilizational obligations. Neither United Kingdom has invented this climate problem, nor has Brazil created this civilizational demand.

Both of them have an equally legitimate, though different, material cause of developmental action (climate or civilization needs) which requires an adequate institutional response of energy supply that has to be designed regarding each one's institutional experiences.

United Kingdom's experience has the virtuosity to unravel that a clear assumption of developmental role by a State permits a more coordinated strategy with public and private sector, through a wide network of web-structure actions. These are not reduced to wealth distribution, to the transfer of public funds to private actors and consumers (always seen as a last resort), or to particular, uncontrollable and unpredictable duties of preserving a non-profitable or non-fair energy supply to fuel poor households; rather, they are structured in a multi-dimensional approach: efficiency, market and social inclusion.

It is the perception of this necessary complex involvement of different perspectives in order to assure the attendance of a nation's developmental need on energy supply, which is signaled by United Kingdom's experience, that has to be detached from the comparison, as it reveals an important logic of State intervention. In fact, if Brazil does not abandon its decentralized strategy of a Judiciary developmental State on energy supply matters - a particular choice that hypostasizes politically this bureaucratic body -, at least this judiciary tradition must not be ignored, and has to be included in a wider conception of State role in assuring a minimum supply of energy for low-income households.

For this reason, if the Judiciary is regarded as a via whereby poor households can seek the certainty that it will have a minimum energy ministration, it cannot be ignored that State, and mainly its particular organ, the Judiciary, is still regarded by its population as an important institution which assures the provision of protective safety capability.

In other words, there is clearly the permanence of a social perception that State has an important role to secure social development through protective safety capability. And, if Brazilian Judiciary developmental State tradition cannot be removed, it must at least be included in State's institutional strategy to promote development by an inventive institutional design.

This means that it is important to maintain this Judiciary tradition and embody it in any future governmental plans of social development related to energy supply matters (if

perceived as desirable). It is not possible to exclude it, but it must not be the only brand of State intervention.

That virtuous perception of the need of a chain of intertwined actions, which are not reduced to transfer of public funds or to the Judiciary disregard of equity or profit expectations, has to incorporate this decentralized logic of assuring protective safety capability, as it is still seen as a mechanism whereby low-income households excluded from the access to civilizational needs can impair an exclusive economic and instrumental logic.

Therefore, if Brazil keeps the tradition of a Judiciary Developmental State in energy supply for low-income households, although being one possible face of a Governmental strategy for development, this does not mean that a centralized plan for assuring a minimum supply of energy is forbidden. Actually, it is an alternative path which will have to consider concomitantly (i) the necessity of a true mix of actions (centralized) composed by (ii) a traditional Judiciary perspective of assuring a minimum supply of energy (decentralized), which is attentive to the fact that (iii) the developmental matter in energy supply issues in Brazil is materially originated (cause) by civilizational demands of energy. Which means that (iv) it does not suffice (a) a single course of particular developmental actions for poor families protection to the detriment of equally legitimate economic rationalities and (b) the sole continuous appeal to the last resort of wealth distribution or direct transfer of public funds.

Finally, a truly holistic regulatory environment that includes this decentralized logic must be conceived in order to make feasible development through social inclusion associated to an efficient and sufficient energy supply.

6 Conclusions

The objective of this article was to assess how different countries from Latin America (specifically Brazil) and countries of Europe (specifically United Kingdom) deal with the assurance of a minimal existence condition. It has departed from the idea of Amartya Sen about the role of a developmental State in assuring a minimum condition to its citizens to expand their substantive freedoms (conditions to “live as they wish”), such as protective safety.

For this reason, it was necessary to sketch the core aspects of Amartya Sen’s concept of Development, in order to clarify the analytical instruments from which development issues

were regarded. Afterwards, United Kingdom's holistic scheme to handle with fuel poverty matters was outlined to reveal this country's development perspective on the necessity of a central public institution. Later, Brazilian development maneuvers to foster a casuistic and fragmented development strategy via Judiciary in energy supply issues were described as the main feature of Brazil's role in assuring minimum existence conditions. Finally, a general comparison between United Kingdom's and Brazilian institutional strategies was briefly presented.

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