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# ***LAW AND SOCIAL POLICY IN THE GLOBAL SOUTH: BRAZIL, CHINA, INDIA, SOUTH AFRICA***

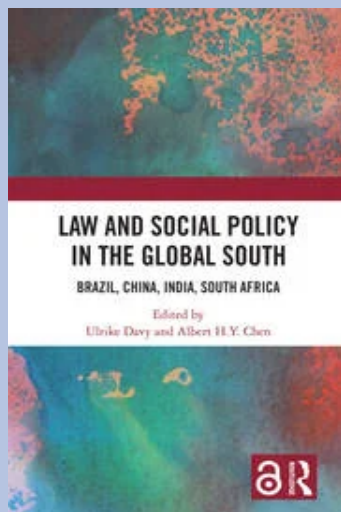
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Ulrike Davy and Albert H Y Chen  
(eds) (2022) ***Law and Social Policy  
in the Global South: Brazil, China,  
India, South Africa***, published by  
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The book, *Law and Social Policy in the Global South*, edited by Ulrike Davy and Albert H Y Chen, brings a legal perspective to the study of welfare systems in the Global South, exploring the historical and ideological forces that shape social policies in these regions. This collection of essays, authored by legal scholars, delves into the evolution, unique characteristics, and impact of social policies and their legal frameworks in Brazil, China, India, and South Africa. Together, the policies and laws of these states influence nearly half of the global population and are shaped by distinct ideologies, political dynamics, and historical contexts.

The book highlights each state's individual path while offering comparative insights that contrast their policies with the European welfare state model. The various chapters provide an indepth analysis of a specific country's policy trajectory, culminating in a reflective comparative study by Ulrike Davy, a Public Law Professor in Germany at the University

of Bielefeld. Her concluding analysis draws out shared themes and key differences, enriching the discussion with a nuanced understanding of the diverse legal and social landscapes in the Global South. This volume's chapters together offer a valuable comparative exploration of the ideologies, legal underpinnings, and practical challenges shaping social policy in the Global South.

The Chen and Davy edited volume makes a notable contribution to the field of comparative legal studies by shifting focus from the traditionally dominant Euro-American legal frameworks to the legal systems of four influential BRICS<sup>1</sup> nations. These states, with their diverse legal traditions, offer unique perspectives on the intersection of law and social policy. By analysing these emerging economies—home to a substantial portion of the world's population—the edited book delivers valuable insights for legal professionals working in international contexts, especially as the BRICS member states continue to grow in economic and political influence globally. The volume explores the multifaceted ways in which disparate legal systems confront common social issues, showing the patterns of legal pluralism and hybridization prevalent within these regions. It scrutinizes the intricate interplay between legal transplants and indigenous legal doctrines, examining how the often-emergent legal frameworks in the Global South navigate the delicate balance between local traditions and global legal models. This indepth analysis offers a new understanding of the ways these states use law as a tool for shaping social policy.

Ulrike Davy's introductory chapter, "Law and Social Policy in the Global South: Setting the Stage", examines the foundational concepts and historical contexts shaping social policies in the Global South. With a focus on intellectual influences—examining how underlying ideas, concepts, and philosophical traditions shape legal systems and social policies across these nations—it offers a comparative framework for understanding better the distinctive evolution of social policies in Brazil, China, India, and South Africa, despite parallels to European models. It is an important contextualising chapter for the rest of the book and argues that historically all four states have moved from a rather narrowly conceptualised "social insurance" framework to a more encompassing regime of "social security". Southern societies have prevailed in conceptualising the meaning of "social security", so that the term epitomizes core elements of Southern welfare and the aspirations of non-European countries in a post-colonial era.

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<sup>1</sup> BRICS is an acronym referring to an intergovernmental organization comprising five major emerging economies: Brazil, Russia, India, China, and South Africa.

In Chapter 2, “Brazil’s Social Policies since the 1930s: From Fragmentation to Universalism”, Octávio Luiz Motta Ferraz traces the development of Brazil’s social policies over nearly a century. He examines the pivotal role of various Brazilian constitutions and landmark programmes such as Bolsa Família.<sup>2</sup> The chapter highlights the key ideas driving social policy legislation while addressing the persistent gap between legal frameworks and their practical implementation.

Albert H Y Chen’s essay (Chapter 3), “Law and Social Policy in the People’s Republic of China: From Communism to Marketisation”, provides a powerful analysis of the transformation of China’s social policies from the republican era through the reform period. It charts the shift from communal systems to more market-oriented approaches, noting key milestones such as the 1951 Labour Insurance Regulations and the 2010 Social Insurance Law. The essay offers a nuanced assessment of China’s progress in building a more effective social welfare system. Professor Chen characterizes the history of the People’s Republic of China in terms of three distinct phases: the Maoist era (1949–1977), the initial reform period (1978–2001), and the subsequent reform period (2002–present). Each era is characterised by distinctive policies towards social welfare. First, during the Maoist era, welfare was administered directly by state enterprises in urban locales and by communes in rural regions. In general, however, the urban sector was given much stronger support than rural areas, and it has been hard for China to dislodge itself from this policy position. The initial reform period—that is post-late 1970s—witnessed the disbanding of these systems, leading to the establishment of new social insurance frameworks. Social policies in the early reform era were largely reactive to emerging problems created by economic liberalization, rather than proactive planning. Social welfare then progressed from *ad hoc* policy measures to increasingly sophisticated legal frameworks, culminating in the 2010 Social Insurance Law and draft Social Assistance Law.

Chen traces the evolution of China’s philosophical underpinnings, transitioning from Confucian ideals of benevolence and compassion for the vulnerable to contemporary interpretations of social welfare and security. This transformation involves a significant reconfiguration of social values and priorities, in which historical influences nevertheless

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<sup>2</sup> The Bolsa Família programme provides monthly cash payments to low-income families, with benefits conditional on meeting specific requirements related to education and healthcare. Families have to ensure their children attend school regularly and receive routine medical check-ups and vaccinations. The programme targets families living in extreme poverty and those in poverty, with benefit amounts varying based on family size and composition.

continue to inform modern policy frameworks involving new ideals of social responsibility and the state's active role in safeguarding its citizens.

The chapter's primary strength is its comprehensive historical analysis of the evolution of China's social policy and legal frameworks across different eras. It effectively demonstrates how China moved from traditional welfare concepts through Maoist collective welfare to the current mixed system of social insurance and assistance. The most significant contribution is Chen's careful documentation of how social policies were shaped by and responded to major economic transitions, particularly the shift from a planned economy to a market-oriented system. China's approach has been one of "experimental gradualism", with social policy development following a pattern of local experimentation, gradual scaling-up of successful models, and eventually national legislation. This historical perspective helps readers understand why China's social welfare system developed the way it did, with its distinctive characteristics and continuing challenges. Chen argues that China's trajectory of welfare reform differs from post-communist states (which typically reduced social welfare) and East Asian developmental states (which improved welfare only after democratization). Unlike India, China's judiciary has played at best a limited role in constitutional interpretation of social rights, with development driven primarily by Party-state policy. And there has been significant progress, moving from enterprise-based welfare to a modern social insurance system serving a billion-plus people. Professor Chen's analysis focuses primarily on the political economy factors driving change: ideology, economic development strategies, institutional changes, and the relationship between market transition and social policy needs. In this reviewer's eyes, the essay might perhaps have benefited from more attention to demographic pressures (population growth, family size, rural-urban migration, ageing population, and so on). These typically play major roles in shaping social security system development, particularly regarding pension design and intergenerational equity worries that are important in China's current social policy challenges. And while coverage of issues is necessarily limited, as Professor Chen does not, of course, seek to provide an overall picture of social development, I take the view that some attention to consumer protection analysis would have strengthened the essay by showing how market-oriented social policies require robust consumer protection frameworks to achieve their social welfare objectives.

Other essays examine the distinctive welfare trajectories of major developing nations through detailed case studies and comparative analysis. Sarbani Sen's contribution (Chapter 4) on "Law and Social

Policy in India: From Growth-based Welfare to Welfare Entitlements” traces India’s transformation from colonial-era social policies to its contemporary framework of welfare entitlements. This chapter considers India’s constitutional structure, particularly examining the Directive Principles of State Policy and how judicial interventions have fundamentally shaped the country’s approach to welfare entitlements. Sen explores the significant ideological evolution that has occurred within Indian social policy, documenting the shift from traditional economic growth-based welfare models towards more comprehensive rights-based approaches that recognize welfare as an entitlement rather than merely as a byproduct of economic development.

In Chapter 5, “Law and Social Policy in South Africa: From Untold Suffering and Injustice to a Future Based on Human Rights” by Letlhokwa George Mpedi, the South African experience receives thorough treatment. This analysis spans the entire arc of South African social policy development, from the colonial period through the devastating apartheid era and into the post-apartheid governance structure. Mpedi examines how racial and class disparities became systematically embedded in welfare provision systems, analysing apartheid’s enduring legacy on contemporary social policy formation. The chapter gives particular attention to how South Africa’s Constitutional Court has influenced the country’s current human rights-centred approach to social policy, representing a significant departure from the exclusionary and discriminatory practices of previous eras.

Ulrike Davy’s concluding chapter “Southern Welfare: From Social Insurance to Social Security”, as noted above, provides a comparative analysis that ties together the experiences of all four countries examined in the volume. Davy identifies both commonalities and significant distinctions among these states’ social policy approaches while considering them in relation to established European welfare state models. Her analysis reveals how a range of distinctive factors operating within these Southern contexts have produced social welfare trajectories that diverge from traditional European patterns, developing distinctive approaches to social welfare that reflect their particular historical experiences, cultural contexts, and developmental challenges.

The significant contribution of this work lies in its integration of legal perspectives into welfare state studies focused on the Global South. By incorporating both historical and ideological dimensions, the book illuminates how these states’ social policies have been shaped by complex interactions between legal frameworks, political ideologies, and historical

circumstances so that they differ substantially from the European experience that has traditionally dominated welfare state scholarship.

***About the author***

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