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AIMS AND SCOPE

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Abstracts

Cooperation for Development, Brazilian Regional Leadership and Global Protagonism

Leticia Pinheiro and Gabrieli Gaio

This article aims to analyze Brazil's policy towards South America during Luiz Inácio "Lula" da Silva's government by discussing what kind of leadership the country was able to perform in the region during this time. The authors examine the role played by the policy of International Cooperation for Development on such regional leadership. The central argument is that although Brazil has performed the role of a regional leader, there is a need for distinguishing leadership for regional matters – inwards regional leadership – from leadership for global issues – outwards regional leadership. The article argues that inwards regional leadership was in fact successfully performed by Brazil in South America, mainly due to its role as a Development Leader. On the other hand, such leadership for regional matters did not always allow Brazil to act on behalf of the entire region on the global arena. Nevertheless, the Brazilian diplomacy left behind the belief that, in order to have global protagonism, the country should use South America as a regional launching platform. Instead, Brazil has been making use of global coalitions such as IBSA and BRICS to boost its global role.

Keywords: Brazil; South America; regional leadership; development; international cooperation.

Water Services in the Buenos Aires Metropolitan Area: How Does State Regulation Work?

Mariela Verónica Rocca

This article deals with the State regulation of drinking water and sanitation services in the Metropolitan Area of Buenos Aires. Its main objective is to identify the continuities and ruptures in State regulation during the transition from private management (1993-2006) to renationalisation and State management (2006 onwards). The concept of "State capacities" (both administrative and relational) is used to assess regulatory performance. For the administrative capacities, the correspondence between the design and resources of the agencies, as well as the differences between their formal functions and actual practices, is examined. For the relational capacities, the policies of the National Government and its interaction with both the water and sanitation companies and the regulatory and control agencies are considered. The analysis is based on official documents, legislation and statistics, company balance sheets and reports, newspaper articles and semi-structured interviews.

Keywords: Drinking water; sanitation services; state capacities; state regulation; regulatory agencies.

Institutionalisation, Reform and Independence of the Public Defender's Office in Brazil

Lígia Mori Madeira

The aim of this article is to investigate the institutionalisation of the state Public Defender's Offices before and after the reform that granted independence and new functions to the Public Defender's Offices in Brazil. The analysis of these processes is based on theories of judicial empowerment (ideational and governance perspectives) and the units of observations are the Brazilian states. Two indicators in three different time periods (before, during and after the reform) are adopted to verify to what extent the formal (de jure) advances were involved in the exercise of autonomy in the states. The analysis reveals that in spite of the formal achievement of independence, the majority of state Public Defender's Offices are not actually independent and there is a great gap between what the laws stipulate and what actually happens in the public provision of access to justice in Brazil.

Keywords: Public defender's office; institutionalisation; independence; judicial strengthening; access to justice.

Flying in Clear Skies: Technical Arguments Influencing ANAC Regulations

Marcelo Fragano Baird and Ivan Filipe de Almeida Lopes Fernandes

Regulatory agencies possess the particularity of being controlled by non-elected politicians whose power is derived from delegations made by incumbent powers. There exists, however, a concern with the creation of institutional mechanisms that permit public participation, thus guaranteeing greater democratization and social control of the regulatory process. One of these participatory mechanisms is the public hearing, which was not given much attention by Brazilian literature on lobbying and interest groups. This article seeks to contribute to fill this gap, focusing on the impact of interest groups acting upon the National Civil Aviation Agency, ANAC. Analyzing comments sent to the public hearings, the article identifies the commentators and the intensity of their participation, the impact of their efforts as measured by the rate of comment incorporation, and explains why some comments are incorporated and others are not. An original data base of the comments made at all ANAC public hearings between 2007 and May 2012 was organized, with 518 comments concerning 48 regulations. To test participant influence, the comments were classified by degree of technicality, economic or legal argument, authorship, and request for regulation. Regression models show that a comment's incorporation is directly related to its degree of technicality. Technical comments, which effectively subsidize the resolution, have a higher chance of being incorporated. Even more than corporate power or its force of participation, the technical quality proved to be the main factor for comment incorporation.

Keywords: Public hearing; social participation; regulatory agencies; ANAC; lobby.

A Comparative Analysis of Brazil's Foreign Policy Drivers Towards the USA: Comment on Amorim Neto (2011)

Fernando Mourón and Francisco Urdinez

This paper looks at the main finding by Amorim Neto (2011), namely that Brazil's power explains why it distanced itself from the country that had once been its great ally in the first half of the last century. An alternative explanation is proposed grounded on the realist literature in IR. The article aims at determining whether the variable has behaved in the same way for other South American countries, searching for independent variables that could help explaining a visible pattern in the region: the increasing distancing from the

United States (USA) at the United Nations General Assembly. The article seeks to contribute to the debate initiated by Amorim Neto (2011) and Schenoni (2012) for future research in the recent field of quantitative analysis of Brazilian Foreign Policy. Using Panel Corrected Standard Error analysis in ten South American countries from 1970 to 2007 it is empirically proven that the lower the power gap between a South American country and the U.S., the lower its alignment with the USA in the UN General Assembly voting.

Keywords: Brazilian foreign policy; South America; USA; UN general assembly; panel data econometrics.

ARTICLE

Cooperation for Development, Brazilian Regional Leadership and Global Protagonism*

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This article aims to analyze Brazil's policy towards South America during Luiz Inácio “Lula” da Silva's government by discussing what kind of leadership the country was able to perform in the region during this time. The authors examine the role played by the policy of International Cooperation for Development on such regional leadership. The central argument is that although Brazil has performed the role of a regional leader, there is a need for distinguishing leadership for regional matters – inwards regional leadership – from leadership for global issues – outwards regional leadership. The article argues that inwards regional leadership was in fact successfully performed by Brazil in South America, mainly due to its role as a Development Leader. On the other hand, such leadership for regional matters did not always allow Brazil to act on behalf of the entire region on the global arena. Nevertheless, the Brazilian diplomacy left behind the belief that, in order to have global protagonism, the country should use South America as a regional launching platform. Instead, Brazil has been making use of global coalitions such as IBSA and BRICS to boost its global role.

Keywords: Brazil; South America; regional leadership; development; international cooperation.

Introduction

In the Brazilian Foreign Policy literature, the reference to the Brazilian pursuit of an important international role is not new. Indeed, this is one of the most recurrent aspects ascribed to the Brazilian diplomacy (LIMA, 2005b; SILVA, 1995). Another ever-present feature regarding Brazil's stance on the international scenario is its alleged drive for playing a

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leading role in the regional arena (SARAIVA, 2010; SILVA, 1995). This is also true as far as official statements are concerned. To give a recent example, former president Luiz Inácio “Lula” da Silva said before Itaipu Hydroelectric Board of Directors that there was a claim from the South American countries for Brazil to lead them¹. Likewise, it is worth mentioning the critiques voiced by former minister of Foreign Affairs Luiz Felipe Lampreia (1995-2001), saying that leadership was something to put in practice, not to be heralded. Moreover, he claimed, leadership should be a continuous and consistent attitude².

In our view, both the aim of having a more important international role and of exercising regional leadership are still very much present in the Brazilian foreign policy agenda. Nevertheless, recent changes on the Brazilian stance towards South America (HIRST, LIMA and PINHEIRO, 2010; LIMA and HIRST, 2006; PECEQUILO and CARMO, 2012; SARAIVA, 2010; SPEKTOR, 2010) should be taken into account in order to better evaluate each one of those aims, as well as their alleged connection, that is, the hypothesis that being a regional leader is a pre-requirement for having international protagonism. We argue that during Lula’s government (2003-2010), the Brazilian policy of horizontal cooperation for development has strongly contributed to strengthen Brazilian regional leadership as well as to diminish – if not totally extinguish – the instrumental nature of the latter to achieve global protagonism³.

This paper joins the debate about Brazilian regional performance by starting with the question of what kind of leadership Brazil has played – if the country has indeed played such a role – and in which areas. Our main hypothesis is that one should distinguish between two different kinds of leadership: *inwards regional leadership*; and *outwards regional leadership*. Whilst the former is defined as the capacity to set formal or informal rules and patterns of behavior within the regional sphere; the latter is defined as the capacity to lead regional partners in global matters. In this sense, the thesis that Brazil was likely to consolidate itself as a middle global power before gaining acceptance as a leader in its region (MALAMUD, 2011) should be slightly revised. Although we follow the argument that “leading a region is not a precondition for global emergence” (Idem, p. 4), we argue, instead, that Brazil does play the role of a regional leader. In saying so, we contend that in particular issue areas Brazil fulfills the three necessary conditions that, according to Van Langenhove and Zwartjes (FORTHCOMING), qualify it to play an inwards leading role in South America: (i) the willingness to act as a leader; (ii) the leadership capacity; and, finally (iii) the acceptance of this kind of leadership by other actors. Finally, we argue that, although it is not necessary to be a representative of its own region to play a relevant role in the international scenario, Brazilian global protagonism is reinforced by its role as a *Development Regional Leader*.

To present our argument, we have organized this article in three sections. First, we briefly discuss distinct views of Brazil’s regional leadership – or its lack – followed by our quest for a different approach to characterize leadership. Second, we address what kind of leadership Brazil has played in South America by means of implementing projects for development of two different types: credit lines for infrastructure projects⁴ and technical cooperation for social

1 Available at: <http://www.bbc.co.uk/portuguese/reporterbbc/story/2008/03/080303_ams_abre1_diplomacia.shtml>. Accessed: 4 May 2012.

2 “Brasil já exercia liderança, diz ex-chanceler de FHC”. Folha.com, 19/01/2003. Available at: <<http://www1.folha.uol.com.br/folha/mundo/ult94u50530.shtml>>. Accessed: 4 May 2012.

3 By region we refer to the group of South American states only.

4 It is important to underline that we are talking about public financing for foreign governments to purchase

development policies. Altogether, these initiatives are strong indicators of Brazilian position as an *inwards regional leader* – a *Development Regional Leader*, label that captures and summarizes Brazil's willingness and capacity, as well as the recognition from its regional fellows, of Brazilian initiatives for boosting economic and social development in the region. In the third section, we turn to the place IBSA Dialogue Forum⁵ has occupied on Brazilian foreign policy during the Lula government and to its connection – if any – with Brazilian regional leadership as defined earlier. By way of conclusion, we raise some thoughts about the complementarity, though not dependence, between Brazilian regional leadership and Brazilian global protagonism.

To be or not to be a regional leader

The need for more precise categories is a central question for scholars and practitioners trying to qualify and rank countries in the international system. This is particularly more complicated when we talk about volatile attributes or situations. Leadership and power, for instance, are not static features. It is impossible to ascribe to anybody or to any country a kind of everlasting leadership position or major power situation. Those are relational and historically contingent categories, and therefore they are not only associated with the country's own capabilities and behavior – which are not static either – but also to other countries' capabilities and behavior, and consequently to the current configuration of the international system. In face of the identification of a power shift in global politics from the G7 to a group of emerging powers (HURREL, 2000), this debate seems to have become even more intense.

It is very much due to the difficulties around the definition of those categories that authors from different perspectives have been trying either to rank or to label countries' power – *great power, middle power, intermediate power, emerging power, global power, regional power* – as well as to label different kinds of leadership – *multiple, collaborative, shared, distributive, by concertation*⁶. By doing so, they attempt to simultaneously take into account some of the particularities of each country and to avoid excessive detailed classifications. The bad news is that either we have dozens of different – and sometimes useless – typologies or, rather, we surpass actual and relevant singularities in the name of parsimony.

Notwithstanding the acknowledgement of the relevance as well as the complexity of the attempts to conceptualize power, it is not our aim to propose a new definition or alternative criteria to categorize it. Instead, we have decided to join the debate about different kinds of

goods and services from Brazilian construction and engineering companies related to infrastructure projects that South American countries consider being relevant to their development. We are not interested in discussing the broader phenomenon of the expansion of Brazilian capital, a strategy that, though may also benefit from public finance support, does not necessarily aim to generate regional public goods such as infrastructure. For a discussion of the latter and its effects on national development, see Masiero and Caseiro (2012); for the international expansion of Brazilian capital, see Actis (2012, 2013).

5 From the outset, it is important to note that, although Brazil participates in other political coalitions with emerging countries and middle powers, such as the BRICS – Brazil, Russia, India, China and South Africa – and is even currently investing much more politically in the latter than in IBSA, the option to examine the place of the latter coalition in Brazil's foreign policy and its relation to the issue of its alleged regional leadership agenda (instead of the BRICS) was due to the fact that the article examines in particular the period of President Luis Inácio Lula da Silva's government (2002-2010), while the BRICS group was only formalized in the first presidential summit in 2009, that is, at the end of his second term.

6 "El desafío de definir el rol como potencia global" by Juan Gabriel Tokatlian. *La Nación*, 6 November 2010. Available at: <<http://www.lanacion.com.ar/1321624-el-desafio-de-definir-el-rol-como-potencia-global>>. Accessed: 2 May 2012.

leadership, due to the importance of this category for South American current international politics. Therefore, we see leadership as a position created and nurtured both by those who present themselves as leaders and by those within the same region and/or from abroad that reinforce, through statements or actions, the leading position of a country. Additionally, we argue that, when it comes to leadership, we have to think not only about who exercises it, but also about on which issues it is exercised.

As a volatile, and not structural, feature, a leading role has to be continuously renewed in order to be recognized as such. Indeed, when it comes to regional leadership, we see it as an ongoing process which can always be disputed by regional neighbors – in the South American case, usually by Brazil, Argentina and, more recently, Venezuela (FLEMES and WOJCZEWSKI, 2010). Therefore, we are not facing a Shakespearean dilemma of “to be or not to be” a leader; but rather a kind of Pirandelian puzzle of “*So It Is (If You – [We] – Think So)*”. The main difference is in the way Brazil sees itself as a regional leader and the way it is seen as a leader by its peers, independently of the means through which this recognition is achieved and renewed.

Most authors agree with the idea that Brazil was not in a position that could lead to any easy or automatic acknowledgement of the country’s regional leadership in world affairs (LIMA and HIRST, 2006); or of a consolidated regional leadership (VIEIRA, 2011); or even of a regional leading role at all (HIRST, 2010).

According to Andrés Malamud (2011), who has been dedicating close attention to this subject, leadership can be defined as “the capacity to engage *subordinate states* so that they adopt the goals of the leading state as their own” (2011, p.3, our emphasis). Contrarily, we do not refer to leadership in such a way, since we understand the idea of *subordinate states* adopting the goals of other state as their own as an example of dominance, rather than leadership⁷. In fact, the idea of *subordination* seems to detract or even to ignore a certain level of complementarity of interests and freewill, which can be identified in the case of Brazil and its regional fellows. Indeed, we argue that the kind of regional leadership Brazil has performed during the Lula government should be seen as associated to its capacity to be a referential country for development policies, not only because it was able to take more than 30 million people out of poverty in less than one decade (WORLD BANK, apud STOLTE, 2012, p.13), but also because it put in place a type of cooperation for development which served, even if asymmetrically, the actual interests of the South American countries, including Brazil. In this sense, leadership here is meant as a role of prominence within the region towards the common objective of development. Indeed, as stated by Dauvergene and Farias, “Brazil has moved beyond the ‘traditional’ role of calling for development to being in a position to draw on its own experience to offer development solutions” (2012, p. 909), thanks to the fact that both the relative paucity of resources for Brazil to assume the role of paymaster and therefore to absorb the costs of region building, and the lack of will to do so (BURGES, 2005, 2007, 2008) now belong to the past (SARAIVA, 2010).

Malamud also defines leadership as “the capacity to influence followers” (2011, p. 3). Even if we acknowledge that influence is a very difficult attribute to measure, this idea could help us to better understand the kind of leadership Brazil has actually played in the region. Even so, we should make a distinction between “the capacity to influence followers” (Idem) in

7 In saying so, we are implicitly denying Kindleberger’s (1981) definition and distinction between the concepts of dominance and leadership. Whilst for him “one country... dominated another when the other had to take into account what the first entity did, but the first could equally ignore the second” (KINDLEBERGER, 1981, p. 243), and leadership is a situation when a country persuades “others to follow a given course of action which might not be in the follower’s short-run interest if it were truly independent” (Ibidem); for us, such definitions of dominance and leadership do not take into account a certain level of complementarity of interests and freewill between leaders and supporters.

regional matters and in global matters. In the case analyzed here, we witness a kind of leadership that can neither be extended to all issue areas, nor qualify the leading country to claim the right and legitimacy to represent its regional fellows in global issues. In sum, we are not talking about a kind of comprehensive leadership or structural leadership, that is, one that could cover all dimensions of a country's interests whichever the forum of discussion. In fact, we argue that this kind of leadership no longer exists (not even great powers can benefit from this kind of leadership). On the contrary, we have opted for examining only one dimension of Brazilian performance in the region, one that can be seen as an example of a kind of leadership.

Now we turn to the concept of *consensual hegemony*, as crafted by Burges (2008) in his attempt to explain the leadership strategy of an emerging power like Brazil – a strategy, he concludes, in which Brazil has not succeeded. (Idem, p. 66). This concept was meant to substitute the somewhat worn out concept of leadership, as well as to be a tool to explain a kind of strategy that, even if it fails to reach its objective, nevertheless “offers rewards that compensate for a failure to attain it”. (Idem, p. 66)⁸.

Differently from several theoretical perspectives that usually associate the idea of hegemony to a coercive behavior by the hegemon, the concept of consensual hegemony proposed by Burges focuses “on a Gramsci-inspired vision that privileges the creation of consensus through the constructive inclusion of potentially competing priorities and the shaping of common positive outcomes” (Idem, p. 81).

Despite offering new ways to think about the particular characteristics of Brazilian behavior in South America, we do not subscribe entirely to Burge's conclusions, and indeed we take some of them as misleading. Firstly, we do not agree with the low importance Burges (2008) gives to the self-interest reasons of the South American countries on following the leader, which in the end he says can be rather apparent⁹. And secondly, when Burges (2008) separates the idea of hegemony and the idea of hegemon in two distinct entities – “hegemony remains the constant, overarching structure, with the role of hegemon shifting between the embraced states depending on which participant is best able to coordinate and advance a specific aspect of the project” (Idem, p. 74) – he gives the structure – *hegemony* – a rather autonomous existence, which we are not prepared to follow..

Nevertheless there are several other elements of Burge's thesis that are quite useful for what we are discussing in this article. For instance, some of his evidences on Brazil's increasing economic presence in the region, by means of private investment flows and public financing through BNDES; and moreover, his ideas that Brazil could be seen as a regionally predominant, but not a dominant state in South America (Idem, p. 74).

Having reviewed these contributions that scrutinize the concept of leadership for explaining the situation in South America, which have greatly helped us to refine our own view on the subject, we will now present our understanding of Brazilian regional leadership and offer some examples to illustrate it.

8 According to Burges, when the strategy fails “it demonstrates that the very attempt to form a consensual hegemony offers the leading state gains that can compensate for an ultimate failure in the larger project; the non-dominating nature of consensual hegemony allows for a series of shifts in the nature of regional relations that at least partially embeds the leading state's interests.” (BURGES, 2008, p. 66)

9 In his own words, “The dominant group will go to the extent of making minor or tangential sacrifices, even in the economic realm, in order to co-opt the subordinate, creating a system of political economy which subtly, yet indelibly, commits the subaltern to preserving the hegemony for what at first glance may appear self-interested reasons” (BURGES, 2008, p. 71).

Cooperation for development and Brazilian regional leadership

Brazilian Cooperation Agency (BCA) – the official agency in charge of coordinating Brazilian policy of international cooperation – defines SSC as mainly technical cooperation, based on the commitment to the construction of capacities for sustainable development, by means of integrating the human resources formation, organizational strengthening, institutional development, and the provision of public goods (CINTRA, 2011). Moreover, BCA excludes financial transfers such as the ones performed by the BNDES (National Bank for Economic and Social Development) to other developing countries out of its definition. In this sense, SSC for development should not be seen as the same of SS relations in general, although “for Brazil [they] have become intertwined dimensions in its foreign affairs”, as posited by Hirst (2011, p. 05). According to some scholars, Brazilian SSC for development is characterized by certain singularities, since the country perceives it as:

(A)n institutionally grounded action built upon the capabilities of its state agencies comprising technical assistance, skills transference and capacity building. It is centered upon the notion of inter-state partnership, based on ideals of solidarity, the relevance of shared experiences and the value of exchanging capabilities to overcome the social and economic limitations imposed by underdevelopment (HIRST, 2011, p. 04).

By a different token, we could take into account the study by Lengyel and Malacalza (2011), who have written a very interesting essay on the variety of instruments and forms through which this kind of cooperation can manifest itself. In their view, SSC can include not only non-refundable loans but also refundable financing, considering Government Sponsored Investments (GSI) as a modality of SSC. According to them, GSI are:

Investments sponsored/financed by governments and secured by bilateral agreements favorable to receptor countries, which do not impose real financial risks to the enterprises involved (...) and imply a relevant economic disbursement envisaging vital areas of development in the receptor countries. (LENGYEL and MALACALZA, 2011, p.11)

According to Lengyel & Malacalza (2011), then, we could indeed take – though not without consequences – the credit lines for infrastructure projects in South America together with technical cooperation projects for social development sponsored by Brazil as examples of SSC. More specifically, BNDES credit lines for boosting South American countries’ infrastructure could be seen as a kind of SSC, an example of GSI modality, since:

- It provides “a relevant economic disbursement envisaging vital areas of development in the receptor countries”;
- It is “favorable to receptor countries” by presenting lower interest rates and varied means of payment;
- It also reduces expressively the “real risks to the enterprises involved” by reducing the risks of default.

Not being the objective of this article to engage in a conceptual debate about SSC, though, we decided to label the policy Brazil has implemented towards its South American neighbors mostly during the Lula government as *regional cooperation for development* (both of technical and economic nature, excepting those initiatives involving military equipment of any kind). In so doing, our aim was to get away both from the Brazilian official statements, which at times contradict the governmental practices, and from any other definitions which

unwittingly succumb to the latter; we also wanted to avoid embracing definitions that could immerse ourselves in endless political contentions, without furthering the exam of Brazilian regional leadership, which is the core of this paper.

Having said that, amongst several examples of Brazil's new stance towards South America, we highlight some more consistent to the Brazilian cooperation for development: the support for the consolidation of the Initiative for the Integration of South American Regional Infrastructure (IIRSA); and the commitment to the Union of South American Nations (UNASUR), created in 2008.

To make both initiatives possible, Brazil has committed financial resources through two different institutions: one regionally based – FOCEM (Fund for MERCOSUR Structural Convergence); and other nationally based – the credit lines opened by BNDES to finance infrastructure projects developed by IIRSA or by national governments individually. Both initiatives were made possible thanks to Brazilian macroeconomic stability¹⁰. A challenge to many South American countries, macroeconomic stability has allowed Brazil to enhance its economic position in the region, as well as to achieve an international donor status, a happy encounter between the country's economic necessities and the government political will to promote regional development in South America, as will be presented below.

Created in 2004 as an institutional mechanism towards the mitigation of regional inequalities, FOCEM¹¹ is an excellent example of Brazilian distinctive commitment to the region, particularly to the issue of regional integration. But it is BNDES credit lines that better illustrate Brazil's will to pay for the costs of helping to promote South American development by integrating it in sectors such as energy, transport and communication.

According to Schutte, in 2005 Guido Mantega, then BNDES's president, publicly stated that the bank had "incorporated into its mission this strategic objective, acting as a funding body for the integration in South America". (2012, p. 67)¹². The strategy was to allow BNDES to give loans to foreign governments mainly for contracting major national contractors and engineering services such as Odebrecht, Camargo Corrêa and Andrade Gutierrez (see Table 01), to the extent that at least 35% of the amount disbursed for each project was spent on imports of Brazilian products (MASIERO and CASEIRO, 2012, p. 16). Data collected by Masiero and Caseiro (2012, p. 16) also shows that between 2008 and 2011, US\$ 5.2 billion out of the US\$ 9.9 billion BNDES lent to foreign governments and corporations for the procurement of goods and services of Brazilian companies went to Latin American countries. Moreover, it is worth noting that the Brazilian government employed large amounts of subsidies when financing such loans, since the national Treasury captured resources in the financial market under an interest

10 It is worth remembering that this macroeconomic stability derives from the maintenance of many economic policies adopted during the previous government of Fernando Henrique Cardoso. However, during Lula's administration, those policies were conjugated with a bigger role conferred to the State as a fundamental part of economic growth. The State is understood, in this sense, as "capable of regulating the market to ensure a macroeconomic stability broader than monetary stability and, simultaneously, strengthen the market as the main producer of wealth". (MORAIS and SAAD FILHO, 2011, p. 525, our translation).

11 Brazil is responsible for depositing 70% out of the total, Argentina 27%, Uruguay 2%, and Paraguay 1%. Inversely, Brazil and Argentina are allowed to withdraw just 10% out of the fund, Uruguay 32%, and Paraguay 48%. Although it would not be correct to say that Brazilian commitment to FOCEM is devoid of interests, it does represent a dramatic change in the Brazilian stance towards the region, as long as it has materialized the country's decision to pay for the most part of the costs of this regional integration arrangement. To find out more about FOCEM's structure, see Brazil's Ministry of Planning, Budget and Management webpage, available at: <<http://www.planejamento.gov.br/secretaria.asp?cat=156&sub=279&sec=10>>. Accessed: 21 Apr. 2012.

12 Although we do not have the figures for South America disaggregated from Latin America, it is worth noting that in 2007, for instance, the percentage of infrastructure projects within the total of the projects financed by BNDES reached 98% (COUTINHO, 2009).

rate of 11.7%, and BNDES lent it under a rate of only 6%. In this sense, the bank made the loans cheaper for its contractors, which was allowed by Brazilian government subsidies (LEOPOLDO, 2011). Additionally, BNDES's loans were supported by regional payment mechanisms¹³ that aim to reduce the transfer of capital among the countries involved (KOBLOITZ, 2010a).

Table 1. Main Brazilian construction companies in South America

Company	Countries	Continents	South-American Countries
Odebrecht	35 countries	Central America, North America, South America, Asia, Africa and Europe	Argentina, Bolivia, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay, Venezuela
Camargo Corrêa	9 countries	South America and Africa	Argentina, Bolivia, Colombia, Ecuador, Peru, Suriname, Venezuela
Queiroz Galvão	9 countries	Central America, South America and Africa	Argentina, Chile, Peru, Venezuela
OAS	15 countries	Central America, South America and Africa	Argentina, Bolivia, Chile, Colombia, Ecuador, Peru, Uruguay, Venezuela
Andrade Gutierrez	40 countries	Central America, South America, Europe and Africa	Argentina, Bolivia, Chile, Colombia, Ecuador, Paraguay, Peru, Venezuela

Source: Author's own compilation based on information retrieved from companies websites in January 2013. Companies websites.

Note: In this table we can see all South American countries where these companies have already been engaged in some infrastructure project.

Although we have only selected projects related to the construction of physical infrastructure in the region, this does not mean that projects of distinct nature have not also been developed with Brazilian credit lines. They certainly have¹⁴. Nevertheless, our aim was to highlight only those which, besides incorporating the search for internationalization of Brazilian companies by contributing to the further diversification of the country's trading relations (BURGES, 2007)¹⁵, could also be seen as providers of regional public goods, even if they also provide private goods¹⁶.

The figures released by the 2010 Foreign Ministry Report, show that between 2003 and 2010, the 80 ongoing projects financed by Brazilian public credits to South America, mainly through BNDES resources (Banco do Brasil was another source of resources), totalized US\$ 10 billion (República Federativa do Brasil, 2010). The report also lists the countries and respective areas that benefited most:

¹³ The Agreement on Reciprocal Payments and Credits is an important example of such mechanisms. For more information on its definition and rules, see the Brazilian Central Bank's webpage, available at: <<http://www.bcb.gov.br/?RED1-INFOCCR>>. Accessed: 10 Apr. 2012.

¹⁴ For a comparison between Brazilian and Chinese support for emerging market multinationals, particularly regarding how the state policies encourage outward foreign direct investment as a domestic development strategy, see Masiero and Caseiro (2012).

¹⁵ It should, however, be noticed that the internationalization of Brazilian companies has not been initiated during Lula's government, and that the expansion of Brazilian multinationals is not a product of a governmental planning. Nevertheless, it has highly benefited from public policies after 2003 (ACTIS, 2013, p. 23).

¹⁶ For a discussion about physical infrastructure projects as regional public goods, see Araque Botero (2012).

- a. Argentina¹⁷: gas pipeline enlargement, aqueduct building, and support for aerial transport infrastructure. Estimated costs: US\$ 2.72 billion. Firms: Odebrecht, OAS, Embraer;
- b. Venezuela: building and enlargement of Caracas subway and building of a hydroelectric. Estimated costs: US\$1.06 billion. Firms: Odebrecht e Alstom;
- c. Bolivia: building of roads. Estimated costs: US\$ 710 million. Firms: OAS and Queiroz Galvão;
- d. Chile: enlargement of Santiago subway and support to the road transports infrastructure. Estimated costs: US\$ 559 million. Firms: Alstom e Mercedes-Benz Brasil;
- e. Paraguay: building of a bridge. Estimated costs: US\$ 200 million.

We have no doubts that these projects strongly “help[ed] the diversification of Brazil’s trading relations and a consolidation of South-South linkages by encouraging business to look in new directions”, as said by Burges (2007, p. 1350). Indeed, these projects were quite successful in enhancing Brazilian exports from distinct sectors (ALÉM and CAVALCANTI, 2005, p. 57), not only services but also those related to building materials (ANTUNES, 2007, p.28; GALVÃO and CATERMOL, 2008, p.100; LEO, 2009)¹⁸. This is especially relevant when we observe the commercial relations amongst Brazil and its South American neighbors. Between 2002 and 2011, Brazil’s exports to South America have increased 504%, jumping from US\$ 7.4 billion to US\$ 45.2 billion¹⁹. The continent constitutes a strategic trading partner in the sense that it absorbs mainly Brazilian manufactured goods, contributing to the value aggregation of Brazilian exports:

Table 2. Manufactured goods as percentage of Brazilian total exports to South American countries (%)

Years/ Countries	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Argentina	85.4	89.4	91.3	92	91.8	93	90.7	94.8	90.9	89.9	91
Bolivia	89	88.4	90.7	92.8	91.1	92.7	95.2	96.1	97	95.6	96.8
Chile	80.5	76.5	76	79.1	67.6	64	65.2	76.1	68.5	52.7	63.9
Colombia	93.4	93.5	89.5	88.7	97.9	91.2	88	83.7	86	86	87.2
Ecuador	93.2	88.3	91.8	87.6	89.5	89.5	95.5	92.7	92.6	90	85.8
Paraguay	96.1	96.6	96	93.1	95.7	95.2	94.7	92.3	93.4	92.3	92.4
Peru	96.1	90.6	88.1	82.8	72	78.7	80	74.9	83.4	81.9	84.1
Uruguay	79.4	80	82.2	86.8	86.1	88.1	90.4	89.3	88	86.3	80.4
Venezuela	93.7	92.1	88.6	89.6	87.3	82.9	69.3	66.4	52.4	55.1	64.9

Sources: Author’s own elaboration based on data provided by World Trade Organization (WTO), Brazilian Foreign Trade Association (2012) and Ministry of Development, Industry and Foreign Trade of Brazil (MDIC).

¹⁷ Argentina has been one of the countries that most benefited from Brazilian infrastructure financing in South America (KOBBLITZ, 2010a). In the years 2009 and 2010, for instance, infrastructure projects in the country absorbed more than 50% of BNDES’s loans to South America. The Brazilian bank possesses a financing portfolio especially for Argentina’s infrastructure projects, which is divided in three areas: gas pipelines, transports and sanitation (KOBBLITZ, 2010b).

¹⁸ As an example, Odebrecht is responsible for the insertion of circa 1.600 Brazilian suppliers of different sectors in several South American countries as well as in other continents (GAIO, 2012, p.14).

¹⁹ Data released by the Ministry of Development, Industry and Foreign Trade of Brazil. For more information, see: <<http://aliceweb2.mdic.gov.br/>>.

Certainly, BNDES credit lines for boosting infrastructure projects conducted by Brazilian enterprises in South American countries are not free of criticism. Such criticism arises from different sources. Following a liberal standpoint, BNDES support for few enterprises represents an excessive state intervention in economy, causing market distortions (FRIEDLANDER and TEREZA, 2009). Besides, according to representatives of Brazilian industry, the bank has benefited only a few large enterprises, excluding small and medium firms (PEREIRA, 2010). There is also an important vector of criticism concerning social and/or environmental impacts of infrastructure projects, to say nothing about the allegations of a likely imperialist behavior by the Brazilian government in South America (COSTAS, 2012; JESUS, 2012).

It is not our aim to scrutinize these criticisms. As well explained by Actis (2012), Brazil's cooperation in South America envisages not only the region's development, but also Brazil's own development goals. The author adds that the expansion of Brazil's multinationals in the continent has been understood by Brazilian government as both an instrument of national development, and regional cooperation for boosting neighbor's countries development and infrastructure. Certainly, this difficult equilibrium between "development and solidarity", as coined by the author himself, brings considerable challenges to Brazil's cooperation and leadership in South America. According to Actis (2012), however, "solidarity" has predominated over national interests and development goals when it comes to Brazil's foreign policy in the region.

We would like to add that although the benefits might also be private and to some extent asymmetrical between the partner-countries, the countries benefitted by the credit lines opened up by BNDES perceived this deal as an opportunity to help them solving their own problems of development, since they assist these countries in reducing their infrastructure deficits. In this sense, despite all the challenges and contradictions, South American governments continued to count on Brazilian enterprises and BNDES financial support when improving their infrastructure.

Certainly, infrastructure projects financed by BNDES and conducted by Brazil's construction companies in South America have a great dimension and sometimes face an adverse reaction by indigenous communities, especially after the end of Lula's government. In 2011, during Dilma Rousseff's government, Odebrecht, for instance, decided to cancel a project for the construction of a hydroelectric in Peru due to pressure from local communities. Another example is the case of OAS in Bolivia in 2011, where president Evo Morales was compelled by indigenous movements to suspend part of the construction of a highway financed by BNDES²⁰. However, it is important to keep in mind that, despite some domestic opposition from interest groups, South America's countries continued to count on Brazilian enterprises and financing for developing infrastructure projects – conflict being the exception, not the rule. In Peru, for instance, Odebrecht continues to be a major player in infrastructure projects, being in charge of many and diverse public concessions (PUPO, 2012). By its turn, OAS remains present in Bolivia through offices and projects, as informed by the Brazilian construction company²¹. Even the litigious dispute between the Ecuadorian government and the Brazilian construction company Norberto Odebrecht in the year of 2008 – by far the most challenging episode on Brazil's cooperative policies for boosting South American infrastructure –²² was not enough to impede further projects

20 For more information on both cases, see Murakawa (2011; 2012).

21 For more information, see the company's website: <http://www.oas.com/oas-com/home.htm>.

22 In 2008, after blaming the Brazilian enterprise for malfunctioning in the San Francisco hydroelectric, president

in this country to be financed by BNDES. In the end of 2012, the Ecuadorian government decided to build a new partnership with Brazil for the construction of another hydroelectric. Manduriacu hydroelectric is to be built by Odebrecht, the same company involved in the conflict of 2008, and will, once again, enjoy a US\$ 90.2 million credit line from BNDES²³. Ecuador's ambassador in Brazil stated that "Brazilian construction companies traditionally conducted good projects"²⁴ in the country. The ambassador added that, despite the 2008 conflict, Ecuador intends to appeal to BNDES's financial support more often, especially in the financing of irrigation projects to be carried out by Brazilian enterprises (SERODIO, 2012).

The willingness of the Ecuadorian government to rebuild such partnership with the Brazilian government and Odebrecht despite the 2008 conflict – the only one of this kind in the period²⁵ – could be taken not only as an indicator of regional acceptance of Brazilian leading role in promoting development through this kind of enterprise, but also that Brazilian financial support for infrastructure projects in South American countries can be very useful in the eyes of neighbor governments despite all of its alleged contradictions.

However, it is not only at the economic realm that Brazil has been showing its new approach to the region. Borrowing Dauvergene and Farias (2012, p. 905) views regarding power, leadership can also come from different sources, and therefore, can likewise be exerted through cooperative mechanisms. In this sense, it is to the role of technical cooperation projects on matters of social development, agriculture, education and health that we now turn, to see how they have contributed to the deepening of Brazilian commitment to the region. Indeed, these initiatives – of which Brazil has been the biggest promoter – were important assets for sustaining and enhancing the cooperation amongst its members by creating convergences and partnerships of strong path dependence, and a distinct Brazilian leading role.

Collecting accurate data regarding such cooperative policies implemented by Brazil in South America, however, does not constitute an easy task. One of the major challenges when evaluating Brazilian cooperation for development policies is having access to accurate statistical information regarding the financial resources employment – especially data related to the amount of resources actually employed in each cooperation project and to the resources employed in each receptor country. Although a few

Rafael Correa decided to expel Odebrecht and took the case to an international arbitration court. Correa stated that the country was not planning to pay for the US\$ 243 million provided by BNDES for the project. As a consequence, relations between Ecuador and Brazil got strained and BNDES no longer financed new infrastructure projects in the country. According to Actis (2012), such episode constitutes an exception in Brazil's posture concerning conflicts involving Brazilian private enterprises and South American governments, given Brazil's choice to protect Odebrecht investments over preserving bilateral relations with Ecuador. In the beginning of 2009, Correa paid its full debt and bilateral relations got at ease. Brazil and Ecuador cooperation for infrastructure projects would be resumed a couple of years later.

23 For more information, see: Brasil vuelve a financiar obra local. *El Universo*, 13/11/2012. Available at: <<http://www.eluniverso.com/2012/11/13/1/1355/brasil-vuelve-financiar-obra-local.html>>. Accessed: 14 Nov. 2012.

24 As quoted by Valor Econômico. For more information, see: Serodio, Guilherme (2012). BNDES assina financiamento de US\$ 90,2 milhões para obra no Equador. *Valor Econômico*, 14 Nov. 2012 Available at: <<http://www.valor.com.br/internacional/2904994/bndes-assina-financiamento-de-us-902-mi-para-obra-no-equador>>. Accessed: 29 Aug. 2013.

25 Although illustrative of the line adopted by the Brazilian foreign policy to bear the costs of regional asymmetry, the cases of the nationalization of hydrocarbons in Bolivia in 2006 that hit Petrobras and was settled through a conciliatory action by the Brazilian government, and the one involving Brazil's decision to meet the demands of the Assunção government to renegotiate the Itaipu agreement in 2009, would not fit as examples here since they did not involve the type of financing agreement with BNDES that we are examining.

government agencies have offered a valuable contribution in gathering and processing official data in this area²⁶, it is still very difficult to find consolidated numbers that could allow us a more precise referencing. In face of this gap, the Ibero-American General Secretary (SEGIB) has been making a formidable work through its annual reports on SSC, in monitoring the flow of financial resources inherent to these cooperative policies.

In this sense, according to an annual report launched by SEGIB, since 2010 Brazil has been the main responsible for cooperation projects in South America, when it exceeded the projects offered by Cuba and Venezuela, the leading countries in the offering of cooperation projects in 2009 (XALMA, 2010, 2011, 2012). In 2011, the country provided nearly 210 cooperation projects, followed by 120 projects provided by Argentina (Ibidem). In the same year, Brazil responded for 35% of all projects executed in the region and provided 75 of the total 192 cooperation projects of social dimension in South America. Concerning projects that envisaged services and infrastructure sectors, Brazil was responsible for 26 in a total of 69 projects. It is worth noting that, although Argentina also plays a relevant role in regional cooperation, the country only exceeds Brazil when it comes to cooperation actions, not cooperation projects. According to the same report, cooperation actions such as seminars and short courses on professional capacitation are more punctual, less complex and less expensive than cooperation projects. Otherwise, cooperation projects tend to involve more costs and envisage the long term. In this sense, while cooperation projects tend to subsist for about a year and a half, cooperation actions normally last a little more than one month.

Table 03 below presents an estimate of the economic disbursement carried out by offering countries, Brazil being the leading one:

Table 3. Manufactured goods as percentage of brazilian total exports to South American countries (%)

Offering country	Receptor country	Number of projects	Share of projects covered on this table (%)	Economic disbursement (US\$)	Average economic disbursement per project (US\$)
Argentina	Bolivia	4	100	35,799	8,950
	Brazil	4	100	38,379	9,595
	Colombia	2	100	11,577	5,789
	Cuba	10	100	57,815	5,782
	El Salvador	1	100	19,306	19,306
	Guatemala	4	75	29,752	9,917
	Nicaragua	5	20	11,228	11,228
	Paraguay	12	100	152,024	12,669
	Peru	5	100	41,626	8,325
	Dominican Rep.	3	67	9,201	2,601
	Others	7			
Argentina's Total		57	77	406,707	9,243

26 One of the most relevant amongst such governmental agencies is the Institute for Applied Economic Research (IPEA), which is associated to the Secretariat for Strategic Affairs of the Presidency. For more information, see IPEA (2010).

Table 3. (Continuation)

Offering country	Receptor country	Number of projects	Share of projects covered on this table (%)	Economic disbursement (US\$)	Average economic disbursement per project (US\$)
Brazil	Argentina	6	100	745,276	124,213
	Bolivia	12	83	1,923,633	192,363
	Colombia	20	75	2,367,119	157,808
	Costa Rica	11	91	651,807	65,181
	Cuba	10	100	1,173,270	117,327
	El Salvador	29	90	9,495,877	365,226
	Guatemala	1	100	9,115,235	9,115,235
	Mexico	10	90	803,274	89,253
	Nicaragua	13	54	1,091,360	155,909
	Panama	5	100	478,371	95,674
	Paraguay	14	43	2,131,106	355,184
	Peru	11	73	883,546	110,443
	Dominican Rep.	13	100	686,686	52,822
	Uruguay	7	71	1,613,287	322,637
Venezuela	9	100	1,099,281	122,142	
	Others	7			
Brazil's Total		178	79	34,259,128	244,708
Chile	Bolivia	9	56	217,642	43,528
	Colombia	1	100	9,752	9,752
	Costa Rica	1	100	3,785	3,785
	Cuba	1	100	15,413	15,413
	Ecuador	5	80	144,467	36,117
	Guatemala	1	100	5,704	5,704
	Mexico	2	50	305,599	305,599
	Paraguay	3	100	22,379	7,460
	Others	3			
Chile's Total		26	64	724,741	42,632
Colombia	Guatemala	1	100	668	668
	Honduras	5	100	6,342	1,268
	Peru	3	33	797	797
	Others	13			
Colombia's Total		22	32	7,807	1,115

Table 3. (Continuation)

Offering country	Receptor country	Number of projects	Share of projects covered on this table (%)	Economic disbursement (US\$)	Average economic disbursement per project (US\$)
Mexico	Bolivia	7	71	23,517	4,703
	Brazil	5	80	54,483	13,621
	Chile	2	100	8,705	4,352
	Costa Rica	14	71	74,825	7,483
	Cuba	3	68	6,406	3,203
	Ecuador	7	71	14,738	2,948
	El Salvador	8	37	5,549	1,850
	Guatemala	13	69	19,300	2,145
	Nicaragua	18	6	3,961	3,962
	Panama	2	100	3,134	1,567
	Peru	2	50	1,652	1,653
	Uruguay	2	100	8,473	4,237
	Others	6			
Mexico's Total		89	52	224,743	4,886
TOTAL		372	68	35,632,126	140,248

Sources: Author's own elaboration based on data provided by World Trade Organization (WTO), Brazilian Foreign Trade Association (2012) and Ministry of Development, Industry and Foreign Trade of Brazil (MDIC).

In light of these figures, we would like to underline that from 2003 to 2012²⁷, Brazil has promoted more than 400 cooperation projects in South America. Most of these projects are mainly related to cooperation and transfer of knowledge in different sectors, such as health, fishing, agriculture, industry and energy. And many of them tend to share with other countries Brazilian national experiences in such sectors, both for bilateral and multilateral projects. Countries like Peru, Paraguay, Bolivia and Colombia were amongst the ones most benefited by Brazilian cooperation projects. Respectively, these countries have engaged in 76, 71, 68 and 53 projects with Brazil between 2003 and 2012.

In the case of Peru, the projects presented different purposes, like eradication of child labor, improvement of the country's health system and transfer of knowledge in the elimination of extreme poverty and hunger. Bolivia, for instance, received Brazilian assistance in improving the country's fishing sector as well as in labor capacitation for the biofuels sector and in the fight against hunger. Brazil also helped the Colombian health sector, mainly in issues concerning food and nutritional security. Likewise, Paraguay enjoyed Brazilian cooperation in the educational system, in the improvement of skilled labor for the energy sector, in the agrarian reform process, among others.

Health and agricultural sectors have shown themselves to be more prominent in Brazilian technical cooperation towards South America. Concerning the health sector, one of the best examples of Brazil's commitment to the region is its participation at the *South American Health*

²⁷ The following official figures about Brazil's technical cooperation projects with South American countries were made available on our request by the Brazilian Cooperation Agency (Agência Brasileira de Cooperação/ABC), thanks to the endeavor of Luciano Barbosa de Lima from the ABC/South, Central America and Caribbean Division, in December 2012.

Council, also known as UNASUR-Health, in which the country plays a central role. Created on December 2008, UNASUR-Health is a permanent council constituted by the Health Ministers of the UNASUR member countries, seeking to constitute a space of integration concerning health by promoting common policies and coordinating activities among its members²⁸. The Council addresses five main issues: Health Surveillance and Response, Development of Universal Health Systems, Health Promotion and Action on Social Determinants, Universal Access to Medicines and Development of Human Resources Management. Brazil takes part at this Council mainly by the biomedical research and public health institute Fiocruz (Oswaldo Cruz Foundation), one of the most active and prominent institutions acting on human resources training and immunization. Fiocruz has indeed been an important instrument for enhancing Brazilian protagonism in the region²⁹.

As for Brazilian technical cooperation in the agriculture sector, it is important to note the relevant role of EMBRAPA (Brazilian Agricultural Research Corporation), which has been involved in more than 70 cooperation projects in South America. It has been present in countries such as Bolivia, Paraguay, Uruguay, Peru, Guyana, Colombia, Argentina, Suriname, Ecuador and Venezuela. Its programs cover diversified areas, like food and nutritional security, soybean production, fish farming, family farming, livestock orientation, cotton production, potato production and commercialization chains, among others (SOUZA, 2010).

Altogether, those projects materialize direct transfer of knowledge and expertise that have been generated and successfully implemented within Brazil (BURGES, 2012, p. 227). Moreover, they are good examples to illustrate the way by which Brazil was quite successful in crafting a kind of regional leading role able to bring, even if asymmetrically, economic and social benefits for both itself and its neighbors.

It is on this aspect that the Brazilian portfolio of cooperation in South America favors the spread of the Brazilian development model (AYLLÓN, 2012, p. 198), to the extent that it offers a cluster of experiences, public policies and knowledge of its own (Idem), as well as professional qualification. In doing so, Brazil cooperation projects for development bring with them a Brazilian view, a Brazilian expertise and a Brazilian *modus operandi*, and, therefore, it crafts a kind of leadership that we label *Development Leadership*³⁰.

Despite all these and many others examples that bring a positive stance to Brazil regarding its regional partners, we had examples of stumbling blocks in the Brazilian capacity to lead its regional fellows for the country's global objectives: the lack of support from Argentina to the Brazilian candidacy to the UNSC permanent seat; and the failure, in 2009, to get support from Mercosur members for Brazilian candidacy to the post of director-

28 Available at: <<http://www.isags-unasul.org/interna.asp?idArea=37&lang=2&idPai=>>. Accessed: 6 December 2012.

29 Ex-presidente da Fiocruz destaca importância do Unasul Saúde para América do Sul. Interview with Paulo Buss, 23/10/2009. Available at: <<http://www.ensp.fiocruz.br/portal-ensp/informe/site/materia/detalhe/18861>>. Accessed: 6 Dec. 2012.

30 We have no doubts that Brazil is also being able to craft another kind of important leading role in the region – or inwards regional leadership, as we mentioned above – by means of attitudes towards political stability in the region, such as its role on the negotiations amongst Colombia, Ecuador and Venezuela over the killing of a FARC leader by the Colombian armed forces within the Ecuadorian territory (VIEIRA & ALDEN, 2011, p. 516); or on the Venezuelan crisis over the right of president Chavez taking office despite his illness. “Maduro: Dilma respalda decisão tomada por Judiciário”. *O Globo*, 10 Jan. 2013, Available at: <<http://oglobo.globo.com/mundo/maduro-dilma-respalda-decisao-tomada-por-judiciario-7246902>>. Accessed: 10 Jan. 2013. Nevertheless, in this article our aim is to highlight its role as a development leader in the region, in relation to which these actions cannot be taken as examples.

general of the WTO being two remarkable ones. Both examples illustrate quite clearly the decision of Brazil's neighbors not to behave in a *quid pro quo* style: despite accepting the country's leading regional role for development (*inwards regional leadership*) derived from the credit lines for infrastructure projects and from the supply of expertise on capacity building by means of projects of technical cooperation, they do not take it as a passport for Brazil acting in their name outside the region³¹. In summary, it is possible to see that Brazil's regional peers tended to maintain their own positions in global matters despite their acquiescence before Brazilian prominent cooperation projects and infrastructure financing in the regional scope. It is here that extra-regional coalitions, such as IBSA, have helped Brazil to put in practice its search for protagonism globally, this time together with its Southern partners from Asia and Africa.

Brazil and the southern coalition for global protagonism

Created in 2003, IBSA Forum (India/Brazil/South Africa Dialogue Forum) was conceived as a strategic partnership amongst emerging industrialized economies and democracies. Soon after its launching, the initiative was "transformed into a South-South inter-state cooperation based largely on soft power assets (...) articulating common goals, positions and values in world politics and economics" (HIRST, 2011, p. 3)³². In 2004, the creation of the IBSA Fund (IBSA Facility for Poverty and Hunger Alleviation) gave more credibility to the commitment of its members to enhance South-South cooperation towards the mitigation of poverty and hunger³³.

Based on a common political identity crafted by their alleged "common experience with colonialism or imperialism and the social and economic inequalities that came with it and accentuated over time" (VIEIRA and ALDEN, 2011, p. 509), besides their common worries about a wide range of subjects (Idem, p. 508), IBSA is strongly committed to the promotion of matters of positive value for developing countries, contributing to bring this coalition to the category of a new pattern of Southern collective behavior in the international system. By way of example, we can mention IBSA claims for the democratization of global authority *fora*, including the reform of the UN, IMF and World Bank; its continuous efforts towards the promotion of a global alliance for development within the 8th Millennium Objective; its search for the implementation of social public policies towards the control of poverty; besides sponsoring other initiatives for international cooperation for development.

31 It is worth noting that, differently from the last contest for the position of director-general of the WTO (2009), when Uruguay presented its own candidate to run against the Brazilian one, in 2013 Brazil was the only South American country to run for the position. Moreover, the regional support that Roberto Azevedo, the Brazilian candidate, received to be elected as WTO director-general last year can be seen as a sign that Brazil is succeeding to gain stronger South American support, and also as an indicator of the increasing international recognition of Brazil as a leading country on trade negotiations.

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33 For more information about IBSA Fund, see <http://www.ibsa-trilateral.org//index.php?option=com_content&task=view&id=29&Itemid=40>.

In doing so, IBSA was a special forum for advocacy for the developing world, and could therefore be seen as a soft balancing strategy (PAPE, 2005) aiming to challenge international norms, rules or practices that might adversely affect the interests of its members, and – hopefully – to eventually change these norms. Amongst its achievements in coordinating positions on multilateral negotiations, we can mention the negotiations at the WTO (CHAKRABORTY and SENGUPTA, 2006)³⁴; its continuous voicing for a distinct approach for international cooperation for development³⁵; the joint project presented to the UN Human Rights Council about access to medicines and the right to medical treatment, the approval of which could be interpreted as an example of success of the political SS cooperation towards development (AYLLÓN, 2012, p. 196); as well as the demands for a new regulation of transnational capital flows (STEPHEN, 2012, p. 304). Amongst other initiatives, those above mentioned gave IBSA the status of one of the most relevant coalitions of Southern countries to act towards the building of an emerging world order.

Brazilian commitment to IBSA during Lula's government has been underlined by several authors as one remarkable example of the country's decision to choose the international coalitions of emerging countries as a central strategy of its foreign policy towards a better equilibrium in the international system (ONUKEI and OLIVEIRA, 2012; VAZ, 2012; VIGEVANI and CEPALUNI, 2007). The very fact that IBSA is a partnership of large developing nations, which holds the UNSC reform amongst its main demands, illustrates the Brazilian strategy to look for other partners to strength its demands, instead of linking its regional policy with this trade-off. Moreover, Brazil did not play the role of representative of IBSA's regional partners, which released Brasilia for having previously regional negotiations and for bringing eventual demands from its regional peers to the bloc, an attitude which could have easily harmed Brazil's own interests at IBSA, without actually guaranteeing any gains for its regional neighbors. On the other side, Brazilian commitment to regional cooperation devoid of a *quid pro quo* behavior towards the global scenario also contributed to the image of Brazil not performing an instrumental regional-global role. And it is exactly this aspect that made Brazilian initiatives in South America and the country's commitment to IBSA Forum complementary, though not dependent on one another, as we will develop on the following and concluding session.

Conclusion

During Lula's government, Brazilian diplomacy left behind the belief that for having global protagonism the country had to make use of South America as a regional launching platform. Put differently, Brazil did not play the regional card to achieve global aims. And this is so not because the Brazilian strategy towards the global arena had changed, but mainly because Brazilian regional aims were modified. In other words, Brazilian policy of giving priority towards South America was an objective in itself in the direction of a better relationship with its neighbors. As a matter of fact, by comparing the time when Brazil used to look at initiatives of regional integration such as Mercosur as a tool to enhance its role on

34 It is worth quoting former Brazilian Ministry of Foreign Affairs, Celso Amorim, who said that "I can state with conviction that the G-20 would not exist without IBSA" (Celso Amorim, "The India-Brazil-South Africa Dialogue Forum and World Trade", in The India-Brazil-South Africa Dialogue Forum, (Brasilia: Ministry of External Relations, Republic of Brazil, 2006), p. 6. Apud STEPHEN, 2012, p. 300).

35 IBSA Trilateral Forum, "Fourth Summit of Heads of State/Government Brasilia Declaration", April 2010, Available at: <www.ibsa-trilateral.org>, p. 5. Accessed: 4 Dec. 2012.

global politics in a kind of regional-global duplicity performance (PINHEIRO, 2000, p. 327) to the period 2003-2010 approximately, we notice that Brazilian commitment to South American development then did express a different approach towards the region – more prone to collective development as part of Brazilian national interests. In this sense, we argue that Brazil did exercise a regional leadership, but one of a different kind and for distinct purposes. In other words, we should not see leadership as a comprehensive concept – that is, one that could cover all dimensions of a country’s interests whichever the forum of discussion – nor as an instrument or credential for acting outside the regional sphere, but rather as the capacity to influence South American neighbors on matters of regional governance due to the outstanding impact that Brazilian “capacity development³⁶” projects of international cooperation had on modeling regional development. It is worth noting that we are not talking about the victory of one kind of development model over its rivals (*desenvolvimentismo* over *liberalism*), but rather about one way of boosting regional development by means of credit lines for infrastructure projects as well as by means of public financing of technical cooperation projects that aim at economic stability and social progress in collective terms. Naturally, we are not unaware about the existence of competing ideological positions in the region as well as some level of opposition to the mode of development leadership searched by Brazil. Nevertheless, we state that despite some level of opposition and dispute, Brazil was able to maintain its leading position in the region both as an infrastructure projects provider of funds and as a pattern of how to make them feasible³⁷.

The kind of leadership Brazil has performed was very much of a *collaborative* and *distributive* nature, to pick up two patterns of leadership mentioned by Tokatlian (2010). It is so in the sense that Brasília showed great inclination for sharing resources and for paying the costs for regional development and, in doing so, contributing for the social and economic development of neighbors in the name of a stronger regional stability and governance. Nevertheless, to say that Brazil was playing such a leading role on the regional sphere does not mean that the country did so devoid of interests. In other words, initiatives like those we cited above did help the country to enhance political links in the region and also brought benefits for Brazilian private investments, especially for the sectors which are brought to the scene as suppliers of goods and services, as well as for Brazilians living in South America countries (SPEKTOR, 2010, p. 36). In doing so, two important consequences followed: firstly,

36 Brazil actually calls it as “cooperação estruturante para o desenvolvimento”, which is a little different from UNDP’s definition of capacity development. Whilst for Brazil the “cooperação estruturante para o desenvolvimento” means the construction of capacities for development by integrating the human resources formation, organizational strengthening, and institutional development, besides refusing to replicate the traditional unilateral transference of technologies; or “proyectos creadores de capacidades nacionales con impacto social y económico sobre los beneficiarios que movilizan agentes de varias áreas y aseguran más apropiación y sostenibilidad” (AYLLÓN, 2012, p. 200); or yet a kind of assistance based on a ‘structural’ approach, that is, “a sustainable plan of action to reach long-term socioeconomic impact on the ground”(HIRST, 2011, p. 05); for UNDP, “capacity development” “builds on this evolution and has three cornerstones. It is a continuing learning and changing process. It emphasizes better use and empowerment of individuals and organizations. And it requires that systematic approaches be considered in devising capacity development strategies and programmes”. UNDP-UNITED NATIONS DEVELOPMENT PROGRAMME. Capacity Development: Technical Advisory Paper No. 2. Management Development and Governance Division, Bureau for Policy Management, New York. 1997, 89 pp. Available at: <<http://mirror.undp.org/magnet/Docs/cap/Capdeven.pdf>> Accessed: 12 May 2012.

37 It is worth mentioning that Chile, Colombia, Peru, all members of the Pacific Alliance, have also signed contracts with BNDES for financing infrastructural projects. See Brasil Econômico (redação@brasileconomico.com.br), 17/10/11; By Business News Americas staff reporter - Thursday, October 27, 2005; <http://www.valor.com.br/politica/2603590/megaprojeto-brasileiro-no-peru-sai-do-papel#ixzz2bZABo0zR>; <http://www.valor.com.br/empresas/2598548/odebrecht-assumira-100-de-gasoduto-no-peru#ixzz2bZB0d8ld>.

Brazilian government helped some of its big companies to internationalize and, at the same time, contributed to provide regional public goods that helped to boost regional development; and secondly, the government succeeded in articulating private domestic and public external interests much better by promoting a domestic constituency for the continuation of this policy, though it also brought some level of dissatisfaction from sectors that did not benefit from the same policy, or from those who disagreed with the criteria used to choose the benefited companies (MASIERO and CASEIRO, 2012, pp.30-31). As we have already shown, the infrastructure sector absorbed a large part of Brazilian government support³⁸, which contributed to its expansion in South America and in other parts of the world as well.

On the other hand, despite the acceptance of Brazil's *inwards regional leadership* by its peers, Brazilian regional status could not be automatically taken as regional acceptance to represent the latter on all global matters as their leader. And it is in this track that the IBSA forum could be seen as the other part of the Brazilian aims and strategy. Since Brazil started to develop new kinds of coalitions, such as IBSA, BRICS, BASIC, there is no need to work on the regional level as a launching platform for global protagonism (VAZ, 2012). The interstate coalitions of regional powers like IBSA are important tools for making feasible the articulation of emerging countries who share the same objective of changing the present pattern of international relations towards their economic and political ascendance, since they seem to be more adequate and indeed more efficient, without high costs of transaction. In this sense, at IBSA Brazil could strengthen its condition of regional power to act in global matters, benefiting from this situation, without having to search in advance for a certificate from its regional partners to be a regional leader.

Likewise, since Brazil has gained increasing global recognition and, therefore, it does not depend on a pre-regional endorsement to do so³⁹, the regional links might also be beneficiary of this situation. Indeed, it is not out of the question to think that this kind of intra-regional relationship without the expectation for trade-offs in global matters – either from Brazil as a paymaster or from the South American countries as beneficiaries – can indeed contribute to facilitate the relationship amongst Brazil and its neighbors, with possible positive results even for the debates at the global *fora*. In other words, to the extent that trade-offs are not put on the negotiation table, this relationship might slowly lead to a kind of recognition of Brazil's credentials to represent South America in global *fora*⁴⁰. But even if that does not happen in the future, Brazil has already presented itself as regional development leader without – and definitely with no need for – bringing its neighbors to the global negotiation tables.

Nevertheless, to give rise to some speculations, we should also think about possible non-expected consequences stemming from IBSA coalition. Being part of an intermediate

38 See Table 01 above.

39 This lack of dependency between traditional regional leadership and global performance can be exemplified by the fact that, even after its defeat as candidate for WTO general-director in 2009, due to the lack of regional supporters, Brazil's reputation and influence in WTO has not been damaged (MALAMUD, 2011, p.9). Besides, we could also mention other Southern coalitions for specific issues of which Brazil is a member, in which the country – and perhaps also its partners – also benefits from its condition of regional power, without having to be a regional leader in its traditional meaning, such as BASIC (Conference of the Parties (COP) of the Framework Convention on Climate Change, created in early 2010 this coalition brings together Brazil, South Africa, India and China for matters of Climate Change; G-4 - India, Germany, Japan, and Brazil – the articulation for the reform of the Security Council of the United Nations (UNSC).

40 It is not out of question the hypothesis that the support Brazil received from its regional peers – Argentina, Paraguay, Bolivia, and Venezuela, among others – for the Brazilian candidacy to WTO general-director is an example of that. "Azevedo Rode To WTO Victory Mainly Due To Developing World Support". Available at: <<http://wtonewsstand.com/WTO-Daily-News/Daily-News/menu-id-446.html>>.

level within the international hierarchy, the successes of IBSA initiatives are very much based on the premises that its members do not compete for resources amongst themselves (at least not yet), and have more latitude for cooperation exactly because they are few and have many similarities. However, the new Brazilian status in Africa supported both by the internationalization of Brazilian big companies and by technical cooperation projects for development⁴¹, as well the increasing Indian presence in the continent could bring some kind of discomfort amongst these partners, therefore bringing damages to the IBSA coalition. The emergence of Brazil and India in Africa can bring some annoyance to South Africa, since the continent's Southern region has been under South African influence.

Finally, bringing the issue of regional leadership back to our discussion, we would also like to raise another question which so far has not been object of much attention: to what extent we could generalize the conclusions taken from the relationship between Brazil and its regional partners to the other IBSA members and their regional fellows. In other words, to what extent India and South Africa membership to IBSA was not also a consequence of change in their aims and/or their strategy towards their respective regional environment? Perhaps the search for responding this question could help us to improve the arguments here developed for the Brazilian case.

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41 "In 2010 27.5% of the ABC budget was destined for Latin America, and 42% for Africa" (Brazilian Cooperation Agency – Ministry of External Relations (2011) *Brazilian Technical Cooperation*, mimeo. Apud, HIRST, 2011, p.6).

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Water Services in the Buenos Aires Metropolitan Area: How Does State Regulation Work?*

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This article deals with the State regulation of drinking water and sanitation services in the Metropolitan Area of Buenos Aires. Its main objective is to identify the continuities and ruptures in State regulation during the transition from private management (1993-2006) to renationalisation and State management (2006 onwards). The concept of “State capacities” (both administrative and relational) is used to assess regulatory performance. For the administrative capacities, the correspondence between the design and resources of the agencies, as well as the differences between their formal functions and actual practices, is examined. For the relational capacities, the policies of the National Government and its interaction with both the water and sanitation companies and the regulatory and control agencies are considered. The analysis is based on official documents, legislation and statistics, company balance sheets and reports, newspaper articles and semi-structured interviews.

Keywords: Drinking water; sanitation services; state capacities; state regulation; regulatory agencies.

Introduction

After the crisis of the Welfare State, State intervention in public utilities was dramatically restructured worldwide. The State no longer acted as the supplier of public utilities and offered their management to private operators. In this way, the State limited its role to regulatory and control functions. The rationale underlying this restructuring was that the operation of public utilities would recreate competition in the market rather than replace it. Following these assumptions, the production and supply of water and sanitation services were transferred to private operators, but competition in the sector was not fostered. In most of the cases, the monopolistic nature of the service remained.

Thus, the nature of water and sanitation services called for strong State regulation of the supply, as the utilities were now in the hands of private operators. However, the regulatory architecture was not sufficiently effective. As a result, private companies made extraordinary profits in a context characterised by asymmetric information problems, lack of transparency and accountability in decision-making, corruption and weak regulatory agencies. The well-being of the population and environmental protection were overlooked (CASTRO, 2004; HALL,

(*) <http://dx.doi.org/10.1590/1981-38212014000100010>

2002; HALL and LOBINA, 2002, 2006; LOBINA and HALL, 2003; VARGAS and SEPPÄLÄ, 2004).

In countries where the water supplies have undergone this process, increased rates have been justified as a means to finance investments that ultimately did not materialise. In addition, recurrent contract renegotiations have resulted in cancellations or delays in mandatory investments. Infrastructure investments have been limited to maintenance and improvements take place mainly in the commercial aspects of the supply (CASTRO, 2004).

At the beginning of this century, several international water operators exited the Latin American region. As a consequence, several public utilities were renationalised (DUCCI, 2007). In the Buenos Aires Metropolitan Area, the concession was rescinded in March 2006 and the company Agua y Saneamientos Argentinos S.A. (AySA)[Argentine Water and Sanitation Services Inc.] was created by the State.

This article focuses on a) the creation of AySA and its performance (e.g. financial results, coverage levels, investments, among others) and b) the regulatory design that accompanied the renationalisation, and how it works (e.g. the regulatory framework, price structure, and regulatory agencies). We will also examine the continuities and ruptures in the regulatory practices from the period of private operation (May 1993-March 2006) to the present.

We use the concept of “State capacities” (both administrative and relational) to analyse State regulatory performance from a sociopolitical perspective. To assess the administrative capacities, we discuss the correspondence between the agency’s design and resources, and the differences between formal functions and the agency’s actual practices. We also examine the policies of the National Government and its interaction with AySA and the regulatory and control agencies to evaluate the relational capacities. In addition, we identify existing power resources so as to understand the behaviour of actors, their strategies and their influence on service operation. We understand the State’s power resources as a)the legal framework to manage the service, b)the negotiation skills with non-State actors and c)the political objectives of the service. Regarding the social actors, we identify a)their alliance capabilities and b)their cooperative or confrontational positions towards State agencies. The analysis is based on official documents, legislation and statistics, company balance sheets and reports, newspaper articles and semi-structured interviews.

This article is organised in five sections. In Section 1, we discuss the concept of State capacity. Section 2 focuses on the creation of AySA: the legislative debate and formal aspects of its design. Section 3 deals with the regulatory regimes. In the first part of this Section, we will present the regulatory scheme during the private concession. The second part will describe the new regulatory framework and compare it to the previous one. Section 4 will examine how State regulation currently works. Finally, in Section 5 we will add our concluding remarks.

State capacities under discussion

We have based the discussion of the concept of State capacity on Skocpol (1989). We view the State as an actor that designs and implements its own objectives. This “State autonomy” not only shows that actions taken are not simple responses to the demands of social groups or classes, it also leads to the study of the State’s capacity to achieve those actions. State capacities must be analysed in connection with specific socio-economic and political environments and with the interests and resources of social actors.

When structural reforms were implemented around the world, the literature began to focus on the importance of State regulation of markets. Scholars have argued that State regulation is necessary but that regulatory interventions are not always effective. That is why many authors have developed theoretical arguments and empirical studies about the nature of the State capacities needed to adequately fulfil regulatory responsibilities (GRINDLE, 1996; HALL, 2002; HILDERBRAND and GRINDLE, 1994; MIZRAHI, 2004; OSZLAK and ORELLANA, 1991; TOBELEM, 1992; etc).

Based on the general arguments of the above-mentioned studies, this article also draws from Palermo (1998), Alonso (2007) and Repetto (2007), who call attention to the need to study the political dimensions of State regulation in addition to considering the administrative capacities. In their view, the examination of actor's interests, resources and strategies sheds light on the actor's voices and veto power in public policy definitions. Political dimensions are of a relational nature and refer to the "specific interactions between State and social actors in certain policy networks" (ALONSO, 2007, p. 13). Likewise, Palermo (1998) points out that "[...] political analysis is essential for studying State capacities, because [...] politics] will be the main support for decision and design" (PALERMO, 1998, p. 12).

Administrative capacities include competences and skills associated with State bureaucracy and its performance. Organisations require qualified staff and "a professional ethos that promotes a prestigious public sector career" (ALONSO, 2007, p. 20). In addition, they include inter-institutional relations and coordination between technical and political levels. Relational capacities refer to the relationship between State agencies and socio-economic actors. Regarding the institutional and organisational context, relational analysis focuses on social actor's veto opportunities and actions by the State to discourage them (ALONSO, 2007). The preferences, interests and power resources of social actors must also be considered in order to analyse the possibilities and limits of State policies. Alonso (2007) states that "[...] the historical path of a particular political arena determines institutional changes. [It] not only illuminates pre-existing institutional arrangements but also shows how much capacity [each actor, including the State] has [...] to adapt, block or interact with in the process of setting new rules" (ALONSO, 2007, p.33).

In order to study administrative capacities, Alonso's analytical proposal includes the notion of "capacity gaps". Taking into consideration other author's concepts (OSZLAK and ORELLANA, 1991; PALERMO, 1998; TOBELEM, 1992), Alonso (2007) classifies possible capacity gaps at two different levels: a macro-institutional level relative to the existence or absence of an institutional framework (formal and informal rules that encourage the behaviours of certain actors) and a micro-institutional level at which organisational capacities are considered. He distinguishes three kinds of capacity gaps in the macro-institutional environment and two in the micro.

We have identified the following gaps in the macro-institutional environment: 1) political-institutional gaps, 2) gaps in inter-agency relationships, and 3) gaps in public service careers. The first one refers to the institutional framework (the political regime, Constitution, regulatory structures, and informal rules based on cultural patterns) that can restrictor facilitate policy execution. An analysis of these capacities allows us to distinguish possible incompatibilities between proposed objectives and implementation. The second type of gap is linked to coordination failures as a result of agencies' ambiguous or overlapping responsibilities. These situations lead to an inefficient use of resources and adversely affect policy implementation. The key to coordinating the work of agencies is to assess the adequacy

of the legal framework (formal and informal rules) that rules their activities. The last type of gap is related to the difficulty in consolidating stable and competent administrative bodies in light of changes of government. The professionalization of agencies is seriously hindered by political discontinuity, inappropriate incentives for government officials and unrestrictive rules. These conditions lead to a constant turnover of technicians and professionals.

Alonso(2007) recognises two gaps in the micro-institutional environment: one in internal organisation and the other in skills and knowledge. The first category refers to the distance between formal organisation (organisation chart) and informal networks. A big difference between them can seriously affect an agency's performance. Another aspect that must be analysed is the formalisation of procedures in technical manuals. Accurate manuals help to improve the quality of the task distribution system, the flow of information between different subunits and the decision-making structures (ALONSO, 2007). The lack of adequate funding, equipment or physical space can seriously reduce the agency's capacities. The second type of micro-institutional gap refers to deficits in information and skills (e.g. managerial abilities and professional competences) that tend to shape a hostile institutional environment (ALONSO, 2007).

As we mentioned before, the analysis of the relational dimension includes the study of existing resources. State capacity depends on its own resources and on those of other actors. Thus, the analysis of available resources should be considered alongside the way in which actors evaluate them and therefore develop their strategies. In line with this, Alonso (2007) classifies power resources in four types: a) structural-economic resources, which refer to the structural context in which actors interact; b) organisational resources that enable collective action; c) institutional resources—rules, institutions and practices that create the conditions for leverage in different political arenas; and d) information resources, which are related to the control of the flow of information.

To explain the logic of action and exchanges between the State and social actors, ALONSO (2007) uses the concept of "policy network", which refers to the implementation of previous political decisions. Policy network analysis not only offers insights about power configurations and reconfigurations, but also makes it possible to evaluate the effect these interactions have on the outcomes of new policies.

Considering these two dimensions, Section 3 will address the study of the Argentine State's capacity to regulate drinking water and sanitation services in the Metropolitan Area of Buenos Aires. Capacity gaps will be identified with particular emphasis on two issues. First, we will study the correspondence between the regulatory framework and the agency's resources. We will then analyse the concordance between formal functions and the agency's actual practices. The study of the relational dimension will take into account the National Government's decisions by stressing the interaction between the State and social actors, their power resources and strategies. We will present the indicators selected for each dimension in the Methodological Annex. Before explaining the results of this analysis, the following section will describe the creation of AySA.

The creation of Argentine water and sanitation services

In May 1993, a 30-year concession for the drinking water and sanitation services of the Metropolitan Area of Buenos Aires was granted to private company Aguas Argentinas

S.A. (AASA) [Argentine Waters Inc.]. The consortium was comprised by Suez Lyonnaise des Eaux-Dumez (25.4%), Aguas de Barcelona S.A. (12.6%), Meller S.A. (10.8%), Banco Galicia y Buenos Aires (8.1%), Compagnie Générale des Eaux S.A. (7.9%), Anglian Water Plc. (4.5%) and the Stock Ownership Program (10%). This concession became one of the largest worldwide with almost 10 million residents in an area of approximately 1,800 km². According to the concession contract, AASA was not only responsible for improving the quality, pressure and continuity of the supplies, but also for maintaining and extending the facilities. By the end of the concession, the company agreed to increase the number of residents served with drinking water by 71% and to raise sewage services by 96%.

During AASA's management, numerous regulatory changes altered the original contractual clauses and authorised increases in rates that largely exceeded the domestic CPI for the purposes of financing investments. As these investments did not materialise, these new rates ultimately pushed up AASA's profits. Between 1993 and 2002¹, rates increased by 88%. The average bill was US\$14.56 in May 1993, reaching US\$27.40 in January 2002 (during these years inflation was close to zero or even negative) (ETOSS, 2003). In addition, fixed costs charged to bills made the pricing structure highly regressive. In May 2002, the cost of water and sanitation services represented 1.3% of the income of those in the highest deciles and 9% of the income of those in the lowest deciles.

Only 58% of the mandatory investment goals were met during the first five-year period (1993-1998) under private management. In contrast, the investments made from 1999-2000 met 100% of the commitments specified in the contract for the first two years of the second five-year period (1999-2003). This occurred because planned adjustments in investment commitments were delayed for two years and works were approved ex-post. The execution level fell to 62% in 2001 and to 19% in 2002, which represents 37% of the promised investments for the period 2001-2002. From 1993 to 2002, the expansion in drinking water service coverage only reached 79% of the population in contrast with the 88% estimated in the contract. The sewage service only reached 63%, when the initial estimate had been 74%. The treatment of sewer fluids registered the largest level of noncompliance, standing at 7%, when the contract had been set at 74% for 2002. Investments in infrastructure renewal fell short of the goal to reduce the high number of leakages. Low water pressure problems affected almost 70% of the water supply network (ETOSS, 2003).

In contrast, AASA's profitability showed a significant increase between 1994 and 2001. The company's profits amounted to a 20% return on capital. This percentage reveals the privileged situation in which its operations took place, as it was considerably superior to the 11.21% estimated in its bid and to those considered acceptable in the United States (6.5-12.5%), the United Kingdom (6-7%) and France (6%) (PHILLIPS, 1993). In addition to these exceptional profits, AASA borrowed internationally, taking advantage of interest rate differentials between Argentine and international interest rates during most of the 1990s. Its large external debt was highly consequential in the following decade. Azpiazu et al. (2005) have explained that at the beginning of 2002, the company's debt was about US\$ 650 million (almost 20 times its net equity) with payment commitments of US\$ 215 million for that year and of US\$ 109 million for 2003.

Given the serious social, political and economic turmoil in late 2001, in January 2002,

1 A regime with a nominal exchange rate fixed at AR\$ 1 = US\$ 1 was established from April 1991 to January 2002. It was called the "Covertibility regimen".

provisional President Eduardo Duhalde put an end to the Convertibility regime and allowed the currency to depreciate². Likewise, the so-called Public Emergency and Exchange Regime Reform Act (Nº 25,561) was enacted in 2002. It mandated the “pesification” of several dollarized prices and prohibited indexation clauses from being included in Public Administration contracts. The National Government was also authorised to renegotiate contracts, including those of the privatised public utilities. Rates would not change until contracts had been fully revised.

The renegotiation of AASA’s contract gave the State the chance to change a number of policies that had preserved the company’s benefits without considering the interests of consumers. As we previously explained, AASA’s performance was characterised by its non-fulfilment of investment commitments, high profitability and a discretionary endowment policy. Nevertheless, the company demanded large compensations from the Argentine government in order to maintain its original economic stability. The concession contract included a specific clause that would compensate the company should any changes in costs or other variables affect its balance sheets. To this end, AASA filed a petition with the World Bank’s International Centre for Settlement of Investment Disputes (ICSID). To strengthen its position in the negotiation, the company counted on the support of the French government and multilateral lending agencies.

From the beginning of the renegotiation process, the rescindment of the contract was not an option. The National Government wanted AASA to keep the concession, but it would participate in the development of the service’s infrastructure. On May 11, 2004, the State and AASA signed a letter of intent that guaranteed favourable conditions for negotiating the final contract. Both parties were committed to making new investments and freezing the rates until December 2004. The National Government also agreed to suspend fines and AASA withdrew its petition before the ICSID. In this respect, the Argentine external debt negotiation was a key factor that explained the outcome of the agreement. As the default had to be resolved, AASA’s irregular service conditions were left aside. The company’s interests were preserved in exchange for the French government’s support at the International Monetary Fund Board.

Once the letter of intent had expired and in accordance with the debt swap in 2005, the renegotiation process froze. Eventually, AASA’s shareholders lost interest in running the company because of the new contractual conditions and unfavourable economic-financial results. Suez was exiting Latin America and beginning to invest in gas and electricity markets in China, Algeria and some countries in the Persian Gulf. Nevertheless, AASA’s foreign shareholders decided to sue the Argentine State in local courts and continued to challenge it before the ICSID. On July 30, 2010, the ICSID ruled in favour of the claimants (Suez, Sociedad General de Aguas de Barcelona S.A. and Vivendi Universal S.A.). It pointed out that the Argentine State had not offered “fair and equitable treatment” of the company’s investments. To date, the ICSID’s findings have not concluded. The amount of money Argentina will have to pay has yet to be determined. While the claimants have to estimate their losses, Argentina can request a revision or annulment of the award.

When negotiations with AASA to sign a new agreement failed, the government attempted to find new investors to replace Suez. But the company’s large external debt and the freeze on rates imposed by the government in 2002 discouraged potential investors. Thus, in 2006, the government rescinded the concession contract (Decree Nº 303/06, March 2006). Rather than admitting that negotiations had collapsed, the National Government justified the annulment claiming excessively high nitrate levels and insufficient coverage that affected consumer rights and

2 The Argentine economy defaulted on January 3, 2002 when the country could not meet its external debt payments.

health. In fact, sanitary risks related to excessive nitrate levels and insufficient coverage already existed when the letter of intent was signed in May 2004, but these claims were only considered cause for rescission because there was no alternative but to keep the company running.

Decree No. 304/06 and Law No. 26,100, formally created AySA, a State-owned public limited company (90% of the shares belong to the State – non-transferable capital – and 10% to the employees through a Stock Ownership Program). The partnership would last for 99 years and this period could be reduced or extended at a special shareholder meeting. AySA kept AASA's organisational structure, as well as all of its assets and workers. Its working plan and budget fell under the supervision of the Ministerio de Planificación Federal, Inversión Pública y Servicios (MPFIPyS) [Ministry of Federal Planning, Public Investment and Utilities].

The water supply and sanitation services regulatory regimes

Even though the main purpose of this Section is to study the regulatory framework created in February 2007 (Law N° 26,221), we will also describe the scheme in existence during the concession period for the purposes of comparison. This analysis will be presented in the first part of the Section, with the second part devoted to the new regime in detail.

State regulation during the private concession

From 1993 to 2007, service regulation and control functions were carried out by the Ente Tripartito de Obras y Servicios Sanitarios (ETOSS) [Tripartite Water Sanitation Agency]. Its creation by decree rather than law reduced its legitimacy and independence, the latter having been especially affected by the way in which its authorities were appointed. As the government could appoint the members of the board, the agency was subject to political pressure. Furthermore, members could sit on the board for six years with the possibility of one re-election and without any legal restrictions regarding a previous or later job in the concessionaire company. This last aspect created the conditions for pro-company behaviour. In addition, as part of ETOSS's financial resources were derived from a percentage of the rates, ETOSS had no incentive to force the company to reduce them. Finally, the risk of capture was extremely high because it had to monitor a single company with no competition whatsoever. Because of this weak design, a political and institutional capacity gap was evident.

Regarding some aspects of the implementation of this framework, we can point out that ETOSS had serious difficulties imposing sanctions and coordinating its action with that of the political levels of government. The Secretaría de Recursos Naturales y Desarrollo Sustentable (SRNyDS) [Natural Resources and Sustainable Development Department], subordinated to the National Government, regularly interfered with its functions. Although drinking water and sanitation services continued to be a monopoly, regulation was extremely lax. Regulatory flaws cannot be explained in terms of the agency's design problems. Rather, ETOSS's performance was mainly affected by the joint capture of AASA and the National Government through the SRNyDS. This department assumed ETOSS's regulatory function from 1998 to 1999. In most cases, the SRNyDS lifted penalties that had been imposed by ETOSS for political reasons, without taking into account the technical reasons for the fines. The SRNyDS not only became responsible for the rate policy and work plans, but also for the appointment of the national members on ETOSS's board.

In addition, AASA also benefitted from constant changes to the contract. 15 months after

the beginning of the concession and in spite of the fact that rate increases had been forbidden in the first 10 years in the contract, ETOSS authorised an increase to guarantee investment goals were achieved. This adjustment demonstrated how opportunistic AASA's offer in the bidding process had actually been. In February 1997, the National Government established a new contract change that excluded ETOSS by decree. The result of this revision was merely implied in a new contract. Among other changes, there stand out: 1) the incorporation of an exchange rate insurance that eliminated the risk of monetary devaluation for AASA; 2) the replacement of the infrastructure tax by two other taxes (a fixed indexable payment that included an environmental aspect not present in the original contract, and the other tax to be paid by new users); 3) a change in the threshold for cost adjustments (from 7% to 0.5%); 4) the incorporation of an annual special rate revision; and, 5) the delay or cancellation of investment requirements and fines. In July 1999, the SRNyDS introduced new changes in rate regulations and a penalty regime, which also benefitted the company. Fines were reduced and ETOSS's control capacities weakened. Later, in January 2001, AASA and ETOSS signed an agreement act that approved the second quinquennial plan and a 10.5% rate increase.

With regard to internal organisation capacity gaps, there was high turnover among ETOSS's top managers. Until 2005, managers remained in their positions, on average, for only half of their terms (three years). Such instability, which interfered with their professionalism, was linked to the influence political authorities exercised on the appointment of board members. Lastly, skills and knowledge gaps also affected its regulatory functions. Even though the contract renegotiation of July 1999 introduced new regulatory tools (a new formula to calculate rates, regulatory accounting, benchmarking, among others) to improve regulation and control over the company, they were not put into practice. AASA repeatedly refused to release information in that regard, with the National Government's consent.

During the post-Convertibility renegotiation process, the ETOSS made important advances to overcome this gap. Many of these regulatory instruments were enforced, which allowed it to carry out a detailed follow-up of AASA. The ETOSS's role was limited to advising the Renegotiation Committee but it was excluded from the design of the negotiation strategies. In contrast with the previous period (1993-2001), only then was its performance influenced by the National Government. As AASA changed its position in the renegotiation and decided to leave the country, the concurrence between the government and the company's interests came to an end. The situation of regulatory capture became evident when the National Government decided to rescind the concession contract (March 2006). The regulatory agency did not intervene in the drafting of the decree that cancelled it. Furthermore, it had to repeal its own ruling that to some extent contradicted the National Government's arguments to rescind the contract (excessive nitrate levels in the water). Only six months earlier, in Resolution N° 95/05, the ETOSS had recognised a decline in nitrate levels and reduced AASA's penalties. It did not participate in the establishment of a regulatory scheme for the renationalised services, either.

The new regulatory framework for AySA

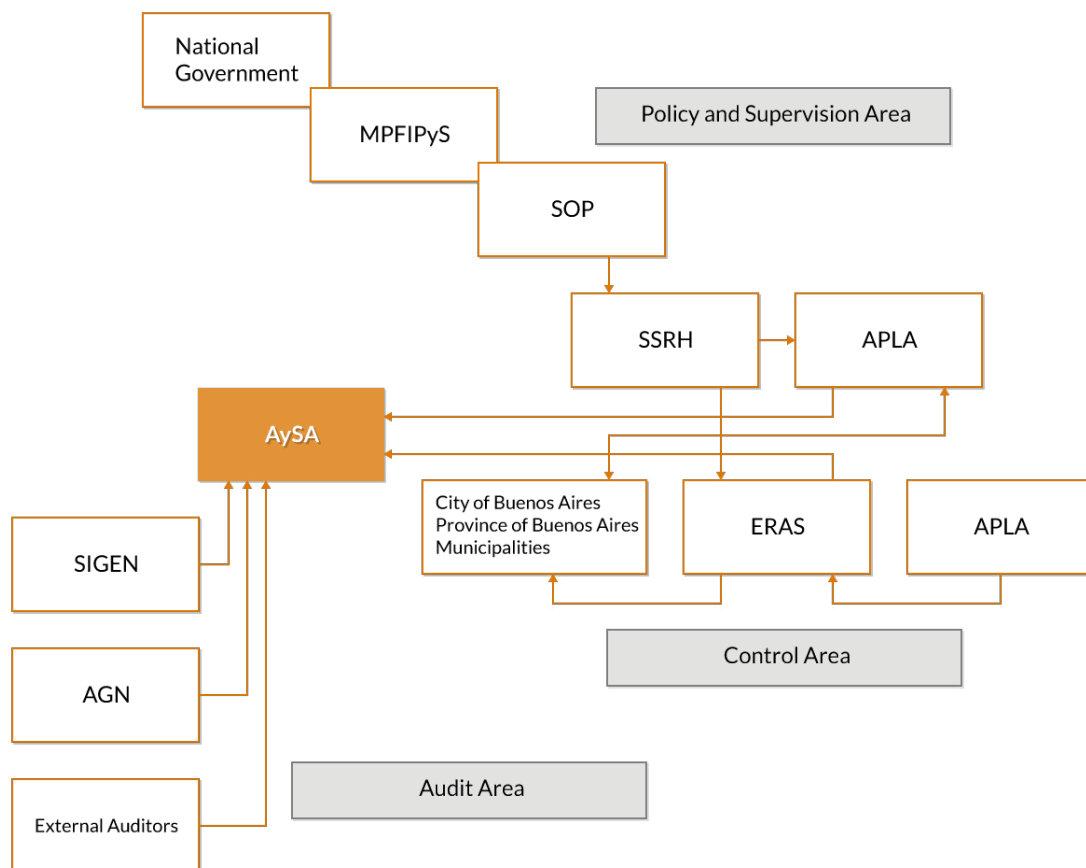
The new regulatory framework of 2007 ratified the State's responsibility for the supply, maintenance and expansion of the service. It also recognised access to water as a human right and established efficiency and equity principles as complementary aims. In addition to previous regulatory objectives, it set new goals – efficient delivery, fair and reasonable rates, and awareness of water conservation, among others.

Although the regulatory framework was established by law and not by decree, legislative participation and debates were limited. The National Government succeeded in its strategy to

obtain urgent congressional approval of the bill. By the end of December 2006, the bill was approved in the Senate with 32 affirmative votes and 13 negative ones. In February 2007, after a brief discussion, the Lower Chamber passed it with 133 affirmative votes and 75 negative votes.

As shown in Figure N° 1, there are three areas in this new regulatory design: 1) a policy and supervision area, 2) a control area and 3) an audit area. The first one is composed of the MPFIPyS, the Secretaría de Obras Públicas (SOP) [Department of Public Works], and the Subsecretaría de Recursos Hídricos (SSRH) [Sub-department of Water Resources]. The control area comprises the Ente Regulador de Agua y Saneamiento (ERAS) [Water Services Agency] and the Agencia de Planificación (APLA) [Planning Agency]. The audit area includes a Supervisory Committee, composed of two representatives of the Sindicatura General de la Nación (SIGEN) [National Controller General Office] and one member of the Sindicato Gran Buenos Aires de Trabajadores de Obras Sanitarias (SGBATOS) [Water Trade Union]. The Auditoría General de la Nación (AGN) [National General Audit Office] and a group of auditors are both in charge of the external audit³.

Figure 1. Regulatory design of Argentina Water and Sanitation



Source: Plan de Saneamiento de AySA (2006-2020), p. 06.

3 The control of the Argentine State is held by two offices: the Sindicatura General de la Nación [National Controller General Office] and the Auditoría General de la Nación [National General Audit Office]. The former is in charge of controlling the efficiency of government bodies and is under the sphere of the Executive. As it is responsible for external control, the Auditoría General de la Nación collaborates with Congress when writing reports for the Legislative Branch.

Regarding the competence of the authorities, the MPFIPyS is responsible (through the SOP) for the creation of regulations (regulatory framework, concession contract, among others) and the approval of action plans and company budgets. The SSRH, acting as the implementation authority, is in charge of service policy execution and of regulation and control. Among other tasks, it has to: a) comply with and enforce the regulatory framework and the concession contract, b) set rates, c) approve AySA's plans, d) oversee the company's annual reports, and e) verify rate revisions and action plan adjustments.

The political and institutional capacity gap identified in the ETOSS persists in the new regulatory agency. Even though the ERAS was established as an autarkic organisation, its independence is limited by the MPFIPyS. As previously mentioned, the SSRH has the authority to set rates and expansion goals and to impose sanctions on the company for not meeting its performance standards. Unlike the ETOSS, the ERAS only has control functions. It is in charge of service quality control, regulatory accounting, benchmarking implementation and can only impose sanctions on managers.

Although the ERAS's board has a tripartite composition, the number of representatives on its board has fallen from two to one per jurisdiction. The terms of these representatives have been reduced from six to four years, but the possibility of re-election for one extra term has not been eliminated. As board members are appointed by the National Government (two of them require the recommendation of the governments of Buenos Aires City and of Buenos Aires province, respectively), the ERAS's management could be swayed by the specific political commitments of its managers. In addition, the president of the board holds a permanent position. From a strictly institutional point of view, this change implies more dependence on National Government decisions. Yet, from a political perspective, it guarantees the president's affinity with the National Government's policies.

Regarding user participation, the competencies of the User Auditing Committee were just as restricted as those of the previous User Commission. Not only was it created in the sphere of the ERAS, but its recommendations and opinions were not binding. The new framework also set up four types of controls over the ERAS: a) auditing control in charge of the SIGEN; b) anti-corruption control, under the responsibility of the Anti-corruption Office; c) user defence, exercised by the Ombudsman; and d) management and patrimonial control headed by the AGN. Finally, its main funds were derived from a percentage (2.67%) of the rate, as was the case of the ETOSS.

The APLA's role consisted of coordinating the expansion and improvement of the service. This included the development and control of projects, plans and environmental impact studies. This new agency also had to establish quality goals, approve applications for expansion and provide or facilitate public access to service information. Like the ERAS, it was an independent and self-financing agency but the fact that its board was presided over by the SSRH Undersecretary undermined its independence. The two other board members were nominated by the Governments of Buenos Aires City and Buenos Aires Province and were elected by the National Government. With the exception of the president, board members were appointed for a four-year period with the possibility of re-election for one additional term.

Resources to cover the APLA's operating costs largely originated from a percentage of its rates and had to be shared with the ERAS. Management and patrimonial control also fell under the responsibility of the SIGEN and the AGN. Unlike the ERAS, there was no formal opportunity for users to participate. They were indirectly represented by municipal authorities, who participated in an Advisory Commission.

This formal regime of multiple authorities presented a regulatory fragmentation problem, which arose from an inter-agency gap. Some functions between government bodies and control agencies overlapped, in practice reducing the ERAS's and APLA's competencies. In

addition, the new regulatory design tended to centralise decisions in the Ministry of Federal Planning, Public Investment and Utilities.

Service quality and coverage

AySA provided services to Buenos Aires City and 17 districts of Buenos Aires Province. The company's activities included collection and purification of raw water; transport, distribution and commercialisation of safe drinking water; collection, transport, treatment, and disposal and commercialisation of sewage, including drainage of industrial waste. The supply had to comply with standards of continuity, regularity, quality and universality.

As in the previous scheme, proper service standards (coverage and quality) were established in the contract under the title "binding instrument" (Resolution N° 170/10) and in the regulatory framework. In the event of quality failure, AySA had to report to the ERAS immediately and implement the necessary actions to restore the required standards. If unplanned service interruptions occurred, the supply had to be restored as soon as possible. Planned cuts had to be notified if the interruption extended for longer than expected and emergency supplies had to be announced to the affected users. Unlike what happened under private management, AySA had no obligation to provide a minimum level of water pressure. With regard to sewage effluent treatment and quality, AySA had to respect SSRH standards. Unlike AASA, if there was a delay in service payment, the new company could not cut off services to residential and public users.

To guarantee performance of the services, the new framework mandated the implementation of the Improvement, Operation, Expansion and Maintenance Plans. As with AASA, these plans were to be reviewed and evaluated every five years by the MPFIPyS. Similarly, a fiduciary fund was created to finance the expansion of infrastructure. If AySA did not keep to these plans, neither sanctions nor contract cancellation would be applied. Rather, AySA would have to work to restore the execution of the plan. As for the sanction regime, two types of penalties were in effect: 1) penalties related to company actions and 2) penalties regarding the performance of the company's top officers. If delivery was interrupted, the SSRH would oblige the company to restore coverage. If the managers did not abide by their obligations, the ERAS was entitled to issue warnings. The SSRH could suspend the managers, while the National Government had the authority to fire them.

The rates and economic regime of the water and sanitation services

Regarding the economic regime, at least one annual review had to be carried out in order to review and eventually adjust expansion plans. If an out of the ordinary situation affected company finances, AySA could request SSRH intervention to minimise the negative impact.

Two rate regimes existed: a flat rate and a metered rate. The cadastral system included a bi-monthly basic rate (BBR) composed of a discount coefficient "K", a zonal coefficient "Z", a general rate for services "TG", a covered built-up area coefficient "SC", and a quality factor of the building "E" added to one-tenth of the total surface of the ground "ST". At the same time, the BBR had a default base value according to the type of user (bi-monthly minimum basic rate) [$BBR = K * Z * TG * (SC * E + ST / 10)$; BBR minimum] (AZPIAZU and FORCINITO, 2004). In addition to the value-added tax (VAT), 2.67% was added to this minimum rate to finance control agencies. Metered rates combined the physical size of the building with actual consumption. The rate of the volume of consumed water was added to the bi-monthly minimum charge.

While both regimes had to guarantee universal service and address health and social

objectives, no provisions encouraged a rational use of water or a more equitable rate. Only a social rate programme had been implemented for vulnerable populations. The rates kept the same structure as the one existing under private management, including fixed charges, which made them highly regressive. By 2009, these charges represented 19% of AySA's revenues. Although the service was renationalised, the rates remained frozen from the beginning of the renegotiation process in 2002. This situation meant that by December 2010 AySA's revenues covered only 49% of its expenses. The rest of its expenditures were financed by State transfers.

Regulating and controlling information

Information about quality, operation and maintenance had to be available to the SSRH and control agencies. AySA was obliged to publish four types of reports: 1) a report on service standards, 2) an annual report, 3) periodic reports and 4) additional reports. Its report on service standards had to state the objectives that the company had achieved and the activities pursued in each area. The annual report was to be submitted to the SSRH and assessed by external auditors. It had to present the company's results (investments, costs and expenses, operations, among others) and not only contained data about its financial situation but also provided information about its actions for the following two years. There were two kinds of periodic reports: a) a monthly technical report on service standards in which production, work execution, and service standard indicators were set; and b) a semi-annual report in which concession revenues and expenditures were reported. Finally, additional reports containing specific information had to be submitted upon request by the SSRH and control agencies.

The new framework also stipulated that the SSRH, APLA and ERAS had free access to AySA's accounting, economic, financial, commercial and contractual information. These agencies and the company had to produce a regulatory accounting system to monitor the financial aspects of the concession. AySA was also obliged to provide sufficient data for benchmarking studies.

In short, the way the new regulatory framework was created was evidence of the absence of a broad debate about the best design for the service. Contrary to accepted criteria, this fragmented scheme ultimately concentrated the functions in the MPFIPyS and left the newly created agencies without much real power to carry out their limited roles. In some cases, the existing regulatory mechanisms conserved or even deepened the irregularities arising during the private management period. The following section will focus on these regulatory flaws.

Regulation and control: how does it work?

Following the renationalisation of the supplies, the implementation of the new regulatory framework did not produce significant changes in the existing regulatory regime. It is paradoxical that the ERAS was named regulator even though it only exercised control functions. In addition, we can identify an internal organisation gap. As the creation of the two agencies (the ERAS and the APLA) did not provide enough financing for their activities, their performances deteriorated. To cover their budget deficit, both agencies had to appeal to MPFIPyS for contributions, which in some cases were submitted through AySA. In 2008, AySA gave the ERAS and the APLA advances of US\$ 4,584,030 and US\$ 3,319,470, respectively (AGN, 2009)⁴.

4 The value in dollars is calculated from an average of the daily exchange rates of 2008. These data are available at the website of the Central Bank of Argentina: <http://www.bcra.gov.ar>.

In addition to these budget problems, other gaps in the organisational structure existed. The ERAS officers interviewed for this study stated that staff cuts had been put into practice. From 2003, the agency was seriously affected by the reduction of its staff and the disbanding of its technical teams. A comparison between the ERAS and the APLA staff and the ETOSS agents revealed a reduction of about 20%. Unlike the ETOSS performance – which was not optimal – the ERAS operation showed a lack of coordination between political and technical areas. To a certain extent, these differences may have been linked to the unionisation of the technical staff that joined the SGBATOS and the consequent improvement in their working conditions. Moreover, as the ERAS managers worked independently from each other, the scope and depth of their studies were undermined.

In addition, some of the interviewees said that political rather than technical considerations had been at stake in the creation of the two new agencies. The main reason to divide them was to create a balance of power between the ERAS president and the SSRH Undersecretary in charge of the APLA. As a result of this tension, the working climate was seriously affected. Some of the ERAS officers argued that they had no knowledge of the APLA's activities because, in practice, expansion plans were set by the company.

Regarding skills and knowledge gaps, the scarce information submitted by the company limited the ERAS's control. The agency had formally received AySA's annual budgets from 2008 but it had been unable to make any recommendations. Its participation had become a mere formality because AySA's budget depended on prior congressional approval. The company did not submit its financial information to the ERAS but it did send it to the MPFIPyS. Interestingly, this information was forwarded to the ERAS by the Ministry, which lacked the technical capacity to analyse it.

User participation (User Auditing Committee) was still subordinated to the ERAS. As mentioned above, user associations were formally excluded from participating in plans to expand coverage at the APLA so their demands and proposals were voiced, in some cases, by municipal mayors, who represented them at the agency. According to the statement made by some representatives of user associations, the Auditing Committee was not working because it had no funds. In the new regulatory scheme, the ERAS was not obliged to finance the Auditing Committee's activities. However, they pointed out that AySA had interceded with the MPFIPyS authorities to restore resources from the SSRH and not from the ERAS. They also stated that associations were holding regular meetings with AySA's board and estimated that this bond would grow stronger.

In short, the new framework had produced a fragmented regulatory regime with a centralised political decision structure. There was a political-institutional gap in both agencies. Even though they had been created by law, their performance was extensively influenced by the National Government. As pointed out earlier, the members of their boards were appointed by the National Executive and the presidents were connected to the National Government authorities. In this sense, an inter-agency relations gap also existed. The SSRH's role questioned the agencies' relevance and independence. As the Undersecretary was also the APLA president, the APLA was less autonomous than would be expected of an autarchic and decentralised agency. In addition, the ERAS's competence was reduced to control functions because regulatory competences were conferred to the SSRH.

As we explained, many of the internal organisation and information gaps of the period under private management persisted and, in some cases, increased. Budget deficits, staff reductions, conflicts of interest among the authorities and the lack of coordination between managerial, technical and political areas seriously affected the working climate and the dynamic of both agencies.

Final comments

Considering the notion of State capacity, this case shows more continuities than ruptures in the regulatory performance of the Argentine State between 1993 and 2011. The deficiencies of the regulatory framework and significant regulatory capacity gaps explain the absence of a clear regulatory strategy. Managerial changes were not accompanied by the necessary redefinition of regulatory parameters. Predictably, regulatory design and implementation problems existing under private management acquired new significance after the renationalisation. The logic behind the new regulatory framework is unclear. Service management and regulatory competences were centralised in the hands of the MPFIPyS, suggesting a regulatory scheme based on political control. At the same time, two decentralised control agencies with several design and performance limitations were created. Assuming that these agencies were created for reasons of mere formality, and taking into account that a centralised regulatory regime makes them unnecessary, questions arise about the nature of a regulatory regime that calls for such a formality. Underlying this institutional framework, problems may arise regarding service sustainability. Beyond this particular case, it will be necessary to re-discuss, from a political and an academic perspective, the nature, limitations and scope of State regulation and control of services under public ownership. It is clear that old recipes or their readjustment to the new conditions are not as effective as what is required. The definition and implementation of different concepts in this matter are fundamental to ensure better performance by these companies.

When comparing the two administrations, we found a substantial difference in the way the services were operated. In the case of AASA, the main purpose of the company was to obtain high profitability at the expense of the quality and improvement of the supplies. By contrast, AySA's management showed a great commitment to service development. This firm expanded infrastructure investments (which grew by 384% from 2007 to 2009) with State transfers. Although these transfers are somewhat necessary to recover the supplies, AySA's dependence on them must gradually be reduced in order to avoid operational difficulties. In fact, AySA's own current revenues do not cover half of its current expenses. Hence, as rates have been frozen since 2002, it will be necessary to find the best way to readjust them without neglecting the protection of the most vulnerable sectors of the population. Regarding the rate regime and structure, a more equitable access to the services must be guaranteed. On one hand, the rate structure must be revised in order to reduce its highly regressive effect. On the other, the rate regime must promote a rational use of the resource by implementing micro-measuring devices, along with other criteria, considering the payment capacity of users. As access to water and sanitation is recognised as a human right, the existing institutional architecture of supply, regulation and control should be reshaped to fully guarantee the quality and expansion of the supply in future.

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Methodological Annex

Regulatory capacity	
Administrative dimension	
Regulatory structure implementation	*Regulatory sequence: regulatory framework approval, agency creation and company transfers
Design	*Creation (law/decreet) *Authorities' appointment *Financing *User's protection and participation
Sanction capacity	*Implementation, effectiveness and collection of fees
Indicators	Contractual renegotiations *Frequency *Contents: rates/expansion goals
Information	*Information access *Implementation of regulatory instruments
Internal structure	*Staff and resources *Authorities' rotation *Managerial staff relationships
Capture risk	*Overlapping functions *Political capture
Sources	*Official documents, legislation and statistics, regulatory framework, ETOSS/ERAS's report *Semi-structured interviews *Specialized bibliography
Regulatory capacity	
Relational Dimension	
State's power resources	*Legal powers to manage the service *Negotiation skills with non-State actors *Political objectives regarding the service
Indicators	Social actors' power resources *Alliance capabilities *Cooperative or confrontational positions towards State agencies
Action logic	*Voice and veto power in public policy definitions
Sources	*Official documents, legislation and statistics, regulatory framework, companies' balance sheets and reports, ETOSS/ERAS's reports and legislative debates *Semi-structured interviews *Newspaper articles *Specialized bibliography

Source: Author's elaboration

Institutionalisation, Reform and Independence of the Public Defender's Office in Brazil*

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The aim of this article is to investigate the institutionalisation of the state Public Defender's Offices before and after the reform that granted independence and new functions to the Public Defender's Offices in Brazil. We attempt to understand these processes based on theories of judicial empowerment (ideational and governance perspectives), analyse them in the Brazilian states by means of an analysis of two indicators in three different time periods (before, during and after the reform) and verify to what extent the formal (de jure) advances were involved in the exercise of autonomy in the states. The analysis reveals that in spite of the formal achievement of independence, the majority of state Public Defender's Offices are not actually independent and there is a great gap between what the laws stipulate and what actually happens in the public provision of access to justice in Brazil.

Keywords: Public defender's office; institutionalisation; independence; judicial strengthening; access to justice.

Introduction¹

The aim of this article is to investigate the institutionalisation of the state Public Defender's Offices before and after the reform that granted independence and new functions to the Public Defender's Offices in Brazil. This reform, created by the 1988 Federal Constitution with the aim of guaranteeing access to justice to the less privileged groups in Brazilian society with the public provision of legal assistance, took over two

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The replication dataset can be found in bpsr.org.br/files/arquivos/Banco_Dados_Madeira.html

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¹ This article was developed based on a wider piece of research titled *Acesso à justiça em contexto de judicialização da política: um estudo sobre o papel e a efetividade da atuação da Defensoria Pública do Rio Grande do Sul* (Access to justice in the context of the judicialisation of politics: a study on the role and effectiveness of the actions of the Rio Grande do Sul Public Defender's Office). Funded with resources from the FAPERGS (Fundação de Amparo à Pesquisa do Rio Grande do Sul – Rio Grande do Sul Research Foundation) and carried out between 2011 and 2013.

decades to be implemented by the states in their institutions. After a slow process of institutionalisation, it underwent a great change with the enactment of Constitutional Amendment nº45 in 2004, which, in the context of the reform of the Judiciary Branch, granted independence and new attributions to the Brazilian Public Defender's Office. The PDO is today an institution of great power and visibility in the legal system. However, considerable differences exist between the states in terms of their independence.

As a research problem, we initially sought to understand the reform and the attainment of independence based on theories of judicial empowerment – whether through ideational perspectives, which suggest that the Public Defender's Office was reformed as part of a general movement towards democratisation and guaranteeing access to rights in Latin America, or from governance perspectives, which indicate the attempt by the Executive Branch to modernise public assistance in Brazil, reducing differences between the states. We also sought to understand the movement of institutionalisation and independence of the Brazilian state Public Defender's Offices, verifying to what extent formal (*de jure*) advances were connected to the exercise of autonomy in the states.

There are three reasons for studying the Brazilian Public Defender's Office. Firstly, Brazil is one of the few countries in Latin America that has a constitutional institution with public servants providing legal assistance to vulnerable citizens². Secondly, given income inequality in Brazil, almost 90% of the population qualifies for free legal assistance, the criterion being earning up to three minimum wages (IBGE, 2010). Thirdly, the Public Defender's Office is a young institution, with great relevance as a political actor, and whose relationship with the other justice bodies must be better researched.

This article is inscribed in the domain of comparative judicial studies, which through the lens of political science has carried out a series of investigations on the role of different legal and judicial institutions in Latin America, particularly on their role as providers of social justice and on the relationship between legal processes and politics (TAYLOR, 2008).

Specifically in Brazil, since the mid-1990s, this research field has been discussing the role of the interaction of judicial processes with the democratic political system, whether in terms of the debate on the separation between the spheres of government and the judicialisation of politics, or through the effects in terms of the formulation and implementation of public policies (CASTRO, 1997). In institutional terms, the first Brazilian studies on the justice system focused on the Judiciary and its various aspects, such as the role of the Constitutional Court in its relationship with the political system, especially the impacts of injunctions issued against the actions of the Executive and Legislative Branches (CASTRO, 1997; VIANNA et al. 1999, 2007); the process of recruitment of the Brazilian judicature (VIANNA et al., 1999); and the discussions on the Judicial Branch and the changes and reforms undergone since the country's redemocratisation (SADEK, 1999, 2004). More recently, several studies have been dedicated to investigating the State Prosecutor's Office and its institutional changes, its role in defending diffuse and collective rights and the vision and activism of its members (ARANTES, 1999); and its role as a political actor and the processes of achieving autonomy and accountability (CARVALHO and LEITÃO,

2 Few Latin American countries have constitutionalised Public Defender's Offices (Brazil, Colombia, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela). In the majority of countries, there are either no PDOs (Antigua and Barbuda, Bahamas, Barbados, Costa Rica, Cuba, Dominica, Grenada, Guyana, Haiti, Honduras and St. Lucia) or there are systems created by infra-constitutional legislations (Argentina, Belize, Bolivia, Chile, El Salvador, Ecuador, Guatemala, the Dominican Republic and Trinidad and Tobago).

2010, FORTHCOMING). However, there is still a great scarcity of work dedicated to investigating the other bodies that make up the justice system, the other courts and the relationship of these institutions with the processes of judicialisation and increasing access to justice in the country. Another aspect that has not yet been much explored in Brazil is the role of the Judicial Branch regarding public policies (TAYLOR, 2008) and the role of actors such as the State Prosecutor's Office and public defenders in the process of implementing public policies.

In order to understand the context of the reform, we use the concepts of institutional and judicial independence (AGUIAR, FORTHCOMING; CARVALHO and LEITÃO, 2010, FORTHCOMING; RÍOS-FIGUEROA and STATON, 2009, 2011) and the theoretical discussion on judicial empowerment (FINKEL, 2005; HILBINK, 2009; HILBINK and WODS, 2009; HIRSCHL, 2000; INGRAM, 2012; NUNES, 2010a, 2010b; WHITTINGTON AND DEVINS, 2005). The research was carried out based on an analysis of qualitative and quantitative sources. The qualitative sources included documents and legislation, as well as observations and interviews with public defenders. The quantitative data was obtained mainly from the *Diagnósticos da Defensoria Pública no Brasil* [Diagnostics of the Public Defender's Offices in Brazil] (MINISTÉRIO DA JUSTIÇA, 2004, 2006, 2009). This data, along with demographic data, was analysed using software package SPSS, which enabled indexes to be established.

This article is organised in three sections. Following this introduction, the second section deals with the history of the Public Defender's Office in Brazil in the context of democratic institutions in Latin America. It presents a theoretical discussion on independence and judicial autonomy and discusses the reform, especially from the public defender's point of view. The third section presents an analysis of the processes of institutionalisation and independence in the Brazilian states by analysing two indicators. The final section is the conclusion.

The Brazilian public defender's offices: historical and comparative perspectives

In the Brazilian judicial system, there are bodies that function at a federal level and at state level. At the federal level, the Judiciary Branch includes the following units: the Federal Courts (courts of general jurisdiction) – including the federal small claims courts – and the courts of special jurisdiction – composed of the Labour Courts, Electoral Courts and Military Courts. The organisation of the state Courts, which includes small civil and criminal claims courts, is an attribution of each one of Brazil's states and the Federal District. The state Public Defender's Offices operate within the State Courts and the federal Public Defender's Office operates in the context of the Federal Courts. Article 5 of the 1988 Federal Constitution lists individual rights and the role of public defenders in guaranteeing access to justice. The Public Defender's Office is governed by Complementary Law nº 80 of 1994, which establishes rules for how it is organised in the states. This law was altered by Complementary Law nº 132 of 2009, which regulates the alterations resulting from Constitutional Amendment nº 45 of 2004, which guaranteed the independence of the state Public Defender's Offices.

The Federal Constitution of 1988 prescribes full legal assistance to those in need of it (art. 5 LXXIV) and also raises the status of the Public Defender's Office to that of institution essential to the exercise of the jurisdictional function of the State, which is responsible for legal advice and defence at all levels of need (art. 134). With the return to democracy, the Federal Constitution assigned to the Public Defender's Office the role of guarantor of access to justice for all the population.

Historical perspective

In the process of the access to justice in Brazil being increased³, the expansion of the Judicial Branch took place in three waves.

The first wave of expansion of Brazil's Judicial Branch, which happened between 1930 and 1940, was propelled by a deeper, more lasting trend in Brazilian politics – one of mistrust of political representative institutions and of the democratic regime's capacity to meet society's needs (ARANTES, 2007, p. 104).

The second one, from the 1970s, saw the responsibility for the defence of diffuse and collective interests before the Judicial Branch be attributed to the State Prosecutor's Office, as a body of the State. The third saw the 1988 Constitution consolidate itself as an instrument for carrying out social justice and promoting rights, incorporating values of social, economic and cultural equality at the same time as it consolidated the expansion of the justice system for protecting collective rights, and also increasing access to justice, especially through innovations in the judicial structure.

The first signs of the Public Defender's Office in Brazil appeared in the context of the dictatorship, but it developed systematically only after the 1988 Constitution was promulgated, when democracy returned to Brazil and to other Latin American countries. From this phase onwards, the Public Defender's Office started being considered vital as a guarantor of rights and for ensuring access to justice.

Currently, the Public Defender's Office is established by law as permanent and essential to the State's jurisdictional function and as an instrument for democracy, responsible not only for offering legal assistance and free defence to those who need it, but also for the individual and collective promotion and defence of rights at all judicial and extrajudicial levels. The institutional principles of unity, indivisibility and functional independence are guaranteed by law. Additionally, certain objectives establish the work of the Public Defender's Office as an instrument of democracy, such as the primacy of the dignity of man, reduction of inequalities, the affirmation of the Democratic Rule of Law and the effective guarantee of human rights and of the constitutional principles of legal defence. These new functions were added by article 4 of Complementary Law 132.

Since the 1990s, the Public Defender's Office has been the object of analysis of few but very important studies in the social sciences. The studies in question concern the trajectory, the profile of the defenders and the effectiveness of guaranteeing access to justice of the Rio de Janeiro PDO, the first one to be institutionalised in the country (ALBERTI, 1996; COSTA, 2000; MOTTA, 2007, 2009; MOTTA and RIBEIRO, 2007; SANTOS, 2013). The recent institutionalisation and its difficulties are portrayed in studies on the PDOs of the states of São Paulo (ALMEIDA, 2005) and Paraná (SANTOS and CARON, 2013). Other studies attempt to understand the Brazilian experience by means of a comparative view (ALVES, 2005).

3 The work of Cappelletti and Garth (1988) is a milestone in the discussions on access to justice. Among their publications, we found the thesis on the development of access to justice in three waves. It assumes the expansion of the offer of legal services to poor sectors of the population, the incorporation of collective and diffuse interests and the consideration of alternative mechanisms for settling disputes.

Institutional independence

Currently, the state Public Defender's Offices have greater independence than the federal government's Public Defender's Office. Article 6 of the Federal Constitution prescribes that the Brazilian President must choose the federal Chief Public Defender and article 99 prescribes that the choice of state Chief Public Defenders must be made by the state governors. These choices are made from a list of civil servants whose names are chosen by the board of the public defender's office by secret ballot.

With Constitutional Amendment nº 45 of 2004, the federal Public Defender's Office came to have its own council, and councils were also created at state level. These councils are meant to be the highest normative and decision-making bodies of their institutions.

Regarding career security, public defenders – like judges and prosecutors – are functionally independent in their roles, including in their terms of office, and there is no possibility of salary reduction. The law that governs the Public Defender's Office provides for competition in the filling of posts, sets out the makeup of the board and established the institution's functional and administrative independence. Given these legal guarantees, the aim of this study is to understand the institutional changes, especially after the creation of these formal guarantees, and their consequences for the Brazilian states. Concepts and theories on the independence of legal institutions will help us understand the reform in the context of Latin America's return to democracy.

Comparative perspective

The debate on judicial reform in Latin America has focused on a number of targets, including the quest for justice, for quicker, more efficient and predictable trials, an external control of the Judicial Branch, the adoption of alternative conflict resolution mechanisms and control of the lower courts by the higher courts. These goals follow the orientation of several international bodies, including the World Bank.

Access to justice is provided in the whole world by three systems⁴. The first one is the "honour system", in which lawyers are obliged to represent poor clients without being paid. The second one is the "bureaucratic system", in which state agencies and public attorneys provide legal services for poor people. This model is characteristic of Latin America, where the creation of Public Defender's Offices has been the rule in the last few years. In the third system, characteristic of European countries, legal services are provided by bar associations or by independent associations of private attorneys (SMULOVITZ, FORTHCOMING, p. 07).

The Public Defender's Offices in Latin America were structured in the 1990s and 2000s. They were created with the aim of guaranteeing access to justice with assistance, representation and adequate defence, and guaranteeing the rights of those in need. Some PDOs are limited to the penal area (in Bolivia, Chile and Argentina, for example) but in other countries legal assistance is given in both criminal and civil questions (Brazil, Costa Rica, Mexico, Panama and Uruguay, for example). The Inter-American Association of Public Defenders (AIDEF – Associação Interamericana de Defensorias Públicas) was created in 2003 to establish a permanent system

4 For a more detailed version of the structuring of legal assistance services from a comparative perspective, see Cleber Francisco Alves's (2005) doctoral thesis, which presents the experiences of the United States, France and Brazil.

of coordination between the Public Defender's Offices in the Americas and the Caribbean. The aim of this association is to defend human rights, promote the independent functioning of PDOs and to strengthen it in relation to the State Prosecutor's Office.

Countries with a federative structure such as Brazil, Argentina and Mexico developed different legal structures for their federal and state courts. In Brazil, the state Public Offices of the Defender, which are the focus of this article, were created mainly between 1990 and 2000. They are more independent than the federal Public Defender's Office, created in 2004 and bound to the Executive Branch, and its fight for independence is currently following the legal channels in the National Congress.

In Mexico, the Public Defender's Office was created in 1998, "to guarantee the right to defence in civil, administrative and tax issues and in criminal cases" (IFDP, 2012). One example of a state Public Defender's Office is the Instituto *Veracruzano*, created in 2006. This institution has the additional responsibility of dealing with indigenous, young people's, and gender issues. The Mexican Public Defender's Offices are only technically and operationally independent. The federal public defenders are civil servants who work for the Judicial Branch and the state Public Defender's Offices are government agencies.

In Argentina, access to justice is guaranteed by the *Ministerio Público de Defensa de la Nación*, a federal institution that became independent in 1994 with a constitutional reform. In the provinces, "provision of public defence in Argentina is currently regulated by 25 different laws. Each provincial unit has its own law" (SMULOVITZ, FORTHCOMING, p. 09). In terms of independence, over 90% of defenders in the provinces are linked to the Judicial Branch.

The three countries are similar in their differentiation between the federal and state Public Defender's Offices. The difference between them is their degree of independence and the provision of access to services of a non-penal nature.

Judicial independence and autonomy

Independent judicial institutions have the capacity to promote and maintain human wellbeing, stabilise democratic regimes and protect human rights (RÍOS-FIGUEROA and STATON, 2009). As a rule, they are part of an institutional dimension related to preventing arbitrariness by governments, an individual dimension related to correcting discriminatory practices in law enforcement and a social dimension related to social stability (RÍOS-FIGUEROA and STATON, 2011). Studies show that these are the roles of the courts in helping to consolidate democratic regimes.

There is a difference between judicial independence and judicial power or between judicial independence *de facto and de jure*. Feld and Voigt (2007, p. 02) define *de jure* independence as "the independence of courts as it can be deduced from legal documents" and *de facto* independence as "the degree of independence that the courts factually enjoy."

Judicial independence "demands that judges do not suffer any interference that makes them unable to judge cases. Therefore, it is not a sufficient condition for a Rule of Law, but it is a necessary condition" (LEIRAS et al., FORTHCOMING, p. 06). It means having the freedom to decide on certain cases without restrictions imposed by other political actors. The judicial sphere also demands political accountability, as judicial independence alone is not sufficient without the power to impose decisions. The independence of other actors depends on legal provisions that establish the relationship between judges and other branches of government, and whether politicians are

acting in accordance with the legal provisions (RÍOS-FIGUEROA and STATON, 2009).

The debate on the relationship between judicial independence and judicial power can be useful for understanding to what extent gaining formal independence can be a source of empowerment for a judicial institution.

The independence of the Public Defender's Office is a way in which to formally capacitate the Judicial Branch. Why did Brazil do this? There are several theories aimed at explaining judicial strengthening or empowerment, that is, the granting by the Executive and Legislative Branches of part of their power to the Judicial Branch. The most prominent theories are insurance theory (FINKEL, 2005), hegemonic preservation theory (HIRSCHL, 2000), the thesis of governance (NUNES, 2010a, 2010b; WHITTINGTON AND DEVINS, 2005) and the theories of ideational empowerment (INGRAM, 2012; HILBINK, 2009; HILBINK and WOODS, 2009).

Insurance theory presupposes that institutions set the "rules of the game", defining the procedures that govern the economic and political behaviour of actors. According to this theory, electoral competition determines whether the reforms made for judicial empowerment will be implemented. Finkel (2005) states that:

[...] when political players are uncertain about the future division of power, even if they currently hold the reins of power, they may seek to increase the availability of institutional checks on political authority as a hedge against their possible loss of political dominance. Judicial reform thereby becomes a trade-off in which ruling parties are willing to accept short-term costs in exchange for long-term security (FINKEL, 2005, p.88).

The theory of judicial hegemonic preservation argues that empowerment is the result of strategies by political and economic elites to preserve their hegemonic influence on peripheral groups in the arenas of formulation of majority policies. According to this theory, the process of judicial empowerment that takes place by means of the constitutionalisation of rights speeds up when hegemonic elites are threatened by peripheral groups, as they would rather transfer power over to the courts because courts tend to act according to the cultural tendencies of the hegemonic community (HIRSCHL, 2000, p. 95).

Insurance theory explains judicial empowerment during periods of uncertainty, such as transitions to democracy in contexts dominated by traditional elites, when these are threatened by the appearance of minority groups. In these situations, "politicians empower courts to constrain incoming majorities" (NUNES, 2010a, p. 03). However, these theories do not explain the institutional reforms proposed in the context of stable electoral competition. It is in these contexts that theories of governance gain ground.

Governance theories explain judicial empowerment as a means to facilitate presidential agendas and to avoid threats such as federalism, entrenched interests, and rebel and pressure coalitions. Using Whittington and Devins's (2005) theoretical argument, Nunes shows that "a friendly judiciary has increased the expected benefits of judicial review for Brazilian presidents while lowering the likelihood of judicial vetoes against their legislative outputs" (2010a, p. 04). Based on a revision of insurance and rational theories, Hilbink and Woods (2009) have explored ideas as variables in the study of judicial strengthening/empowerment.

Ideational arguments suggest that decisions to build or reform courts are due to substantive aims. Decisions are taken according to the need for these changes by the countries in question. "This sense of purpose or mission as conditioning factors of profoundly rooted ideas is what determines the reactions of actors to the limitations of their institutional environment" (NUNES, 2010b, p. 41).

Ideational explanations highlight the influence of the immaterial, of ideological engagements. Specifically, actors react less to the material, to cost-benefit calculations based

on rational/strategic interest, and more in response to engagements of an immaterial nature, that is, to the roles of courts in society (INGRAM, 2012, p. 441). Reforms are linked to political and ideological postures, especially those to the left in the political spectrum. What tends to delegate power to the courts is the belief in their very role, that is why “ideas also clarify why actors promote reform despite material costs, obstacles, and constraints, even expending great effort over long periods of time to overcome those obstacles” (INGRAM, 2012, p. 440).

In ideational theory, social movements and interest groups are seen as key actors in processes of institutional change. Analysing the process of judicial empowerment in Spain during the transition to democracy, Hilbink (2009, p. 404) describes the role of the lawyers mobilised for promoting political liberalism in terms of:

(1) judicial independence aimed at the moderation of executive power; (2) greater autonomy for civil society in the form of free speech, press, associations and assembly; and (3) guarantees of basic civil rights, such as bodily integrity, due process and equal treatment under law.

When analysing the processes of judicial strengthening/empowerment in Brazil, insurance theories can help to explain the attainment of independence by the State Prosecutor's Office during the transition to democracy (AGUIAR, FORTHCOMING). On the other hand, it is possible to understand the process of empowerment of the Federal Supreme Court based on the governance thesis defended by Nunes (2010a, 2010b), which explains the strategy of the Executive to grant power to the courts in order to meet its government agenda, using the Judicial Branch as a partner. Next, we will see how the attainment of independence by the Public Defender's Office can be viewed both from the point of view of ideational theories and from theoretical perspectives of governance.

Independence of the Brazilian public defender's offices

The process of independence and autonomy of the Public Defender's Office in Brazil, achieved through constitutional and legislative changes, must be understood in terms of Brazil's transition to democracy. This transition took place in a context of ample participation by actors and social movements, especially those of lawyers, whose role in defending human rights was vital to establishing public policies. The rise to power of a left-wing political party reflects an increase in concern for social justice, equality and vulnerable groups and sectors of the population. The attainment of independence by the Public Defender's Offices can therefore be seen as part of two larger movements, according to ideational theories and theoretical perspectives of governance.

In ideational terms, the possibility of increasing access to justice is part of Latin America's democratic political project. All the pressure groups that contributed to this project, including national and international actors, are committed to democracy and to its consolidation.

Regarding the domestic actors, through the National Association of Public Defenders (ANADEP – Associação Nacional dos Defensores Públicos), the political mobilisation of the state and federal PDOs showed itself to be a fundamental element for realising legislative alterations. Other bodies of members of the justice system such as associations of the State Prosecutor's Office and of judges also participated. The massive mobilisation of civil society organisations such as NGOs, social movements, lawyer networks and the Catholic Church – through the National Confederation of Bishops of Brazil (CNBB – Confederação Nacional dos

Bispos do Brasil) and its pastoral branches, especially the Pastoral Carcerária (Prison Pastoral Commission) –revealed the social demand for expanding the activities of public defenders.

As for the actions of international actors, international organisations were very concerned with institutionalising rights and increasing access to justice. The UN, for example, whose report on the independence of judges pointed to a need for strengthening the public practice of law in order to guarantee access to justice, stood for the adoption of a reform of the justice system as an important – albeit insufficient – step, and suggested monitoring the impact of the reform and of administrative and financial independence, as well as creating Public Defender's Offices in states that did not have any (DESPOUY, 2005).

It is interesting to look at the role performed by the ANADEP alongside the AIDEF in strengthening the Public Defender's Offices in all member-countries, using the Brazilian experience as an example. This action was incorporated into the Regras de Brasília [Rules of Brasília] (2011) and its implementation plan. Additionally, international bodies such as the OAS continue to encourage increasing access to justice by means of legal assistance, including working jointly with the Inter-American Court of Human Rights (ORGANIZAÇÃO DOS ESTADOS AMERICANOS, 2011).

From a governance point of view, the process of independence can also be understood in the context of a coordinating strategy by federal government, recurrent in several other movements of formulation and implementation of public policies. Within them, the actions of the federal government, in an attempt to formulate policies that are executed by subnational entities, aim to reduce regional differences and inequalities (ALMEIDA, 2005; ARRETCHE, 2004, 2010). National legislations tend to give greater uniformity to institutional design, aiming at the creation of a single performance standard. The Executive Branch showed its support for making the PDO autonomous by authoring the legislation aimed at reform. The almost unanimous vote in the Senate also showed the endorsement of the Legislative Branch, backed up by the social and electoral appeal of expanding access to justice.

We will later see how this objective has not yet been attained in spite of the efforts made.

The defender's view on the reform and achievement of independence

It could be argued that because of the concession of *de jure* independence, the Brazilian Public Defender's Office saw institutional advances towards greater autonomy, visibility and equivalence with the other bodies of the justice system. Perhaps in the medium and long term these alterations will change the interplay of forces in trials, especially in the criminal system. However, as the literature on judicial independence shows, *de jure* independence is necessary but not sufficient for an effective exercise of independence. In the next section, we will discuss to what extent achieving formal independence resulted in the actual exercise of independence by the state PDOs.

In the defender's view, the Public Defender's Office is the justice system institution that most grew in terms of guarantees and structuring in the last decade. The reform and attainment of autonomy were the result of external elements and an internal mobilisation by the field's professionals. A great window of opportunity was provided by the actions of the federal Executive Branch and its allied base in the Legislative Branch, which saw the need for the inclusion into the justice system of people from classes C and D, whose social mobility took place through social programmes of income distribution and the policy of minimum wage increase.

We achieved this change in Law 132 for two reasons: because of the judicial reform – because the Judicial Branch needs the Public Defender’s Office, because the State needs the Public Defender’s Office. In truth, we’re in a paradigm of inclusion of people from class C and D into the market. You need people to be included into the justice system; this is natural from the point of view of the organisation of the State. Now, this only happened because the political context was favourable for it to happen (Interview nº 10, 2012).

After the legal achievement, understood as *de jure* independence, the great difficulty for the state Public Defender’s Offices is the implementation of *de facto* independence, which means generating their own budgets, setting wages, creating posts and holding competitive civil-service examinations. Thus, it is also important to appreciate the defender’s view about the extent to which the very exercise of functional independence depends on *de facto* independence:

It’s no use being administratively and functionally independent without budgetary independence, so I can know how much I’m going to spend, how many defenders I can hire, if I can create another 10 posts for defenders... if I’m stuck to the Judicial Branch, I don’t have that sort of independence. Because we have functional autonomy, I can file a lawsuit against whomever I want and the governor can’t take me away from here. But he can punish me through the budget if I file a civil suit against the state. So to us, this [budgetary autonomy] is very important (Interview nº 6, 2012).

In the public defender’s view, as well as independence, the mobilisation ended up resulting in the expansion of the competent jurisdiction of the Public Defender’s Office. Previously an institution aimed only at individual legal assistance, it also came to file class actions and, at a third stage, became a human rights defence institution whose model altered the very configuration of the Rule of Law, being then copied by other Latin American countries.

In terms of advances, if we now talk a bit about Law 132, the Complementary Law that altered Law 80 of 1994, which is our Organic Law, what do we have there? The article to me is symbolic. It assigns three basic functions to the Public Defender’s Office – two that we already performed and one new one, which we didn’t yet know how to. The first one is integral, free legal orientation – which we already did in all contexts – civil, crime, etc; it was nothing new. The other one is the protection of collective rights, which is a little bit of a novelty, but collective representation was already in the system. And the new one, which is the following: to take care of human rights in the Democratic Rule of Law, and this is a gigantic incumbency. Why? This, for me, is a big turnaround, in the symbolic terms of the Democratic State, a State has historically been a State that oppresses, judges and prosecutes – it’s very good at that. It’s very good at judging and prosecuting people, it’s a State that now offers to defend, and we don’t really know how this is going to be done, do we? How are we going to create a State that cares, that sees, that understands and defends? (Interview nº10, 2012).

These changes can cause great alteration in the Brazilian criminal system, which is still seen as a traditionally inquisitorial model, and which after redemocratisation did not reform its legislation to draw closer to more prosecutorial models (AGUIAR, FORTHCOMING), as the existence of a state institution capable of defence with a strength equivalent to that of the prosecution can destabilise a penal system so marked by punishment:

I think that there’s a change in the Democratic State that’s largely reflected in the criminal model. We are advancing towards a State where, ‘it is the monopoly of the State to accuse’,

you see... today we have a model of a State that defends, but we are moving towards a model in which the State Prosecutor's office, it is the *custos legis* of the procedures, you see. Perhaps we'll migrate towards a model in which the Public Defender's Office will assume the function of *custos legis* of criminal defence. Because if I have a State that is strongly armed to prosecute you, we have to have a State strongly armed to defend you (Interview n°10, 2012).

As it is a struggle with material and symbolic aspects, in the public defender's view, the reform – with its expansion of competent jurisdictions, gain of autonomy and consequent salary equalisation – caused a change in the very “tripod” of the justice system:

We make up the tripod of the justice system. In truth, this is the justice system: the judge judges, the prosecutor prosecutes and the defender defends. Without that, there is no criterion for justice, not to mention any equality, so we need to give it its due recognition (Interview n° 11, 2012). This generates quite a clash, which is part of this process of institutional construction and of other constructions, part of assimilating the fact that ‘when a new player enters the field, the others have to adapt’, so I see these asymmetries as natural. What was the question of wages, of salary equalisation about? This is a very important question, not just for the institution, but also socially because the Public Defender's Office previously used to be just a temporary career (Interview n° 10, 2012). The judge is assisted by two justice bodies, the SPO that prosecutes and the PDO that defends. Does it seem fair to you that the one who prosecutes should earn more than the one who defends? This was something that used to make us very uncomfortable (Interview n° 11, 2012).

Although it is not the direct focus of this article, which focuses on internal institutional analysis, we must contextualise the external and inter-institutional aspects of this process of attaining autonomy, which does not occur without fighting and conflict. This is the case particularly among the actors of the justice system themselves, with the political and judicial struggles between the Public Defender's Office and the State Prosecutor's Office regarding the legitimacy of filing public-interest civil actions and the defence of diffuse and collective rights⁵. It is also true of the Public Defender's Office and the OAB (Ordem dos Advogados – Brazilian Bar Association), both regarding the professional exercise of the defenders and the requirement that they be members of the OAB because they are lawyers, and the other way around, between the OAB and the Public Defender's Offices against the increase of people qualifying for free legal assistance, including legal entities⁶. Furthermore, the fact that the OAB's political power in some states delayed the structuring of some Public Defender's Offices⁷ must also be mentioned.

Having understood the reform and attainment of independence from ideational and governance points of view, we will now look at how the processes of institutionalisation and independence occurred in the Brazilian states.

5 ADIN 3943 (Direct Action for the Declaration of Constitutionality 3943) is currently following the legal channels through the STF (Supremo Tribunal Federal – Federal Supreme Court). It was proposed by the Associação Nacional de Membros do Ministério Público (CONAMP – National Association of Members of the State Prosecutor's Office) and contests the constitutionality of the law that allows the Public Defender's Office to file public-interest civil actions – article 5 of Law 7,347/1985, as drafted by Law 11,448/2007 (<http://www.stf.jus.br/portal/processo/verProcessoAndamento.asp?incidente=2548440>), as well as ARE 690.838 (Extraordinary Interlocutory Appeal 690.838), which recognised the general repercussion of the constitutional question (<http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=223069>). It is also worth referring to the literature on the achievement of autonomy by the State Prosecutor's Office itself and the construction of the legitimacy of proposing this type of action (ARANTES, 1999).

6 News on this clash can be found at <<http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=185914>>.

7 The thesis of Frederico Ribeiro de Almeida (2010) portrays the resistance of OAB/SP (Brazilian Bar Association of São Paulo). The following report illustrates the conflict in the state of Santa Catarina: <http://www.probono.org.br/defensoria-publica-de-santa-catarina-enfrenta-a-resistencia-da-oab>.

Institutionalisation and independence in the Brazilian state public defender's offices

In order to demonstrate the changes caused by the institutionalisation of the Public Defender's Office in Brazil, we analysed three time periods. The data presented for the first period (2004) covers the institutions before the reform, the data from 2006 shows the institutional transition and the data from 2009 shows a stable institution five years after the constitutional changes that guaranteed independence.

In order to investigate a possible relationship between institutionalisation and the achievement of autonomy and independence by the state PDOs, we built two indicators. The first one, regarding institutionalisation, was created with the variables time of creation and number of competitive civil-service examinations held. To build the second indicator, one regarding independence, from which we would be able to measure the independence of the Public Defender's Office institution in the states, we established a ranking system that computed the presence or absence of certain powers. The index consists of a two-point interval attributed to the presence or absence of each feature, making it possible to see a greater degree of independence in states with high scores. It must be mentioned that the study analysed the independence of exclusively *de jure* measures. Along with the analysis of the indicators, the variables promoting collective actions and legal representation in the Inter-American System of Human Rights served to present a panorama, albeit a restricted one, of the actions in each period.

Figure 1. Institutionalisation and independence of the state Public Defender's Offices

Institutionalisation	Weight given to each variable	Institutionalisation index		
Time of creation	1	1 point = Public Defender's Office in the process of institutionalisation (I)	2 points = Consolidated Public Defender's Office (C)	
Number of competitive civil-service examinations held	1			
Independence		Independence index		
<i>Powers of the Chief Public Defender</i>				
Creating new posts	1	Between 1 and 3 points = no independence (NI)	Between 4 and 6 points = low independence (LI)	Between 7 and 10 points = autonomous (I)
Holding competitive civil-service examinations	1			
Abolishing posts	1			
Setting and adjusting wages	1			
Imposing disciplinary sanctions	1			
<i>Institutional procedures</i>				
Choosing the Public Defender from a three-candidate list	1			
Existence of an organic law	1			
Existence of a maintenance fund	1			
Existence of a Higher Council	1			
No subordination of Public Defender's Office to state departments (Executive Branch)	1			

Source: Brazilian Public Defender's Office Database.

In line with studies on the independence of judicial institutions, our data on independ-

ence considered two larger areas – one regarding the institutional procedures that rule the institution and the other one regarding the Chief Public Defender's exercise of power. In the first dimension, there are variables aimed at verifying the presence of independence in legal terms, such as the existence of an organic law and a board of the public defender's office, and other variables focusing on the procedural exercise of independence, such as the selection of a Chief Public Defender from a three-candidate list. Finally, there are variables that indicate the actual exercise of independence, such as the availability of financial resources without subordination to the state administration. The second dimension includes variables that indicate the amount of power in the hands of the Chief Public Defender, in terms of creating and abolishing posts, hiring, discipline and budgetary choices.

Figure 2 illustrates the process of independence and institutionalisation by state, according to the measures and key in Figure 1.

Figure 2. Institutionalisation and independence of the state public defender's offices

State	Institutionalisation			Independence		
	2004	2006	2009	2004	2006	2009
AC	I	I	I	I	LI	LI
AL	I	I	I	LI	LI	I
AM	C	C	C	LI	LI	LI
AP	I	I	I	LI	LI	LI
BA	C	C	C	LI	I	I
CE	I	I	C	LI	I	I
DF	C	C	C	NI	NI	NI
ES	I	I	I	LI	LI	LI
GO*						
MA	I	I	I	LI	LI	LI
MG	C	C	C	LI	LI	LI
MS	C	C	C	I	I	I
MT	I	I	C	I	I	I
PA	I	I	I	NI	LI	LI
PB	I	I	I	LI	LI	LI
PI	C	C	C	LI	LI	LI
PE	I	I	I	NI	LI	LI
PR*			I			NI
RJ	C	C	C	I	I	I
RN*		I	I		LI	LI
RR	I	I	I	LI	I	I
RO		I	I	LI	I	I
RS	I	I	I	NI	I	I
SC*						
SE	I	I	I	LI	LI	LI
SP*		I	I		I	I
TO	C	C	C	NI	I	I

Source: Brazilian Public Defender's Office Database.

* States in which there was no PDO or where data was not provided to the research.

From the indicators built, we carried out various analyses using as a reference the three time periods (2004, 2006, 2009), which portray the scenario of the institution before and after the reform.

Before the reform: state Public Defender's Offices in 2004

In 2004, five Public Defender's Offices had no independence (DF, PA, PE, RS and TO)⁸, 12 had low independence (AL, AM, AP, BA, ES, MA, MG, PB, PI, RO, RR and SE) and five were considered independent (AC, CE, MS, MT and RJ).

From the analysis of the state PDOs prior to the reform that granted independence, we saw that even before the reform there was a trend of increasing powers in the institution. In the non-independent Public Defender's Offices, the degree of interference in decisions was very high, without the possibility of the institution defining its job posts, and especially not its budget and wages. The scenario was different in the independent institutions, although they were few in number and still had no significant prerogatives regarding wages and budgetary issues. Regarding people served, whether or not the PDOs were independent bore no relation to an increase in the number of people served and suits filed.

Before the reform, there was great variation in the independence of the Chief Public Defender. It was in states without independent PDOs that there was most difficulty in creating or abolishing posts, adjusting wages, imposing disciplinary sanctions and promoting civil servants. The more the Public Defender's Offices became independent, the greater the power of the Chief Public Defender, but his role was always limited in budgetary and wage issues.

During the reform: state Public Defender's Offices in 2006

In 2006, the data showed very significant changes, with only one PDO remaining without independence (DF). However, the number of PDOs with low independence rose in 14 states (AC, AL, AM, AP, CE, ES, MA, MG, PA, PB, PE, PI, RN and SE) and the number of states with PDOs considered independent rose to nine (BA, MS, MT, RJ, RO, RR, RS, SP and TO).

During the reform, the political characteristics of the Federal District and the fact that it is the federal capital directly affected the granting of independence. In institutions with low independence, the formal and procedural prerogatives remained, since in each state there was an organic law and a Higher Council, and in half the states the Chief Public Defender was selected from a list of three candidates. There was a trend of increasing power held by the head of the institution relating to the establishment of internal criteria such as disciplinary sanctions. However, there were still restrictions on the exercise of power regarding financial questions, such as setting and adjusting wages and creating and abolishing posts.

This panorama drastically changes when the independent Public Defender's Offices are compared with one another during the reform, as for the first time they saw an increase in

⁸ Brazilian states and their abbreviations: AC – Acre, AL – Alagoas, AM – Amazonas, AP – Amapá, BA – Bahia, CE – Ceará, DF – Distrito Federal, ES – Espírito Santo, GO – Goiás, MA – Maranhão, MG – Minas Gerais, MS – Mato Grosso do Sul, MT – Mato Grosso, PA – Pará, PB – Paraíba, PI – Piauí, PE – Pernambuco, PR – Paraná, RJ – Rio de Janeiro, RN – Rio Grande do Norte, RR – Roraima, RO – Rondônia, RS – Rio Grande do Sul, SC – Santa Catarina, SE – Sergipe, SP – São Paulo, TO – Tocantins.

the exercise of their autonomy, both in formal and procedural terms. In all states, an organic law and a Higher Council came into existence, with the choice of the chief of the institution being made from a list of three candidates. The Chief Public Defender's exercise of power also increased in practically all states, allowing him to create new posts and abolish posts and to set and adjust wages in more than half the institutions.

A trend of growing independence and prerogatives regarding the institution's internal and organizational aspects could be seen. However, decisions regarding finances were still made by the federal administration in the majority of cases.

From the analysis of the state Public Defender's Offices during the reform, we saw a trend of rising autonomy, observed in the increase of prerogatives for deciding on posts and holding competitive civil-service examinations, but still restricted in budgetary and wage issues. We saw a gain in terms of the institution's power of organisation from an internal point of view, but the financial decisions were still being made by the administration of the states in the majority of cases.

As for people served, it is interesting to see a trend of PDOs initiating class actions, in keeping with the legal system, although the experience of legal representation in the Inter-American System of Human Rights was a rare exception in the states.

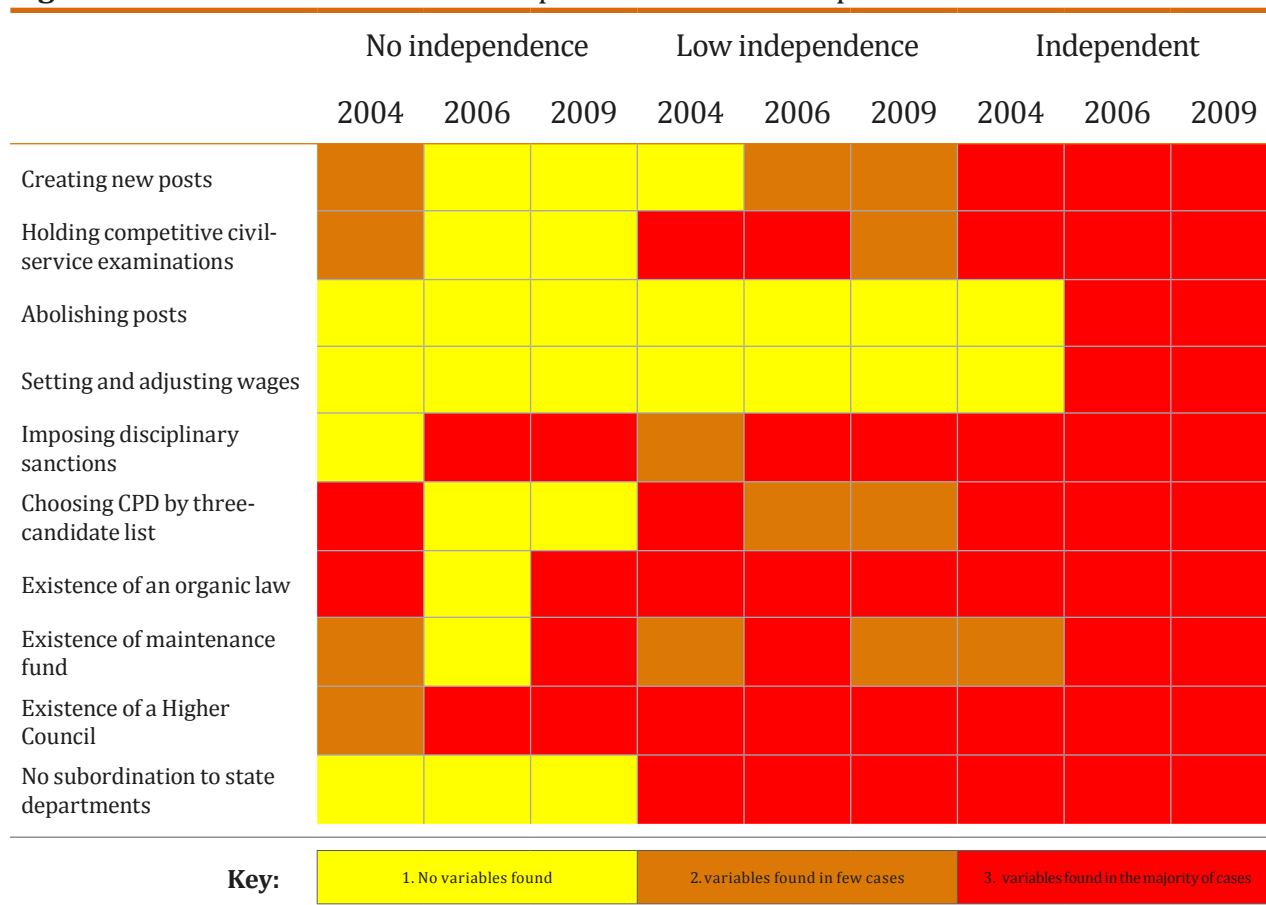
After the reform: state Public Defender's Offices in 2009

In 2009, the Federal District remained the only Public Defender's Office without independence. It is important to highlight that the data for that year showed the presence of new PDOs, such as those of Paraná and Goiás, which in spite of having been created, did not provide data for the research. There was no data for the state of Santa Catarina, either, as it did not have a PDO at the time. In that year, the number of PDOs with low independence fell to 13 (AC, AM, AP, CE, ES, MA, MG, PB, PA, PE, PI, RN and SE) and the number of PDOs considered independent rose to 10 (AL, BA, MS, MT, RJ, RO, RR, RS, SP and TO).

If we ignore the Federal District as the only Public Defender's Office that remained without independence after the reform, it is interesting to note that inequality remained in the independent and low-independence Public Defender's Offices, especially regarding the Chief Public Defender's exercise of power. Another interesting fact is that in low-independence states, there were cases of reduced guarantees in the 2006-2009 period. Thus, among the low-independence PDOs, the number of states that could choose a Chief Public Defender from a three-candidate list decreased, and among the powers of the Chief Public Defender, the possibility to hold competitive civil-service examinations also decreased. Regarding the filing of class actions, these remained the same in PDOs with low independence and rose in the independent ones, with legal representation in the Inter-American System of Human Rights limited to one PDO from each group.

Figure 3 synthesises the variables of achievement of independence for each one of the groups and Figure 4 presents the variables by state throughout the three periods.

Figure 3. Institutionalisation and independence of the state public defender’s offices



Source: Brazilian Public Defender’s Office Database.

The comparative analysis of the 2006 and 2009 periods – that is, before and after the reform – does not show very significant changes. It is interesting to note that the achievement of *de jure* autonomy, or gaining autonomy in legal terms, has the effect of driving change. Yet the actual implementation of autonomy does not consolidate itself, and the characteristics found immediately after the constitutional and legislative change remain. The prerogatives of internal interference in institutions increase and consolidate themselves, but the powers regarding financial issues turn out to be hard to consolidate in several states.

If we compare the institution’s degree of institutionalisation with its degree of autonomy in 2004, 2006 and 2009, we see that there is no direct relation between the fact that the Public Defender’s Offices were institutionalised and their autonomy.

What the analysis reveals, which corroborates a great part of the studies on judicial independence and some theoretical studies on the autonomy of the State Prosecutor’s Office, is that in spite of them having *de jure* independence (by law, stipulated by it), in fact, many state Public Defender’s Offices are not independent because autonomy means meeting prerequisites which at the time the states had not met. Although we see an evolving panorama, we can draw conclusions from the gap between what the law stipulates and what actually occurs.

In an attempt to reveal national disparities, and bearing in mind the social differences between Brazilian states, we established a comparison between the Human Development Index in the states and their independence indicator for each period.

Figure 4. Achievement of independence in states by variable in the three time periods (2004, 2006, 2009)

State	Creating new posts			Holding competitive civil-service examinations			Abolishing posts			Setting and adjusting wages			Imposing disciplinary sanctions			Choosing CPD from a three-candidate list			Existence of an organic law			Existence of a maintenance fund			Existence of a Higher Council			Subordination to state departments			
	2004	2006	2009	2004	2006	2009	2004	2006	2009	2004	2006	2009	2004	2006	2009	2004	2006	2009	2004	2006	2009	2004	2006	2009	2004	2006	2009	2004	2006	2009	
AC	Y	N	N	Y	Y	N	Y	N	N	Y	N	N	Y	Y	Y	N	N	Y	Y	Y	N	N	N	Y	Y	Y	N	N	N		
AL	N	N	N	Y	Y	Y	N	N	N	N	N	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N	
AM	N	Y	N	Y	N	N	N	N	N	N	N	N	N	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N		
AP	N	N	N	Y	Y	N	N	N	N	N	N	N	N	Y	Y	N	N	Y	Y	Y	N	N	N	N	Y	Y	N	N	N		
BA	N	N	N	Y	Y	Y	N	Y	N	N	N	N	Y	Y	N	Y	Y	Y	Y	Y	N	N	N	N	Y	Y	N	N	N		
CE	Y	N	N	Y	Y	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N	
DF	N	N	N	N	N	N	N	N	N	N	N	N	Y	Y	Y	N	N	N	N	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	
ES	Y	Y	N	Y	Y	N	N	N	N	N	N	N	Y	Y	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	H	N	N	N	
GO*																															
MA	N	Y	N	N	N	Y	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N	N	Y	Y	N	N	N	
MG	N	Y	Y	N	N	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N	N	Y	Y	N	Y	N	
MS	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N	
MT	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N		Y	Y	Y	N	N	N	
PA	Y	N	N	N	N	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	N	N	
PB	N	N	N	Y	N	N	N	N	N	N	N	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N	
PI	Y	N	N	N	Y	Y	N	N	N	N	N	N	Y	Y	Y	Y	N	N	Y	Y	Y	N	Y	Y	N	Y	Y	N	N	N	
PE	N	N	Y	Y	Y	N	N	N	N	N	N	N	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N	
PR*																															
RJ	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	N	N	N	
RN*		N	N		Y	N		N	N		N	N		Y	Y		Y	N		Y	Y		Y	N		Y	Y	N	N	N	
RR	N	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	N	Y	Y	N	N	N	
RO	N	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	N	N	N	Y	Y	Y	N	N	
RS	N	Y	Y	N	Y	Y	N	Y	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	N
SC*																															
SE	N	N	Y		Y	N	N	N	N	N	N	N	Y	Y	Y	Y	N	Y	Y	Y	N	N	N	N	Y	Y	N	N	N	N	
SP*		N	N		Y	Y		N	N		N	N		Y	Y		Y	Y		Y	Y		Y	Y		Y	Y		N	N	
TO	N	N	N	Y	Y	Y	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	N	Y	Y	Y	N	N	

Key: Y= existence of the prerogative; N= non-existence of the prerogative.

* States in which there was no PDO at the time of research or for which there was no data available.

Source: Brazilian Public Defender's Office Database.

In 2004, out of the five Public Defender's Offices without independence, two of them were in states with a high HDI (RS and DF), two in a state with a medium low HDI (PE and TO) and one in a state with a low HDI (PA). Out of the 12 PDOs with low independence, one of

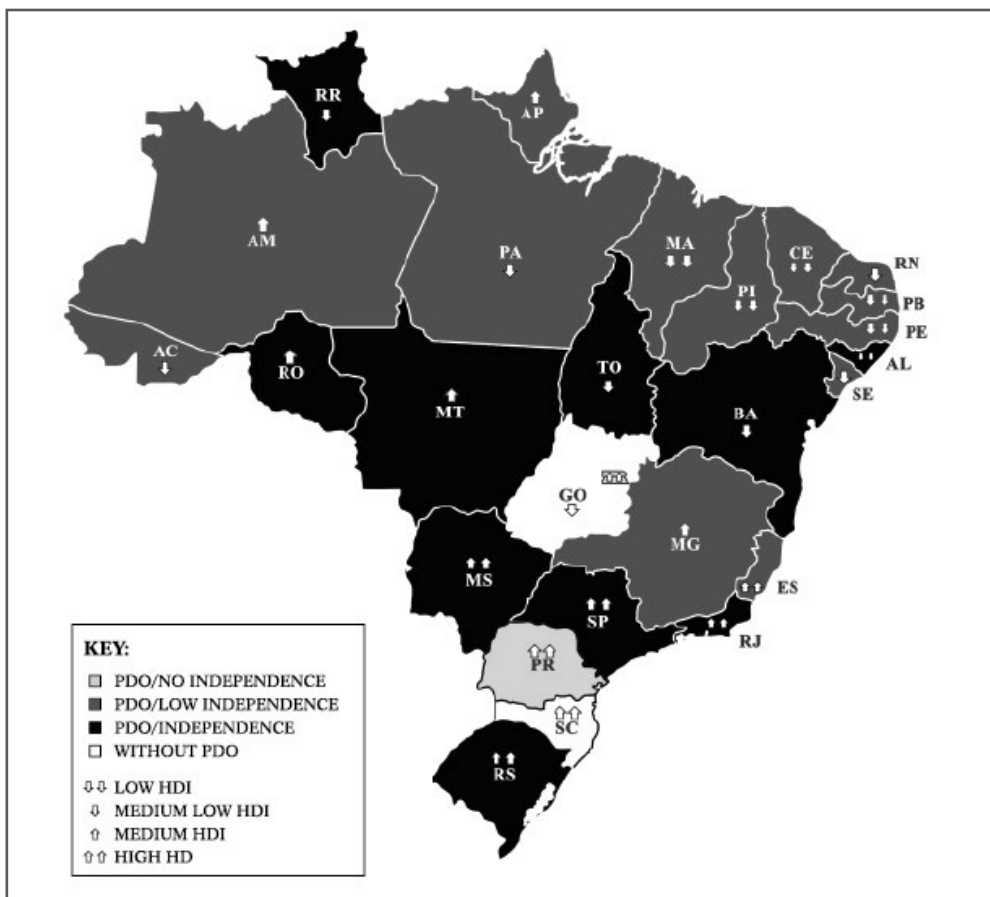
them was in a state with a high HDI (ES), four in states with a medium high HDI (AM, AP, MG, RO), three in states with a medium low HDI (BA, RO, SE) and four in states with a low HDI (AL, MA, PB, PI). Lastly, out of the five independent PDOs, two were in states with a high HDI, one in a state with a medium high HDI (MT), one in a state with a medium low HDI (AC) and one in a state with a low HDI (CE).

In 2006, the only Public Defender’s Office without independence was found in a state with a high HDI (DF). Out of the 14 PDOs with low independence, one was in a state with a high HDI (ES), three in states with a medium high HDI (AM, AP, MG), four in states with a medium low HDI (AC, PA, RN, SE) and six in states with a low HDI (AL, CE, MA, PB, PI, PE). And lastly, out of the nine independent Public Defender’s Offices, four were in states with a high HDI (MS, RJ, RS, SP), two in states with a medium high HDI (MT, RO) and three in states with a medium low HDI (BA, RR, TO).

In 2009, the two Public Defender’s Offices without independence were found in states with a high HDI (DF and PR). Out of the 13 PDOs that had low independence, one was in a state with a high HDI (ES), three in states with a medium high HDI (AM, AP, MG), four were in states with a medium low HDI (AC, PA, RN, SE) and five in states with a low HDI (CE, MA, PB, PI, PE). Lastly, out of the 10 independent PDOs, four were in states with a high HDI (MS, RJ, RS, SP), two in a state with a medium high HDI (MT, RO), three in one with a medium low HDI (BA, RR, TO) and one in a state with a low HDI (AL).

The map below illustrates the panorama in the last period.

Map 1. Independence of Public Defender’s Offices an HDI in Brazilian states in 2009



Source: Brazilian Public Defender’ Office Database.

This distribution shows that prior to the reform there was no valid relationship between independence and HDI. In spite of this, we were able to see that during the reform there was a tendency for non-independent states with a low HDI to remain so. They seemed incapable of establishing independent Public Defender's Offices. A comparison between periods showed a tendency towards an expansion of independence after the reform, including in states with a low HDI. However, the fact that states with a high HDI remained non-independent after that reform is worthy of attention, as it shows that as well as socioeconomic criteria, cultural and political factors also interfere in the institutional trajectories of states such as Paraná and the Federal District.

Conclusion

This article has investigated the institutionalisation and reform that granted independence and new functions to the Public Defender's Office in Brazil, with a focus on the process in the states. Our main findings can be summarised as follows:

In the Brazilian case, the achievement of independence can be explained based on two theoretical references of judicial empowerment. In ideational terms, the reform and attainment of independence originate from a long process of fighting for democracy and for guaranteeing rights in Brazil, even before the end of the military regime. The presence of pressure groups, associations and political actors in the institutionalisation of democratic policies in Brazil has shown itself to be vital, as has the great pressure exerted by international bodies, which have been eager for justice systems reforms and for executive bodies that are actually independent. From the governance point of view, there has been a visible change in the patterns of Brazilian federalism in the last few decades, from the granting of independence to the three subnational entities (federation, states and municipalities), resulting in a strengthening of regional inequalities, to a more recent one by the federal Executive attempting to establish uniformity, often using judicialisation as support. The PDOs' independence can be seen as an attempt to standardise public assistance to the most vulnerable sectors in the states, thus aiming at guaranteeing more equitable access to justice in the country.

This process did not occur without struggles and conflict, especially among the justice system's actors themselves, revealing an overt clash between the Public Defender's Office, the State Prosecutor's Office and the Brazilian Bar Association.

The institutionalisation and implementation of independence in the states took place in a slow and varied fashion. There was a rise in independence in procedural terms, an increase in the Chief Public Defender's power, but there are still restrictions as to his power in budgetary matters. Public defenders are now more independent in the exercise of their new powers, such as in the filing of class actions. In spite of a constant increase in the number of defenders in the states, of the higher budgets in the institutions and of the average wages of these professionals, there are still deficits (in terms of active and needed defenders) and inequalities (compared to other bodies of the justice system).

Few studies have aimed to investigate the role of the other institutions integrating the justice system. An understanding of the processes of institutionalisation and independence of these new institutions – considered vital for the consolidation of democracy in Latin American countries – is crucial for carrying out comparative analyses of legal studies in political science. And this is a debate that has only just begun.

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Flying in Clear Skies: Technical Arguments Influencing ANAC Regulations*

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Regulatory agencies possess the particularity of being controlled by non-elected politicians whose power is derived from delegations made by incumbent powers. There exists, however, a concern with the creation of institutional mechanisms that permit public participation, thus guaranteeing greater democratization and social control of the regulatory process. One of these participatory mechanisms is the public hearing, which was not given much attention by Brazilian literature on lobbying and interest groups. This article seeks to contribute to fill this gap, focusing on the impact of interest groups acting upon the National Civil Aviation Agency, ANAC. Analyzing comments sent to the public hearings, we identified the commentators and the intensity of their participation, the impact of their efforts as measured by the rate of comment incorporation, and we explained why some comments are incorporated and others are not. We organized an original data base of the comments made at all ANAC public hearings between 2007 and May 2012. We analyzed 518 comments concerning 48 regulations. To test participant influence, we classified the comments by degree of technicality, economic or legal argument, authorship, and request for regulation. To understand the incorporation process, we used regression models through which we presented evidence that a comment's incorporation is directly related to its degree of technicality. Technical comments, which effectively subsidize the resolution, have a higher chance of being incorporated. Even more than corporate power or its force of participation, the technical quality proved to be the main factor for comment incorporation.

Keywords: Public hearing; social participation; regulatory agencies; ANAC; lobby.

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The replication dataset can be found in bpsr.org.br/files/arquivos/Banco_Dados_Baird_Fernandes.html

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Introduction

Daily, we see information in the press regarding health plans, telephone and energy rates, the prohibition of medicines, etc. What do these themes have in common? They are all regulated by federal regulatory agencies. Created in the mid-1990s in the midst of the state reform process, the regulatory agency is an important institutional innovation. Among its main characteristics is the existence of institutional mechanisms to enable and encourage social participation and control.

One of these participation mechanisms is the public consultation, whereby groups can send contributions to the regulatory agencies in respect to regulation projects. If we combine this move towards social participation with the growing impact which measures adopted by these agencies generate in society, it is expected that the groups will articulate to try to influence the formulation of regulation in their favor (BAIRD, 2012). It is important to note, however, that regulatory agencies do not have a legal obligation to institute public hearings (ALVES, 2008). However, the performance of consultations is customary, at least for polemic themes that affect important interests.

Despite the importance of the subject, little attention has been given at these hearings to the interest group's political actions upon regulatory agencies. Most studies seek to analyze the relationship between agencies and other instances of Executive Power (PÓ, 2009; SILVA, 2011a; SILVA, 2011b). On the other hand, studies of interest group lobbying tend to focus on other political arenas, principally National Congress (CABRAL, 2007; MANCUSO, 2007; TAGLIALEGNA and CARVALHO, 2006). The present analysis seeks to fill in this gap, driving its attention to the impact of interest group performance upon the National Civil Aviation Agency, ANAC. For this, we analyzed comments sent during all public hearings¹ since the creation of the agency in 2006².

In taking on this study, we had three basic objectives: the first was to identify types of commentators participating in public hearings and their intensity; secondly, we strove to evaluate the impact of the group's performance through their contributions. Finally, we attempted to explain why these comments were incorporated into the final text of the regulation. The agencies have a discretionary power over the resolutions to be adopted, reserving the right to incorporate, or not, the proposed comments into the final version of the regulation.

The article is divided into six sections, including the introduction. Next, we present literature about interest groups and bureaucracy, introducing the discussion about regulatory agencies. In the third section, we analyze the role of the public hearings and we broach the research hypothesis. In the fourth section we present the research methodology, with the presentation of our data and estimation methods. In the fifth section, we present the

1 We should clarify that regulatory agencies often establish differences between the public consultations and the public hearings. The former provides the possibility of sending written contributions, whereas the latter refers to physical presence at the session. Differently from other hearings, ANAC does not distinguish between these two mechanisms. In this manner, we use the term public hearing to refer to the process of allowing general participation by the population through written comments, as well as the sessions requiring presence whose discourses were transcribed and used as input at the regulatory agency discussions.

2 ANAC, the only regulatory agency created during the presidential term of Luís Inácio Lula da Silva, was the last federal regulatory agency to be instituted.

empirical results. Finally, in the sixth section, we conclude by summarizing the main findings and proposing new avenues to be pursued to better understand the role of interest groups in Brazilian regulatory agency decision-making processes.

Interest groups and bureaucracy

Articles about interest groups always emphasize the effects of the political actions of these groups upon Congress. However, during the second half of the last century, important governmental functions were transferred to governmental agencies linked to the Executive Power, charged with detailing and executing the laws. These agencies became important actors in the State political-institutional architecture and were responsible for complex tasks, providing services or regulating private activity (FERNANDES, 2011 and PETERS, 1995). During the last decades, ten times more regulations were produced by governmental agencies than the number of laws approved by Congress (COGLIANESE, 2004, p.05 apud YACKEE and YACKEE, 2006). Despite this major transformation, few efforts have been made in the theoretical field to account for this new political-institutional framework.

Three theoretical discussions began dealing early on with the effects of interest group political actions upon governmental agencies, becoming, therefore, references for debates in this area: discussion about forms of intermediation relations between interest groups and the government, studies of policy subsystems and regulation economic theory.

Classical studies performed on the Brazilian case embark on the analysis of relationship patterns between the government and interest groups, using concepts such as clientelism, bureaucratic rings and corporatism (CARDOSO, 1975; DINIZ and BOSCHI, 2004; NUNES, 1997; SCHMITTER, 1971). Although enlightening, and with an extremely keen perception of the Brazilian political reality, these studies were less interested in pursuing a systematic empirical analysis of the interest group's actions than in constructing a typology of public-private interaction in Brazil.

Policy subsystem studies gave a highlighted role to the effect of interest group's actions upon governmental agencies, mapping the relationships between the principal actors in certain areas of public policy. These studies sought to make a diachronic analysis of the public policies beginning with the relations established between interest groups, agencies and Congress, forming what has become known as the iron triangle (FRITSCHLER, 1969; HECLLO, 1978). It is noted, therefore, that Congress still performs an important role within this theoretic lineage. Although regulatory agencies participate in the analytical framework, the analysis focuses on the understanding of the political macro processes and the description of the main events related to public policy.

In the beginning of the 1970s, the seminal work of George Stigler (1975) gave rise to the theory of economic regulation, often called capture theory. The theory of economic regulation formally modeled a relationship system between politicians and interest groups linked to industry: the interest groups needed regulations to protect themselves from market competition, while the politicians offered these regulations. A balance was reached from common interests: the groups obtained protection to survive on the market with the creation of entrance barriers for new competitors, while the politicians obtained financial support to keep their party machine alive and to gain votes.

This was the first theoretical body to specifically treat the relationship between interest groups and agencies. In spite of their theoretical contributions, the models did not allow the

empirical and theoretical analysis of how the mechanisms and nuances of the group's concrete actions affected the interaction between groups and regulatory agencies. It is interesting to note that, except for a few case studies (MOE, 1985; SELZNICK, 1949), "surprisingly little empirical work has been done on the role of interest groups in administrative policymaking" (BAUMGARTNER and LEECH, 1998, p. 145).

The point which caught the attention of Baumgartner and Leech is particularly surprising in the USA, in that the country's legislation already foresaw a formal participation mechanism for groups in the formulation of agency regulations since 1946: the Administrative Procedures Act (APA), which obliges regulatory agencies to publish all proposed legislations in the Federal Register (the equivalent of Brazil's *Diário Oficial*) and to open a period for the receipt of written contributions from the interest groups (notice and comment period). Only after analysis of the comments can the regulatory agencies define the final content of the legislation to be effectively adopted.

This was exactly "the path taken by many authors, beginning in the 1990s, seeking to measure the group's influence on agency decisions through observation of the suggestions made on proposed resolutions" (BAIRD, 2012, p. 65). The pioneer study was performed by Golden (1998). The methodology employed by the author was innovative and of great heuristic value since, focusing on this rich source of information, it could measure the real impact of interest group contributions on regulatory agency legislation, thereby permitting a more accurate and concrete evaluation of the interest group's lobbying during an important phase of the decision process.

One of the principle forms of lobbying is the provision of technical information to bureaucrats who are responsible for the formulation and implementation of public policies. In this sense, public consultations become a valuable tool for observing the impact of the interest group's actions on bureaucracy, since the moment of interaction between the interest groups and bureaucracy is formal and documented, enabling empirical analysis of the lobby on bureaucracy.

Golden (1998) collated the beginning and final versions of 11 resolutions promulgated by three regulatory agencies and observed whether or not the changes corresponded with the contributions. Assuming that the changes had occurred as a result of the comments, the author could verify if the interest groups had influence or not. Various authors took the same path, adopting similar methodology and observing the content and the type of participation at the public consultations (BALLA, 1998; WEST, 2004).

Susan Yackee (2005) adopted this new perspective, but brought greater methodological sophistication to encompass a broader list of resolutions and obtain results that are likely more generalized. The author united more than one thousand contributions from approximately forty regulations and performed inferential analysis, not merely descriptive, to assess the impact of the comments on the final versions of the resolutions. The author observed that regulatory agencies altered their resolutions to better correspond with the average positioning of the commentators during the period of the public hearings.

Despite the problems relative to this type of analysis, with the difficulties of codifying the changes which occurred (WEST, 2005) and the absence of contextual variables that could help explain the final policy outcomes (BAIRD, 2012), Yackee's study (2005) opened new doors for literature, especially for those interested in obtaining generalized results for a broader population of public consultations.

Yackee and Yackee (2006) analyzed the business bias in the incorporation of nearly 1700 comments regarding 30 regulations by four government regulatory agencies. Kelleher and Yackee (2006) observed informal contacts - phone calls and personal meetings - conducted by legislators,

governors and interest groups in an attempt to influence regulatory agencies. To do so, they relied on surveys conducted with decision-makers from about 80 regulatory agencies in the 50 U.S. states. Yackee and McKay (2007) studied the effects of competition among interest groups in lobbying the regulatory agencies. Their sample was based on 1700 comments on 40 regulations.

Naughton, Schmid, Yackee and Zhan (2009) evaluated the importance of interest group participation in the early stages of decision-making. Analyzing approximately 500 comments coming from 36 regulations concerning the Department of Transportation, the authors concluded that contributions made early in the process affect the final adopted text. Yackee and Nelson (2011) studied the role of coalitions in influencing the regulatory agencies. From the combination of data from surveys conducted with entities that lobby and analyze content concerning seven regulatory agencies, the authors found evidence of coalition effectiveness in impacting the approved regulations.

The debate regarding interest group actions with regulatory agencies in Brazil began taking greater form, beginning with the creation of regulatory agencies in the mid-1990s and with the increasing presence of formal mechanisms for popular participation, such as public consultations and hearings. Despite the absence of a single law governing their operation, all national regulatory agencies have mechanisms for popular participation.

The primary focus of this study, however, was something else. The process of creation and institutional evolution of regulatory agencies gave rise to a profusion of works that sought to understand the political game behind their formation and institutional design (BAIRD, 2011; NUNES, 2001; NUNES et al, 2007; PIOVESAN, 2002). Others sought to discuss the rationality of the model vis-à-vis the executive agencies (COSTA, 2002; PACHECO, 2006). Mechanisms for civil society participation and accountability present in the agencies model were studied by Pó (2004) and Pó and Abrucio (2006).

Despite the diversity of studies, the main debate concerns the independence of regulatory agencies and the control mechanisms available to the elected government to oversee the actions of regulatory bodies (PÓ, 2009; SILVA, 2011a; SILVA, 2011b). These studies analyze the action of the government itself, and not the actions of the interest groups. As pointed out by Baird (2012), one can, “roughly distinguish between two possible areas of focus for regulatory agencies: one focuses on the key actors of the state and the other focuses more closely on the actions of interest groups” (BAIRD, 2012, p.71).

This second focus, though less widespread, was also covered by national literature, with studies that sought to follow the actions of interest groups through contributions made during the public consultations (ALVES, 2008; MATTOS, 2004; SILVA, 2012). These studies aim to describe the participants in the public consultations at the National Telecommunications Agency - ANATEL, the National Electric Energy Agency - ANEEL, and the National Health Surveillance Agency - ANVISA, analyzing the incorporation rate of the comments made by these actors, so as to assess the potential influence exercised by these groups.

Studies performed by Mattos (2004) and Alves (2008) analyzed about a dozen ANATEL and ANVISA resolutions, respectively, and demonstrated that the interests of the groups are relatively contemplated: in both cases, the incorporation rate of contributions was approximately 25%.

The work of Silva (2012) was more comprehensive, covering all of the ANEEL resolutions in public hearings between 1998 and 2006. The authors sought to compare the incorporation of comments made by business interest groups vis-à-vis consumers. Their main hypothesis, based on the ideas of Olson (1999) and Stigler (1975), was related to a relatively greater acceptance of comments made by the regulated sector. The conclusion points to a greater favoritism of corporate groups, although the percentage difference is minimal.

These studies, of a more descriptive character, represent important efforts to use the regulatory agency's popular participation mechanisms to understand the influence exercised by interest groups. In line with the seminal study by Golden (1998), it was possible to observe who participates the most at public consultations and which group's comments are considered. However, the methodology used was not sufficient to explain why certain contributions are more heeded than others by the regulatory agencies. It is upon this challenge that we focus our work.

Interest group influence at public hearings

Economic regulation theory attributes an important role to interest groups, but the analyses do not take into consideration the complexity of the political phenomenon. The positive theory of institutions (MOE, 1987) sought to broaden the discussion by identifying the principal-agent problems in the regulatory process. They sought, therefore, to establish more direct connections between social interests and political outcomes. The theoretical focus was on the mechanisms available to those in office to control public bureaucracy, whose need for supervision would therefore arise from the necessity to delegate power and from the relative autonomy of the bureaucrats (WEINGAST and MORAN, 1983).

The first focus of study was to understand how the American Congress controls the activities of regulatory agencies (CARRIGAN and COGLIANESE, 2011; WEINGAST and MORAN, 1983). There are several ways to exercise this control, the most direct being the approval of detailed laws, in order to reduce the space for autonomous bureaucrat decisions (KERWIN, 1996). The executive branch also appears as a competitor in the quest for control of the regulatory agencies, providing some means of supervision. It is thus possible to observe progress in relation to the theory of economic regulation, in that the importance of institutions and political actors was highlighted, showing how institutional mediations affect the way in which social interests are reflected, at the end of the day, in public policies.

However, putting too much focus on institutions, this neglected the direct political actions of the interest groups. This action is not restricted to the election period, via bid presentations or campaign financing. Interest groups are organized and perform permanent and direct lobbying to these powers, including via public hearings. Kerwin (1996) was direct in his criticism: "Interest groups are not considered the major players, but profoundly influence these other institutions." (KERWIN, 1996, p. 297). You can therefore see that "what occurred in theories concerning regulation was a pendulous movement that went from one extreme of emphasis on social interests to another extreme, that of emphasis on institutions interests, without being able to articulate a more coherent theory that would account for balancing interests and institutions" (BAIRD, 2012, p. 61).

It is clear, therefore, that studies with a more empirical foundation about the actual influence exercised by interest groups are greatly valued. It is worth emphasizing that although the neo-institutionalism literature has considered the regulatory agency's participation mechanisms, their focus was to observe the way in which the "principals" - the executive and legislative powers - maintained control over the bureaucracy, slowing its discretionary momentum. According to this logic, the groups who feel affected by the regulatory agencies would use the public hearings to make sure that their opposition is made known to these powers. Once alerted, the "principals" could pressure the bureaucracy and define the decision to be made.

Thus, it is important to adopt another theoretical perspective on this regulatory moment, to allow the accurate analysis of interest group's influence on the regulatory agencies. This work seeks to contribute to the effort to fill this gap by analyzing the impact of contributions

from interest groups at all ANAC public hearings between 2007 and 2012. Our work also seeks to advance in relation to Brazilian literature on the subject, in that it presents and seeks to test some hypothesis which explain the motivation for regulatory agencies to incorporate certain comments over others.

The first way to qualify the comments is to divide them into technical and non-technical categories. It is possible that technical reviews tend to be incorporated by the regulator, since they provide information that may not have been evaluated during the preparation of the draft resolution. Furthermore, we classify the arguments presented in the comments as economic or legal. With that, we seek to find out if the regulatory agency is more sensitive to a particular type of argument. Finally, we analyze whether the comment calls for more or less regulation.

The introduction of these variables that qualify the comments made is relevant because a higher comment incorporation rate may be related to an increased production capacity of more informative comments, warning of economic, political or legal consequences of the resolution in question. It is possible that a group has a higher comment incorporation rate because of producing qualified comments and analyses concerning the resolution and not because of possessing greater influence on ANAC.

We propose the following research hypothesis:

Hypothesis 01: Technicality of the comments: agencies tend to incorporate more technical comments than non-technical comments.

In the context of this hypothesis, the public hearing would be a time to improve resolutions. The comments serve to increase the information available to the regulatory agency and improve the quality of the resolution. The regulatory agencies opened public hearings aiming at obtaining feedback from stakeholders. Moreover, during the public hearings, mere political pressure, when unqualified, would not produce large effects. The victorious arguments are precisely those that would shed light on new information relevant to the regulatory agency.

An important note concerning this point: by distinguishing between technical and non-technical comments, we do not claim, in any way, that technical comments put forth by any interest group could be neutral and therefore devoid of political interest. Comments from all groups are politically motivated, in the sense of being based on interests about how the benefits resulting from new resolutions should be distributed among different social groups. Thus, when dealing with technical comments, we are just pointing to the fact that some comments have the power to contribute more information pertaining to the topic addressed by the regulatory agency, when examining issues in a sophisticated and detailed manner, basing their positions and proposals on technical information and/or statistical data.

Hypothesis 02: Economic comments: agencies tend to incorporate comments that present economic arguments.

During the public hearings, mere political pressure, when unqualified in economic arguments, would not have a major effect during this time of decision-making. The arguments that tend to be victorious are precisely those that produce information and warnings about potential economic risks to the regulated sector. This is because ANAC would be sensitive to the economic interests at stake during their decision-making process and would avoid increasing costs to stakeholders when their decisions would affect the performance of the sector.

Hypothesis 03: Legal comments: agencies tend to incorporate comments presenting legal arguments.

During the public hearings, mere political pressure, when unqualified in legal arguments, would not have a major effect during this time of decision-making. The arguments that tend to be victorious are precisely those that produce information relevant to the regulatory agency, including warnings that the resolution violates national or international law, signaling future court battles if it is not modified. Threats of legal retaliation would raise the costs for the regulatory agency of changing the bill.

Hypothesis 04: Power of business groups: businesses and business groups tend to get better results at public hearings.

Business interest groups are more organized and possess more resources to put pressure on regulatory agencies, besides being able to count on other pressure mechanisms. Based on collective action problems analyzed by Olson (1999), we know that the formation and operations of various groups in society are not symmetrical or balanced. The organizational and action capacity of small groups gives them a disproportionate power in relation to latent groups, in such a manner that these tend to benefit more in detriment to large social groups with common interests, but without the incentive to mobilize. The business groups would naturally be a group benefiting from a larger organization capacity, in that they are composed by a smaller number of parties.

Hypothesis 05: Business groups produce better comments: companies and business groups tend to have better results at public hearings because they produce better-qualified comments, offering the regulatory agencies arguments that corroborate and justify their interests.

In the event that the more incorporated comments are the technical comments and business groups are the most privileged groups in ANAC public hearings, we intend to see if this relationship is enhanced when interacting. That is, if the comments actually incorporated are the technical comments from the business community. The logic behind this hypothesis is the same that explains Hypothesis 4, nuanced by the fact that ANAC does not answer any comment from the business community except those which are justified in a technical manner, although they do not give the same attention to technical arguments from other non-business groups.

Methodology

Our research design does not seek to exhaust the explanations regarding why the ANAC resolutions take one form or another, answering to these or those interests. Surely, there are other mechanisms to pressure regulatory agencies. This can occur both directly but informally, with contact with the directors of the regulatory agencies, and indirectly, when interest groups mobilize other powers and/or other regulatory agencies of the Executive Branch to make contact with the regulatory agencies (YACKEE, 2005). Nor are we concerned with understanding how the topics covered by these resolutions entered the political agenda of the regulatory agencies while other, equally-important issues did not (BACHARACH and BARATZ, 1962), since mechanisms that explain the selection of topics to be regulated are beyond the proposed search method. Our goal, more modest, is to consider the action of

interest groups exclusively during the public hearing, seeking to understand the causes that explain the influence exercised during this specific moment of decision-making.

Data

The analysis will be made from an original database on the comments made at the ANAC public hearings held between 2007 and 2012. The basic unit of analysis is the comment, and this refers to the set of propositions made by a specific actor regarding the proposed regulations at ANAC public hearings.

The choice of the unit of analysis is due to the fact that the responses made by ANAC on the incorporation or not of the contributions made at their public hearings are not uniform. In some reports, the considerations are made in relation to the comments of each of the actors; in other reports, the comments are divided into propositions and considerations are made for each of the propositions, organized into sets of similar propositions and in reference to specific articles and paragraphs of the regulations. Thus, when interest groups showed different documents in the same public hearing, these are considered as parts of the same comment.

In all, we analyzed 518 comments concerning 48 regulations. In the table below, we show the number of resolutions per year receiving comments and the number of comments made each year. To test the relative influence of the participants in the public hearings, we classify the comments according to the following variables: 1) incorporation of comment; 2) comment technicality; 3) economic argument; 4) legal argument; 5) comment authorship; 6) demand for regulation.

An analysis of comment contents by variable codification was carried out by three coders.

We adopted similar criteria to those used in the North American literature on participation in regulatory agencies public hearings. Like us, Golden (1998), West (2005), Yackee (2005) and Yackee and Yackee (2006) used content analysis to transform the comments and resolutions into quantitative data. This is because content analysis is “a research technique for making valid and replicable inferences from data” (KRIPPENDORFF, 1980, p. 21 apud YACKEE and YACKEE, 2006).

To estimate the reliability of content analysis realized by the three distinct coders, we determined that some regulations would be analyzed by two of the three coders, which allowed the evaluation of the method’s strength by evaluating the Pearson correlation coefficient. Of 48 regulations, 15 were analyzed by two coders.

Table 1. Resolutions and comments by year

Year	No regulamentations	No comments
2007	02	31
2008	03	44
2009	20	219
2010	14	185
2011	06	32
2012	03	07
Total	48	518

Source: Dataset: Banco_Dados_Baird_Fernandes

The rules for the encoding used in the research were as follows:

The variable incorporation measures whether the comment was incorporated or not.

We assign the value of 0 when the comment is not incorporated, 1 when it is considered appropriate and submitted for future analysis and 2 when it is effectively incorporated and changes the final resolution. Partial attention to the comment is assigned the value of 2, to the extent that the final version of the resolution is changed. ANAC itself indicates the incorporation status of the comment.

The variable technicality measures the technical quality of the comment. The value of 0 is assigned when the comment is not technical, 1 when the comment shows some knowledge of the matter by the commentator, but no comprehensive assessment, and 2 when there is a thorough analysis of the issue, including the submission of data to add to the debate. To check the validity of the results, two other measures of technical quality of comments were made: the number of words and *number of proposals for change*. A greater number of words generally indicate a greater technical capacity to discuss the matter in the same way that the *proposals for change* usually mean prior detailed knowledge on the subject.

The variable *economic comment* indicates whether the comment is an economic theme or argument, or not. We assign the value of 1 when the argument is of an economic nature and 0 if it is not. The economic argument concerns the requests for changes due to the fact that the resolutions affect the economic sector. The same goes for the *legal comment* variable. The value of 0 is assigned when the argument is not legal and 1 when it is. The legal argument refers to requests for changes of the resolutions because of their inconsistency with rules and national and/or international laws.

The variable *request for regulation* measures if the comment asks for more or less regulation. When the comment requested a move towards greater regulation, it was assigned a value of 1. When the comment requested a change towards lesser regulation, it was assigned a value of -1. When the comment did not request a change in the level of regulation, it was assigned a value of 0. Finally, the variable *comment author* indicates the type of interest group to which the commentator belongs. There are six distinct types of commentators: i) public institutions; ii) individuals; iii) companies; iv) business associations; v) labor unions; and finally, vi) civil society organizations. Our categories are mutually exclusive and exhaustive, and the vi type is residual.

Reliability of variables

Table 2 shows data reliability through the Pearson correlation coefficient for each of the variables obtained from the comparison of variable assignments made by each of the independent coders, taken in pairs³. As we see in Table 2, the data has satisfactory reliability indices. All variables have correlations higher than 0.5 and the main variable of interest, incorporation, has an index greater than 0.88. Moreover, all are significant. The average reliability of the database is 0.8313 and if we exclude the variables number of words and number of proposals for change, the average reliability is 0.790.

3 Twenty comments were simultaneously analyzed by AB, 17 by BC and 14 by AC.

Table 2. Reliability of variables

Variables/codificators	AB	AC	BC
Incorporation	0.888**	0.941**	0.935**
Technicality	0.823**	0.723**	0.540+
Words	0.999**	0.953**	0.728**
Proposals	0.972**	0.958**	0.995**
Economic	1.00**	0.840**	0.685*
Legal	0.780**	0.734**	0.595+
Regulation	1.00**	0.683**	0.677**

Pearson's correlation: p - value <0,05(+); <0,01* and <0,001(**).

Source: Dataset: Banco_Dados_Baird_Fernandes

Methods

In the next section, we analyze the data indicating which interest groups contributed the most and which type of comments were most commonly made. Then, we analyze their respective rates of incorporation and, finally, which variables are related to the incorporation of comments, through regression analysis of binary data and multi-categorical data. When the dependent variable is 0 or 1, we use logistic regression models, and when the dependent variable is 0, 1 and 2, we use ordered logistic regression models. In all these, we present strong standard errors clustered by regulation.

The logistic models causes results predicted by the estimated model to be between 0 and 1, thereby estimating the probability that the event ($Y = 1$) occurs. In turn, the ordered logistic models are appropriate when the dependent variable has more than two categories and the values of each category have a natural sequential order. This is because the values assigned to the variables are not arbitrary, but the interval difference is not equal to each interval. That is, the 2 does not represent a value that is twice 1 (WOOLDRIDGE, 2002, p. 504).

Econometric model

The ordered logistic model is the more general of the two proposed estimations therefore we define our estimation technique only using this model. The binary logistic model is a special case of the former. In both, y (conditioned on independent variables x) can be derived from a latent variable model.

Assuming that the latent variable y^* is determined by the process (WOOLDRIDGE, 2002, p. 505):

$$(1) \quad y^* = x\beta + e; \quad e|x \sim \text{Normal}(0,1),$$

where β is $K \times 1$ and x does not have a constant. And $\alpha_1 < \alpha_2 < \dots < \alpha_j$ are separation parameters that define:

$$\begin{aligned}
 (2) \quad & y = 0; \text{ if } y^* \leq \alpha_1 \\
 & y = 1; \text{ if } \alpha_1 \leq y^* \leq \alpha_2 \\
 & (...) \\
 & y = j; \text{ if } y^* > \alpha_j
 \end{aligned}$$

Estimation

The parameters α_i and β_i are estimated by maximum likelihood by the function of log-likelihood (WOOLDRIDGE, 2002, p. 506).

$$\begin{aligned}
 (3) \quad L_i(\alpha, \beta) = & 1[y_i=0] \log [\Lambda(\alpha_1 - x_i\beta)] + 1[y_i=1] \log [\Lambda(\alpha_2 - x_i\beta) - \Lambda(\alpha_1 - x_i\beta)] + \dots \\
 & \dots + 1[y_i = j] \log [1 - \Lambda(\alpha_j - x_i\beta)]
 \end{aligned}$$

Who participates and how

Our first interest is to observe the relative degree of participation in public hearings.

To do so, we show how many comments were made by each of the interest groups, divided into four categories: the business community, consisting of companies and business associations; state actors; individuals; and civil society representatives, composed of trade unions and non-governmental organizations. As the reviews vary in the number of propositions and in length, we also present the comparison according to these variables.

The most participatory group is the business community group, with over 50% of the comments, 68% of the proposals and 70% of the words sent. In absolute numbers, the business community presented 263 of the 518 comments, 1599 of the 2345 proposals and 433,280 of the 618,481 words. Far behind the business community, individuals are the second most significant group, reaching 30.7% of the comments made, 14.5% of the proposals and 11.2% of the words, indicating therefore that, although its gross share is relatively large (159 of 518 comments), their comments are less sophisticated than those made by the business community.

The third most participatory group is made up of state actors who are responsible for approximately 10% of the comments, 12% of the proposals and 14% of the words. And finally, the fourth and least-participative group is made up of representatives of organized civil society and non-governmental organizations and trade unions, which have reached very low levels of comments made: 8% of comments, 5% of the proposals and 5% of the words.

These results are shown in Table 3:

Table 3. Participation in ANAC public hearings

Participation	Nº comments		Nº proposals		Nº words	
Public actors	54	10.4%	285	12.2%	87274	14.1%
Individuals	159	30.7%	339	14.4%	68967	11.1%
Business community	263	50.8%	1599	68.2%	433280	70.1%
Civil society	42	8.1%	122	5.2%	28960	4.7%
Total	518	100%	2345	100%	618481	100%

Source: Dataset: Banco_Dados_Baird_Fernandes

If we analyze this data with reference to the size of the comments as a way of measuring their technicality, the result remains quite favorable for the business community. The relative amount of words and proposals per comment is much higher in corporate participation. However, in this regard, the difference between business community comments and those of state actors is significantly lower. It is therefore not possible to indicate that business community comments are technically superior to those of the state actors. On the other hand, the relative length of the comments from these two groups is about 2-3 times greater than the relative length of comments from individuals and representatives of organized civil society, namely 2.25 times greater when the length is measured in number proposals and 2.91 times higher when it is measured in number of words. The data are presented in Table 4 below.

We compared the findings in Table 4 with the measurement taken by the technicality variable that assigns values of 0 when the comment is not technical, 1 when the comment demonstrates knowledge of the matter but without being an exhaustive review and 2 when there is a thorough review. In Table 5, we display the absolute values and the average technicality of the comments made by the respective types of groups. The same pattern repeats itself, which is a good indication of the validity of the technicality variable⁴. Comments from the public sector actors and the business sector actors are still much more technical than the other comments. We can also observe that all interest groups tend to mostly present comments that reflect knowledge of the issue, without providing a thorough evaluation. On the other hand, only the business community sector and the public sector tend to present sophisticated comments that thoroughly evaluate the regulated issue more often. These two groups rarely (about 15% of the time) present non-technical reviews, while this happens more often in the comments from civil society representatives and individuals (31% and 48% of the time, respectively).

Table 4. Relative length of comments

Participation	Per proposal	Per words
Business community	6.08	1,647.45
State actors	5.28	1,616.19
Individuals	2.13	433.75
Civil society	2.90	689.52
All groups	4.53	1,193.98

Source: Dataset: Banco_Dados_Baird_Fernandes

Table 5. Comments by technical level

Interest groups	Not technical	Knowledge of the issue	Exhaustive assesment	Average
State actors	08	29	17	1.17
Business community	40	166	57	1.06
Civil society	13	25	04	0.79
Individuals	76	78	05	0.55
Total	137	298	83	0.90

Source: Dataset: Banco_Dados_Baird_Fernandes

⁴ Another indication of the validity of this variable is the correlation with the number of words logarithm and with the number of proposals for change logarithm (+ 1), namely: 0.7071 and 0.5752.

Finally, we will analyze whether or not the comments use economic and legal arguments. We do this in Table 6 and Table 7. In Table 6 we find that the actors, with the exception of the business community, do not use economic arguments. While 30% of the business community's comments used economic arguments, only 16.7% of the organized civil society's comments did. The rate of economic comment utilization was 13% in the public sector, while economic comments made by individuals occurred less than 5% of the time. In Table 7, we find that the sector that most uses legal arguments is the public sector; the use of this type of argument occurs in no less than 37% of the comments. The business community makes use of legal arguments about 20.5% of the time, civil society 19% and individuals 12.6%.

The above results demonstrate that ANAC public hearings constitute an arena in which technically-qualified business community interest groups have great influence. However, the low presence of organized civil society interest groups, individuals or public authority interest groups does not mean that they have more difficulties in having their arguments heard by the regulatory agency.

It is important to note that, although the business community interest groups are responsible for about 50% of the comments, it is impossible to define an ideal pattern for the participation of the different social groups. It is possible, therefore, that the 50% of participation of the other groups is a high number, given their limited access to organizational, financial and political resources to attend public hearings.

We will now discuss the aspects that influence the incorporation of comments. It would not be unlikely, for example, if the regulatory agency were to possess an anti-business bias, that other interest groups would possess higher rates of incorporation than the business community interest groups. This is what we will discuss in the next section.

Table 6. Economic argumentation

Participation	Not economic	Economic	Proportion
Business community	184	79	30.0%
State actors	47	07	13.0%
Civil society	35	07	16.7%
Individuals	152	07	4.4%
Total	418	100	19.3%

Source: Dataset: Banco_Dados_Baird_Fernandes

Table 7. Legal argumentation

Participation	Not legal	Legal	Proportion
State actors	34	20	37.0%
Business community	209	54	20.5%
Civil society	34	08	19.0%
Individuals	139	20	12.6%
Total	416	102	19.7%

Source: Dataset: Banco_Dados_Baird_Fernandes

Who influences

The variable measuring the influence of the actors present at the ANAC public hearings is comment incorporation. The value is 0 when the comment is not embedded, 1 when the comment is considered relevant and ANAC agrees to review it in the future and 2 when it is incorporated and it effectively changes the final resolution. As we can see in the table below, the average incorporation rate of all comments is quite high, showing that the regulatory agency is fairly sensitive to commentator's arguments. Approximately 41% of the comments incorporated have at least part of their proposal incorporated by the regulatory agency. However, this rate is not similar for all groups. State actors and business group actors have a higher incorporation rate than individuals and civil society interest groups. The results are shown in Table 8 below.

Despite the fact that business community groups and state actors have higher incorporation rates, this does not mean that these actors are privileged by ANAC. As discussed in the previous section, the groups tend to have different types of comments, varying in terms of argument technicality or type of argument presented. Thus, it is necessary to make a multivariate analysis incorporating the variables that qualify the comments, so we can judge if the observed higher rate of incorporation for business community interest groups and state actors groups, as explained in Table 8, reflects a favoring by ANAC of those groups, or if it is merely due the characteristics of the submitted comments.

We used two regression models. In the first model, given the nature of the dependent variable trichotomy, we appraised ordered logistic models to check if the relationships found are valid for the two different answers given by ANAC: incorporation that alters the resolution and consideration of the result relevance for future analysis. In the second, we consider only the comment incorporation as an event, and the relevance, or non-incorporation, as a non-event, so that the dependent variable becomes binary and logistic regression estimation is then appropriate. In both analyses, we first present models that include only interest groups dummies, and then incorporate the characteristics of the comments. Finally, we create interactions to see if specific types of comments are more accepted by ANAC when submitted by a particular set of interest groups.

Table 8. Incorporation of comments

Participation	Non-incorporation	To be analyzed	Incorporation	Rate of incorporation
State actors	22	03	29	53.7%
Individuals	106	09	44	27.7%
Business community	118	15	130	49.4%
Civil society	25	07	10	23.8%
Total	271	34	213	41.1%

Source: Dataset: Banco_Dados_Baird_Fernandes

Ordered logistic model

In Table 9 we present the results of the ordered logistic model to infer which interest groups have the most influence on ANAC resolutions in public hearings. In the first model, we identify the interest groups, having organized civil society as baseline (it therefore will not appear in the table). As can be seen in the first column, the comment indicator realized by an individual is not different from the baseline and will thus be removed from the base model, ready in the second column. Comment indicators made by business community interest groups and the public sector are positive and significant.

In the second model, we incorporate the variables that characterize the comments: technicality, economic, legal and regulatory. The results are quite interesting. The two commentator-type indicator variables lose significance and only the variable that indicates that the comment is technical proves to be statistically significant⁵. The results remain strong when measuring technicality by the number of words or proposals, as in Model 3 columns 4 and 5. In the fourth and fifth models, we verify if the relationship between technicality and interest group is stronger when the variables interact. That is, if ANAC is more responsive to technical arguments from the business community and/or public sector. Neither of the interactions was significant, indicating that ANAC does not respond differently to technical arguments coming from different types of interest groups.

Thus, the analysis indicates that no interest group takes precedence in ANAC public hearings. The highest incorporation rates of actors from the public sector and the business community do not appear to be justified by an alleged favoritism to those groups but rather by the very quality of the argument⁶.

We note, finally, that in some of the models presented, the difference between the categories comment is not incorporated and comment deemed relevant and to be considered in the future is not statistically significant (models 1, 4 and 5), and because of this, we re-did the analysis, this time having a binary variable as a dependent variable that measures only the effective incorporation of the comment as an event, considering the other categories, therefore, as non-events. Using the basic function of Model 2, we observed that only the probability of non-incorporation (0) and incorporation (2) is affected by variation in the level of technicality, as can be seen in Figure 1⁷.

5 The same result stands if the technicality variable is computed as a dummy indicating that the comment is 0 (neither technical nor exhaustive) and 1 (exhaustive).

6 As a simple verification of the empirical findings, we re-did all analyses using the ordinary minimum squared estimator. Very similar results were obtained. Moreover, we re-did the analyses incorporating year dummies to eliminate specific impacts that had occurred each year. Again, the results were quite similar.

7 The formulas used to construct the graph are the following: $P(Y=0) = 1 / [1 + \exp(X\beta - \alpha_1)]$; $P(Y=1) = \{1/[1 + \exp(X\beta - \alpha_2)]\} - \{1/[1 + \exp(X\beta - \alpha_1)]\}$; $P(Y=2) = 1 - [1/\exp(X\beta - \alpha_2)]$. For the other variables present in the model, we will consider the average values

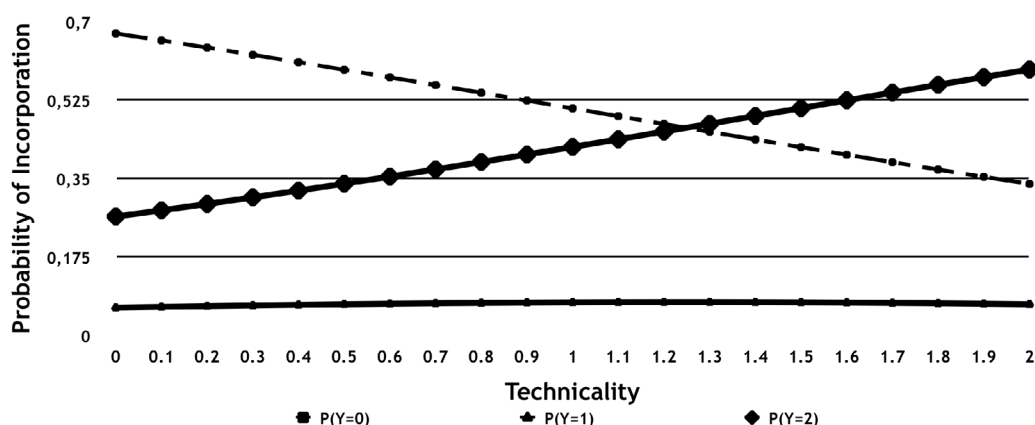
Table 9. Incorporation of ordered logistic regression comments

Incorporation	Model 01	Model 02	Model 03	Model 04	Model 05	
1. Group variables						
Business community	0.771*	0.887*	0.530	0.303	0.151	0.137
	0.365	0.440	0.402	0.402	0.443	0.636
State actors	0.943*	1.060*	0.702	0.571	0.630	0.805
	0.371	0.466	0.477	0.482	0.598	0.441
Individuals	-0.151					
	0.496					
2. Comment characteristics						
Technicality		0.698**			0.461	0.619*
		0.253			0.360	0.262
Log (words)			0.644***			
			0.131			
Log (propositions)				1.705**		
				0.235		
Economic		0.498	0.057	0.187	0.467	0.493
		0.398	0.261	0.303	0.402	0.406
Legal		0.121	-0.076	-0.531	0.125	0.122
		0.392	0.437	0.496	0.385	0.392
Regulatory		-0.112	-0.220	-0.358	-0.088	-0.106
		0.279	0.233	0.240	0.297	0.268
3. Interactions						
Business community x Technicality					0.460	
					0.403	
State actors x Technicality						0.734
						0.717
Cutt 1	0.538	0.655	1.174*	4.234***	2.256***	1.009
	0.279	0.420	0.582	1.028	0.589	0.632
Cutt 2	0.818**	0.934*	1.471*	4.555***	2.627***	1.307*
	0.303	0.445	0.613	1.080	0.640	0.667

Source: Dataset: Banco_Dados_Baird_Fernandes

Obs.1: * p<0.05, ** p<0.01, ***p<0.00 | Obs.2: N= 518 | Obs.3: standard errors clustered by regulation

Graph 1. Probability of incorporation due to comment technicality.



Binary logistic model

In Table 10, we present the results of the logistic model. Like before, we identified the interest groups in the first model, having organized civil society and the group of comments from individuals as baseline. The result is surprising, because only the public sector was statistically significant. Business community interest groups do not appear different from the baseline, although they are at the limit of 'not significant'. In the second model, we incorporate the variables that characterize the comments, namely: technicality, economic, legal and regulatory. Again the results indicate that the relevant variable is the comment technicality⁸. The results are more evident when measuring technicality according to the number of words or the number of proposals in each of the comments, which is the third model presented in columns 3 and 4.

In the fourth and fifth models, we again verify whether the relationship between technicality and interest group is stronger when the variables interact. As we can see in Table 10, the interactions between technicality and public sector and between technicality and business community sector are not different from zero, indicating that ANAC does not respond differently to technical arguments coming from different types of interest groups. Thus, there is no prevalence of any interest group at ANAC public hearings. The higher incorporation rates of actors from the public sector and the business community sector does not seem to be justified by any supposed bias towards these groups, but to be due to these sectors producing the most qualified comments. Repeating the analysis in Figure 2, it is once again clear that increasing technical sophistication of the argument implies an increased likelihood of comment incorporation.

In this paper we presented five research hypothesis. The empirical results show that only Hypothesis 1 is supported. The best results at ANAC public hearings, obtained by state actors and the business community, do not reflect the fact that these groups possess greater influence on the regulatory agency, but reflect rather the propensity of ANAC to incorporate comments of a technical nature. As we have seen, it was precisely these groups that have produced the most technical arguments over these six years (2007-2012).

There was not sufficient evidence to support hypothesis 2, 3, 4 and 5. In relation to the first two, the fact that the arguments are of economic or legal nature does not increase the likelihood of comment incorporation. Regarding the third hypothesis, once the comment quality has been verified, we find no evidence that business groups benefit vis-à-vis the other social groups at this stage of the decision process. Hypothesis 5 was refuted, moreover, because the statistical non-significance of the interactions showed that technical arguments presented by the business community groups are not privileged in comparison to technical comments from other interest groups.

We demonstrate, however, that, at least in ANAC public hearings held between 2007 and 2012, there is no evidence of capture theory on the part of business interests. At this moment in the decision process, what seems to guide the changes in the proposed resolutions is the quality of argumentation aimed at perfecting the regulation written by the regulatory agency.

⁸ The same result stands if the technicality variable is computed as a dummy indicating that the comment is 0 (neither technical nor exhaustive) and 1 (exhaustive).

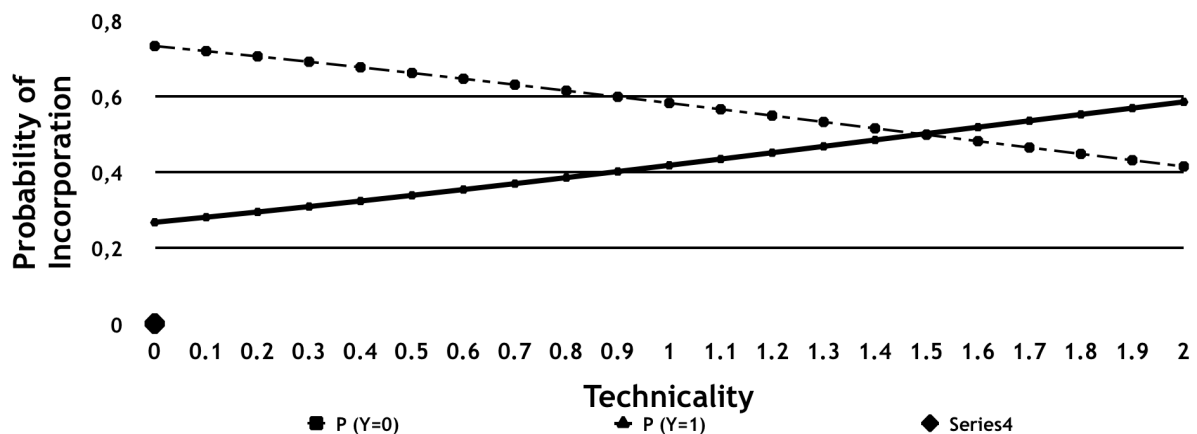
Table 10. Incorporation of binary logistic regression comments

Incorporation	Model 01	Model 02	Model 03	Model 04	Model 05	
1. Group variables						
Business community	0.979	0.608	0.366	0.213	-0.034	0.641
	0.502	0.476	0.483	0.538	0.492	0.458
State actors	1.150*	0.736	0.577	0.712	0.910	-0.048
	0.532	0.532	0.550	0.702	0.492	1.104
Individuals						
2. Comment characteristics						
Technicality		0.676*			0.302	0.591*
		0.277			0.368	0.296
Log (words)			0.671***			
			0.144			
Log (propositions)				1.735***		
				0.266		
Economic		0.278	-0.220	-0.174	0.233	0.265
		0.371	0.244	0.266	0.374	0.384
Legal		0.272	0.064	-0.328	0.277	0.279
		0.391	0.429	0.492	0.387	0.393
Regulatory		0.110	0.009	-0.018	0.159	0.120
		0.236	0.192	0.209	0.253	0.226
3. Interactions						
Business community x Technicality					0.736	
					0.419	
State actors x Technicality						0.717
						0.709
Constant	-1.001*	-1.512	-4.772***	-2.726***	-1.254	-1.453*
	0.509	0.694	1.248	0.740	0.709	0.707

Source: Dataset: Banco_Dados_Baird_Fernandes

Obs.1: * p<0.05, ** p<0.01, ***p<0.00 | Obs.2: N= 518 | Obs.3: standard errors clustered by regulation

Graph 2. Probability of incorporation due to technicality of the comment.



Conclusions

Political scientists in Brazil have become increasingly interested in the subject of regulatory agencies. We saw, however, that there is still little effort being made to analyze the political actions and influence of lobbyists on regulatory agencies. The present study adds to this promising literature and seeks to make a contribution towards a better understanding of the role of interest groups and their impact on public hearings.

It is important to note that the method of measuring the impact of the interest groups action is based on their formal participation in public hearings. We do not intend to cover all of the influence exerted by the groups, which could only be done through a close examination of their actions by the ANAC beyond participation mechanisms provided by the regulatory agency and a broader analysis that would take into account the role of other political arenas possibly triggered by these groups, such as other bodies of the Executive Branch and the Legislative Branch.

Our analysis of ANAC public hearings revealed, as did the work of Silva concerning ANEEL (2012), predominance in the participation of the business community. This result was expected, in that it concerns an industry, the civil aviation sector, which is characterized by the presence of strong business groups. On the other hand, the technicality of the discussions tended to reduce the participation of a wider range of social actors. It should be emphasized that the participation of individuals was significant. Moreover, it is difficult to determine an optimal level of participation for the various social groups.

The rate of comment incorporation also follows a pattern similar to the study by Silva (2012). Summing the categories “accepted” and “partially accepted” for the ANEEL comment contributions, we found that the overall comment incorporation rate was at 40.1 %, similar to the rate found in our study: 41.1%. Another interesting pattern to be noted is in the groups whose comments are incorporated the most by regulatory agencies. We identified that state actors, followed by the business community actors, are the participants who are most likely to be recognized by ANAC, a dynamic which was also observed in Silva’s study (2012).

Brazilian literature on the subject therefore begins to draw certain conclusions about the involvement and impact of social groups at regulatory agencies’ public hearings. First of all, there seems to be predominance in business community participation. Secondly, the regulatory agencies consider the participation of social groups to be relevant, which is expressed by a relatively high level of incorporation, or at least partial incorporation, of their comments. Thirdly, it should be noted that public institutions are important participants in this process, and usually have their demands met in good measure.

This brings us to the final point, which is perhaps the main and most original contribution of our work, which is to understand why some interest group contributions have more influence on the decisions made by ANAC following the public hearings.

Our analysis showed that the main reason why comments are incorporated into the final text of regulations is directly related to their technical nature. Thus, comments which are greatly technical in nature and serve to subsidize the discussion and to improve the text under scrutiny are more likely to be incorporated by the regulatory agency. Despite the power of the business community and the strength of their participation, the technical quality of the comment is the main factor in explaining the rate of comment incorporation used by ANAC.

This finding is entirely consistent with the role of public hearings, as per analysis by Gonzalo Vecina Neto, first president of the National Health Surveillance Agency - ANVISA. According to him, there are two basic functions that must be met by this expedient:

On one hand, to legitimize the process triggered by regulatory agencies. On the other hand, to collect the technical information necessary for the regulatory agency's performance, even if it means imposing economic losses on the regulated sector. To quote Gonzalo Vecina Neto:

It (the public hearing) will actually impose a new behavior for the market. What, then, is its purpose? To find out if it is lacking in knowledge. Bring in the light of knowledge. Exposed to the light of knowledge, decisions can be made in a technical and legal manner. Not so much in a social manner, because many laws end up having a significant economic burden on the industry (VECINA NETO, 2012).

We are advancing on various aspects in the literature on regulatory agencies and interest groups, finding patterns in the interaction between these groups and regulatory agencies. However, only further studies will allow us to focus on unanswered questions in this discussion, such as the areas of public policy where there is greater or lesser participation; where there is more or less balance in this participation and under what circumstances and in what areas the regulatory agencies tend to be more responsive to interest groups. Likewise, studies that go beyond the scope of public hearings and take into account a broader list of strategies and political arenas driven by interest groups (BAIRD, 2012) can be very useful in divulging all of the influence exerted by these groups.

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A Comparative Analysis of Brazil's Foreign Policy Drivers Towards the USA: Comment on Amorim Neto (2011)*

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This paper looks at the main finding by Amorim Neto (2011), namely that Brazil's power explains why it distanced itself from the country that had once been its great ally in the first half of the last century. We propose an alternative explanation grounded on the realist literature in IR. Ultimately, we seek to determine whether the variable has behaved in the same way for other South American countries, searching for independent variables that could help us explain a visible pattern in the region: the increasing distancing from the United States (USA) at the United Nations General Assembly. We want to contribute to the debate initiated by Amorim Neto (2011) and Schenoni (2012) for future research in the recent field of quantitative analysis of Brazilian Foreign Policy. Using Panel Corrected Standard Error analysis in ten South American countries from 1970 to 2007 we empirically prove that the lower the power gap between a South American country and the U.S., the lower its alignment with the USA in the UN General Assembly voting.

Keywords: Brazilian foreign policy; South America; USA; UN general assembly; panel data econometrics.

Introduction

Even with the unprecedented interest in Brazil, not much attention has yet been given to the research area encompassing the quantitative analysis of the Brazilian Foreign Policy (PEB). Even though until recently the empirical research on the matter was very limited (OLIVEIRA, 2005, p. 27), the recent book by Amorim Neto (AN) *De Dutra a*

(*) <http://dx.doi.org/10.1590/1981-38212014000100013>

The replication dataset can be found in bpsr.org.br/files/arquivos/Banco_Dados_Mouron_Urdinez.html.

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Lula: A Condução e os Determinantes da Política Externa Brasileira (From Dutra to Lula: The Determinants of Brazilian Foreign Policy) (2011) has been a turning point.

Since its publication this work has been used as basis for other papers (RODRIGUEZ, 2012), reviewed (MALAMUD, 2012), quoted (MILANI, 2011; SPOSITO, 2014) and also criticized (SCHENONI, 2012; SENNES, 2011)¹, so it deserves an in depth analysis. Before continuing, we should clarify that we will not attempt to carry out an in-depth and thorough Foreign Policy analysis and neither will we replicate AN's model for other countries. Rather, we want to initiate a debate with the aforementioned author and demonstrate the weak conceptual grounding of the main finding in his book regarding the realist variable. He argues that as Brazil came to be a more powerful State it could distance itself from the United States of America (USA) within the United Nations General Assembly (UNGA) voting and have a more independent conduct.

AN's book is based on the assumption that the degree of convergence with one of its main allies – namely the USA (HIRST, 2009; PINHEIRO, 2004) — within the United Nations General Assembly (UNGA) is a good indicator to understanding the determinants of the PEB. However, even when the use of this strategy has been justified by an extensive bibliography (BOOCKMANN and DREHER, 2011; DREHER et al, 2008; KIM and RUSSETT, 1996; POTRAFKE, 2009; RIESELBACH, 1960), all the countries of South America have followed a similar behavioral pattern in the UNGA for the 1970-2007 period and this needs to be explained (see Appendix A).

The objective of this paper is to look at the causes of this analogous behavior and show that it is not the country's power that explains its voting independence within the UNGA (as AN stated for Brazil), neither the declining power of the USA, as was argued in a response to AN's work, by Schenoni (2012). Rather, after a bibliographic review of the concept of power in International Relations we empirically demonstrate that what matters is the relation of power between two countries and the power gap between them.

On the other hand, with reference to the theory of complex interdependence (KEOHANE and NYE, 1987) that was also considered by AN, we test new indicators based on the existing literature (DREHER and STURM, 2012; OATLEY and YACKEE, 2004; THACKER, 1999; WOODS, 2003), to look for complementary variables that can explain the behavior of South American countries within UNGA.

Finally, using widely tested databases on democracy (GASTIL, 1991; MARSHALL and JAGGERS, 2002) and based on historiographical information, we test whether South American authoritarian regimes have tended to be closer to the USA than democratic ones.

Our paper is structured as follows: the next section presents the theoretical framework and the hypothesis of our work. Secondly, we proceed to some methodological clarifications concerning the models and their reading. Thirdly, we analyze the results. Finally, we arrive at the conclusions and implications of the work, highlighting its strengths and pinpointing a few caveats.

Theoretical framework and hypothesis

Using a Tobit model, AN's work attempts to explain the convergence between Brazil and the United States in UNGA according to nine explanatory variables, three structural and six domestic ones: (a) an indicator of national capabilities to measure power as understood by realism; (b) USA's participation in Brazil's annual exports; (c) a dummy variable to control for the end of the Cold

1 Amorim Neto (2011) was considered the Best Book in International Relations for 2012 by the Brazilian Association of Political Science (ABCP) and won the Award Vitor Nunes Leal.

War; (d) the number of ministers belonging to leftist parties for each given year; (e) the president's ideology; (f) the ideological leaning of his cabinet; (g) the legislative share of the president's party; (h) the legislative strength of left-to-the-center parties; (i) diplomatic inertia.

Among the structural variables the author dismisses variables (b) and (c) for lacking statistical significance. The domestic variables (e), (f), (g) and (h) also showed statistically insignificant results and therefore AN decided to omit them from his final model.

The conclusion he arrives at is that only variables (a) and (i) are significant at a 1% level. This can be read as: small variations in national capacities in Brazil had great impact on the convergence between Brazil and the United States (AMORIM NETO, 2011, p. 183) and strong diplomatic inertia found in statistical tests can be read as an acknowledgment of the key role played by Itamaraty in steering Brazilian external policy (AMORIM NETO, 2011, p. 159).

That is:

[...] the neorealist systemic factor was the most important since as the Brazilian economy grew and industrialized itself, population expanded, society urbanized, and military spending increased, and the size of the armed forces grew, the country was feeling able to, step by step, distance itself from the country who had been its great ally in the first half of the last century (AMORIM NETO, 2011, p.171).

For its part, variable (a) explains the inertial power of Itamaraty, and variable (d) the importance of ideology in the domestic arena, which allowed to assert that "in addition to affirming neorealist theory, this book also highlights the importance of bureaucracy and ideological identity of the actors who run the State in determining foreign policy" (AMORIM NETO, 2011, p.176).

From his finding we ask: how is it possible to explain the high degree of convergence in the UNGA voting between Brazil and other South American countries when it is impossible to consider in the existence of an agreed strategy? Nowadays there are different interpretations of the role played by Brazil in South America (VARAS, 2008, p. 02) which makes it difficult to define the role played by the country in the region (HAKIM, 2010, p. 49). In return, even if there is dissent in relation to Brazil's position in South America and especially when it comes to discuss "leadership" (MOURON, 2012, p. 12), there is a consensus within the academic community that only after the end of the Cold War Brazil for the first time carried out a policy of engagement with its South American neighbors (BETHELL, 2010, p. 417).

Therefore, by taking AN's thought-provoking results as a starting point as well as the debate initiated by Schenoni (2012), in the following sections we shall address three issues, namely: If a country has lost relative power over the years, then should it show an increasing convergence with the USA in UNGA voting? (See Appendix B). Also, does the American power itself explain the greater independence of a country in the UNGA voting? Furthermore, does the fact that Brazil has increased its power provide enough evidence for AN to affirm that it was the cause of the observed voting behavior?

As a secondary objective of this paper we test new variables that we believe might show some significance. Is the American participation in annual exports to Brazil the best available indicator to represent theories on complex interdependence? Sennes (2011) questions the choice of USA's participation in annual exports from Brazil as an independent variable that could reflect the interdependence between the two countries. According to him, this "... understates much more structural and critic matters to the country, such as the American involvement in FDI to Brazil [or the] importance of the country in the public and private

financial flows ...” (SENNES 2011, p. 208). Finally, and following Spektor’s (2009) writing on the Brazilian case, the following question arises: Did authoritarian regimes affect the alignment of South American countries with the USA?

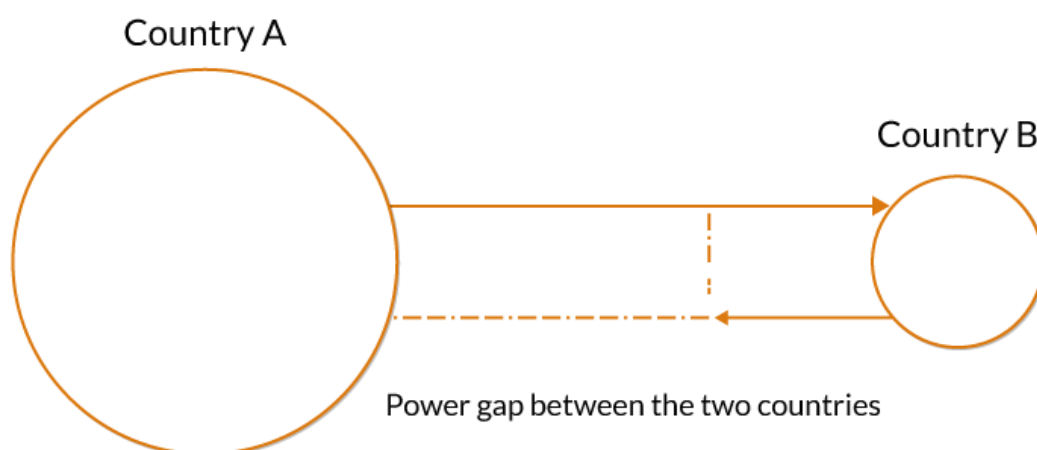
Thus, to answer the above questions we formulated three hypothesis:

Hypothesis 1: The lower the Power Gap between a country and the USA, the lower its alignment with the latter in UNGA voting.

We will use the Weberian-inspired concept of power coined by Robert Dahl in his classic text *The Concept of Power* (1957), and later resumed by Richard Emerson (1962), Steven Lukes (1974) and developed in IR by David Baldwin (1971, 1979, 1980), Jeffery Hart (1976) and later by Waltz (1979, 1993), which assumes that power among countries has a relational nature². This work is different from the one-dimensional vision of power in AN (2011), who only observes the increase or decrease in power of Brazil as well as the concept used by Schenoni (2012) who considers that it is not the growing power of Brazil which accounts for its greater independence from USA, but the progressive weakening of American power.

This vision of power is therefore different from the one-dimensional view in AN (2011) and in Schenoni (2012) as it will take into account the power of both countries, reversing the coefficient symbol as it is expected a positive relationship between the alignment of USA and South American pair in the UNGA and the power gap of both. Thus, power is measured as the gap between USA’s power and the power of the South American country in question. For example, Brazil is more powerful than Paraguay in 2006, it is therefore expected that the power differential between USA and Brazil is smaller than the difference between Paraguay and USA. Then, we refer to a true realistically-read relationship, while the power is conceived as a relationship of “spheres” whose gravitational forces are canceled. “A” has power over “B” to the extent that it achieves “B” do something that otherwise would not do (DAHL, 1957).

Figure 1. Graphical representation of the gap of power between two countries



Source: Elaborated by the authors

2 “The intuitive idea of power is something like this: A has power over B to the extent that he can get B to do something that B would not do otherwise.” (WALTZ, p. 202) “Power is here defined in terms of a relation between actors, and is expressed in simple symbolic notation. From this definition a statement of power comparability is developed, or the relative degree of power held by two or more persons.” (WALTZ, p. 201) “Actors may be individuals, groups, roles, offices, governments, nation-states, or other human aggregates” (WALTZ, 1979, p. 203).

It is rather surprising that the author has not calculated power as a *relationship*, as suggested here, even when he references Waltz (1979), who “emphasizes the ‘relational properties’ (mainly military power and economic) as major determinants of international state action” (AMORIM NETO, 2011, p. 19). The operationalization of this hypothesis is carried out by using a National Material Capabilities Index (CINC) composed of six indicators, which are (1) Total population, (2) Urban population, (3) Iron and steel production, (4) Energy consumption; (5) Military personnel, (6) Military expenditures.

Hypothesis 2a. The greater the flow of Foreign Direct Investment in a South American country;

Hypothesis 2b. the greater the funding from the International Monetary Fund;

Hypothesis 2c. and the more funding from the World Bank, the greater the likelihood that the country is more aligned with the USA within the UNGA.

First we seek to measure if the flow of Foreign Direct Investment had any impact on the degree of alignment of South American countries with the US in the UNGA. Why this choice of variable? Since most of the FDI came from Advanced Industrialized Democracies we believe that voting in UNGA could have been influenced by a “carrot and stick” behavior on behalf of incoming investments. While there are studies that have shown that the frequency of military raids (EMMERT and TUMAN, 2004, p. 16) and the type of institutions in South American countries (BIGLAISER and STAATS, 2010, p. 16) had a significant relevance on FDI flows to the region, there are no known studies that have taken this variable as explanatory to the degree of convergence at the UN between US and South American countries.

In turn, Dreher and Sturm (2006) find that countries that borrowed from the World Bank and the International Monetary Fund voted in alignment with G7 countries, indicating that the source of funding partly determines the behavior of recipient countries in the international arena. Taking this article as reference one of the possible explanations for why much of the South American countries voted similarly in the UN General Assembly in relation to USA could be the great influence it had on the IMF and the WB.

We believe that financing in the region could have been conditioned by votes in the UNGA. A superb paper on the matter is Stone (2004), which uses data on 53 African countries from 1990 to 2000 to show that the IMF’s loans-for-reform contracts were conditioned by voting in the UNGA³. As he notes “Access to Fund financing varies widely, and recent studies have demonstrated a relationship between IMF lending and countries’ voting patterns in the United Nations (UN) General Assembly.” (STONE, 2004, p. 578).

Moreover, since we are analyzing a subcontinent that comprises twelve independent countries and three overseas regions, it is remarkable that there are significant differences among them (DE SEBASTIAN, 1998, p. 15) and that the experiences of those in the second half of the twentieth century were varied (THORP, 1998, p. 213). However, if there is something in common in the financing process of South American countries after World War II is that financial flows came through institutions originating in the USA before other countries – especially West European ones – increased their participation over them and became internationalized (GRIFFITH JONES, 1984, p. 14). Therefore, it can be concluded that the rate by which South American countries were funded for years was largely marked by policies

3 See also Stone (2008).

formulated from the US⁴.

Hypothesis 3. The probability that a South American country has a greater alignment in the UNGA with the USA increases during an authoritarian regime.

While South American military regimes from the period ranging the 30s and 80s were in fact very different, in the words of Alain Rouquié it can be argued that for much of the twentieth century a lasting military hegemony was predominant within the region in which an institutionalized military tutelage exerted great influence over the State (ROUQUIÉ, 1997, p. 294). Although all these regimes shared the goal of establishing a new order and a subordinate society, the political plan to achieve those goals depended, in each case, on countless variables (ACUÑA and SMULOVITZ, 1996, p. 125) among which should be mentioned the interference and influence of the USA.

One aspect common to all dictators who came to power in the late 60s and 70s is that they were part of a generation of officers trained during the Cold War on a counterinsurgency strategy (ROUQUIÉ, 1997, p. 300) and once in power participated within the framework of Operation Condor⁵. It is a fact that American presidents often supported dictators who allied with the USA (MAY and ZELIKOW, 2006).

Does this mean that the authoritarian regimes in the region were unilaterally aligned with the USA? Not necessarily. While the interference of the USA has been analyzed in depth in the cases of Chile (QURESHI, 2009), Argentina and Brazil (SPEKTOR, 2009), all these authors highlight that it is not accurate to assert that the South American authoritarian regimes corresponded fully to guidelines dictated from the United States. However, there is a strong historiographical evidence to affirm the financial and logistic assistance of the USA towards these authoritarian regimes (MCSHERRY, 1999, 2002, 2012). As a counterpart, we think that voting in UNGA could have been influenced by a “carrot and stick” behavior on behalf of military assistance.

Empirics

The sample used in this work consists of ten South American countries, which are studied within the period of 1970-2007 using a panel-type statistical model employing STATA. Even though AN studied the period between 1946 and 2007, data on FMI lending, WB lending, and Foreign Direct Investment is only available from the 70's onwards. It is important to also mention that this paper considers South America –and not Latin America– as Brazil's region of reference⁶. However, Table 5 extends the findings to Latin America and other regions. The countries in our sample are: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Venezuela and Uruguay.

The dependent variable is the same as the one used by AN, namely, the degree of

4 The fact that funding was scarce in the 50's had to do with the lack of importance the region had for the USA right after World War II (GRIFFITH JONES, 1984, p. 26). This low priority would become even more apparent over time (THORP, 1998, p. 138), with the great exception of the Cuban Revolution, until the 80s during the debt crisis process (KUCZYNSKI, 1988).

5 Operative established in 1975, which laid the foundation for future cooperation between South American military dictatorships in the exchange of information on anti dictatorships and communist activities in the whole region.

6 Bethell (2010) discusses why Brazil is not “part” of Latin America.

convergence in the voting at the UN General Assembly with each of the countries analyzed. Information regarding such convergence is obtained from the database built by Erik Voeten and Adis Merdzanovic⁷, which has a record of votes from all member countries of the UN General Assembly between 1946 and 2008. We did not discriminate votes by subject area, but have considered all votes equally.⁸ The aggregated variable is an index of similarity rating from 0 to 1. This index is equal to:

$$\text{Index of Similarity} = \frac{\text{Total number of votes on which two States converge}}{\text{total number of joint votes}}$$

Being computed as 1 = “yes” or “approval”, and 0 = “no” or “disapproval”.

Statistical data used for the operationalization of the six independent variables was taken from four major databases, as summarized in Table 1.

CINC is a composite index of six indicators, which are (1) Total population; (2) Urban population; (3) Iron and steel production; (4) Energy consumption; (5) Military personnel; (6) Military spending. The available data comprises the 1816-2007 period, but because of the limited data for the other independent variables we chose to work with the 1970-2007 period (BREMER, SINGER and STUCKEY, 1972).

We measured both the AN’s original variable and the variable that measures the power gap. We called the first one *Unilateral Power*, and the second, *Power Gap*. We built a power gap index following the framework described in Figure 1. That is, the value for each of the ten South American countries in the study was calculated as the absolute value of the difference between the power of the USA, minus the power of the South American country. This means that the expected relationship in regards to the dependent variable is positive: the weaker the South American country the higher the value of the difference.

This calculation is consistent with Dahl’s conception of power and is a synthesis of the work of AN (for whom Brazil’s power was only relevant) and Schenoni (2012) (who suggested that only the USA was relevant).

For the variables *Foreign Direct Investment (FDI)*, *IMF loans* and *World Bank loans* we used World Bank Data indicators. The indicators used to operationalize each of these variables were (a) Private capital flows, total (% of GDP), (b) Use of IMF credit (DOD, current US\$), (c) Net financial flows, International Bank for Reconstruction and Development (NFL, current US\$).

(a) Private capital flows consist of net foreign direct investment and portfolio investment. Foreign direct investment is net inflows of investment to acquire a lasting management interest in an enterprise operating in an economy other than that of the investor. It is the sum of equity capital, reinvestment of earnings, other long-term capital, and short-term capital as shown in the balance of payments. The FDI included here is total net, that is, net FDI in the reporting economy from foreign sources less net FDI by the reporting economy to the rest of the world. Portfolio investment excludes liabilities constituting foreign authorities’ reserves and covers transactions in equity securities and debt securities (WORLD BANK, 2013A).

7 United Nations General Assembly Voting Data”, <http://hdl.handle.net/1902.1/12379UNF:5:NpHV5DXWPNWMO rLGTjQYA==> Erik Voeten [Distributor] V5 [Version].

8 Amorim Neto considered two separate models (2011, p.182). The first one did not discriminate votes by subject while the second one did, taking into account votes on Security and Politics. Model 1 and 2 did not differ significantly.

(b) The use of IMF credit denotes member's drawings on the IMF other than amounts drawn against the country's reserve tranche position. It includes purchases and drawings under Stand-By, Extended, Structural Adjustment, Enhanced Structural Adjustment, and Systemic Transformation Facility Arrangements as well as Trust Fund loans. SDR allocations are also included in this category. Data are in current USA dollars (WORLD BANK, 2013B).

(c) Net financial flows received by the borrower during the year are disbursements of loans and credits less repayments of principal. The International Bank for Reconstruction and Development is the founding and largest member of the World Bank Group. Data are in current USA dollars (WORLD BANK, 2013C).

The variable *Authoritarian Regime* was tested through three common indicators in the Political Science literature to avoid common problems of measurement (MUNCK and VERKUILEN, 2002). Firstly, we tested a dummy created by the authors based on historiographical information. The existence of an authoritarian government that suppressed the democratic division of powers and free elections on a certain year was coded as 1, otherwise as 0. This variable follows the "minimalist" criteria used by Cheibub et al (2010). Secondly, we tested the existence of authoritarian regimes using Polity IV, which captures the regime authority spectrum on a 21-point scale ranging from -10 (hereditary monarchy) to +10 (consolidated democracy). The Polity scores can also be converted to regime categories: "autocracies" (-10 to -6), "anocracies" (-5 to +5) and "democracies" (+6 to +10). Finally we used the Political Rights Scale of Freedom House, which has rating of 1 through 7, with 1 representing the greatest degree of freedom and 7 the smallest degree of freedom.

Table 1. Sources of data for the Independent Variables

Independent Variable	Source
Countries Unilateral Power (Amorim Neto, 2011)	CINC Index v4.0
USA Power (Schenoni, 2012)	CINC Index v4.0
Power Gap	CINC Index v4.0
Foreign Direct investment (FDI)	World Bank Indicators
International Monetary Fund loans	World Bank Indicators
World Bank loans	World Bank Indicators
Military Dictatorship	Elaborated by the authors, Polity IV, Freedom House

Source: Elaborated by the authors

The general model for this work can be summarized as:

$$\text{Convergence in UNGA voting}_{i,t} = \beta_0 + \beta_1 \text{Unilateral Power}_{i,t} + \beta_2 \text{USA Power}_{i,t} + \beta_3 \text{Countries Power Gap}_{i,t-1} + \beta_4 \text{FDI}_{i,t} + \beta_5 \text{International Monetary Fund loans}_{i,t} + \beta_6 \text{World Bank loans}_{i,t} + \beta_8 \text{Authoritarian Regime}_{i,t} + e_{i,t}$$

Model analysis

We have first defined a model with only three explanatory variables and no corrections to the data. The country's unilateral power (as defined by AN), USA's power (as suggested by SCHENONI, 2012) and the one suggested by us, which we called the Power Gap. There is a theoretical reason to presume that our variable has a better fit that we justified with the classical Dahl paper. Appendix C shows the statistical results of our model.

The first two variants, Model 1 and Model 2, test the three realist variables to see which has a better fit. As can be seen, the Power Gap has a better explanatory power than AN's variable, but not to Schenoni's (2012). Then, under the same assumptions, we have included the other independent variables for a first full version of the model discussed above. These are Models 3 and 4. As can be seen, Power Gap is now the most significant power variable. The WB loans variable is significant, but its effect is almost zero. The variables on authoritarian regimes were all significant, but while the minimalist criteria and Polity IV behaved as expected, Freedom House Political Rights showed a slightly positive relation with the dependent variable. Even if they are useful so as to obtain a first impression of our data, models presented in Appendix C are misspecified in their assumptions, leading to overly optimistic conclusions.

It may be recalled that according to the Gauss-Markov assumptions, OLS estimators are the Best Linear unbiased estimators ("BLUE" for its acronym) if errors are independent of each other and identically distributed with constant variance. The independence is violated when errors in different units are correlated (contemporaneous correlation), or when errors within each unit correlates temporally (serial correlation), or both (see Appendix D). In turn, the equal distribution of errors is violated when the variance is not constant and thus has heteroskedasticity (see Appendix E). Another aspect that until recently was not considered in econometric analysis in International Relations was the control for unit roots, which can lead to spurious regressions. This control should be done before any other controls (see Appendix F).

How can we solve problems of non-stationarity, heterogeneity, heteroskedasticity, and autocorrelation? These problems can be solved using estimators of Feasible Generalized Least Squares (FGLS) or with Panel Corrected Standard Error (PCSE) (BECK and KATZ, 1995; BECK, 2001). We have no certainties that the Models presented by AN have controlled these issues. Our Models 5 and 6, presented in Table 2, use PCSE and corrects the problems of heterogeneity, heteroskedasticity and autocorrelation coefficients which give less optimistic, but more accurate estimators than Models 1 to 4⁹. Models 5 and 6 even display greater significance in the variable "Power Gap", and make AN's and Schenoni's variables non-significant. Any of the control variables show significance, except for the minimalist criteria of authoritarian regime.

9 On page 638 of the paper by Beck and Katz (1995), the authors note that Error Correction Models (ECM) automatically solve problems of heteroscedasticity and spatial correlation, but does not solve problems of temporal autocorrelation (AR1). To resolve the temporal correlation, before rolling the ECM, we use a lag in the Power Gap variable. This is justifiable since the effect of the explanatory variable on the dependent variable is not immediate.

Table 2. Variations for PCSE estimation

Dependent variable: Percentage of convergence with the U.S. in UNGA	Model 5.1	Model 5.2	Model 5.3	Model 6.1	Model 6.2	Model 6.3
Unilateral Power (Amorim Neto, 2011)	17.57 (0.21)	16.54 (0.24)	16.42 (0.25)	- -	- -	- -
USA Power (Schenoni, 2012)	- -	- -	- -	0.97 (0.23)	1.15 (0.16)	1.10 (0.19)
Power Gap	3.12*** (0.00)	2.85*** (0.00)	2.77*** (0.00)	3.03*** (0.00)	2.79*** (0.00)	2.73*** (0.00)
FDI	0.00 (0.30)	0.00 (0.25)	0.00 (0.27)	0.00 (0.25)	0.00 (0.21)	0.00 (0.23)
IMF Loans	-0.00 (0.78)	-0.00 (0.79)	-0.00 (0.81)	-0.00 (0.63)	-0.00 (0.63)	-0.00 (0.66)
WB Loans	0.00 (0.51)	0.00 (0.48)	0.00 (0.46)	0.00 (0.54)	0.00 (0.53)	0.00 (0.50)
Authoritarian Regime (minimalist criteria)	0.05* (0.02)	- -	- -	0.05* (0.03)	- -	- -
Authoritarian Regime (Polity IV)	- -	-0.00 (0.16)	- -	- -	-0.00 (0.14)	- -
Authoritarian Regime (Freedom House)	- -	- -	-0.00 (0.72)	- -	- -	-0.00 (0.73)
Constant	-0.02** (0.00)	-0.02*** (0.00)	-0.02*** (0.00)	-0.02** (0.00)	-0.02** (0.00)	-0.02*** (0.00)
Observations	328	328	322	328	328	322

* p<0.05, ** p<0.01, *** p<0.001

Models 5 and 6 controlled for the temporal autocorrelation (AR1) and the existence of unit roots in the variables. Their different versions correspond to the use of different criteria to measure Authoritarian Regimes. After controlling for non-stationarity, heterogeneity, heteroscedasticity and autocorrelation (AR1), Power Gap variable remains significant, while this is not the case for Unilateral Power and USA Power. The interpretation of this coefficient is as follows: a 1% increase in the power gap between the USA and a South American country has a positive effect on the convergence in UNGA of between 2.73% and 3.12%, depending of the specification of the model. Meanwhile, a country under an authoritarian regime holds a 5% increase in UNGA convergence with the U.S., when measured with the minimalist criteria. With respect to liberal variables “*Foreign Direct Investment*”, “*International Monetary Fund lending*” and “*World Bank lending*”, we can state they show no statistical relationship with the dependent variable and can therefore be added to the variables already tested by AN that did not have statistical significance¹.

Since we have a strong theoretical reason to propose the use of Power Gap as the

1 As were the dummy variable for Cold War and USA weight in Brazilian annual exports.

best proxy for power, as understood in Realist terms, we believe that testing it in different geographical regions would give robustness to our finding. Table 3 shows the behavior of the three power variables in different samples of countries, corresponding to Latin America¹, Africa², East Asia³ and Europe⁴.

Table 3. Checking the robustness of “Power Gap” in other samples

Dependent variable: percentage of convergence with the U.S. in UNGA		Unilateral Power (Amorim Neto, 2011)		USA Power (Schenoni, 2012)		Power gap		Observations
Latin America	(1)	8.709	(1.27)	-	-	3.903***	(6.89)	820
	(2)	-	-	0.638	(1.07)	3.823***	(6.73)	820
	(3)	8.828	(1.28)	0.651	(1.07)	3.858***	(6.79)	820
Africa	(4)	3.411	(0.11)	-	-	4.163***	(5.76)	657
	(5)	-	-	0.179	(0.24)	4.148***	(5.72)	657
	(6)	3.841	(0.12)	0.185	(0.25)	4.149***	(5.72)	657
East Asia	(7)	3.388	(1.22)	-	-	0.848*	(2.12)	420
	(8)	-	-	1.035	(1.27)	0.607	(1.75)	420
	(9)	3.262	(1.18)	1.034	(1.27)	0.838*	(2.10)	420
Europe	(10)	-2.443	(-0.61)	-	-	2.948***	(3.73)	403
	(11)	-	-	-1.556	(-1.91)	2.870***	(3.96)	432
	(12)	-2.343	(-0.58)	-1.531	(-1.82)	3.047***	(3.86)	403

* p<0.05, ** p<0.01, *** p<0.001.

Conclusions

The results of the study show that there is a similar behavior pattern among the ten tested South American countries in the AGNU for the period 1970-2007. In order to explain this behavior, and according to the statistical results obtained, we are able to provide responses to the questions raised in the paper.

1 We considered Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Mexico, Nicaragua, Panamá, Peru, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.

2 We considered Burkina Faso, Cameroon, Chad, Cote d'Ivoire, Equatorial Guinea, Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Libya, Mali, Mauritania, Morocco, Niger, Nigeria, Senegal, and Sierra Leona.

3 We considered Cambodia, China, India, Indonesia, Japan, Malaysia, Myanmar, Nepal, Philippines, Singapore, Sri Lanka, and Thailand.

4 We considered Austria, Belgium, Finland, France, Greece, Ireland, Italy, Netherlands, Portugal, Spain, Sweden, and the United Kingdom.

Firstly, the fact that a South American country weakened between 1970 and 2007 does not necessarily imply that that country got closer politically to the US, using the voting in the UNGA as a *proxy*. This is a counter intuitive conclusion with the results obtained by AN, who argued that the more powerful Brazil was, the more independent it would consequently become. On the other hand, the loss of power of the United States per se does not explain the distance in the voting pattern. Our paper finds that what matters is the power gap, measured in absolute terms, and the annual difference between the world power shares of the South American country and the USA. Therefore, power is conceived as a relationship and not as a resource. This variable is the most important systemic one and from which we may conclude that as the years passed and the power gap got smaller, South American countries had more room to have independent positions and leave the American orbit. We expanded this finding to a larger sample, which include other geographical regions, to give robustness to the results.

Secondly, any of the liberal systemic variables that have been tested showed statistical significance. We have therefore added three liberal variables that have shown no statistical significance (Foreign Direct Investment, International Monetary Fund credits, credits from the World Bank) to the one tested by AN (U.S. participation in annual exports from Brazil).

Thirdly, we did not find enough evidence to affirm that authoritarian regimes have shown a relatively greater alignment with the U.S. in the UNGA than democratic governments, even when there is strong historiographical evidence that can back this hypothesis.

We have contributed to a research line that has, for the first time, explained PEB through quantitative methods. In a time when research in IR in Brazil is booming we expect to see more debates like this. Further research in PEB should focus on the replicability of empirical work, and on the improvement of quantitative techniques.

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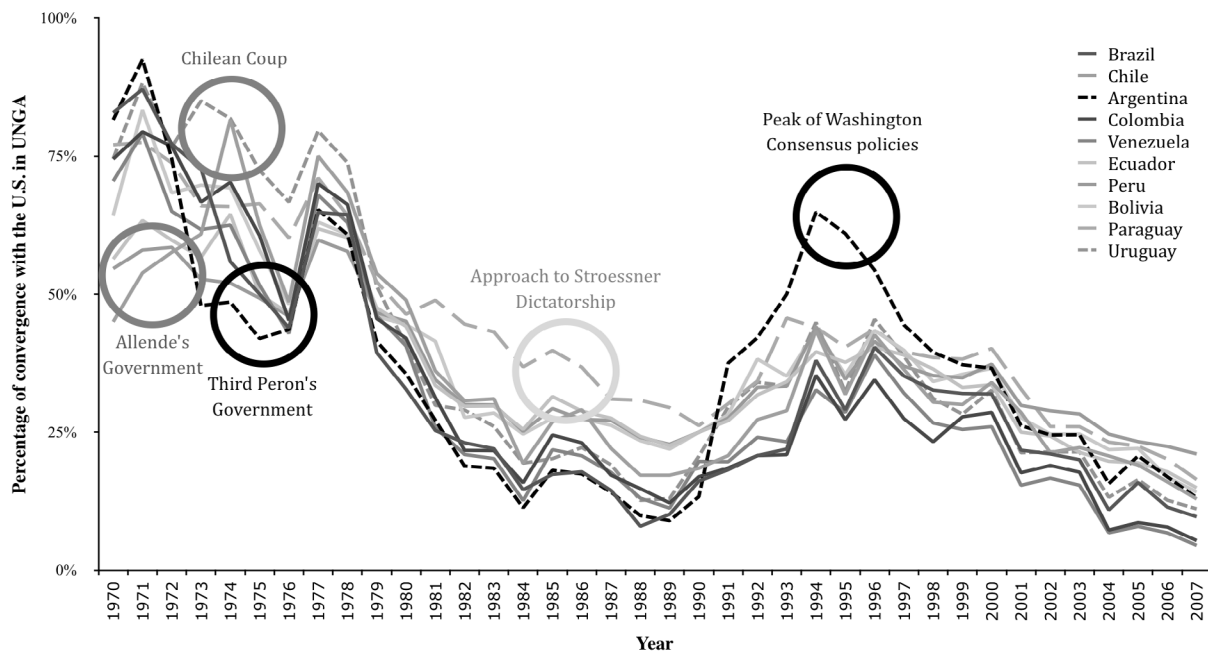
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Appendix A

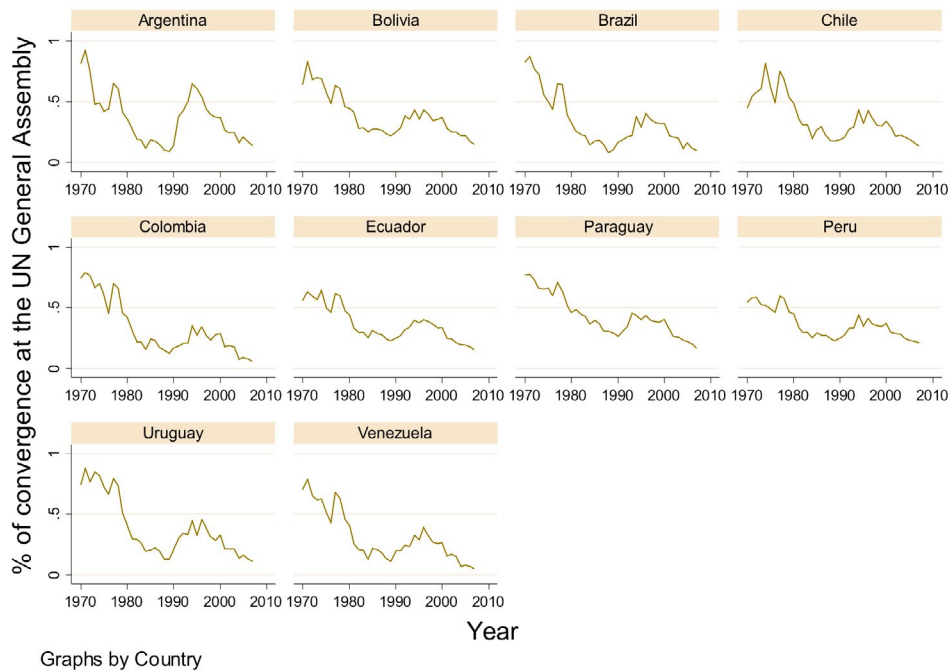
Graphic 1. Behavioural pattern in the UNGA for selected South American countries 1970-2004



Appendix B

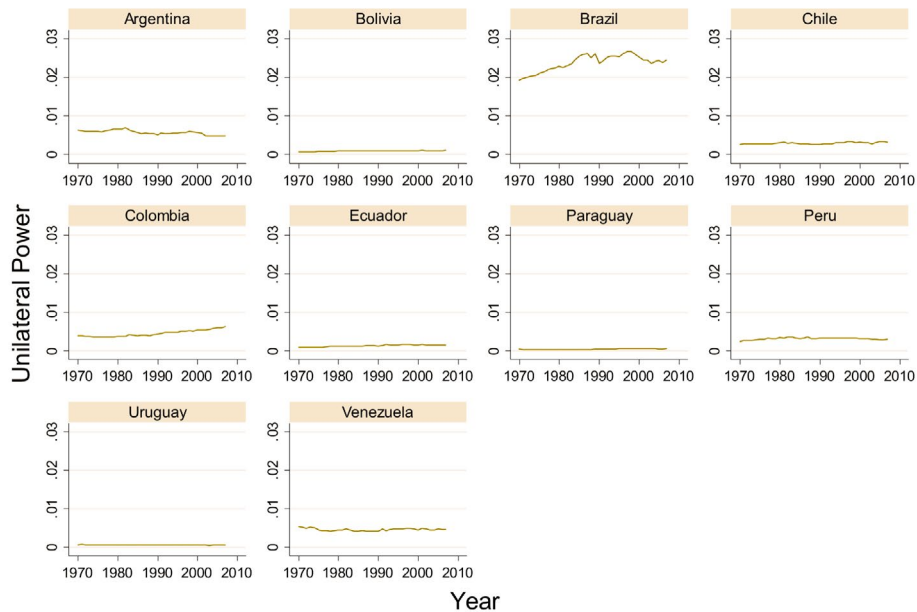
Looking at the percentage of convergence with the U.S. in the UNGA among South American countries it is perceptible that they all show a suspiciously similar pattern.

Graphic 2. Suspiciously similar pattern of convergence with the U.S. in the UNGA
Amorim Neto concludes that:



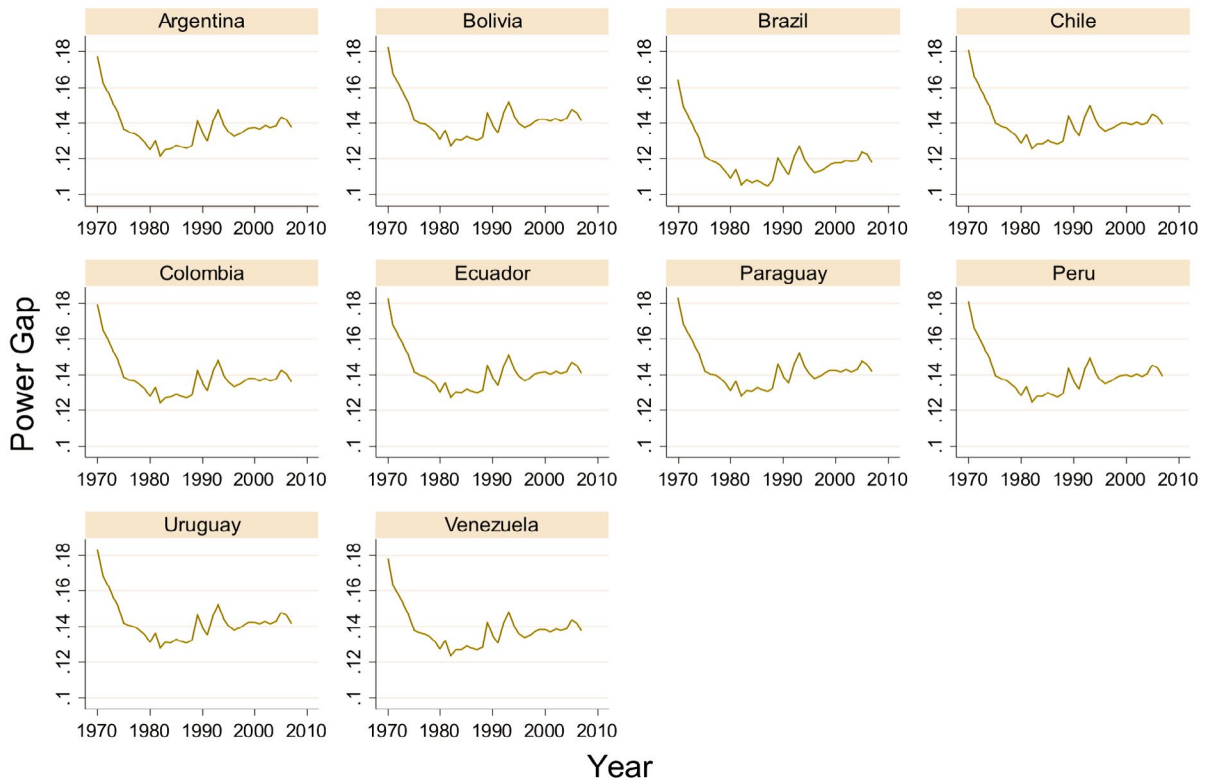
from the second half of the twentieth century, as the Brazilian economy grew and industrialized, its population expanded, its society urbanized, military spending increased as well as the size of the armed forces, the country felt it was able to, step by step, distance itself from the one who had been its great ally during the first half of the last century (AMORIM NETO, 2011, p. 171).

If we look at the figure above, does this mean that all these countries have strengthened between 1970 and 2010? If one looks at the image below, which shows the evolution of the extent of power of each country (measured with the same indicator used by the author for Brazil), we see that some countries such as Argentina, Uruguay and Venezuela not only did not increase their power, but it was actually weakened.

Graphic 3. Dissimilar patterns in the evolution of national capacities

Graphs by Country

For that very reason and based on Robert Dahl's concept of power (1957), we suggest a measure of the variable in which all countries show a similar pattern in relation to the U.S. As mentioned in the body of the work we name this variable "Power Gap", which has been calculated as the absolute value of the difference between the power of country *i* and the power of the U.S., for each year.

Graphic 4. Power gap pattern

Graphs by Country

Appendix C

Table 4. Regression results, models 1 - 4

Dependent variable: Percentage of convergence with the U.S. in UNGA	Model 1	Model 2	Model 3.1	Model 3.2	Model 3.3	Model 4.1	Model 4.2	Model 4.3
Unilateral power (Amorim Neto, 2011)	5.92** (0.01)	-	4.91* (0.02)	5.07* (0.02)	0.59 (0.83)	-	-	-
American power (Schenoni, 2012)	-	6.18** (0.01)	-	-	-	4.93* (0.03)	5.08* (0.02)	0.61 (0.83)
Power gap	9.17*** (0.00)	3.21*** (0.00)	8.11*** (0.00)	7.89*** (0.00)	2.95 (0.27)	3.24*** (0.00)	2.86*** (0.00)	2.36*** (0.00)
FDI	-	-	0.00 (0.83)	0.00 (0.68)	0.00 (0.32)	0.00 (0.84)	0.00 (0.69)	0.00 (0.32)
IMF loans	-	-	-0.00 (0.12)	-0.00 (0.08)	-0.00 (0.08)	-0.00 (0.12)	-0.00 (0.08)	-0.00 (0.08)
WB loans	-	-	-0.00*** (0.00)	-0.00*** (0.00)	-0.00*** (0.00)	-0.00*** (0.00)	-0.00*** (0.00)	-0.00*** (0.00)
Authoritarian regime (minimalist criteria)	-	-	0.17*** (0.00)	-	-	0.17*** (0.00)	-	-
Authoritarian regime (Polity IV)	-	-	-	-0.01*** (0.00)	-	-	-0.01*** (0.00)	-
Authoritarian regime (Freedom House)	-	-	-	-	0.04*** (0.00)	-	-	0.04*** (0.00)
Constant	-0.93** (0.00)	-0.96** (0.00)	-0.82** (0.01)	-0.69* (0.02)	-0.17 (0.65)	-0.83** (0.01)	-0.70* (0.02)	-0.17 (0.65)
Observations	380	380	332	332	326	332	332	326

* p<0.05, ** p<0.01, *** p<0.001

Appendix D

Wooldridge developed a very flexible test based on minimal assumptions, which can be run in STATA. The null hypothesis of this test is that there is no autocorrelation.

Table 5. Wooldridge test for autocorrelation in panel data

Wooldridge test for autocorrelation in panel data
H_0 : no first-order autocorrelation
F(1, 9) = 67.335
Prob > F = 0.0000

The test tells us if there is a problem of autocorrelation that must be corrected (Prob> F = 0.0000). One way is through a fixed effects model with a Grade 1 autoregressive term (AR1) that controls the dependence of t with respect to $t - 1$.

Appendix E

With respect to heteroscedasticity we use the Wald test for groupwise heteroskedasticity, which works better than the Larange and Pagan multiplier test because it is sensitive to the assumption of normality of errors (GREENE, 2000, p. 598). The null hypothesis of this test is that there is no problem of heteroscedasticity. Naturally, when H_0 is rejected there is a heteroscedasticity problem to be solved (Prob>chi2 = 0.0000).

Table 6. Modified Wald test for groupwise heteroskedasticity in fixed effect regression model

Modified Wald test for groupwise heteroskedasticity in fixed effect regression model

$H_0: \sigma(i)^2 = \sigma^2$ for all i

chi²(10) = 60.31

Prob>chi² = 0.000

Appendix F

One of the first concerns when looking at the author's model is that it seems not to have been non-stationarity controlled. Admittedly, until recently only a few econometric works in the field of International Relations controlled for such problems.

By analyzing two non-stationary variables (Yit being explained by Xit) there is a risk of obtaining spurious regressions. Many time series variables are biased for not controlling for unit roots and could lead us to spurious liner relationships, which violate the basic assumptions of Ordinary Least Squares (OLS).

We test the existence of unit roots by using the Dickey-Fuller model (DF). The null hypothesis (H_0) calculated in STATA tests if the variable in question has a unit root. The alternative hypothesis is that the variable is stationary.

By creating a linear graph for the convergence of votes in the UNGA between the U.S. and Brazil we can observe a non-stationary behavior. The DF test has a p value of 0.78 indicating that it is possible to reject H_0 , so that the dependent variable in Amorim Neto (2011) suffers from non-stationarity.

Graphic 5. Non-stationary pattern of AN’s dependent variable

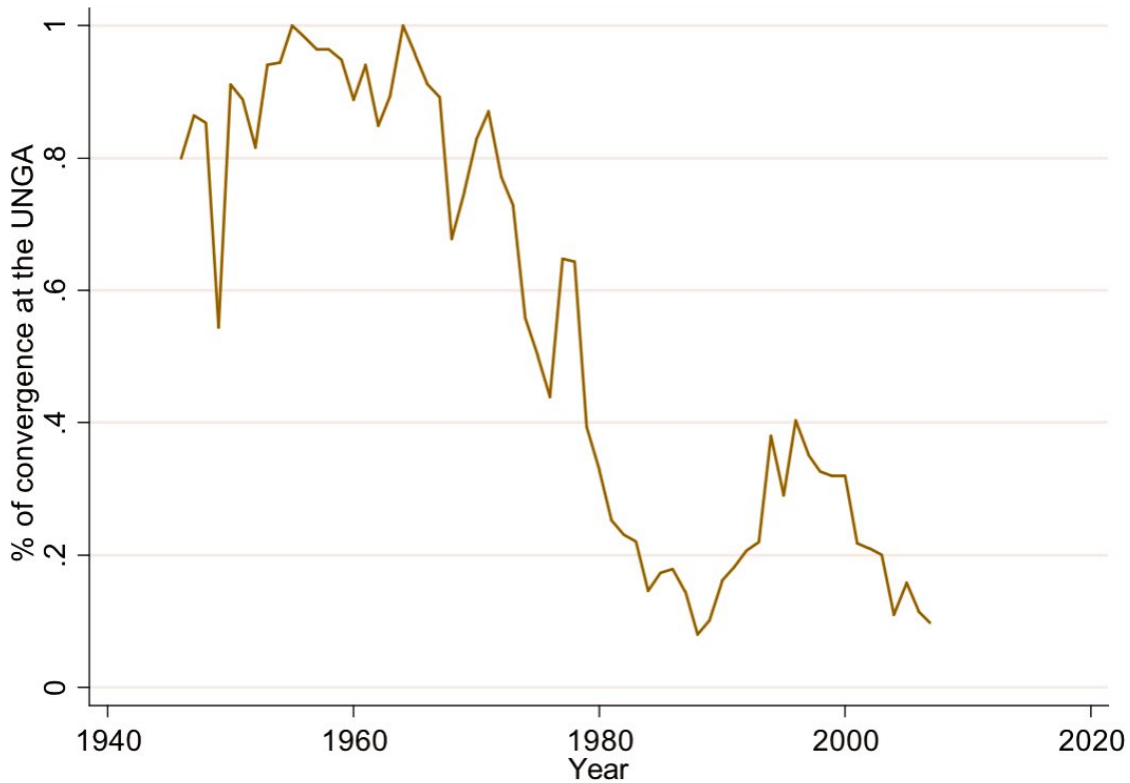


Table 6. Dickey-Fuller test for unit root

Dickey-Fuller test for unit root		Number of observations = 61		
	Test Statistic	1% Critical Value	5% Critical Value	10% Critical Value
Z(t)	-0.921	-3.565	-2.921	-2.596

MacKinnon approximate p-value for Z(t) = 0.7811

The same situation occurs for his most significant explanatory variable, Brazil’s CINC coefficient. A p value of 0.71 confirms that it is non-stationary. As the dependent variable is non-stationary, and the independent variable is also non-stationary, this constitutes a spurious regression, and the results must be controlled in an improved model. Otherwise it would be like using i.e. Cumulative rainfalls in Brazil as an explanatory variable and finding a great correlation with the dependent variable leading us to wrong conclusions.

Graphic 6. Non-stationary pattern of AN's main independent variable

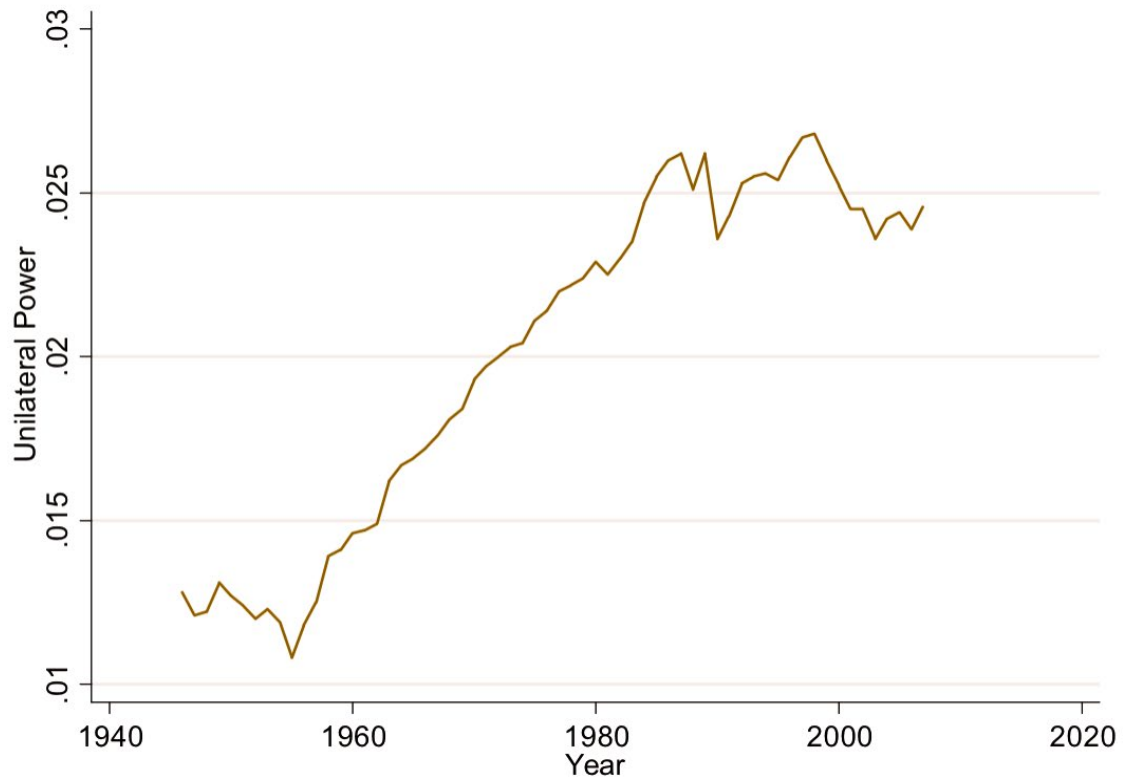


Table 7. Dickey-Fuller test for unit root

Dickey-Fuller test for unit root		Number of observations = 61		
	Test Statistic	1% Critical Value	5% Critical Value	10% Critical Value
Z(t)	-1.105	-3.565	-2.921	-2.596

MacKinnon approximate p-value for Z(t) = 0.7130

The Dickey-Fuller test has been improved by several econometricians, and adapted for panel models. We used Levin and Lin Models for Table 2 Models.

Policy Analysis in Brazil: Emergence and Institutionalisation*

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(VAITSMAN, Jeni; MENDES RIBEIRO, José and LOBATO, Lenaura (Ed.) *Policy Analysis in Brazil*.
Bristol: Policy Press, International Library of Policy Analysis Series, 2013)

Government decisions are taken based on circumstantiated studies and analyses of the policy in question. These studies, backed up by theory, research and good practices, indicate the alternatives available and their consequences, thus allowing the decision maker to choose with knowledge and confidence the most convenient programme or policy for the objectives proposed.

Does this ideal, modern, rational world correspond to the practices of decision-makers? Is this comfortable situation, in which validated options are offered in order to inform decisions taken in the public and private spheres, the norm? That is not always the case. It is even less true if one considers all countries.

This is because this ideal situation assumes that certain “normal” prerequisites will be in place, i.e. a degree of evolution in the process of modernisation of the state and a legal-institutional framework that requires and legitimises processes of the type described; in short, the availability of technical and bureaucratic personnel endowed with competence and ability to manage the methods and instruments of policy analysis. However, such conditions cannot be created overnight. They result from long and complex processes of institutional development and the modernisation of organisations and procedures. Even then, it still takes time for those practices to become widespread and take root.

What are the characteristics of the Brazilian practice of public policy analysis?

This is the question that *Policy Analysis in Brazil* attempts to answer. The 18-chapter collection is edited by Jeni Vaitsman, José M. Ribeiro and Lenaura Lobato and was published in mid-2013 by Policy Press, introducing its International Library of Policy Analysis Series.

It is a timely publication, with work of very good quality, by 27 authors of renowned experience and competence. This is also true of the editors, Jeni Vaitsman and José Mendes Ribeiro, senior researchers and professors of the National School of Public Health of the Oswaldo Cruz Foundation in the area of Public Policy. Lenaura Lobato is a professor at the Federal Fluminense University, where she coordinates the Centre for Social Policy Evaluation and Analysis.

The Brazilian experience is examined in different domains and dimensions, in articles that blend together research and reflection. The compilation is organised in four parts.

(*) <http://dx.doi.org/10.1590/1981-38212014000100014>

Historical and methodological questions are the topics of Part I. The professionalisation of policy analysis in Brazil (VAITSMAN, MENDES RIBEIRO and LOBATO, 2013) is examined in the light of the wider context of modernisation of the state and development of a professionalised bureaucracy, recruited on merit, knowledge and technical specialisation (SOUZA, 2013). These conditions were necessary but not sufficient for the emergence, diffusion and dissemination of the policy analyst profession. This only happened when the shape of the state and forms of governance changed, with the 1988 Constitution and more transparent and participative deliberative processes.

Policy analysis is a recent disciplinary and professional field, which did not develop with its own methodologies and styles, particularly not with those enshrined by the Anglo-Saxon tradition. In Brazil, it initially leant on the economic style of analysis (for example, cost-benefit analysis) and, after 1988, on the socio-political style of analysis, incorporating methodological instruments from the social sciences (ANDREWS, 2013).

The studies in Part II examine the production of policy analyses of bodies of the federal executive (MENDES RIBEIRO and INGLEZ-DIAS, 2013; PAES DE SOUZA and HELLMAN, 2013), state governments (FILGUEIRAS and ROCHA, 2013), municipal governments (FARAH, 2013), of public banks such as the BNDES [Banco Nacional de Desenvolvimento Econômico – Brazilian Bank for Development] (VELASCO and CASTELAR PINHEIRO, 2013) and of the Brazilian Congress (SANTOS, 2013).

With a special focus on the relationship between public policy and politics, Part III examines policy analysis in different contexts: the cases of the Conselho Nacional de Assistência Social [CNAS – National Council for Social Assistance] (VARGAS CÔRTEZ, 2013), social movements (HORA GÓIS, 2013) and other civil society associations, such as those actively involved in the shaping of a national policy to fight AIDS (MASSARD DA FONSECA and BASTOS, 2013), the media (LATTMAN-WELTMAN, 2013), political party (DANTAS NETO, 2013) and business associations (BOSCHI, 2013).

Part IV is dedicated to the production of policy analysis in universities, research institutes and think-tanks. The latter are few and recent, having generally been established with a certain distance from political activity and social movements (TEIXEIRA, 2013).

The case of universities is different. The strong epistemic community involved in the institution of a national health policy, for example, mobilised in the 1980s the specialist's academic production, successful in creating a national health system according to the principles it extolled (ROSÁRIO COSTA, 2013). The widening of university activity, which involved studies on the evaluation, formulation and implementation of policies, strengthened the role of academia in the field (BATISTA, 2013). From the end of the 1980s, the training of public policy analysts also increased, with subjects and postgraduate programmes multiplying, giving public policy greater visibility and prominence (HOLANDA and SIQUEIRA, 2013).

The book's definitions, perspective and form ensure its unity and homogeneity. Among the many definitions of policy analysis, the authors chose the one that sees it as the area of public policy studies whose aim is to produce technical-scientific substantiation and alternatives for decision-makers. Differently from the analysis of policy, which is analytical and descriptive, it deals with analysis for policy, which is prescriptive and propositional (For this definition and others, see BARDACH, 2011; BREWER and DELEON, 1983; DROR, 1967; DUNN, 1994; FISCHER and FORESTER, 1992; FISCHER, GERALD and SIDNEY, 2007; GUY PETERS and PIERRE, 2006; HAWLET, RAMESH and PERL, 2009; WEIMER and VINING, 1992).

The articles commonly adopt a simultaneously contemporary and historical perspective, although their approaches and styles of political analysis may vary. In each one

of the experiences analysed, the authors make a quick historical assessment, situating today's practice in a more long-sighted perspective.

Still regarding form, it is worth noting that the collection is composed of short, concise chapters, a strategy that allows it to cover the wide range of topics mentioned in a coordinated and coherent fashion.

A strong thesis permeates the entire compilation and frames the different studies: in Brazil, policy analysis, understood by the authors as the production of studies for policymakers, is a recent practice. Examples can be found here and there in the past and up until the 1980s, but it was only with democratisation and after the institutional innovations introduced by the 1988 Constitution, and especially from the 2000s onwards, that it actually became widespread as a routine procedure by government bodies.

This is one of the sub-processes of modernisation of the Brazilian State, in which several technical and bureaucratic careers took shape, processes of recruitment based on merit were institutionalised and the practice of basing decisions on technical studies of diagnostics and forecasting of results became generalised. The state became more democratic and transparent because it informed more, and the decision-making system became more participative, with an increase of councils and consultation systems.

The thesis is generally correct but, when confronted with the particularities of the Brazilian experience, comes up against a few difficulties. These difficulties, in my view, result from both a restricted definition of policy analysis and the proposed periodisation for the modernisation of the state and the practice of policy analysis as a basis for decisions.

The pattern of modernisation of the Brazilian State was neither linear nor homogeneous. From the 1930s onwards, in the state structure, there were pockets of modernity living alongside an environment controlled by patrimonialism, nepotism and favouritism among sectors, companies and institutions. This is a classical thesis and has been well defended and argued by many (GRAHAN, 1968; JAGUARIBE, 1962; LAFER, 1970; MARTINS, 1973). These pockets of modernity were the mining engineers active in the creation of Petrobrás; the DASP (Departamento Administrativo do Serviço Público – Civil Service Administration Bureau), in 1938; the BNDE, later known as BNDES, in 1952; the economic advisors of President Vargas (2nd government); the executive groups of the Kubitschek period; and later, during the 1964-1985 military period, the IPEA (Instituto de Pesquisa Econômica Aplicada – Institute for Applied Economic Research), the Banco Central (Central Bank) and so many other bodies – all of them with the function of providing technical assistance to the decision-makers. Between 1980 and 1990, technical areas of the traditional ministries and systems of policy assessments, such as the one implemented by the INEP (Instituto Nacional de Estudos e Pesquisas Educacionais – National Institute of Educational Studies and Research) also grew and were able to back up important decisions, such as the implementation of the SUS (Sistema Único de Saúde – Unified Health System), of the Statute of the Child and the Adolescent, of the FUNDEF (Fundo de Manutenção e Desenvolvimento do Ensino Fundamental de Valorização do Magistério – Fund for Development of Primary Education and Improvement of the Teaching Profession) and the pension reform. Not to mention the now traditional elaboration of the EIA/RIMA (Estudo de Impacto Ambiental/Relatório de Impacto Ambiental – Environmental Impact Study/Environmental Impact Report) by independent institutions for the benefit of investments with likely environmental impacts.

It could be that another narrative, operating with a different periodisation from that of Policy Analysis in Brazil, might see the Brazilian experience prior to the 2000s through another lens, assigning it a more defining role in the introduction and institutionalisation of

the practice of public policy analysis in the country. That is, one that would reconstitute the particular periodisation of the field of public policy in Brazil, and detect periods of emergence, development and consolidation.

In my opinion, the strict definition of policy analysis makes it difficult to retrieve the particularity of such an experience. In Brazil, policy analysis and policy evaluation were mingled in academic production, whose main “clients” are the governments, from the outset, and remain so today. Policy recommendations and alternatives were and still are a part of this activity, which grew significantly in the 1980s.

My observations in no way diminish the importance of this publication – on the contrary.

A reasonable criterion for evaluating a compilation such as this is whether it is sufficiently comprehensible and wide-ranging for the mixed readership – tutors, students and policy analysts – for which it is written and whether it is comprehensible, inclusive and an easy and relevant guide to the field, indicating key concepts, main axes and cleavages, and paths for furthering future knowledge.

Policy Analysis in Brazil meets these criteria very well. The chapters provide a clear and accessible analysis of the main concepts of the disciplinary field, as well as offering good insights into the reach of public policy analysis in specific areas, indicating the resources mobilised, the typical actors involved and styles of analysis. The book will no doubt enrich the public policy bibliography and considerably benefit those students and professionals interested in familiarising themselves with the Brazilian practice and intellectual production of this field of public policy.

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Critical Comparatives Perspectives in Water and Sanitation Systems*

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(CASTRO, José Esteban and HELLER, Léo. *Water and sanitation services: public policy and management*. London: Earthscan, 2009.)

The study of infrastructure services has long remained a field of technical studies carried out by the engineering community or by economists and finance experts, with few exceptions. This absence of contributions from other areas has caused the presence and dissemination of what the authors of this book call “mainstream water and sanitation policies” – general and standardised solutions for water and sanitation services (WSS) worldwide –, which have disregarded local processes and differences. This situation has had disastrous consequences in several countries and cities in the last few decades, and has been reinforced by policy solutions internationally disseminated by donor institutions and multilateral organisations.

The book edited by José Castro and Léo Heller offers a critical perspective of these policies. It aims to address the gap between the technical elements and social science analyses by critically discussing the recent provision of WSS all over the world. It is a product of successful research network “Governance, citizenship, water management and environmental health in developing countries” (Gobacit), which has promoted regular international seminars and is currently developing Waterlat (Research Network on Governance and Citizenship in Water Management and Environmental Health), with a focus on Latin America. This network’s existence gives it stronger cohesion than what is usually found in edited volumes.

Although not all the chapters support the same position, the book clearly takes sides in the debates on the matter, supporting the claim that WSS should be considered social citizenship rights, understood within the logic of health promotion. They should therefore be organised institutionally so as to reach universality and equity. Based on this normative claim, several chapters develop the idea that WSS cannot be produced on the basis of market principles. Services based on the willingness to pay or on the principles of full cost recovery, promoted by international donors in recent years, are possibly incompatible with universality not only in countries of the so-called Global South, but also among poor social groups and ethnic minorities of the economically developed world.

Contrary to general formulas, the book states the importance in WSS provision of considering the specific conditions of countries, regions and cities, in terms of their physical, socio-economic, spatial, political and cultural dimensions. Therefore, diversity in institutional arrangements is considered a key element for the universal expansion of good quality and

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affordable services in different regions of the world.

Some of the book's contributors, however, hold diverging positions and defend the relevance and primacy of market mechanisms in developing WSS. Others emphasise the relevance of community organisation and mixed systems with participation by multiple agents in service provision. As a whole, the book creates a solid but nuanced critical account of mainstream WSS, while also presenting a broad and informative picture of how services are organised in different parts of the world.

The book includes an introduction and 21 chapters organised in two large parts, focusing on conceptual elements and country experiences, respectively. As in most edited volumes, the quality and style of the contributions vary, but the large majority of chapters are highly interesting and informative.

In the introduction, as well as presenting the book's chapters and structure, the organisers also outline its main ideas and the importance of studying WSS within a public policy approach based on the recognition of social rights.

This emphasis is repeated in the next chapters. The first chapter, by José Castro, defends the importance of considering the so-called systemic conditions – the social, political, economic and spatial characteristics of each case – when promoting WSS. From the consideration of these elements, the author criticises mainstream policies based on standardised proposals. In the following chapter, Erik Swyngedouw discusses the main contradictions present in treating WSS as commodities produced by a market rationale. The author deconstructs the premise of full cost recovery, stating that the real question is who should pay the costs to make the systems sustainable. In chapter 3, André Mulas introduces a conceptual framework for considering WSS as public policy, debating arguments from the literature, especially those regarding the financial arrangements associated with service provision.

In Chapter 4, Okke Braadbart develops an interesting historical account of the expansion of piped water and sewage in Europe and the US since the 19th century. The chapter shows that differently from what the literature states, health concerns were not at the origin of the first services, although they were responsible for the dissemination of these systems at a later date. The weakest part of this chapter concerns the movement of these systems to the Global South, as, in my opinion, the author homogenises a broad range of different situations. The cases of Rio de Janeiro and São Paulo, for example, were more similar to what the author describes in Europe than to his account of what took place in the Global South.

The following chapters present different models and principles for service provision. In Chapter 5, Osmo Sepala and Tapio Katko discuss the several European models for producing WSS. However, instead of presenting the European cases and constructing a typology, the chapter theoretically discusses the institutional and management elements involved in services provision. The subsequent contribution, by David Hall and Emanuel Lobina, is on the financial arrangements of WWS and builds a critique of what the authors call donor policy obsessions – cost recovery and private sector provision. The article states the importance of public taxation for financing services in a very compelling way. In Chapter 7, Léo Heller elaborates on the connections between WSS and health, defending the importance of an inter-sector approach for both service provision and research.

Chapter 8, by Michael Rouse, is probably the most divergent contribution from the book in terms of the policy solutions it advocates. It is the only contribution devoted to publicising and defending service provision by the market-centred paradigm. The author presents the argument and discusses well-known private failures in the US, Bolivia and China, as well as

private provision successes in the UK, Chile and China.

In Chapter 9, Jarmo Hukka and Tapio Katko discuss the various arrangements present in the Finnish experience, deriving lessons about the necessity of flexible forms of service provision. The same nuanced position is found in Chapter 10, by Gordon McGranahan and Martin Mulenga, which focuses on community participation. This chapter presents a short, interesting account of community participation in WSS. Their argument is not that communities could replace market solutions or State provision, but that community organisation may enhance WSS production and delivery.

The second part of the book is devoted to current regional and country cases. Chapters 11 to 14 present European cases from France, Spain, Nordic countries and Europe as a whole, respectively. Christelle Pezon discusses the role of decentralisation and delegation of services to private providers in France. The first element is actually a historical legacy of the great territorial fragmentation of a large number of communes, although this has decreased since the 2000s. The second important characteristic of WSS in France involves a specific form of contracting out of services with public financing and a large degree of public control over the services. In chapter 12, David Sauri and colleagues discuss the Spanish situation. Service provision in Spain remains under the control of local government, although, similarly to France, private companies are increasingly becoming concessionaries. In recent years, full cost recovery policies have produced substantial increases in the cost of services, leading to several conflicts and struggles. The Nordic experiences are presented by Pekka Pietila and colleagues in the following chapter. Services in Denmark, Finland, Sweden, Iceland and Norway are highly decentralised and local government plays the most important role. Recent changes have reinforced the role of local administration. Although private companies carry out a substantial part of the operational activities, including provision of services and equipment, they do not manage the services, which are organised around principles of equity and universality. In Chapter 14, Bernard Barraqué uses historical evidences from several countries to summarise the provision of WSS in Europe. The chapter dialogues with and complements Chapter 4, giving a broad and informative overview of WSS in the continent. The author sustains that the design of solutions for WSS production and delivery should consider the differences in social structure and social solidarity present in each case, leading to a strong rejection of general models or solutions.

Chapters 15 and 16 discuss WSS provision in Canada and the US. Mark Rosenberg (Canada) and Venkatesh Uddameri and Vijay Singh (US) both suggest relatively similar situations – very high coverage levels, but inequality of access due to an ageing infrastructure and institutional disorganisation, which mainly affect the poor, immigrant groups and indigenous populations.

In Chapter 17, David Nilson and Arne Kaijser discuss the situation in African countries, mainly Uganda and Kenya. The article starts by mentioning the WSS inherited from the Colonial period, which concentrated on large and expensive systems. This paradigm systematically excluded the poor, creating an illegal private market of low-quality water delivery. Recent reforms have not changed this situation, since they were based on the principle of full cost recovery, excluding the poor from the services yet again. The authors discuss alternatives for service provision that could contribute by combining large systems with local distribution schemes.

In Chapter 18, Roldan Muradian and colleagues draw lessons from several local initiatives developed in Bangladesh and Nepal. Looking at the interface between public policy and community participation, the authors state the importance of actively including communities in WSS, especially in poor urban areas. This could lead to cost-sharing schemes, especially

if service production and delivery is tailored to match local situations and actors. Focusing on Asia, Jiane Zuo and Lili Gan deal with WWS in China. In this case, the central government continues to play the main role in what is known as government-led management structures, which have produced increasing rates of service coverage, but also large inequalities, especially between urban and rural areas. In recent years, private firms have increasingly been participating in service design and construction, but not in management.

The last two chapters focus on Latin America. Léo Heller discusses the Brazilian case in Chapter 20. The author presents the historical legacy of WWS in Brazil inherited from the military period, as well as the most recent transformations introduced in the 2000s. Service continues to be provided by local government. Although municipalities have legal responsibilities, services are conceded to state level public companies in most cases. The federal government recently returned to the sector, but mainly with a financial and regulatory role. The author sustains that the recently introduced changes point in the direction of a more comprehensive and universal approach, but the production of concrete effects still depends on policy delivery. The final chapter, by María Armentia and Blanca Cisneros, discusses the Mexican case, marked by low coverage rates and intense inequalities. The federal government has been historically responsible for WSS provision, with limited participation by civil society and local government. The private sector has increasing participation in the services, in part due to a central government decentralisation policy, but is mainly involved in specific tasks rather than service provision or operation, which continue to be public and marked by clientelism.

The Democratic Deficit of Brazilian Foreign Policy: a Faorian Interpretation*

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(LOPES, Dawisson Belém. *Política externa e democracia no Brasil*. São Paulo: UNESP, 2013)

Traditionally conceived as a singular, differentiated policy insulated from public debate, foreign policy in democratic political systems has gradually drawn closer to other public policies. Mechanisms for channelling the demands of different political actors and even for direct participation in developing and executing foreign policy, as well as mechanisms of control and accountability, have been established and have moved the democratisation of foreign policy forward to a greater or lesser degree, according to the context. However, an examination of the literature shows that in foreign policy the democratic deficit is invariably perceived as greater than in domestic policies. To what can this be attributed? To the inertia of tradition or to a real specificity of foreign policy, in which debate might not be advisable? In the words of Christopher Hill (2003), this specificity is related to the “long-debated issue of how far foreign policy can or should be accountable to citizens who are probably ignorant of the issues but who may ultimately be asked to die in its name” (2003, p.17). For many, the tension between two types of Weberian rationality (purposeful rationality and value-oriented rationality) is particularly important in foreign policy.

If the topic of the democratisation of foreign policy is of universal interest, it is particularly interesting in contemporary Brazil. As Ambassador (and former Minister of External Relations) Celso Amorim states in the book’s prologue, Brazilian foreign policy is increasingly present in public debate in Brazil and has therefore become another field of party conflict. At the same time, several institutional changes, within and without the Itamaraty (Ministry of External Relations), have assuaged the traditional insulation of the bureaucracy responsible for conducting Brazil’s foreign policy.

That is why Dawisson Belém Lopes’s work, based on his Ph.D thesis defended at IUPERJ (*Instituto Universitário de Pesquisas do Rio de Janeiro* – University Research Institute of Rio de Janeiro) in 2010, is a most welcome contribution to this debate. It is a book of great interest and numerous virtues. Perhaps the greatest one is its eclecticism, the decision to combine analytic perspectives originating from different academic fields, as well as the attempt to balance social explanation with historical interpretation. The author’s clear commitment to the objective of democratising Brazilian foreign policy is also laudable. On the other hand, the book displays many irregularities and frailties common in the work of junior researchers. This is particularly noticeable in the research design.

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Indeed, the author's initial statement about what his research problem is, "to point out the potentialities and limitations of the proposal to democratise BFP [Brazilian Foreign Policy]" (p.28), does not help him to channel his efforts in a more focused and productive way. A research problem necessarily seeks to describe or explain an existing phenomenon. Without that, there is no analysis. Although it is perfectly valid to ask oneself about the possibilities of something happening, it is a purely speculative exercise, rather than an analytical one. In any case, it is an exercise dependent on a prior analysis. And this prior analysis requires an adequate and precise formulation of the problem to be analysed, in this case, a certain aspect of BFP or of the democratisation of BFP. In the absence of this, the focus changes throughout the book, addressing several different questions, which are not always made explicit or explored in much depth.

In Chapter 1, the literature on models of foreign policy analysis is briefly examined. In a very summary fashion (sometimes based on a brief quotation), the author presents several contributions by authors who have dealt with foreign policy from more traditional perspectives (starting from Morgenthau's), and those part of the canon of the sub-area of Foreign Policy Analysis, from precursors Snyder, Burton and Sapin to contemporary authors such as Milner or Moravcsik. The aim of this exercise is to seek answers to understand what could be termed the "democratic deficit" of BFP – the reasons for which "it is not subject to democratic control by the population, as what happens in principle (or should happen) with any public policy" (p.16). Different connections between foreign policy and public democracy/opinion are made, but not in a very systematic way. It is hard for the reader to identify the author's own arguments and voice, as he does not always assume a clear position in relation to the authors/models he presents.

Chapter 2 proposes to "[retrieve], from a historiographical perspective, the rudiments of the democratisation process in the discourse and practice of Brazil's foreign policy from 1985" (p.29). Statements by different Ministers of External Relations and other Itamaraty documents with mentions of the theme of democratisation of BFP are analysed. The author also reviews some institutional changes that can be seen as advances (or not) towards democratisation, for example, the creation of new dialogue channels with several BFP stakeholders – such as mayors, governors, representatives from social movements and academics – during the Lula government. Here, it would have been interesting to have gone beyond the official narrative and further into the genesis of and the debate on these "Itamaratyan" proposals, and to have left the Itamaraty context aside to analyse, for example, the foreign policy proposals of candidates to the presidency or the institutional changes that affect BFP in other ministries. The methodological decision to leave open the concept of democratisation in foreign policy seems, in the least, questionable.

Of a more theoretical nature, Chapter 3 is also affected by the lack of definition of the research problem. The chapter's aim is to examine "the hypothesis that democracy is compatible with foreign policy in many of its aspects" (p.84). In truth, this statement is not a hypothesis as such (it does not explain anything) and, in any case, it is a trivial one. The chapter is structured around four groups of questions (which the author calls historical, technocratic, institutionalist and normative, respectively) that include a quite heterogeneous set of facts, arguments and debates on the relation between democratisation and foreign policy. In spite of the problem's lack of definition and the questionable categorisation (the categories overlap), the chapter turns out to be very instructive and interesting. Some of the topics dealt with are the consolidation of diplomacy as an international institution in the 17th century; the development of the public management sector in the 19th and 20th centuries; technocratic ideology contrasted with democratic demands; the role of the Legislative Branch

in foreign policy; and contemporary proposals to reconcile the democratic decision-making method with foreign policies that turn out effective.

In Chapter 4, the author delves into the “book’s central avenue” (p.142), to use his own words. The starting point is a question with good potential to give the whole book focus, and which could (and should) have been formulated from the outset: why did it [the democratisation of foreign policy] not happen in Brazil after democratisation? The author proposes to answer this question by comparing the Brazilian case to those of European and North American countries. Initially, the idea of using a comparative method seems to be quite a sensible methodological strategy. Unfortunately, the comparison boils down to a collection of quotes from different studies by different authors about certain countries (Switzerland, United Kingdom, Norway, Canada, the United States, France and Germany), and it is unclear what exactly is being compared in each case and even less clear on which data the comparison is based. The alleged difference of the European and Anglo-Saxon models indicated by the author may have a basis, but it is certainly not found in the data presented. Instead of resorting to secondary sources and using them in an impressionistic fashion, the author could have utilised, for example, the Eurobarometer or other existing statistical sources. In any case, no hypothesis on Brazil’s difference arises from the comparison to other countries. In the same chapter, he examines the hypothesis present in BFP literature regarding the lack of development of Brazilian democracy, once again grouped into four categories: apathy of public opinion, “developmentalist government induction” (the idea that the government foments the bureaucratic isolation of foreign policy so as to better focus on the developmentalist goal), the organizational culture of the Itamaraty, and the constraint of political-administrative institutions. Although the four hypothesis are qualified by the author as “ambivalent and inconclusive regarding the root of the phenomenon” (p.207), in our view, the part of the chapter devoted to discussing them is one of the book’s high points.

The author’s own hypothesis on the lack of development of BFP is presented in the fifth and final chapter. He turns to the concept of “aristocratic republicanism” (based on the political experience of the Italian Renaissance republics) combined with the concept of “bureaucratic stratum” introduced by Raymundo Faoro in *The Owners of Power* (1958) to postulate, as the main explanatory element, the existence of a “BFP stratum” very resistant to the demands of democratisation, although pressured in the last few years by democratising forces, which may have given rise to a “mitigated republicanism”. The strongly patrimonialist Portuguese heritage and colonial centralisation, as well as the actual threat of political disintegration as a consequence of the dismantling of the Portuguese colonial apparatus, are some of the elements the author uses to weave his interpretation, which is, in fact, compatible with several elements of interpretations by other authors presented in the previous chapter. Once again, the author moves with ease through several terrains, combining in an attractive manner the political thought of Machiavelli, the Faorian interpretation of Brazilian social history and other traditional and contemporary sources.

Although unanswered, the initial question about the possibilities and limitations of BFP is addressed once again in the conclusion of this at once irregular and stimulating study.

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The Effects of Participation*

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(DONAGHY, Maureen. *Civil Society and Participatory Governance: Municipal Councils and Social Housing Programs in Brazil*. New York: Routledge, 2013)

The debate on effectiveness is today at the centre of the participation agenda. What are the results of participatory institutions, and how and when do they produce change? These are questions asked by activists, academics and governments hungry for assessments for evaluating the outcome of the rich democratic experimentation that has recently taken place in Brazil, and for projecting their future ventures. In academia, this effort means huge theoretical and methodological challenges. After all, when we speak of the results of participation we can include a variety of effects – such as changes to people’s quality of life, to the dynamics of the civil society-State relationship, to resource allocation, to the quality of democracy, to the decision and implementation of public policies etc. – which requires a reduction by specification of the domains of analysis, associated with a search for variables and indicators that allow the results of participation on the dimension(s) selected to be measured. Ingeniousness in the research design is also required to mitigate the problems arising from attributing relations of cause and effect, isolating the influence of other determinants in the context. As if that were not enough, expectations need to be calibrated and normative parameters appropriate to the analysis of participatory institutions need to be set, in a general context marked by strong politicisation of the debate on State-society interaction.

Civil Society and Participatory Governance. Municipal Councils and Social Housing Programs in Brazil (2013) by Maureen Donaghy brings an important contribution to this debate. The book discusses the effects of participation on the allocation of public goods and on the promotion of social wellbeing policies, with the normative presupposition that it is up to participatory institutions to increase the poor population’s access to citizenship rights. Thus, the author investigates whether or not municipal housing councils are associated with a rise in the adoption of housing programmes and policies for the low-income population, and, if so, how and when.

One of the study’s most innovative characteristics is the creative and innovative manner in which the author combines quantitative research with case studies in order to determine the causal mechanisms through which municipal councils influence housing policy in Brazil. Donaghy uses data from Munic/IBGE (Basic Municipal Information Research/Brazilian Institute of Geography and Statistics) on 5,564 Brazilian municipalities, from 2005 and 2008, to test the hypothesis that the existence of municipal councils is the key to explaining the increase of housing policies in municipalities. The list of programmes devoted to the low-income population includes the construction of new housing units, awarding of plots of land, supply of construction materials, regularisation of land titles,

(*) <http://dx.doi.org/10.1590/1981-38212014000100017>

urbanisation, and the acquisition of units and improvement of existing units.

Based on these initial pieces of information, the author selected five cases to study in depth: Curitiba (low associative pattern and no housing council), Recife (high associative pattern and no municipal council), Salvador (low associative pattern with municipal council) and São Paulo (high associative pattern with municipal council). In order to assess the role of the civil society-State dynamics in the effects of municipal councils, the author contrasted the cases of Santo André (long presence of left-wing governments) with those of São Paulo and Salvador (instability of parties in power). Her analysis distinguishes the assessment of the processes – defining the variables that influence the dynamics and political processes in the councils – from the analysis of the influence of the participatory process on the results of public policies. This is interesting if we accept that a participatory process can be successful regarding the inclusion of new actors and a new agenda without it necessarily affecting the results of public policies and vice-versa.

The results of this mixed-method approach allow the author to question commonly accepted hypothesis such as the importance of associative density or of the party in power for effective participatory institutions. Similarly, the conclusion that councils matter to the adoption of housing programmes for the poor goes against a good part of the assessments produced in academia that share in and reiterate a certain disseminated pessimism, partly marked by excessive expectations and/or by a restricted focus in case studies. Even so, although the author concludes that councils do matter to the adoption of programmes for the poor, she does not go further in the analysis of the extent to which these programmes have resulted in the housing deficit decreasing or the living conditions of the poor actually improving. This would be difficult, considering the data available.

The results of the research are presented in eight chapters, the first one being the Introduction. In Chapter 2, the author debates the place of housing policy and its relationship with the question of democracy and development, comparing the Brazilian case with those of other developing countries. Her assessment is that Brazil's housing policy reflects a worldwide trend, a rise in the number of programmes aimed at low-income populations. The Brazilian specificity lies in the decentralised system and in the role that civil society assumes in the process of policy production, which, along with other characteristics, make the current Brazilian arrangement a model for other developing countries (p.44).

In Chapter 3, Donaghy statistically tests her central hypothesis: the existence of a link between the presence of the councils and the adoption of social housing programmes. The data found confirm the initial hypothesis, according to which the existence of councils leads to the allocation of more resources for programmes aimed at low-income populations. In the two years (2005 and 2008), the number of programmes was significantly greater in municipalities with councils than in those without. These data lead the author to conclude that "This provides evidence to confirm the primary hypothesis that participatory governance institutions lead to programmes benefiting the poor" (p.56) and that "These results provide evidence to sceptics that councils exist more than as institutions on paper" (p.62). In the same chapter, she tests the independent effect of other variables on policy results, among them civil society density and the party in power. The findings lead the author to question the literature on participation: "interestingly, two variables that political scientists would expect to have a significant effect on social policy – the presence of a leftist administration and the density of civil society – do not have a consistent effect on the adoption of housing programmes" (p. 59).

Based on these preliminary results, Donaghy goes further in the analysis of the relationship between civil society density, participation and public policies with the following question: "is the effectiveness of participatory governance institutions in bringing about

programme adoption contingent on a strong civil society?” (p. 63). The variable used to measure the strength of civil society is based on associative density, measured by the number of non-profit organisations per capita in each municipality. The conclusion is that a strong civil society makes no difference to the results of municipal housing councils as far as the adoption of programmes is concerned. The problem is that the variable used by Donaghy does not seem adequate as a measurement of the strength of civil society, precisely because it leaves out important actors such as social movements and because it groups together organisations with very different profiles in terms of their political orientation, involvement with the housing issue (or lack thereof), and their relationship tradition with the State. Aware of these limitations, Donaghy seeks to validate the measurement used by resorting to the case studies.

What variables influence the decision-making process in the councils and what are their results? This question orients the analyses in chapters 5, 6 and 7, in which she seeks to identify how and to what extent the context matters. Once again in dialogue with the literature, the author assesses the role of institutional design and of the dynamics of the civil society-State relationship on the functioning of the councils and on their results. The case studies corroborate what the literature of the field suggests: the party in power influences the policymaking process inside the municipal councils. When the mayor belongs to the PT (*Partido dos Trabalhadores* – Worker’s Party), civil society finds a more favourable environment in which to exercise its influence. However, the statistical analysis concludes that the presence of the PT in government does not increase the probability of social programmes being adopted when councils do exist: “what is true for the policy process does not appear to apply to the outcomes across cases” (p. 76). It was institutional designs that proved more prone to being generalised as to their effects. On this point, Donaghy finds divergences between the findings from the results of the qualitative and the quantitative research:

Though the case studies provide strong evidence to suggest that the party in power influences the civil society-State dynamics in the policy process within municipal housing council, quantitative results do not confirm the importance of the PT in power for programme outcomes in the larger universe of cases (...). Therefore, though the party in power may matter in some cases, in the aggregate the party is a weak predictor of the effect of participatory governance institutions on programme outcomes (pp. 113-116).

In an attempt to find answers, the author returns to the case studies and speculates on the reasons for the insignificant link between the PT and the results of policies in the cases. However, just as interesting as this debate are the methodological considerations at the heart of these conflicting findings.

The results of this analysis also bring to light questions regarding mixed-method research. Using multiple methods should serve to strengthen the reliability of findings. When case studies tell one story and statistics another, however, researchers have to use both sets of data to tease out the causal mechanisms at work and plausible explanations for conflicting findings. The real world of politics and policy making is messy, and neither the interpretation of cases nor statistical analysis can truly identify all variables at work. I believe, though, that relying on multiple methods in this study reduces the probability of asserting false conclusions, even if it takes some work to wade through the evidence regarding the process and the outcomes of these new institutions (p. 116).

In short, Maureen Donaghy offers her readers a complex and innovative analysis on the processes and effectiveness of participatory institutions. It is a most welcome contribution. The results of her research remain open to interpretation and the book is evidence of the work we have before us if we wish to go further in the research on the effects of participation.

Comments on When is Statistical Significance not Significant?*

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(FIGUEIREDO FILHO, Dalson. B. et al. When is statistical significance not significant?

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An article titled “*When is statistical significance not significant?*” was published in this journal. The study echoes countless others which have underlined the dangers of wrongly interpreting the p-value (see Gill (2004) for an overview of such studies). The authors’ main goal is to provide a basis for understanding the logic behind tests of significance and their appropriate role in empirical studies within the social sciences. For this, the authors present four recommendations with universalistic intents: 1) to always graphically analyze data before interpreting the p-value; 2) it is pointless to estimate the p-value for non-random samples; 3) the p-value is highly affected by the sample size; and 4) it is pointless to estimate the p-value when dealing with data on population.

We believe that these recommendations do not achieve the intended objectives, even when dealing with very simple examples. This is problematic since the authors intend “to help students to make sense of the appropriate role of the *p-value* statistics in empirical political science research” (p. 32). Given that these suggestions orient the definition of the mathematical relationship among variables, which in turn is a result of theoretical constructs, we intend to show how distant we still are when we follow the suggested steps. Therefore, our motivation is to indicate points unmet by the proposed recommendations. The aim is also to collaborate with the practical use of statistical analysis in political science and thus complementing the discussions raised by the authors. It is worth mentioning that we generally agree with the assessments on the limits of using the *p-value*, but we intend to open here an opportunity to discuss the recommendations followed from these diagnoses.

Recommendation: Scholars must always graphically analyze their data before interpreting the *p-value*.

Graphical analysis is useful and powerful diagnostic tool for linear relationships without the presence of covariates. In this case a scatter graph would show a pattern of relationship

(*) <http://dx.doi.org/10.1590/1981-38212014000100018>

The R simulation code used in this article can be found in bpsr.org.br/files/arquivos/Banco_Dados_Peris_Guarnieri.rtf. This Research was supported by FAPESP. Process: 2009/14768-2.

between the two variables to help the researcher. This is an exceptional case, however. One could consider any number of situations where graphical analysis would not help the researcher since it depends on the relationship between the considered variables, which in turn depends on theoretical keystones, the importance of covariates in the models, and the functional form used. The authors only briefly mention this aspect by saying that “[the] practical consequence of functional form misspecification in this case is the underestimation of the magnitude of relationship between variables.” (p. 39).

A familiar example extracted from Taagepera (2012) is quite illustrative of this point: the author calls for other researchers to estimate the non-linear relationship represented by the universal gravitation formula. The result, according to the author, is that an erroneous relation is identified both due to lack of a theory that allows one to find what they seek within the data and because one stemmed from a generally linear relationship between variables. A simulation with this data shows that the graphical evaluation would not be enough to avoid a misguided analysis. That is, reinforcing Taagepera’s argument on which we agree, in order to find the adequate functional relationship, researchers must theoretically know what they aim to find in the data before evaluating the p -value or even carrying out a graphical analysis. This would be secondary to a functional form analysis derived from a theory supporting it.

Recommendation: It is pointless to estimate the p -value for non-random samples

This is simply not true. The p -value, as conceived by Fisher (1925) is a measure for the adjustment of a model or “null hypothesis” to our data. Conditional upon the null hypothesis being true, if the observed values discern enough from the expected values we can then reject the hypothesis that the difference between them is due to chance. For example, if a study aims to compare different data sets, the sample size may not be random and the p -value could still be useful to distinguish an interesting characteristic. This is a common situation in political science. A fairly trivial example is to assess whether the deputies who comprise the governing coalition during a certain president’s term are more disciplined than in previous legislatures. The samples considered in this situation are not randomly produced and the p -value is helpful to provide the difference between these groups and the knowledge produced through this research is of interest to the field.

Recommendation: The p -value is highly affected by the sample size

The authors suggest that we can always obtain a significant p -value if we increase our sample size thus indicating a distinction between the power of the test and the significance of the test, something only marginally evaluated by the authors. To support this argument they simulate the power of a significance test with different sample sizes. For large samples the test power is 100%. Does this mean that if you increase your sample size you will get a significant p -value? Not necessarily. The power of the test provides us with the probability of rejecting a null hypothesis when it is false. Should the null hypothesis be false we will certainly reject it from a given sample size. But this does not mean that we will reject it if the null hypothesis is true. Remember, the p -value provides a starting point by which we reject the null hypothesis on the condition that is true. We may continue to obtain non-significant p -values even when our test power is 100%. Evidently, when considering the very mathematical formulation of Student’s t test, the larger the sample size, the higher the p -value. But this does not lessen the importance of differentiating the power of the test from its significance, which seems to be a more central issue for empirical studies test.

As the authors rightly point out, effects of a small magnitude (from a substantive point

of view) may become significant with a larger sample, though they would still continue to be of a small magnitude. This is not because of the power of the test, but due to the fact that a larger sample almost always provides us with more information, similar to observing space with a more powerful telescope: more information is always good. Even in situations where we are unable to increase our sample, we may obtain significant results and powerful tests with small samples. Lastly, effects with significant p -values on large samples are just as significant as significant p -values in small samples.

Recommendation: It is pointless to estimate the p -value when dealing with data on population

As scientists we are interested in describing and explaining phenomena. The explanation strives to be as general as it can. This means that every time a theoretically determined mechanism is present under certain circumstances a certain predicted outcome by the theory shall occur. We check our theories against our data. Positively, each new observation gives us a new test to our theory and each time we fail to reject it we have more confidence in its validity. The data obtained by any applied technique are derivations of theoretical constructions upon the empirical world, our concepts. They therefore help us to understand the abstract connections built upon their concrete dimensions. In this sense even when we came across a census it is but one of many instances in which we test our hypothesis. In this sense it stands to reason to think in terms of p -value. Even in the task of merely describing something the p -value makes sense, since even a census may contain flaws, such as measurement error.

General Considerations

Given these four recommendations the authors conclude that when a researcher uses significance tests, they must ensure they are working with a large random N sample. What we said above changes this final recommendation. The p -value may be useful even if our sample is not random nor as large as statistics books recommend (for a good example of this as well as examples where the p -value could hinder the researcher see Gelman, 2011).

In the conclusion the authors call upon researchers not to confuse a significant p -value effect with a significant theoretical and substantive effect. We most certainly agree with such a recommendation¹. We also agree that the lack of statistical significance does not mean a less important finding from a theoretical point of view. The difference between a significant result and a non-significant result is not necessarily in itself significant. The difference between a study with an average of 25 and standard error of 10 (therefore significant to a p -value of 0.01) and another study with an average of 10 and 10 standard errors (not significant) have an average of 15 and an error of 14 and is therefore not significant².

But the solution to these issues is not to analyze the data graphically and to work with large random N samples. Our recommendation is that researchers who wish to avoid the problems of the p -value should always remember that it always gives us the probability that

1 Cinelli (2012) carries out a similar analysis in the Economy field.

2 It is interesting to note that this does not depend either on substantive issues or on the sample size, since in order to calculate the confidence interval and the standard deviation of the difference of means only two pieces of information are deemed necessary: means and standard errors. Remembering that the calculation of the confidence interval at 95% occurs by the following equation: $\text{mean} \pm 1.96 (\text{SE})$, where SE is the standard error, and also, in order to find to find the standard error in a difference of means we have $\sigma^2_{12n1} + \sigma^2_{22n2}$, where σ_j^2 is the variance in each sample. Since $\text{SE} = \sigma/n$, where σ is the standard deviation, we have that $\text{SE} = \sigma/n$. Therefore, the difference of means can be rewritten as follows: $\text{SE}_{12} + \text{SE}_{22}$ (example taken from Gelman and Stern (2006)).

our results are due to the conditional chance that the null hypothesis is true ($P(D|H_0)$). It is not a test to verify if H_0 is true ($P(H_0|D)$). Once we do not reject the null hypothesis this does not mean that our data was caused by chance or that there is no connection between the variables. Empirical work is closely tied with the theoretical questions behind it and it should be conducted in their light.

Following Gill's footsteps (1999) we also recommend that instead of merely reporting the p-values, researchers should attempt to flee from the perils of the hypothesis test and further explore their findings to the limit. Limiting an analysis to the level of significance of certain effects is a poor theoretical practice. We can report effects observed by means of techniques such as predicted values, expected values, first differences (KING et al., 1998) for assessing a theory in terms of the observed results and not only by the presence of a certain effect; we may use simulations to obtain the distribution of a conditional parameter relevant to our data and thereby test counterfactuals (GELMAN and RUBIN, 1995); or we can simply report the confidence interval which expresses our uncertainty as to our estimation and provides us with the same kind of information as the p-value.

We hereby believe to have presented consistent arguments for the case that these four given recommendations are also not free of controversy. Perhaps the most general recommendation is that researchers who plan on using statistical analyses techniques should pay attention to the implications behind this methodological relationship in face of the desired theoretical results so that relevant questions may be answered. That is to say, when a scientist wishes to know something, they use a certain set of established procedures. But these should not be merely taken as dogmas. There are limits to them and knowing such limits is vital.

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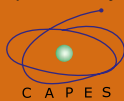
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