Federalism and Regulatory Agencies in the Brazilian Sanitation Sector

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Brazil has experienced a boom of independent regulatory agencies (IRAs) since the middle 1990s. Over the last twenty years, more than sixty IRAs were created in the three levels of government. From these, more than forty are located at the subnational levels and are responsible for regulating the sanitation sector. Although this may indicate a convergence in the Brazilian agencification process, the outputs of this process are quite distinct. In practice, four different types of IRAs emerged in the Brazilian sanitation sector: (i) multisectorial state agency; (ii) state sanitation agency; (iii) regulatory consortium; and (iv) municipal sanitation agency. In this paper we specifically address the impact of a robust federalism in the regulatory reform outputs. In order to analyze the divergent outputs of IRAs’ diffusion process in Brazil, we explored the specificities of Brazilian political system, specifically the robust federalist structure. The complexity of the Brazilian sanitation sector and the different designs of IRAs that emerged in the country are an excellent example of how mechanisms of diffusion and contextual factors interact leading to divergent outputs. Despite the excessive power usually attributed to the federal (Melo & Pereira, 2013) and the state (Abrucio, 1998) executives’, the divergent outputs of the sanitation IRAs show the consolidation of the municipalities as important political actors. The Brazilian sanitation IRAs illustrate the ‘symmetric federalism’ introduced by the Constitution of 1988 and the dynamic relations of the federation units after 1988.

Marco Teórico
The worldwide diffusion of IRAs in the past years was so expressive that autonomous regulatory agencies can be considered the “appropriate model of governance” of the capitalist world today (Jordana, Levy-Faur and Marín, 2011, p. 1344). This “boom” of IRAs made the processes of agencification particularly interesting to the theories dealing with policy interdependence. In this paper, we will draw on previous contribution from policy diffusion, policy transfer and policy convergence. To differentiate these perspectives, we will adopt Pollitt’s (2001) conceptualization of the term “convergence”. The author pertinently argues that convergence is a multidimensional concept that can be divided in four sequential stages: (i) discursive convergence; (ii) decisional convergence; (iii) practice convergence and (iv) results convergence. The first one refers to the convergence of the conceptual agenda and the second to the formal adoption of a given organizational form or technique. The third is related to the actual practice, that is, when organizations or techniques start to function in a similar way. And the results converge occurs when similar outcomes are observed in practice. The three mechanisms of diffusion used by Gilardi (2005) can help to explain the decisional convergence: bottom-up, top-down and horizontal. The first refers to ‘similar reactions to similar problems’, and includes the issues of credible commitment and political uncertainty, originally developed by the congressional delegation literature. The second relates to ‘exogenous pressures’, drawing similarities with the idea of coercive isomorphism (DiMaggio and Powell, 1983) since it can refer to both formal and informal pressures. At last, the horizontal mechanisms translate the essence of diffusion, and the related concepts are: emulation, mimicry, bandwagoning, learning and imitation. In Gilardi’s work, the focus was on “taken-for-grantedness” and “symbolic imitation”. In order to understand why decisional convergence has led to a practice divergence, we will draw on previous contributions from the literature that emphasizes the role local context in the policy selection choice. This body of literature has shown how apparent convergent practices differ in rhetoric (Smullen, 2010), decision (Hood, 2000; Moynihan, 2006) and practice (Pollitt, Van Thiel and Homburg, 2007;
Within this perspective, policy innovation or policy reform are intrinsically a process, that may be “messy” or “erratic” (Jacobs and Barnet, 2000; Pollitt, 2001), but cannot be understood by looking at just one of its phases. In this paper, we understand the diffusion of Brazilian sanitation IRAs as a process, in which the divergent outputs or the different organizational forms that emerged are a result of the common forces (or top-down, bottom-up and horizontal diffusion mechanisms) and the federative tensions along the history. This historical struggle left as result organizations and institutions that shaped the negotiations and outputs of the process.

Método de investigação se pertinente
The data utilized in this research was collect via (i) archival research, (ii) in-depth semi-structured interviews and (iii) observation. The bibliographic research was conducted prior to the fieldwork, and had a very important role in the research plan. The archival research was conducted along with the fieldwork, between September of 2012 and August of 2013, mainly due to a constant need for clarification and confirmation of the data gathered via interviews and observation. It involved an extensive and exhausting search in official reports, websites of all relevant sectorial actors, and federal, state and municipal legislation. The law proposals that preceded the new regulatory framework of the sector were also analyzed. The fieldwork involved nineteen semi-structured in-depth interviews with key sectorial actors. The semi-structured interviews were conducted between January and August of 2013. The interviews always started with an open question and the extremely rich information obtained made us frequently go back to the literature and adjust the conceptual model. Moreover, data collection and analysis proceeded simultaneously, as normally occurs in qualitative research. The interviews were essential to understand the diffusion of Brazilian sanitation IRAs. All respondents worked direct or indirectly in the regulatory agencies, and some were also part of their creation process. Our interviewees are senior executives in the most important agencies and sanitation companies. We also interviewed political actors, in order to understand the macro relationship between the most important players in sanitation sector (executives, private sector and sanitation companies). As the process of data collection and data analysis occurred simultaneously, the early interviews influenced the conduct and structuration of the later interviews. The fieldwork was also complemented by observation, and more than twenty informal conversations were recorded in field notes. The observation was held in various events and industry meetings, such as the ABAR Conference, which annually brings together practitioners and academics. The data was analyzed via content analysis, being codified in open categories that were grouped in a way to facilitate the data interpretation and data confrontation. The discussion between the researches also helped to validate the results.

Resultados e contribuições do trabalho para a área
The provision of sanitation services in Brazil has been a historic struggle between states and municipalities. At the heart of this struggle are (i) the National Sanitation Plan (PLANASA), (ii) the Federal Constitution of 1988 and (iii) the federal law n.11.445/2007. While the provision of sanitation services is a legal competence of municipalities, the PLANASA changed this responsibility in practice, creating significant sticking points in the federative relations. The military regime, in general, and PLANASA, in particular, favored the centralization at the expenses of federative relations. As consequence, in the sanitation sector specifically, the importance of municipalities as economic and political actors was dramatically reduced. With the end of the military regime and the promulgation of the Federal Constitution of 1988 the federative tensions were highly aggravated. The new Constitution established that the development of infrastructure and the improvements in sanitation programs as a shared competence of the Union, the states and the municipalities. Although the
provision of sanitation services remained legal competence of municipalities, the states are able to establish metropolitan regions and to act on those areas. This legal ambiguity created institutional barriers to the development of the sector and it is today an important tension point between states and municipalities, remarkably in the metropolitan zones. It is noteworthy that this important change did not occur in an institutional vacuum. At that time, the provision of sanitation services was made by the state companies. The privatization process held in the mid 1990s did not succeed in the sanitation sector as it did in the other public utilities. As a result, today we have mainly three providers of sanitation services: the state company, the municipal company, and the private company operating at the municipal level. These state sanitation public companies have been important economics players and political actors, with a high lobbying power in the Brazilian Congress. The last of the main sources of conflicts between states and municipalities is the new regulatory framework of the sanitation sector, enacted in 2007. The federal law n.11.445 was intensively discussed and negotiated between the three levels of government, and did not address the ambiguity in the legal competence inherited by the Constitution. However, it established that the validity of the concession contracts depends on the designation of a regulatory entity. This inclusion can be attributed to a powerful lobby of the sanitation companies and the private sector. The adoption of IRAs was seen as a way to increase the credibility of those companies, facilitating their interaction with the private sector. Summing up, the organizational and institutional heritage left by these federative tensions can help to explain the four different types of IRAs that can be found in the sanitation sector. The sector complexity can be mainly attributed to the federalist tensions in the past forty years. The new regulatory framework was the antecedent and the consequent of these historical tensions. The federalist tensions are accentuated when the municipalities have financial conditions to create their own regulatory agencies or to negotiate with the state government the delegation of the regulatory activity. At the same time, most of the municipalities have a strong dependence of cross-subsidization, and need to accept the conditions imposed by the state governments and their sanitation companies. All this tensions are reflected in the different types of IRAs. Another curiosity that increases the sector complexity and is a result of the federalist dynamic is the possibility of “multi-regulation”: different IRAs can regulate the same state company. Since the regulatory activity is a legal competence of municipalities, they may or may not delegate it to a state or a consortium agency. Thus, strong municipalities can use this bargain power with the state companies.

Referências bibliográficas
Jordana, J., Levi-Faur, D.