

INSTITUTIONS, STATE CAPACITIES AND ENVIRONMENTAL GOVERNANCE

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International Conference on National Perspectives in a
Global Economy: Rethinking State Capacities, Public
Policies and the Brazilian Crisis
Rio de Janeiro, 7-9 November, 2016

Subject:

Institutional factors that empowered the state as a key actor to protect the environment

Institutional factors that guide the environmental action of municipalities in Brazil.

State capacities for environmental protection and subnational governments

The broad questions:

What are the most important institutional changes? What was changed? What are the consequences?

Environmental policy and governance: the subnational governments perspective

Capacities and resources for environmental governance at local level?

The approach adopted

- The state is among the key actors in addressing environmental problems.
- Institutions have a strong shaping power over public policy and mechanisms of governance
- Institutional changes are needed to establish the environment as an object for state action.
- In Brazil, most institutional factors that shape the environmental institutional order and the field for state action are similar to institutional factors found in other countries.

Approach adopted (2)

- Although similar institutional factors can be found in other countries, in Brazil there are also unique factors. Their combination provides a unique framework for environmental governance.
- In Brazil, the institutional analysis should also take into account the federal organization of the Brazilian state, its particular trajectory and the distribution of powers among the three tiers of government - Federal government, states and municipalities.

Methodological tools

- Sources: Literature on environmental governance, environmental law, environmental federalism; documents review; analysis of selected Brazilian laws and regulations; interviews with environmental law and policy experts; study cases; statistical exploratory analyses.
- [Nevertheless, we are focused on the ordering principles of environmental law -“the meaning of a normative enunciate]”

Environmental protection and the role of the state: a new legal subject, a new generation of rights

- 1) **Environment: a public heritage / patrimony / asset (1981 + 1988)**
 - Environment: a diffuse interest (1985 + 1988) to be protected by the Public Ministry
 - Environment: common-use goods of the people (1988)
- 2) **Preventive principle**
- 3) **Precautionary principle**
- 4) **Strict liability for environmental damage =** Three types of liability – civil (1981/1988), administrative (1981/1988), and criminal (1988... 2008)

Environmental protection and the role of the state: a new legal subject, a new generation of rights (2)

- 5) Environmental damage as a crime
- 6) The Public Ministry and the environment
- 7) The polluter-pays principle

Conclusions institutional factors

- A bundle of impressive changes over a short time span
- Environment: formally a object of state provision, defined from a multidimensional viewpoint, associated to a healthy quality of life and future generations
- New values included in the Federal Constitution – environmental issues for the first time became federal provisions
- New values operationalized by old and new policy tools: environmental standards and control (inspection, monitoring, sanctions), economic incentives, planning tools, public civil action suit, sanction capacity for environmental crimes,
- New rules protected by CF
- The Public Ministry has played a crucial supplementary role in enforcement of regulation, both directly and indirectly, by supervising with remarkable independence the exercise of the environmental responsibilities of the Executive branch,

An open agenda

- Motivations and political forces that allowed these changes?
- How do these rules affect environmental quality, and how do they influence investment decisions?
- How do the organizations entrusted with the enforcing this regulation work?
- “New institutions took place, but fundamental contradictions remain: the underlying rationale of the system is continuous growth, in a world of limited environmental capacity.” What role may they play in curbing environmental stress?

Institutions, environmental governance and the subnational governments

Five factors emerge as the driving forces behind the actions taken by municipalities in relation to the environment:

- the federal status of municipalities,
- the inclusion of the environmental protection provision in the Federal Constitution,
- the lack of consistent funding for environmental policy,
- the coexistence of several regimes within environmental rules, and
- the discretionary power related to the indeterminacy of environmental regulation.

Empirical research 2008-2017

- Institutional capacities and resources for environmental governance: Brazilian municipalities, states of Pará and Ceará
- Fighting deforestation in Amazon Region and the subnational actors
- Water governance in Brazil: national level, subnational agenda for water government – the role of the municipalities.