(Virtual) T08P05 / Bringing Law (back) in: Contributions of the Law and Public Policy Approach to Public Policy Analysis

Topic : T08 / POLICY DESIGN, POLICY ANALYSIS, POLICY CAPACITY

Chair : Isabela Ruiz (Universidade de São Paulo)

Second Chair : Maria Paula Bucci (Universidade de São Paulo)

Third Chair : Gabriela Azevedo Campos Sales (Universidade de São Paulo)

GENERAL OBJECTIVES, RESEARCH QUESTIONS AND SCIENTIFIC RELEVANCE

This panel starts from the assumption that legal knowledge provides crucial contributions to the multidisciplinary analysis of public policies, both from descriptive and prescriptive perspectives.

The law and public policy (LPP) approach focuses on the role of law and legal experts in public policies, recognizing the theoretical, methodological, and empirical relevance of legal issues in policy formulation, implementation, evaluation, and control. Current scholarship in this field emphasizes three main analytical dimensions: 1) substantive law, focused on studying the institutionalization of rights and the organizational dimensions of policies; 2) legal control mechanisms exercised by judicial and oversight bodies; and 3) the interaction with legal disciplines to develop innovative categories for structured legal operations.

Descriptive analyses of public policies are enriched by technical understanding of the normative frameworks that shape policies, as laws materialize decisions and procedures that constitute public policies. The LPP approach particularly values discussions on: the State's role in public policies; relations between State and civil society in policy-building processes; the interplay between legal and political elements; and the importance of institutional contexts in decision-making and legal innovations. We are particularly interested in studies describing elements of sectoral policy arrangements, whether focused on substantive law (such as education, health, social assistance, public security, environment, and culture), on the legal control of public policies by the Judiciary, the Public Prosecutor's Office, Audit Courts, and comptrollers, or on the interaction between public policy issues and legal disciplines (constitutional, administrative, tax, procedural, criminal law, among others).

Understanding these processes enables the development of learning repertoires that could be replicated across contexts, sectors, and government levels. This approach emphasizes activities related to institutional engineering and policy design, particularly focusing on how different legal-institutional arrangements influence policy outcomes.

Research Questions:

1. What legal elements ensure the sustainability and resilience of public policies in unfavorable political contexts?
2. How does law shape the coordination of government agents in federal contexts?
3. What is law's role in coordinating governmental and non-governmental agents in governance contexts?
4. Which regulatory instruments best address the challenges of multi-level governance in public policies?

The central hypothesis is that policy success - measured through outcomes, organizational processes, and democratic legitimacy - is significantly determined by legal-institutional arrangements. These arrangements vary in their normative flexibility, hierarchical levels, and stakeholder participation in policy processes.

The panel aims to strengthen the interface between law and public policy analysis through three main objectives: (1) enhancing legal experts' participation in academic discussions of public policy; (2) fostering theoretical and practical knowledge accumulation in the field; and (3) building an academic network focused on this intersection, promoting experience sharing and future collaborations.

CALL FOR PAPERS

Dear researcher/practitioner,

If you are an academic or policy practitioner interested in legal issues involved in the formulation, solution design, implementation, evaluation, and control of public policies, you are invited to submit your paper to this law and public policy approach panel.

We accept theoretical, methodological, or empirical papers on the following topics:

- Descriptive policy analysis: research that uses analytical approaches to specific public policies, and describes aspects of their institutional arrangement, focusing on the legal element and the relationship between law and politics in a particular public policy, sectoral policy, or from a comparative perspective. We are particularly interested in studies describing elements of sectoral policy arrangements, whether focused on substantive law (such as education, health, social assistance, public security, environment, and culture), on the legal control of public policies by the Judiciary, the Public Prosecutor's Office, Audit Courts, and comptrollers, or on the interaction between public policy issues and legal disciplines (constitutional, administrative, tax, procedural, criminal law, among others).

- Prescriptive policy analysis: research focused on recommending, formulating, and designing policy solutions for public problems. We are particularly interested in the following analytical approaches: public policy evaluation, legislative evaluation, evidence-based policy analysis, institutional learning, and prescriptive approaches addressing cross-cutting and intersectional themes.

- The interaction between law, politics, and public administration in specific public policies, federal entities, individual countries, or from a comparative perspective. Topics of particular interest include: relations between law and politics, law and public administration, regulatory issues, judicial control of public policies, participatory and social control processes, legal instruments for federative coordination, law and governance, gender issues and social justice, human rights, research and teaching on law and public policies.

The topics listed above are only suggestions of interest. This call for papers is open to other themes, as long as they are related to the role of law, norms, procedures, institutions, and legal relationships in public policies.

In addition to encouraging the production and accumulation of theoretical and practical knowledge on law and public policy, this panel aims to strengthen a network of academics and professionals interested in the connection between law and public policies, with a focus on sharing experiences, building closer ties, and establishing contacts for future academic collaborations.

The panel will be in an online format.

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Session 1

Wednesday, July 2nd 00:00 to 23:59 (Virtual 1)

(Virtual) The Construction of Structuring Systems for Public Policies in Brazil: Contributions from the Law and Public Policy Approach

Gabriela Azevedo Campos Sales (Universidade de São Paulo)

Maria Paula Bucci (Universidade de São Paulo)

This paper examines the legal-institutional arrangements that enabled the Brazilian State to significantly transform its social welfare policies over the past four decades.

The Brazilian redemocratization process of the 1980s coincided with demands for broader and universal social provision, as well as a federal arrangement sensitive to the social and regional heterogeneity and inequalities that characterize the country. Channeled through a notably participatory Constituent Assembly, these demands resulted in the 1988 Constitution, which combined the reestablishment of democratic rule, commitment to overcoming a historical deficit in social rights implementation, and a cooperative, decentralized, and interdependent federal arrangement. Specifically regarding social rights, the Constitution: a) ensured, unprecedentedly, the universalization of social rights; b) assigned the responsibility for implementing social rights to all three levels of government; c) established specific rules for formulating and implementing social policies.

Subsequently, a long process of incremental reforms led to the organization of "structuring systems for public policies" in areas that form the core of social welfare regimes. In summary, these systems are characterized by: a) national standards for social provision; b) specific responsibilities for each government level; c) federal coordination; d) decentralized program execution; e) intergovernmental committees for political decision-making; f) shared financing of activities; g) social participation in policy formulation and monitoring. As an original and successful response to the changes promoted during the democratic transition, the system model was responsible for organizing the Unified Health System, the Unified Social Assistance System, and the collaboration regime in basic education, with efforts directed toward the National Education System.

Supported by an ingenious legal-institutional framework, these arrangements created stable and self-reinforcing social policies that provided substantial expansion of services and improved social indicators. This institutionality developed resilience mechanisms that enabled them to survive periods of democratic tension (2016-2022) and the Covid-19 pandemic - even limiting authoritarian advances by the federal executive. Despite recent impasses and critical points in these programs - particularly persistent difficulties in moving beyond basic levels of social provision -, the results of these reforms constitute a remarkable achievement that began when pioneering Welfare States were already restricting their policies.

Analyzing these transformations through the Law and Public Policy approach contributes to understanding the legal-institutional factors that influence the implementation and resilience of social policies in democratic federalism contexts. Furthermore, it helps transform the learning derived from sectoral policy analysis into a theoretical and methodological repertoire that can be used across different public policy areas (e.g., public security, environment). More than a descriptive activity, studying public policies from a legal perspective can reveal paths toward successful and stable institutional innovations, addressing contemporary State challenges.

(Virtual) LEGAL GUIDELINES FOR PUBLIC POLICY PLANNING: STATE OF THE ART OF SOCIAL ASSISTANCE

Mariane Lübke (Centro Universitário Curitiba - Unicuritiba)

The research aims to analyze the normative basis of Brazilian social assistance public policy, in order to detect existing planning elements that complement the implementation and evaluation phases of this policy. This analysis aims to answer the following research problem: given the lack of general guidelines for planning public policies, can the normative model of social assistance serve as a parameter for the construction of legal guidelines for planning public policies? To answer the question, the research is divided into three parts. The first explains what is meant by planning as an external element (the coordination of public policy with the State's general planning) and internal element (the structuring of public policy itself) to public policies. The second identifies and analyzes the existing constitutional and infra-constitutional normative basis that must be observed in the planning of public policies, such as issues relating to competence, the organizational model, financing, participation and social control, demonstrating the existence of standards of mandatory observance in the public policy planning. And, finally, the normative basis of Brazilian public social assistance policy raised by Isabela Ruiz (2023) is analyzed. The theme of social assistance was chosen because it is a policy that, in addition to its constitutional relevance, has broad regulation in infra-constitutional legislation, in addition to its capillarity across all federative entities (Union, states, Federal District and municipalities). The complexity of social assistance public policy is captured in its broad normative base, extracting some essential elements for planning any public policy: objectives, guidelines, design of the organizational and decision-making model, financing and social control of the policy. The existence of these elements, as a whole, confers a high degree of institutionality that is desirable for all public policies. From these elements, it is possible to attest to the advanced level of legalization of public social assistance policy, whose normative, executive, financing and control powers are well defined in the normative acts. For this reason, the normative basis of public social assistance policy can help in the construction of a general model of legal guidelines for planning public policies, with the purpose of providing a “model” to public managers when formulating public policy. The methodology used is hypothetical-deductive, with bibliographical research.

(Virtual) State Capacities and Public Urban Passenger Transportation Policies in Rio de Janeiro: Legal Instruments and the Challenge of Building Resilient and Innovative Institutional Arrangements in a Context of Contractualization

Valmir Rodrigues Junior (Universidade Federal do Rio de Janeiro)

Emiliano Brunet (Universidade Federal do Rio de Janeiro)

Under the influence of multilateral organizations such as the World Bank and the International Monetary Fund, the Brazilian State began to adopt, particularly from the 1990s onward, development policies aligned with neoliberal economic framework. A key feature of this shift was the increased reliance on contractual models to outsource government functions. This trend significantly influenced the design and implementation of public policies related to the provision of essential services, including urban mobility. The issue gains relevance when considering that concession agreements and public-private partnerships (PPPs) typically involve long-term contracts and substantial investments in infrastructure and the provision of public services.

As a central legal instrument, the administrative contract thus acquires a critical role in the study of public policies from the perspective of legal-institutional arrangements. This raises important questions about its ability to promote a meaningful interaction – one that is both democratically legitimate and effective – among the State, private actors, and civil society in addressing complex social challenges.

Within this framework, urban mobility policies, in their strong connection with the provision of public transportation services, are deeply connected to a highly significant social issue. Beyond merely facilitating the movement of people, public transportation services, viewed through the broader lens of urban mobility policy, are inseparable from socioeconomic development and the guarantee of the right to the city. However, the current crisis in urban public transportation is evident in the growing shift of users toward individual modes of transport or ride-hailing services.

Therefore, the central research question of this study focuses on the role of concession agreements and partnership contracts within the legal-institutional frameworks that underpin urban mobility policies. Specifically, the study will explore how the resilience and continuity of these contracts correlate with the effectiveness and efficiency of such arrangements. The preliminary hypothesis is that certain state capacities – both political and organizational – are closely linked to the selection and design of contractual

instruments capable of supporting public transportation services that align with an urban mobility policy promoting equitable access to the city.

To address these questions, empirical research will be conducted, focusing on measures implemented by the Municipality of Rio de Janeiro to reverse (or ate least mitigate) the crisis affecting two contracted transportation systems: the 'Veículo Leve sobre Trilhos' (VLT) and the urban bus system. The study will examine administrative decisions and processes that led to the introduction of public subsidies for bus operators and the provision of contractual rebalancing for the VLT concessionaire.

This research aligns with the themes of panel T08P05, as it directly examines legal (public subsidies) and contractual (economic-financial rebalancing) instruments as mechanisms to address the challenges faced by public policies implemented through administrative contracts.

(Virtual) Law and Public Policy in Illiberal Times: Crafting a LLP Approach for Democratic Resilience

Ivan Ribeiro (Universidade Federal de São Paulo)

Maria Paula Bucci (Universidade de São Paulo)

This article addresses the growing global concern over illiberal trends, democratic erosion, and the fragility of social rights, proposing an integrative "Law and Public Policy" (LPP) approach as a response. In times of mounting democratic backsliding, the significance of robust legal and policy mechanisms for safeguarding social rights and democratic values becomes especially apparent. It begins by examining how many emerging and consolidating democracies, particularly in the Global South, constitutionally enshrine social rights yet struggle to translate these formal guarantees into effective policies. Illiberal regimes exacerbate this gap by systematically weakening institutions and curtailing freedoms, thereby underscoring an urgent need for methodologies that connect legal frameworks to policy design and implementation while remaining vigilant against power abuses.

Drawing on traditions in legal realism, institutional analysis, and transformative constitutionalism, the LPP approach offers both normative and empirical vantage points. By recognizing that law is neither neutral nor purely instrumental, it treats legal-institutional arrangements as dynamic sites where policy objectives, social struggles, and legal doctrines intersect. A core tenet is that policymaking is inherently processual, shaped by conflicts and negotiated settlements. This perspective highlights how law functions as a critical medium for defining areas of contention, determining who has standing to participate, and structuring the channels through which disputes are resolved.

The article also emphasizes the need for middle-level analysis—rather than exclusively grand or narrow theoretical approaches—to systematically map how specific legal instruments, procedural rules, and institutional practices influence policy outcomes. In doing so, it integrates the capacity for empirical scrutiny into a framework guided by democratic and social values. Rather than assuming that robust conditions prevail, the LPP approach contends with scenarios in which illiberal regimes maintain formal institutional forms while hollowing them out from within, exposing the limits of purely formal legal oversight.

To bolster democratic resilience, the text encourages building social participation, accountability, and transparency into policy processes. Such measures reinforce the legitimacy and efficacy of public policies and guard against authoritarian tactics to curtail social rights. By adopting iterative and incremental strategies, states can develop an "alluvial" system of layered legal mandates and procedural safeguards that collectively deepen democratic governance. This enriched perspective also sparks curiosity regarding the approach's relevance in more established democracies facing rising populist pressures.

In conclusion, the LPP approach emerges as a promising analytical and reformist tool, combining empirical rigor with a firm commitment to social inclusion and the rule of law. By situating policy choices in their legal context and emphasizing inclusive stakeholder engagement, it provides a pathway for strengthening democratic frameworks in regions susceptible to institutional decay and social rights backsliding. Central to this perspective is the recognition that law and politics are inextricably linked, as underscored by early references to Lasswell, McDougal, and Clune, who illustrate how power dynamics shape and are shaped by legal structures. This research agenda underscores the importance of connecting scholarly inquiry with real-world application, highlighting how an intertwined, forward-thinking relationship between law and public policy is critical for sustaining democracy and social welfare.

(Virtual) Addressing the demand-side aspects of green transition in Europe and the ASEAN

Charlotte Halpern (Sciences Po Paris - Centre d'Etudes Européennes (CEE))

Nicolas Calamita (National University of Singapore)

This paper examines the relationship between policy choices and non-governmental actors' advocacy strategies and the understanding of the demand-side aspects of green transition and climate rulemaking in two regions, Europe and the ASEAN. It serves as an introduction to this panel. This panel examines whether and how the role of demand-side adjustments to the green transition has come into focus for policymakers in both regions, especially regarding consumer behaviour. Specifically, it questions whether legal regulation directed toward consumers can serve as to harness consumer behaviour in support of demand-side solutions to the green transition. It also questions whether the framing of demand-side solutions as pertaining to consumer protection law has impacted the selection of policy tools, focusing on information-based tools to prevent "greenwashing" (i.e., the protection of consumers from being misled by information that is false or that deceives or is likely to deceive,) and regulatory tools to ban or restrict marketing and advertising of specific products (i.e. drawing on experiences with tobacco and alcohol).

Drawing mainly on a literature review, document analysis and a first series of interviews, the paper addresses the following questions : How are demand-side solutions framed in different legal and institutional contexts? How are consumers' demands channeled into public policy processes? What tools (legal, policy, etc.) have been formally adopted to support demand-side solutions?

(Virtual) Seafront areas Project: the Brazilian model of federative and participatory management to regulate the sustainable use and occupation of its seafront areas

Fernanda Vick (Federal University of São Paulo)

This paper describes the Brazilian model of federative and participatory management to regulate and implement the sustainable use and occupation of the Brazilian seafront areas, the "Seafront areas Project" (Projeto Orla), which is part of a broader policy, the National Coastal Management Plan, Federal Law nº 7.661/1988, and its executive regulation, Federal Decree nº 5.300/2004, in addition to other administrative norms that also determine the institutional arrangement of the policy.

The relevance of the topic for Brazil derives from the large extension of its Coastal-Marine System, the transition area between the continent and the ocean, which has almost 200 thousand km² of mangroves, sandbanks, beaches, estuaries, and rocky coasts, whose preservation coexists with the challenge of the broad and disorderly occupation of the coast, which has 280 provinces that face the sea and concentrates 25% of the country's total population (IBGE, 2019), in addition to the voracity of economic interests in these areas, whose agents seek to change the legal regime involving the use and occupation of the Brazilian coast (Proposed Constitutional Amendment No. 3, 2022).

The methodology used is the "Law and Public Policies" approach (BUCCI, 2019) and seeks to identify the main legal elements that organize its institutional arrangement, using the dimensions proposed by RUIZ (2019). It highlights the fact that the territorial spaces in question are not private, but "common goods", attributed to the Brazilian State by the Constitution, specifically at its federal level (art. 20), managed by the Secretariat of the Union's Patrimony, which holds special administrative powers and instruments, without which it would not be possible to effectively regulate the uses in these spaces, either to balance interests regarding use and occupation, or to allow effective access to the beach and the sea, which is a universal right in Brazil.

The main instruments of the "Seafront areas Project" are the "Integrated Management Plan for the Seafront Area" (IMPSA) and the "Term of Adhesion to Beach Management" (TABM). The IMPSA is the product of participatory workshops to construct diagnoses and classify seafront areas, according to legal parameters of preservation and occupation, which serves as the basis for decision-making aimed at balancing social, economic and local development interests with environmental preservation. These workshops incorporate local political sectors and civil society actors. The TABM, in turn, as the most recent innovation in the arrangement, is an instrument that transfers management tasks for these spaces to the municipality, which are currently the responsibility of the Union. Under the TABM, the municipality is obliged to implement and monitor the IMPSA, including the management of onerous authorization contracts and licenses for the use of the spaces, in addition to applying sanctions and penalties for inappropriate use and occupation, encouraging adherence for financial gains, with the obligation to invest part of the resources in the environmental and urban qualification of the spaces.

The project also has the support Local Seafront Management Committee.

(Virtual) Legal Traditions and Economic Governance: EU civil law system vs Anglo-Saxon common law system

Shintaro Hamanaka (IDE-JETRO)

The modes of economic governance vary from country to country, but legal traditions play an important role. Approaches to economic governance differ significantly between the EU, which has a civil law system, and the US, which has a common law system. In many economic issue areas, the EU prefers top-down across-the-board type of governance that incorporates fundamental values of the civil law system. The US, on the other hand, prefers bottom-up, flexible, case-by-case type of economic governance, which is in line with the core values of the common law system. The two sides have very different approaches to various economic related issue areas, such as intellectual property, services, and investment. They often cannot agree upon the fundamental goal of economic governance, such as what to govern (regulate) and how to govern (regulate), which had led to the deadlock of international negotiations such as the WTO Doha Round. The conflict between the EU and the US over economic governance has global implications. Many countries in Latin American (such as Brazil), countries around the EU (such as Turkey) and possibly China would prefer the civil law type of economic governance. The UK, some countries in the Asia Pacific (such as Australia and Singapore) and possibly India would join the latter group because of their common law traditions. There is a risk that the global economic governance will become divided in terms of legal traditions rather than democratic values.