

TRANSJUS

Institut de Recerca TransJus
UNIVERSITAT DE BARCELONA

TransJus Working Papers Publications

ISSN 2462-263X

Working Paper N. 3/2019



This work is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/)

**PUBLIC POLICY ANALYSIS AND THE LAW: A TEACHING EXPERIENCE AND
A RESEARCH METHODOLOGY**

ANA FARRANHA

PhD in Social Sciences, professor at the University of Brasilia Law School
anclaud@uol.com.br

PAULO SOARES

PhD Candidate at the University of Brasilia Law School
paulofsp1983@gmail.com

JULIANA MIRANDA

Master of Law, professor at the Institute of Public Law (IDP)
juliana.miranda@idp.edu.br

SUMMARY 1. Introduction; 2. The methodological approach: the subject and its content; 3. Students' perceptions; 4. Conclusions: how to redesign the approach around the issue.

ABSTRACT: What are the relations between public policy analysis and the Law? How can linking these research fields contribute to the development of institutional capacities in the policymaking process? How can a teaching experience emphasize this issue? How can multiple public policy methodologies approach the Law? This paper tries to answer those questions. In Brazil, the formalistic legal logic separates both research fields (Law and Public Policy Analysis), creating obstacles that obstruct better governance in all three government branches. From the methodological point of view, this paper explores the experience of graduate students at the University of Brasilia Law School (FD/UnB), incorporating their professional experience related to the public policy cycle. The case study we explore here is the Law and Public Policy Analysis course ministered in the second half of 2015 and 2016. We present how the discipline was developed and how the students perceived the topic in their research. We connected the literature to the students' perceptions. It seems that linking legal models to the public policy cycle tend to improve the integration and performance of policy stakeholders and the Lawyers.

KEYWORDS: Public Policy Analysis, empirical research in Law, legal models and governance.

RESUMEN: ¿Cuáles son las relaciones entre el análisis de políticas públicas y el derecho? ¿Cómo puede la vinculación de estos campos de investigación contribuir al desarrollo de las capacidades institucionales en el proceso de formulación de políticas? ¿Cómo puede una experiencia de enseñanza enfatizar este tema? ¿Cómo pueden múltiples metodologías de políticas públicas abordar la ley? Este artículo intenta responder a estas preguntas. En Brasil, la lógica legal formalista separa ambos campos de investigación (Derecho y Análisis de Políticas Públicas), creando obstáculos que obstruyen una mejor gobernabilidad en las tres ramas del gobierno. Desde el punto de vista metodológico, este trabajo explora la experiencia de los estudiantes de postgrado de la Facultad de Derecho de la Universidad de Brasilia (FD/UnB), incorporando su experiencia profesional relacionada con el ciclo de políticas públicas. El estudio que aquí exploramos es el curso de Análisis de Leyes y Políticas Públicas impartido en la segunda mitad de 2015 y 2016. Se presenta cómo se desarrolló la disciplina y cómo los estudiantes percibieron el tema en su investigación. Conectamos la literatura con las percepciones de los estudiantes. Al parecer, la vinculación de los modelos jurídicos con el ciclo de las políticas públicas tiende a mejorar la integración y el desempeño de las partes interesadas en las políticas y de los abogados.

PALABRAS CLAVE: Análisis de Políticas Públicas, investigación empírica en Derecho, modelos legales y gobernabilidad.

RESUM: Quines són les relacions entre l'anàlisi de polítiques públiques i el dret? Com pot la vinculació d'aquests camps de recerca contribuir al desenvolupament de les capacitats institucionals en el procés de formulació de polítiques? Com pot una experiència d'ensenyament enfatitzar aquest tema? Com poden múltiples metodologies de polítiques públiques abordar la llei? Aquest article intenta respondre a aquestes preguntes. Al Brasil, la lògica legal formalista separa tots dos camps de recerca (Dret i Anàlisi de Polítiques

Públiques), creant obstacles que obstrueixen una millor governabilitat en les tres branques del govern. Des del punt de vista metodològic, aquest treball explora l'experiència dels estudiants de postgrau de la Facultat de Dret de la Universitat de Brasília (FD/UnB), incorporant la seva experiència professional relacionada amb el cicle de polítiques públiques. L'estudi que aquí explorem és el curs d'Anàlisi de Lleis i Polítiques Públiques impartit a la segona meitat de 2015 i 2016. Es presenta com es va desenvolupar la disciplina i com els estudiants van percebre el tema en la seva recerca. Connectem la literatura amb les percepcions dels estudiants. Pel que sembla, la vinculació dels models jurídics amb el cicle de les polítiques públiques tendeix a millorar la integració i l'acompliment de les parts interessades en les polítiques i dels advocats.

PARAULES CLAU: Anàlisi de Polítiques Públiques, recerca empírica en Dret, models legals i governabilitat.

1. INTRODUCTION

This paper explores the relationship between Public Policy Analysis and Law. It tries to fill a gap between these two study fields, pointing out the necessity of articulating the phases of the public policy cycle to the legal norms.

In Brazil, research regarding the relationship between Law and Public Policy is still in its first steps, as indicated by COUTINHO (2013). We aim at linking these two fields and discuss how this is able to improve institutional capacity and, at the same time, point out innovative methodologies for the less formalistic enforcement of the Law.

Such concerns are not new. At the University of Sao Paulo Law School, there is a research group on Law and Public Policy since 2007 trying to address these issues.¹

In our research, we propose the integration of both fields (Law and Public Policy). Regarding this issue, FARRANHA (2002) points out a research agenda on these terms:

- Theoretical research aiming to find in the works of classical authors notions of judicial-political institutions, considering the individual characteristics of those authors;
- Research that tries to evaluate policy based on how it pursues the effectiveness and fulfillment of fundamental human rights;

¹ At the National Research Council (CNPq) there are 133 groups researching the topic. These groups research from Human Rights to Law and Economics, and Financial Regulations.

- Research that approaches the topic of political representation during the policymaking process, aiming to evaluate not only the content of the norms but also the political elements that created those norms;
- Research that aims to understand the principles that guide judicial decisions, addressing the fact that they have political consequences.

Matters of some concern raised by this research agenda remain relevant. It is necessary to address them not only through academic research but also through the understanding of how Lawyers get their professional education. Thus, we developed in 2015², at the University of Brasilia Law School, the Public Policy Analysis and the Law course for graduate students. Most students were professionals that work directly with public and private institutions that are interested in the topic.

Considering the issues raised by FARRANHA (2002), as mentioned above, and the necessity of making the experience public, we describe the events while trying to identify the connections between both disciplines through the following questions: What is the relationship between Law and Public Policy? How approximating both fields can help to develop institutional capacity in the policymaking process?

In order to develop this work, we present in the next topic what we aimed to do, looking at the references used in the course. After that, we focus on the perception of the students that were enrolled in the course, and then we point out some examples of works that linked Public Policy and the Law taking into consideration the multiple phases of the policy cycle. This discussion intends to contribute to the deepening of the debate by referring to more critical and diverse methodologies in the field and how they impact the juridical professional education.

More than having professionals concerned with what the Law is, the challenge is having professionals dedicated to Law enforcement with material results. Our goal is to improve the access to public goods and interests, undoing the Categorical Imperative (element of the Kantian thought), whose impacts can definitely contribute to the reduction of formal

² The same course was taught again in 2016 for graduate students at the Public Law Interinstitutional Doctorate (DINTER, a partnership between the University of Semiarido and the University of Brasilia) and for standard graduate students at the University of Brasilia.

inequalities (legal interpretation) and the material inequalities, which impact the access and the quality of public services.

2. THE METHODOLOGICAL APPROACH: THE SUBJECT AND ITS CONTENT

The “Law and Public Policy Analysis” course had the following study plan:

“The subject aims to present the main models for public policy analysis, pointing out how they relate to the legal and institutional framework. The topics refer to aspects of the formulation, implementation, and evaluation of public policies and begin a debate among authors and schools of thought (Sabatier, Easton, Kingdom, Lindblom, Rational Choice, Institutionalist, Managerialism, Participation) in order to identify how decision-making models relate to the legal design of a specific policy.”

Its goal was to point out to the foundation of the literature that discusses Policy Analysis, establishing connections with the legal perspective that articulates the policy dimension.

The institutional and learning goals consisted of making sure the students, by the end of the course, were able to:

- Comprehend the foundation of Public Policy Analysis;
- Identify the multiple phases of the Policy Cycle;
- Analyze the eventual connections between the Policy Cycle and the juridical formulation;
- Debate case studies in order to deepen the research on the topic.

Regarding the content, the subject was divided into five chapters, as follows:

a) The first chapter dove into the nature of public policies and its relationship with Law. It introduced the concept of public policies and its study field. It was taught in four meetings, whose topics were: “Public Policy: From whom and for whom?”; “Theoretical approaches”; “Law and Public Policy: institutionalism and policy”.

The references were indicated in order to approach the topics above by connecting the two fields. The main authors were HOWLETT ET AL. (2013); BUCCI (2002); SOUZA (2006); SALM (2006); LEJANO (2012) and KOERNER & INATOMI (2011).

b) The second chapter had as its main discussion topic the elements that make up the public policy formulation. It was organized in order to discuss the decision-making process and the following questions: How public policy decisions are made? What instruments are used?

What is the rationale? How do institutions welcome social demands? How does the legal framework capture these movements? The literature privileged authors that had this approach: HOWLETT ET AL. (2013); CAPELLA (2004); GOTTEMS (2013); OLLAIK & MEDEIROS (2011); COUTINHO (2014); SALM (2006).

c) In chapter three the debate was about the implementation aspect. The key discussion was on how public policies are established. What are the legal instruments used for the policy establishment? Are they able to account for the politicization that permeates the Administration?

The references were grounded in the following authors: HOWLETT ET AL. (2013); CAPELARI, ARAÚJO & DU PIN CALMON (2015); WU, XUN ET AL. (2014); GOMIDE & PIRES (2014); CALMON (2013); PETERS & PIERRE (2010); DE PAULA (2005); PIRES (2011); SILVA (2010). Besides the questions raised, the chapter introduced the concept of public governance and participation, presented by GONÇALVES (2005) and AZEVEDO & ANASTASIA (2002). We aimed to comprehend how important are those dimensions of analysis to understand the implementation process and the effectiveness and fulfillment of fundamental constitutional rights.

d) Finally, chapter four discuss the evaluation of public policies focusing on the importance of periodic evaluation for the effectiveness of the Law, pointing out the most recent Brazilian research available about the topic.

The course ended with the topic “Case studies: new paradigm, new methodology, and the new interpretation of the Law”, when the students were able to cite government policies and programs where the topics we debated could be applied, pointing out the elements that show convergence between public policy and the Law.

The methodology was organized using the following techniques:

- Dialogical classes, always composed by the exposition of arguments from the students and the professor;
- Scheduled activities, such as seminars presented by the students, about the referenced literature;
- Critical analysis of the references, discussing articles presented in conferences or published in journals.

3. STUDENTS' PERCEPTIONS

Besides presenting the topics above, our proposal is to identify the students' perceptions. Thus, at the end of the course, we asked them to fill a form with the following questions: Eight out of the thirteen total students answered all these questions:

a) *What government agency do you work for?*

b) *What motivated you to enroll in the course?*

c) *Was this motivation met? () Yes () No*

d) *If your answer is "no", please, briefly explain why.*

e) *In order of priority, list four topics addressed that are important for you:*

1 _____

2 _____

3 _____

4 _____

f) *Briefly, explain why those topics were important:*

g) *What is your view of the theoretical link between Public Policy and the Law: (mark all the relevant):*

() *Problematic*

() *Possible, but controversial*

() *Desirable, as it allows for a better comprehension of the Executive branch actions*

() *Useful only regarding the judicialization of public policy*

i) *Explain your previous answer:*

j) *What is your view on the references used for the course:*

() *Good, because it deepened my understanding of institutional capacities and public policy analysis*

() *Good, but more connections with the juridical literature were needed*

() *Good, no more comments*

() *Weak, there was no juridical literature of public policy*

() Unintelligible

k) If you wish, explain your previous answer:

l) What other approaches could be explored in this topic?

m) If you wish, write any suggestions you might have:

The answers are below:

Table 1 – Question a) What government agency do you work for?

Pessoas	Respostas
1	Notary Public and Enforceable Notarized Debt Instrument
2	Does not work
3	National Healthcare Fund
4	Legal Department – Presidency of the Republic
5	IPEA / Ministry of Justice
6	Department of Prison Management
7	Federal Antitrust Agency (CADE)
8	Null

Source: Elaborated by Farranha, Soares & Miranda, 2017.

The answers above indicate that the students participate in some of the phases of the public policy cycle.

For question number 02, regarding the motivation for enrolling in the course, the answers were as follows:

Table 2 – Question b) What motivated you to enroll in the course?

Pessoas	Respostas
1	Study the connections between Law, Economics and Political Science.
2	Better understand public policy.
3	Working with the normative design of public policy.
4	Better understand public policy and the Law.
5	My main motivation was learning more about the literature in the public policy field, relating it to my professional career as I work on improving access to the judicial system.
6	I'd like to learn more about public policy.
7	I have an academic and professional interest in public policy analysis. In professional terms, because I serve as a Policy Specialist for the Federal Government. In academic terms because this is a little researched field despite its relevance.

8	Null
----------	------

Source: Elaborated by Farranha, Soares & Miranda, 2017.

The answers show that their motivation was mostly linked to the integration between the fields. In that regard, answer number 07 points out the low number of studies on the matter. Answer number 04 points out that legislative work requires public policy knowledge.

Regarding the next question, if the motivation was met by the course, all students answered “yes” and said that the content studied help them in their professional career. They said the following:

Table 3 – Question c) Was this motivation met?

Pessoas	Respostas
1	The topics studied helped me understand how Laws are created and how the Law interacts with politics and economics.
2	I learned the theory as well as theoretical-methodological models that help with policy analysis.
3	Currently, I work with the compliance of our organization to the Federal Court of Auditors decisions.
4	After the course, I was able to better understand the policy formulation process and how I can apply that framework to my professional activities.
5	The content is useful for my professional career as it makes it clearer the policy cycle and its challenges. It helps with ideas to permanently evaluate public policy.
6	I started to understand better the decision-making process and how the agenda is set with its specific priorities.
7	Null
8	Null

Source: Elaborated by Farranha, Soares & Miranda, 2017.

The answers show that it is necessary to offer to students more than just knowledge about what the norms are. They need to understand them in their context and how they relate to politics. Thus, answer number 01 and number 06 draw attention as they underline the necessity to comprehend the juridical and political elaboration of norms. Answer number 03 underlines how the content explored helps to improve the work done, including the relationship with the auditing organizations such as the Federal Court of Auditors. Finally, answers 04 and 05 address the relevance of the use of knowledge in professional experiences.

The answers above show that methodologically, the term “institutional capacity” is important. The term is understood as the capabilities of the government agent and how it relates to his

environment. Regarding this issue, GOMIDE & PIRES (2014) discuss the challenge of building development policies in a Democratic Society.

They point out the following elements of institutional capacities that make possible a new methodology in Legal and Policial Science:

“É certo que a capacidade técnico-administrativa para implementação de políticas de desenvolvimento pode existir tanto na presença quanto na ausência de democracia – por exemplo, o caso dos Estados desenvolvimentistas arquetípicos do Leste Asiático ou mesmo da América Latina. No entanto, no caso brasileiro atual, a consolidação da democracia tem imposto à ação estatal requisitos voltados à inclusão e à relação com os atores afetados na tomada de decisão, na promoção da accountability e no controle de resultados. Isto demanda novas capacidades do Estado, além das necessidades de uma burocracia profissional, coesa e meritocrática. Ou seja, no contexto de um ambiente institucional caracterizado pela existência de instituições representativas, participativas e de controle (social, burocrático e judicial), são necessárias também capacidades políticas para a inclusão de múltiplos atores, o processamento dos conflitos decorrentes e a formação de coalizões políticas de suporte para os objetivos e as estratégias a serem adotadas (sic)” (GOMIDE & PIRES, 2014, p. 21).

The following question was about the perceptions students had regarding the relationship between Public Policy and the Law. The possible answers were a) Problematic; b) Possible, but controversial; c) Desirable, as it allows for a better comprehension of the Executive branch actions; d) Useful only regarding the judicialization of public policy.

Among the answers, the one that the students marked the most was letter “c”, desirable in order to understand the Executive branch actions. We could interpret that as a confirmation of the importance of the understanding of the processes that guide bureaucratic action, focusing on equity during the distribution of public goods and, consequently, an improvement on the effectiveness of the Law.

Then the question regarding the references used for the course had four possible answers. The results were:

Table 4 – j) What is your view on the references used for the course?

Possible answers	Answers (%)	Answers (quantity)
Good, because it deepened my understanding of institutional capacities and public policy analysis Good, no more comments	85.71%	6
Good, but more connections with the juridical literature were needed	14.29%	1
Weak, there was no juridical literature of public policy	0%	0
Unintelligible	0%	0
Total	100%	7

Source: Elaborated by Farranha, Soares & Miranda, 2017.

These results are significant because they show the necessity of making a link with the juridical literature. Why is it interesting? It shows that, in absolute terms, there are few papers articulating public policy and the Law. Two references used during the course work with this lack of interaction and try to explain them under the following perspective:

“Essa relação simultânea de proximidade (prática) e distância (acadêmica) entre o direito e o campo das políticas públicas brasileiras seguramente tem muitas causas. Algumas delas estão, acredito, relacionadas a certos traços do ensino jurídico que temos, que embora venha se dedicado a formar magistrados, advogados, promotores, procuradores, defensores políticos, autoridades públicas e políticos há quase dois séculos, não se propôs, especificamente, a formar profissionais do direito preparados para estruturar, operar e aprimorar políticas públicas e programas de ação governamental (sic)” (COUTINHO, 2013, p. 3).

The paper by the author (COUTINHO, 2013), which was used as a reference for the course, points out that there is no concern with public policy and government management in Law schools throughout the country. Professional legal practice has kept a formalist perspective regarding legal procedures, supporting the argument of neutrality of Lawyers that work for the government, and that means lack of innovation or connection with any idea of improving the access to public goods and services.

Furthermore, BUCCI (1997) talks about Administrative Law and how it relates to public policy:

“No início do século XX, poucos anos depois da aceitação, pelo Conselho de Estado francês, do serviço público como critério para definição da competência da jurisdição

administrativa (1873), seguiu-se importante teorização sobre o papel do Estado, diante dessa nova forma de relacionamento entre o poder público e a sociedade. Leon Duguit deu grande atenção a esse problema – “Los Gobiernos no son más que los representantes de un poder social que manda: son los gerentes de los servicios públicos” –, ocupando-se do ordenamento jurídico dos serviços públicos para explicar e fundamentar teoricamente a crescente dependência da vida comum em relação aos serviços criados e mantidos pelo Estado (sic)” (BUCCI, 1997, p. 91).

These two arguments explain the lack of references on the subject and how difficult is the challenge to turn both legal education and research to the understanding of this relationship.

Thus, the comments of the respondents confirm the arguments that were pointed out above: the lack of a deepening in the research and a difficulty in extracting the juridical aspects of the literature about public policy in Brazil.

Table 5 – Question k) Opinion about the References

Pessoas	Respostas
1	I considered the references interesting but one of the basic books – HOWLETT ET AL. – is not a fluid reading and the examples it contains are very far from the Brazilian reality.
2	The book used is very good but covers mainly theory and as the authors are foreigners it makes it harder for us to utilize some of the ideas and examples that were given.
3	The wide range of references used for the course was very positive and the strongest point. The mix between foreign and national references was excellent.
4	Null
5	Null
6	Null
7	Null
8	Null

Source: Elaborated by Farranha, Soares & Miranda, 2017.

Finally, the student’s perceptions when asked about what areas should be researched more deeply, they put forward the following arguments:

Table 6 – Question l) What other fields should be studied?

Pessoas	Respostas
1	Accountability agencies and their impact over the Executive actions.
2	I believe we could improve models for permanent evaluation of policies.
3	I would be interested in deepening my knowledge on agenda

	setting, implementation, and evaluation of public policy. In this last case, I see in my professional career that implementation is essential for a policy to achieve its goals. That is why evaluation in this phase can help to identify errors in time of proper corrections.
4	Addressing practical policy case studies. For instance, security policy, housing policy, healthcare policy. Each chapter could pick a field that we could work with.
5	I believe it would be interesting to work with more case studies, including inviting professionals that work with public policy to talk about the formulation, development, and implementation obstacles. The fact that we study in Brasilia (the capital) makes it easier for us to improve the connection between academia and professionals involved with policy.
6	Null
7	Null
8	Null

Source: Elaborated by Farranha, Soares & Miranda, 2017.

The answers point out that the challenge in this field is to bring practical elements to the theoretical formulation, finding problems, questions, and possibilities of innovation that are in the practical dimension and that return to the academic perspective with the idea of building new knowledge. That dialogues directly with everyday experiences and gives new meaning to science in a perspective that faces inequalities, be they institutional or in the factual world, wherever Law and public policies are developed.

It is a proposal of interdisciplinarity, which seeks to follow the path of a new scientific production in legal education, which recognizes the complexity of social relations, leaving aside their logical-formal preferences, without a critical view of the whole. The objective of Law becomes a dependent variable and the legal relation a socio-political phenomenon (GUSTIN, 2014, p. 25).

Taking these points as references, we point out that some recent research conducted on the subject of Law, whose focus has been the discussion of public policies in its articulation with aspects of public management aimed at results in Brazil.

A challenge for the teaching of Law, whose proposal is the transformation of the traditional methodological pathways and also pushing forward an approach based on new research techniques, working not only with the formally understood meaning of the Law, but the one worked by Political Science, Public Management, Sociology, and Anthropology. Necessarily, the dialogue between Law and Public Policy Analysis demands methods and techniques that go beyond the legal dogmatism (OLIVEIRA, 2004, p. 3).

Anticipating conclusions, the empirical experience of this discipline, with the presence of student-managers together with student-researchers, has demonstrated the improvement of the analysis of Public Policies by Lawyers and a cross-cut understanding of the Law by political studies.

There have been several evidences or statements of changes in decision-making processes, either incremental or innovative, regarding the recent episodes of contemporary Brazilian politics. Discussions about the interdependence of stakeholders, institutions and contexts, disputes of interest, power-sharing, and networking multiple levels were part of our classes.

Based on the idea that science of Law proposes to solve complex, contextualized problems, aimed at unveiling emancipatory possibilities for social groups and individuals (SANTOS, 2002), not being restricted to a "social regulation", the idea of a policy-making process which focuses on solving real problems is an enhancer of institutional capacities.

COUTINHO (2010) points out the mistaken description of public policy by some jurists as a succession of administrative acts. In fact, it is a dynamic and articulated process, a vision that imposes severe limits on the understanding of public policies and, therefore, their subsystems. This distorted view does not see the different interactions and roles played by the actors, institutions, and ideas related to a specific political reality.

4. CONCLUSIONS: HOW TO REDESIGN THE APPROACH AROUND THE ISSUE

The main issue of this paper was to discuss the relationship between public policy analysis and Law. Can the integration of these fields of study contribute to the development of institutional capacity in the policymaking process? From the methodological standpoint, what are the lessons to be learned from this experience? In this perspective, it starts from some diagnostics of a lack of integration and interinstitutional dialogue between the Legislative, Executive and Judicial branches of government, and that this absence has an impact on the provision of public services and its consequences in the enforcement of regulations that refer to the contemporary State: that is, the realization of the well-being of the general public.

The description of how the course was organized as well as the perceptions of the students help to answer the proposed questions:

a) Can the approximation of these fields (Policy Analysis and Law) contribute to the improvement of institutional capacity in the policymaking process? The answer is positive.

Taking the institutionalist perspective that involves the legal procedures, allowing for an understanding of the challenges of the legal-political context, beyond the simplistic normative application.

b) What is the novelty of the research with this approach? It is to make an analysis of the effectiveness of the legal norm in its context. It is a matter of understanding what political and legal forces affect their dimension of action. Not only as a prescription but as pieces of intricate chess in which "choice" might define the building or not of the norms that guide policymaking.

c) How can a teaching experience contribute to research in this field? In order to start to answer this question, we point out the experience developed in two graduate courses at the University of Brasília Law School to disassemble the model of a study program and, at the same time, to highlight the students' perceptions, as they work with this topic in government.

Among other aspects, the results of this approach demonstrate the importance as well as the need to deepen research in the field of public policies starting with the normative frameworks. It should be noted that this is not something new but we should deepen the discussion about the use of anchoring methodologies in the field of public policies, addressing issues related to the implementation and enforcement of fundamental rights in Brazil.

Finally, three academic works that were supervised by us in the last three years illustrate in a concrete way the answers mentioned above, in which they tried to identify how the public interest was approached, from the management standpoint, highlighting the contributions to the study of Law and Public Policy Analysis.

First, we cite the paper "*A Nova Lei dos Portos e os Modelos de Concessões e de Agências Reguladoras: mecanismos para a garantia do interesse público*" (FREZZA, 2016), whose objective was to discuss if the new federal legislation regarding ports established mechanisms for the effectiveness of the well-being of the general public, helping to improve port service that, due to the Brazilian Constitution, is defined as public service. The results pointed out that the new legislation is harmonized with previous regulation regarding the federal regulatory agencies, even considering that ports are private businesses.

The research identified that the new legal framework constituted a viable alternative for solving of the existing conflict between the public and the private nature of the exploration of the Brazilian ports despite the challenges faced for its improvement. The research was qualitative, the approach was inductive, and used indirect documents to obtain data. Official

documents and databases were consulted, as were semi-structured interviews with key players in the port sector, through intentional sampling (FREZZA, 2016).

Another work, which was elaborated following the same method as the previous one, refers to the understanding of how at the institutional level the right to transparency and information is implemented. At the same time, it evaluated the effectiveness of the Law on Access to Information, Act No. 12,527 which was passed in 2011. The act had the function of identifying how the Federal Agencies in Brazil were implementing the regulations established by the referred act itself and by the Decree No. 7,724 which was signed in 2012. This legislation had in its core the task of making clear if government actions were securing the right of the Brazilian people to have access to government information (CINTRA, 2015). So, the research was based on the following data:

- Collecting data with the 38 Federal ministries and agencies with ministerial status, using criteria and parameters established by the legal norms for information access by the general public;
- Collecting data from the Reports formulated by the Federal Comptroller's Office (the agency responsible for supervising compliance with transparency regulations); and
- Collecting data from the monitoring made by the Non-Governmental Organization Article 19 (from the perspective of active and passive transparency).

The research also used data obtained through interviews with managers responsible for monitoring the actions proposed by Law and the Executive order (decree), as well as with players involved in drafting the Law and the Executive order.

From a theoretical standpoint, the idea of agenda formation and window of opportunity presented in KINGDON (1984) was used to demonstrate how the issue of transparency and access to information entered the government agenda in 2011 and made possible the establishment of a constitutional right that was more or less forgotten in the past.

From a methodological perspective, the research had as an innovative aspect the use of legal frameworks that brought prescriptions for the implementation of the subject. In this case, the research used the request of information to verify how each agency complied with the legal aspects related to the implementation. The researchers also used data extracted from websites and platforms in which the federal government releases details of its actions.

The conclusion shows three aspects that relate to the institutional elements of the topic,

namely: a) internal integration (among the various Ministries and government agencies involved in politics); b) understanding by the agencies of responsibility for the policy of access to information; c) the need for the translation of the information available.

These are conclusions that a legal reading of the rules alone would not allow us to gauge. Most likely, a rule-based study would lead to sanctions to the manager. However, to understand what is going on in the institutional arena, what route corrections are needed, not only in the Law but also in the Executive order including mainly policy enforcement, it is possible only if the jurists have the appropriate training regarding public policy analysis. Therefore, this seems to be an area to be explored.

Finally, the last work to be cited refers to the implementation of the National Policy on Urban Mobility (Law 12,587 / 2012) within the municipalities (MORAES, 2017). The central question of this work was to inquire if the Municipality has its planning adhering to the principles, directives, and objectives of the Urban Mobility regulations and whether it is capable of impelling such public policy. To answer the question, the author will use the multicriteria analysis method to identify which aspects are relevant, from the performance of the municipal manager to the implementation of legal requirements. This is a case study in the city of Palmas, state of Tocantins. The result of the research demonstrates how the implementation public transportation as a right (as it is in the Constitution) is seen as decisions made regarding the management of policies that should be measured and, in this case, is referred to the National Policy on Urban Mobility.

In order to conclude our discussion, we highlight the notion of how the use of multiple policy analysis methodologies and the combination of this field with Law provides the possibility of reducing the inequalities that exist in the access to fundamental rights and their effectiveness. In this case, the improvement in legal education, providing new studies and references, new methodologies of analysis, new notions about how to enforce the Law, can all be meaningful in societies as unequal as the Brazilian and others.

Classrooms that are more like laboratories for the verifying and the understanding of politics, exploring the references and the empirical application of the phenomena studied are the ones that really experience this process of interaction between Law and Public Policy Analysis.

REFERENCES

- AZEVEDO, S., ANASTASIA, F., “Governança, ‘accountability’ e responsividade”, *Revista de Economia Política*, vol. 22, n. 1, 2002, pp. 79-97.
- BUCCI, M. P. D., “Políticas públicas e direito administrativo”, *Revista de Informação Legislativa*, ano 34, n. 133, 1997, pp. 89-98.
- BUCCI, M. P. D., *Direito administrativo e políticas públicas*, São Paulo, Saraiva, 2002.
- CALMON, P., COSTA, A.T. M., “Redes e Governança das Políticas Públicas”, RP3. *Revista de Pesquisa em Políticas Públicas*, n. 1, 2013, pp. 1-29.
- CAPELLA, A. C. N., *O processo de agenda-setting na reforma da administração pública*, Tese de Doutorado defendida no Programa de Pós-Graduação em Ciências Sociais - PPGCSO da Universidade Federal de São Carlos – UFSCar, 2004, Available at : http://www.bdt.ufscar.br/htdocs/tedeSimplificado/tde_arquivos/6/TDE-2006-06-21T14:28:51Z-1058/Publico/TeseACNC.pdf
- CAPELARI, M. G. M., ET AL., “Advocacy coalition framework: um balanço das pesquisas nacionais”, *Administração Pública e Gestão Social*, vol. 7, n. 2, 2015, pp. 91-99.
- CINTRA, M. E. R., *Lei de Acesso à Informação no Brasil: sua implementação e seus desafios*, Dissertação de Mestrado apresentada junto ao Programa de Pós-Graduação em Direito da Universidade de Brasília – UnB, 2015, Available at: http://repositorio.unb.br/bitstream/10482/22544/1/2016_MariaEduardaRibeiroCintra_Parcial.pdf
- COUTINHO, D. R., “Linking Promises to Policies: Law and development in an unequal Brazil”, *The Law and Development Review*, vol. 3, n. 2, 2010, pp. 3-40.
- COUTINHO, D. R., “O direito nas políticas públicas”, in: MARQUES, E., FARIA, C. A. P., *A política pública como campo multidisciplinar*, São Paulo, UNESP, 2013.
- COUTINHO, D. R. ET AL., “O direito nas políticas públicas urbanas e habitacionais: o uso de instrumentos urbanísticos no município de Santo André”, *Cadernos Gestão Pública e Cidadania*, vol. 19, n. 64, 2014, pp. 58-77.
- DE PAULA, A. P. P., *Por uma nova gestão pública: limites e potencialidades da experiência contemporânea*, Rio de Janeiro, FGV Editora, 2005.
- FARRANHA, A. C., “Política e Direito: irmãos siameses vivendo separados?”, *Depoimentos: Revista do Curso de Direito das Faculdades de Vitória – FDV*, vol. 3, n. 5, 2002, pp. 55-66.
- FREZZA, C. S., *A nova Lei dos Portos e os modelos de concessões e de agências reguladoras: mecanismos para a garantia do interesse público*, Dissertação de mestrado apresentada junto ao Programa de Pós-Graduação em Gestão de Transportes - PPGT/UnB, 2016, Available at: http://repositorio.unb.br/bitstream/10482/20033/1/2016_ConradoSilveiraFrezza.pdf
- GOMIDE, A. Á., PIRES, R. R. C., *Capacidades estatais e democracia: arranjos institucionais de políticas públicas*, Brasília, IPEA, 2014.
- GONÇALVES, A., *O conceito de governança*, *Anais do XIV Encontro do Congresso de Pós-Graduação em Direito – CONPEDI*, Fortaleza, 2005.

GOTTEMS, L. B. D. ET. AL., “O modelo dos múltiplos fluxos de Kingdon na análise de políticas de saúde: aplicabilidades, contribuições e limites”, *Saúde e Sociedade*, vol. 22, n. 2, 2013, pp. 511-520.

GUSTIN, M. B. S., DIAS, M. T. F., *(Re)pensando a pesquisa jurídica*, 3. ed., Belo Horizonte, Del Rey, 2014.

HOWLETT, M. ET AL., *Política pública: seus ciclos e subsistemas: uma abordagem integral*, Rio de Janeiro, Elsevier, 2013.

KINGDON, J. W., THURBER, J. A., *Agendas, alternatives, and public policies*, Boston, Little Brown, 1984.

KOERNER, A. ET AL., “Sobre o Judiciário e a judicialização”, in: MOTTA, L. E. P., MOTA, M. (Eds.), *Teorias críticas da judicialização*, Rio de Janeiro, Elsevier, 2011.

LEJANO, R., *Parâmetros para análise de políticas: fusão de texto e contexto*, Campinas, Arte Escrita, 2012.

MORAES, L. N., *Proposta de ferramenta de análise multicritério de apoio à gestão municipal da mobilidade urbana*, Dissertação de mestrado apresentada junto ao Programa de Pós-Graduação em Gestão de Transportes - PPGT/UnB, 2017, Available at: http://repositorio.unb.br/bitstream/10482/24216/1/2017_LeonardoNogueiradeMoraes.pdf

OLLAIK, L. G., MEDEIROS, J. J., “Instrumentos governamentais: reflexões para uma agenda de pesquisas sobre implementação de políticas públicas no Brasil”, *Revista de Administração Pública*, vol. 45, n. 6, 2011, pp. 1943-1967.

OLIVEIRA, L., “Não fale do Código de Hamurabi! A Pesquisa sociojurídica na pós-graduação em Direito”, in: OLIVEIRA, L., *Sua Excelência, o comissário e outros ensaios de sociologia jurídica*, Rio de Janeiro, Letralegal, 2004.

PETERS, G., PIERRE, J., *Administração pública: coletânea*, São Paulo e Brasília, ENAP, 2010.

PIRES, R. R. C., *Efetividade das instituições participativas no Brasil: estratégias de avaliação*, Brasília, IPEA, 2011.

SALM, J. F. H., *Políticas públicas e desenvolvimento: bases epistemológicas e modelos de análise*, Brasília, Editora da UnB, 2006.

SANTOS, B. S., *A crítica da razão indolente: contra o desperdício da experiência. Para um novo senso comum: a ciência, o direito e a política na transição paradigmática*, São Paulo, Cortez, 2002.

SILVA, F. C. S., Desenho, contexto e qualidade deliberativa em conferências nacionais: uma análise dos debates e proposições sobre o sistema penitenciário na I Conferência Nacional de Segurança Pública – I CONSEG, in: *Brasil em Desenvolvimento: Estado, planejamento e políticas públicas*, Brasília, IPEA, 2010, Available at: <http://www.ipea.gov.br/participacao/images/pdfs/conseg.pdf>

SOUZA, C. ET AL., “Políticas públicas: uma revisão da literatura”, *Sociologias*, vol. 8, n. 16, 2006, pp. 20-45.

WU, X. ET AL., *Guia de políticas públicas: gerenciando processos*, Brasília, ENAP, 2014.