

From neo-corporatism to policy networks in Brazil: the case of lobbying for port reform

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Abstract: The article presents some theoretical insights from policy network analysis that apply to Brazil and considers some empirical aspects related to evolving network-like structures and processes focused on improving systemic competitiveness in Brazil, with reference to the case of port reform. Notwithstanding signs of gross corruption exposed in the Lava-Jato case, research provided evidence of how business utilised organised collective action within corporatist institutions (such as CNI) and even newly developed policy networks (such as AEI) to articulate its interests in a public interest regarding and development enhancing manner. The article argues that business interest representation has successfully adapted to the democratic context and there are many signs of good governance practices that could support the considerable socio-economic transformation that lies ahead in Brazil's development path.

Keywords: Policy network analysis; Business; State; Port reform.

1. Introduction

The on-going *Lava-Jato* investigations into corruption in Petrobras involving both business and state actors has raised the issue of business-state relations to the fore of Brazilian politics. As accusations fly and evidence mounts, the questions at the heart of my research are whether Brazilian business has no other option than particularistic (and even outright corrupt) actions when representing its interests to the government? Or do policy-making processes allow for effective (and law abiding) interest intermediation in a context of political and economic liberalisation? More specifically, what is the

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scope for narrow elitist corporatist structures to evolve into more flexible inclusive policy network-like structures for interest representation? These questions will be addressed with reference to the case of port modernisation reforms carried out in Brazil over the past twenty-five years.

The article first presents some broad context on the Brazilian port system and why port reform is crucial for the Brazilian economy. Next, it discusses some theoretical approaches to analysing business-state relations in Brazil. Finally, it considers the practical options utilized by Brazilian businesses to represent their interests and influence policy-making. The aim of the article is to identify some theoretical insights from policy network analysis (PNA) that might apply to Brazil and to consider some empirical aspects related to evolving network-like structures and processes focused on improving systemic competitiveness, i.e. reducing so-called Brazil Cost, the stated top priority of Brazilian business since the 1990s.

2. Brazilian Ports and Brazil Cost

Brazilian ports stand at the centre of Brazilian efforts to boost competitiveness, not least because some 95% of exports pass through ports. In 2016, according to the Special Secretariat for Ports (SEP), there are 37 statutory public ports (*porto publico organizado*) and over 130 private use terminals (*terminal de uso privativo*, TUP) in Brazil. Since 1993, TUPs were allowed to handle third party cargoes. In addition, there are some 39 fluvial ports and 122 Small Scale Public Ports (IP4). Broadly, the public ports handle about 32-34% of cargo through-put including general cargo and containers, while the TUPs handle about 66-68% of all cargoes mainly bulk solids and liquids. The main law regulating the port sector was Law 8630/1993 until it was replaced by Law 12,815/2013. The former was introduced as a bill (PL08/1990) by President Fernando Collor de Melo and signed into law by President Itamar Franco, while

the latter was introduced as a Provisional Measure (MP595/2012) by President Dilma Rousseff.

The public ports are administered by federal dock companies, but operated via concessions to private port operators who are obliged to contract labour registered in the official labour management organ (OGMO) and pay various fees for access to general port facilities. Port users often view these ports as outdated, inefficient and expensive. The TUPs, in contrast, are often owned by big exporters or importers, benefit from appropriate levels of investment, contract their own labour, do not rely on public provision of port infrastructure nor pay fees to the dock companies. As such, they are much more efficient and cost competitive. However, both types of ports face some common problems, such as land and water access to their facilities and bureaucratic red tape (involving customs, safety inspections, environmental regulations, and so on). In this sense, Brazilian ports are considered a genuine obstacle to boosting the competitiveness of Brazilian exports (farm, mine or factory produced) and poor logistics infrastructure remains a key component of Brazil Cost.

The dire condition of ports is reflected in various international and domestic comparative studies of the performance of Brazilian ports and logistics infrastructure. For example, Brazil ranked 123rd out of 189 economies in the ‘trading across borders’ sub-category (which includes transport) of the World Bank’s *Doing Business Index* in 2014. Similarly, it ranked 57th out of 144 economies overall in the World Economic Forum’s *Global Competitiveness Report* (2014-2015), but received an especially poor 76th place in the infrastructure category. It also ranked an unimpressive 65th out of 160 economies surveyed in the World Bank’s *Logistics Performance Index* in 2014. Domestic institutions, such as the Institute of Logistics and Supply Chain (ILOS), Brazilian Exporters Association (AEB), and the National Confederation of Industry (CNI), repeatedly published studies with similar complaints about the poor performance of Brazilian ports. Even state agencies, such as the National

Development Bank (BNDES) and Institute for Applied Economics Research (IPEA), published reports recognising the inefficiencies and problems of Brazilian ports.

Given the widely recognised situation in ports, what did Brazilian business do to influence policy and institutional change? How did business lobby the government to shape regulatory reforms, especially during the legislative process? Even though the origins of the most recent key pieces of port legislation differed as mentioned above, business lobbying displayed some important common features. Business interest intermediation under both PL08/1990 and MP595/2012 was carried out under the banner of reducing Brazil Cost, and both faced a tough fight from vested interests in the legislature before final approval. Also, in both cases, business consensual positions and preferences were articulated via network-like structures and processes. In the 1990s, the AEI was the main lobbying network², while in the 2010s, the CNI took the lead on competitiveness issues with support from a network of other business associations. Given the use of network-like structures in both cases, it makes sense to turn to theoretical frameworks that apply network logics to understanding the process of business lobbying and the extent of its success in Brazil.

3. Approaches to Business-State Relations

The network metaphor has been a very popular theme in analysing contemporary interest intermediation, policy-making and governance, especially in Europe. Whatever the specifics, network-based analysis of business-state relations and policy-making was a reaction against the idea of a monolithic state that controlled policy processes and outputs. In the 1970s, Schmitter and Lehmbruch (1979) challenged the stark dichotomy between

² See DOCTOR, 2002 and 2003.

democratic pluralism and authoritarian state corporatism. They showed how meso-level neo-corporatist arrangements prospered in several European democracies. Meanwhile, mainstream American pluralism was also going out of academic fashion. By the 1990s, numerous scholars pushed for more nuanced and neutral concepts to label societal networks involving state actors in governance arrangements (RHODES and MARSH, 1992). Thus, the term 'policy network' emerged as the generic concept.

A policy network may be defined as the arena where interaction between state and societal actors gives rise to policies. A network exists where there is some exchange of resources – either within formal institutions or informal practices. The effort to analyse the evolution of business-state relations in terms of network structures mainly applied to those scholars working on European countries with active remnants of corporatist style arrangements, but this approach was also usefully applied to Brazil. In a parallel development, policy network analysis was a new approach to emerge out of pluralism in the Anglo-Saxon literature, and PNA also emphasised the value of analysing network structures in business-state relations.

In Brazil, corporatism must be the starting point of any analysis of interest intermediation between economic and state actors (POWER and DOCTOR, 2004). It was put in place by President Getúlio Vargas in the 1930s and consolidated in a single legal instrument, the Consolidated Labour Code (CLT), in 1943. It operated under both democratic and authoritarian regimes, and even the 1988 Constitution did not tamper with two of its core elements – the union tax (*contribuição sindical*) and the union monopoly (*unicidade sindical*) – which guaranteed that the union tax went to the officially recognised union. Much has been written about these issues³, and this article does not intend to delve into them.

³ See SCHMITTER, 1971; DINIZ and BOSCHI, 1991; SCHNEIDER, 1997.

Given the lasting institutions and legacies of corporatism in Brazil, any network based approach to business-state relations should provide valuable insights. Thus, my research is based on the assumption that in addition to applying the usual (neo)-corporatist approach, an alternative such as PNA could shine new light on evolving business-state relations. It is particularly relevant in the Brazilian case, since societal actors always remained willing to experiment with alternative channels of interest articulation, notwithstanding the embeddedness of corporatist institutions. Before examining some of these network-like structures, it is worth noting some of the main points of the PNA approach.

Although PNA comes in various versions, the best typology of policy networks was set out in Marsh & Rhodes (1992). They placed policy networks on a continuum from open issue networks to closed policy communities. PNA used the variation in network structures to explain their consequences for policy outcomes. Policy communities were seen as most effective, since they emphasised the continuity, access and privileges of participants, but also acknowledged a special role for the state. Marsh and Rhodes argued that policy communities benefitted from frequent interaction, deepening resource dependencies and shared values among participants, which created positive sum games where trust and reciprocity acted as lubricants to collective action (another way of looking at it would be as increasing 'bonding social capital'). Of course, critics are not incorrect in noting that policy communities often resemble neo-corporatist arrangements since they institutionalise political exchange between privileged groups and the state. Issue networks were more open and often focused on gaining a foothold in the policy-making arena. As such, they were incipient networks of relevant societal actors, but allowed only a minimal role for the state. In a democracy, however, they exercised influence over policy because of their control over resources (from votes to investment to jobs) that were valuable to state actors. As an issue network became more

embedded in the policy-making arena, it often moved towards becoming a policy community.

4. Practical Options for Business Interest Intermediation

Business has numerous options when representing its interests to the state – formal corporatist and voluntary business associations, looser network structures, and direct contact by a firm/businessperson with state actors. Interest representation may occur in an open, public-interest-enhancing and constructive way, but also in a closed, rent-seeking and corrupt manner. While corrupt exchanges between business and state actors are a temptation where the rule of law is fragile, these types of public-disregarding relations are inherently harmful to all. While those involved may excuse these exchanges as greasing the wheels of economic production and policy outputs, these actions are neither inevitable nor an acceptable face of business-state relations.

In the current context of economic contraction and exposure of gross corruption in the national oil company, Petrobras, there is much concern to identify signs of development-enhancing behaviour in business-state relations in Brazil. Happily, there are many signs of this type of interaction. Research found a number of instances where business played a crucial role during the policy-making process and in supporting desired policy outcomes. For example, business actively engaged in a variety of innovative network structures for interest intermediation. Four examples stand out: *Ação Empresarial Integrada* in the early 1990s, *Camaras Setoriais* in the mid-1990s, the *Conselho de Desenvolvimento Econômico e Social* (CDES) in the 2000s, and the various networks operating under the umbrella of the *Confederação Nacional da Indústria* (CNI) in the past 20 years. Here, the article only discusses the AEI and CNI networks, since they were directly involved in the port sector. The other two network-like organisations are discussed in my other publications

(DOCTOR, 2007a for the Sectoral Chamber of the Automotive Industry; and DOCTOR 2007b, for the CDES).

The AEI was formed in the late 1980s to push for modernisation of the port institutional and regulatory structures. It was short-lived since it disbanded in 1993 as soon as it achieved its objective, the approval of Law 8630/1993. In this narrow focus, it can justly consider itself a very successful network of business interests that attained its desired legislation to modernise ports in support of enhancing the competitiveness of Brazilian products. AEI was a unique business-led network seeking dialogue with the state, both the executive and legislative branches. It was a loosely organised network of some 52 business associations that were eager to support port reform led by a small group of businessmen, most prominently Jorge Gerdau Johannpeter. AEI's approach to lobbying was based on a tight inner circle of actively involved businesspeople, the Olsonian 'political entrepreneurs' as conceptualised in Olson (1965), alongside a wider network of organisations providing passive support and political weight. This was no small feat in a business community that benefitted from state intervention that favoured particularist concerns. Although attempts were later made to revive AEI to push for constitutional reform, this was never more than a half-hearted effort. Moreover, the slow implementation of the port modernisation law exposed the importance of follow-up monitoring of policy as part of the interest intermediation process. Thus, AEI was successful at the policy formulation and approval phases, but had little input in the implementation phase of reform. As such, it operated outside the frame of corporatist structures, and could at best be seen as an issue network that hoped (but failed) to become a policy community.

The banner of reducing Brazil Cost was later taken up by the CNI, the formally constituted organisation representing industry at the top of the corporatist pyramid. In the mid-1990s, its leaders decided to move away from its earlier elitist and top-down approach towards its members. Instead, it re-

reorganised its structure and behaviour to address the challenges industrialists faced under conditions of market liberalisation and globalisation. Its leaders decided to develop an inclusive process of extensive consultation with its member state federations as well as individuals in the business community via network-like forums, such as the *Encontro Nacional da Indústria*, *Fórum Nacional da Indústria*, *Coalizão Empresarial Brasileira* and *RedIndústria*. Today, it maintains a permanent process of dialogue within these forums and councils that feed into the articulation of industrialists' interests to the government and legislature.

One of its most successful initiatives is the formulation of the annual *Agenda Legislativa da Indústria*, a list of the sector's top priority bills transmitting in the National Congress. A database, *Legisdata*, records the position of industry on each bill and tracks its passage through the legislature, allowing business to lobby for its preferred outcomes in a consistent and open manner. Mancuso (2007a) showed how successful the CNI was in influencing legislative output from 1996 to 2003. Since the focus of the *Agenda Legislativa* is on bills that reduce Brazil Cost, ports, and transport infrastructure more broadly, typically feature in the CNI's lobbying efforts. Thus, the 17th edition of the *Agenda Legislativa* (CNI 2014a) listed Law 12,815/2013 as a success for business interest representation. Over the years, the CNI also produced a number of reports highlighting problems in the port sector as well as surveys of businesses indicating the issues that hamper the efficiency of ports and their overall competitiveness⁴.

In terms of theoretical frameworks, the CNI most obviously fits in with the neo-corporatist approach, which shows how privileged groups/organisations have consistent access to policy-makers and maintain regular dialogue on issues of concern in dual or tri-partite arenas of

⁴ See CNI 2010 and CNI 2014b for just two of many such examples.

consultation (the latter including labour unions). PNA also provides some useful insights to show the practical means the CNI has used to represent its interests to the state. It has constructed extensive networks within its own organisation in the first place; next, it built on this process via utilisation of formal neo-corporatist mechanisms of access to the state with the added legitimacy provided by its earlier wide consultation process. Business clearly had learnt from the AEI experience and understood the necessity of moving from loose *ad hoc* issue networks to more stable policy communities.

To conclude, the main research questions have been answered by showing evidence of how business can (and has) utilised organised collective action within corporatist institutions and even newly developed policy networks (such as AEI) to articulate its interests in a public interest regarding and development enhancing manner. The transformation of CNI's approach to interest intermediation, especially its wide consultation within numerous network-like structures, provides strong evidence that old corporatist structures can be revitalised to serve Brazil's development goals. Moreover, by applying an unprecedented PNA lens to the Brazilian situation, my research shows how one may evaluate the features of successful business interest representation in a democratic context and identify good governance practices that could support the considerable socio-economic transformation that lies ahead in Brazil's path to development.

References

- CNI. *A Indústria e o Brasil: Transporte de Cargas: Agenda para um Brasil Competitivo*. (Brasília: Confederação Nacional da Indústria), 2010.
- CNI. *Agenda Legislativa da Indústria* (Brasília: Confederação Nacional da Indústria). 2014a. Accessed On: www.cni.org.br.
- CNI. *Portos: o que foi feito, o que falta fazer*. (Brasília: CNI Propostas da indústria eletrônicas 2014). 2014b.

- DINIZ, Eli; BOSCHI, Renato R. "O corporativismo na construção do espaço público." In: (Org.). BOSCHI, Renato R. *Corporativismo e desigualdade*. Rio de Janeiro: Editora Rio Fundo, 1991.
- DOCTOR, Mahrukh. "Business and Delays in Port Reform". In: *Brazilian Journal of Political Economy*. 22:2: p. 79-101, 2002.
- DOCTOR, Mahrukh. "Institutional Modernisation and the Legacy of Corporatism: the Case of Port Reform in Brazil". In: *Journal of Latin American Studies*. 35:2, p. 341-365, 2003.
- DOCTOR, Mahrukh. "Boosting investment and growth: the role of social pacts in the Brazilian automotive industry". In: *Oxford Development Studies*, 35:1, p. 105-130, 2007a.
- DOCTOR, Mahrukh. 'Lula's Development Council'. In: *Latin American Perspectives*. 34:6, p. 131-148, 2007b.
- MANCUSO, Wagner P. *O lobby da indústria no Congresso Nacional: Empresariado e política no Brasil contemporâneo*. Sao Paulo: Humanitas/Editora USP, 2007.
- MARSH, David; RHODES, R.A.W. *Policy Networks in British Government*. New York: Clarendon Press, 1992.
- OLSON, Mancur. *The Logic of Collective Action: Public Goods and the Theory of Groups*. Cambridge: Harvard University Press, 1965.
- RHODES, R.A.W; MARSH, David. "New directions in the study of policy networks". In: *European Journal of Political Research*. 21:1-2, p. 181-205, 1992.
- POWER, Timothy; DOCTOR, Mahrukh. 'Beyond the Century of Corporatism? Continuity and Change in Brazil'. In: (Org.). WIARDA, Howard Jr. *Authoritarianism and Corporatism in Latin America, Revisited*. Gainesville: University of Florida Press, 2004.
- SCHMITTER, Philippe C. *Interest Conflict and Political Change in Brazil*. Stanford: Stanford University Press, 1971.
- SCHMITTER, Philippe C. "Still the Century of Corporatism?". In: (Orgs.). SCHMITTER, Philippe C; LEHMBRUCH, Gerhard. *Trends toward Corporatist Intermediation*. London: Sage Publications, 1979.
- SCHNEIDER, Ben Ross. "Organized Business Politics in Democratic Brazil". In: *Journal of Interamerican Studies and World Affairs*. 39:4, p. 95-127, 1997.

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