

PUBLIC POLICIES AND STATE THEORIES: THE ROLE OF MIDDLE RANGE THEORIES

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Abstract: The study of the state action, either under the perspective of the public policies field, or in the old tradition of state theories, was for a long time under the influence of the attempts of creating the so-called *grand theories*. This article discusses this evolution and examines its recent unfold, foremost to point the increasing influence of medium range theories and the development of a law and public policy approach.

Keywords: Law and Public Policy, Medium Range Theories

1. INTRODUCTION

PETER WAGNER, a theorist who has published extensively in the history of social sciences, argues the emergence of social knowledge and forms of intervention through public policies are related to the various ways of overcoming the limitations of the liberal concept of society. In France, the failure of the 1848 Revolution demonstrated that a Democratic State alone would not be sufficient to solve the issue of social organization. In Italy and Germany, the unification processes between 1861 and 1871 profoundly changed the terms of political debate and the orientation of social scientists in both countries (WAGNER, 2007, p. 32). The idea of societal improvement seemed, in these two cases, tied to the concept of a national State.

In general, the construction of national social policies, where the importance of the State stood out, was advocated throughout Europe by the end of the 19th century. Across the Atlantic, social researchers in the United States tended to be reluctant in assigning such preeminence to the State, superior to individuals, as a strong central state did not yet exist in the country (WAGNER, 2007, pp. 32-33). The author recognizes individualist liberalism as the dominant tradition among American social researchers and reformers, making approaches based on individual behavior increasingly popular as the emerging fields of Psychology and Social Psychology.

CELINA SOUZA develops a similar line of reasoning by suggesting the birth of Public

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Policies as an academic discipline in the United States (SOUZA, 2007, pp. 66-67). The country followed a different tradition from European nations, where studies focused on the analysis of the State and its institutions. In line with what WAGNER (2007, p. 32) also suggests regarding French, German, and Italian thinkers, Souza argues that European scholars approached public policies through discussions about explanatory State theories, while in the United States, the emphasis was placed directly on government actions, addressing concerns with State theories only indirectly.

In various countries and time periods, one can observe a profound relationship between the prevailing conception of the State and the policies implemented by governments. This influence appears in the execution of social policies and among those that only indirectly find their foundations in social rights, such as industrial, credit, foreign policies, and others. Thus, the outcomes of these policies flow from the combination of many factors, with decisive influence from State theories.

This relationship occurs on a very broad level. The context is that of the so-called Grand Theories, a concept that arose from the debate initiated between Talcott Parsons and Robert Merton in the late 1940s (PARSONS, 1948, MERTON, 1948). The idea of a theory capable of fully and definitively explaining any phenomenon faces challenges when applied to the definition, implementation, and monitoring of public policies and their relations with the State, something that is also evident in other areas of social sciences such as Sociology and State Theory².

Indeed, law plays a fundamental role in examining the microstructure of public policies. The design process of these policies, unraveling issues of jurisdiction, participation of social actors, forms of federal cooperation, and others, is based on legal mechanisms. The definition of funding forms and policy beneficiaries also resolves, through legal mechanisms, important redistributive and equity issues. Looking at the articles in this dossier³, we can see that Law is the fundamental building block in the construction of policies — these issues will be examined later.

Following this characteristic of Law as a building block of public policies, a positive approach, aimed at scientific understanding of incentives, constraints, assumptions, causal relationships, and other components, requires the construction of a common language and the empirical examination of the effects of these same legal mechanisms on outcomes, based on testable hypotheses. In other words, as M. P. BUCCI advocates, the examination of public policies requires the “establishment of common references and generalizable research procedures” (BUCCI, REI dossier). To this end, it requires the construction of a Law and Public Policy approach, beyond the traditional field of Public Policies besides the consideration of these so-called Middle-Range Theories.

To support these propositions, this article begins by examining Marxist and neoliberal conceptions of public policies, including critiques by proponents of the Welfare State (sections II

² This challenge is found to some extent in the debates on State Theories (BUCCI, 2018, pp. 68-71) and even in Brazil, for example, in the transition that Florestan Fernandes makes from more specific thematic cuts to broader propositions in his work *A Revolução Burguesa no Brasil* (MARTINS, 2006, pp. 12-15). I extend my gratitude to Maria Paula Dallari Bucci for her comments in this regard during several sessions of our “State, Law, and Public Policies” Group in 2018 and 2019.

³ The references in the article are to the dossier “Direito e Políticas Públicas”, published in *Revista Estudos Institucionais*, vol. 5(3), 2019. References to the dossier are presented as REI dossier from now on.

and III). Section IV presents a brief historical overview of the discussions on Middle-Range Theories, starting with the classic debate between Parsons and Merton and its developments, including in the fields of State Theory and Sociology in Brazil. The possible exhaustion of these grand theories as a tool for analyzing Public Policies, with examples of the application of MRTs to the Law and Public Policy approach, is examined in section V, followed by conclusions in section VI.

2. POLICIES IN THE MARXIST ANALYSIS

In Marxist analyses, the State has a class character, and State actions can be explained through the structure of capitalist society, the direct action, and the articulation of the owners of capital. For EROS GRAU, in this context, law functions to smooth market relations and, given the unstable nature of the capitalist system, to ensure its survival (GRAU, 2010, Chapter 1). According to the author, the State, assuming the role of managing crises in market processes, uses Law as an instrument aimed at its preservation. It is in this context, in his view, that the public policies are implemented (GRAU, 2010, p. 72)⁴.

According to various Marxist currents, the State ultimately acts in the interest of the bourgeoisie. The origin of this hegemony can be economic, cultural, or arise from common characteristics between bureaucratic elites and the bourgeoisie, leading to multiple explanations for its dominance. In the end, based on this influence, the capitalist class exerts power over the state apparatus, subordinating the population. According to DOMHOFF, this dominance, among other means, is achieved through the process of public policy formation, especially in major issues such as foreign policy, fiscal policy, environmental policy, and social rights (DOMHOFF, 1979, p. 59).

Public policies, particularly the positive provisions of the State in the form of public services such as education and healthcare, are established in the interest of capital. OFFE suggests that state structures are endowed with selectivity, implementing actions directly associated with the creation and recreation of conditions for capital accumulation and the process of legitimizing class domination (OFFE, 1975; see also LENHARDT and OFFE, 1984). For the author, the State acts as a regulator at the service of maintaining capitalist relations, and social policy is the way it attempts to resolve the persistent transformation of non-wage labor into wage labor. Public policies would aim not only to continuously qualify the workforce for the market but also to maintain control over segments of the population not taking part in the productive process. In summary, health, education, and other policies aim to facilitate the process of capitalist accumulation (OFFE, 1975; LENHARDT and OFFE, 1984, pp. 92ff).

The retreat from social policies, observed in the so-called Crisis of the Welfare State of the 1970s, also serves the interests of capital (a phenomenon noted by BERCOVICI and

⁴ Eros Grau elaborates more extensively on public policies in his *Direito Posto e Direito Pressuposto* (2011, pp. 26-32). His proposition is that Law is one of the forms of intervention in the economy, one of the specific techniques of action, alongside techniques of absorption, participation, direction, and induction. The shift from a 'government by laws' to a 'government by policies' (a concept developed by COMPARATO, 1998, based on LOEWENSTEIN, 1965) results in public policies, and not just Law, serving as an instrument of bourgeois domination. The development the author makes of the concept of public policies, and their interactions with Law, is modest, as this is not one of his primary lines of research.

MASSONETTO, 2006). Advances in information technology and work organization, among other factors, reduce the importance of labor in the process of capitalist accumulation. The financialization of the economy, which can be understood as the dominance of one segment of capital over others, in the sense of hegemony defined by POULANTZAS (1978), alters the function of public policies.

The process of accumulation has shifted to the direct appropriation of public funds, used to secure capital returns through interest payments, the establishment of guarantees, and the transfer of material and immaterial public assets (BERCOVICI and MASSONETTO, 2006). This development coincides with the discussion on the Entrepreneurial State by MAZZUCATO (2015), where the risk of major technological innovations has globally fallen on the public sector. In its financial phase, the risk of capitalist activities is transferred to the State.

BERCOVICI and MASSONETTO explore and dissect this phenomenon, proposing that there has been a neutralization of the Financial Constitution, which they term as the Inverted

Directive Constitution project. According to the authors, an attempt is made to attribute a neutral and technocratic aspect to the concept of fiscal austerity, ensuring its utility and effectiveness in promoting economic development, which greatly reduces the possibilities for developing public policies. This idea of a neutral aspect of public debt would be flawed, first because even proponents of fiscal austerity have revisited their positions, including liberal economists like STIGLITZ⁵, conservatives like BLANCHARD (BLANCHARD, 1990; BLANCHARD and PEROTTI, 2002), and even international organizations like the IMF (2010).

Secondly, the imposition of a sterilizing agenda on financial policies, such as the approval of the Constitutional Amendment on Spending Limits⁶, results in a true inversion of our Constitutional project (BERCOVICI and MASSONETTO, 2006). If, as the more conservative interpretation suggests, directive constitutions could be understood as the imposition of a project on future generations, their counterpoint, in the form of extreme austerity policies, could be classified as an example of an inverted directive constitution. This austerity would consolidate the undermining of social rights and the constitutional project of society, placing them in the background compared to the bourgeoisie's needs for creating and recreating the conditions for capital accumulation.

The authors' pessimistic stance seems to stem from a certain disbelief in the directive constitution project, perhaps originating from its announced 'death' (CANOTILHO, 2001, preface). The news of the death of the directive constitution reached Brazil brought by Professor Avelãs Nunes, resulting in the iconic interview of Canotilho recorded by COUTINHO (2005) in the collective work "*Canotilho e a constituição dirigente*". In the interview and debates, the author qualifies the assertion, noting that "the directive constitution is dead if constitutional dirigisme is understood as revolutionary constitutional normativism capable of, by itself, operating

⁵ Stiglitz's statements pointing out the risks of fiscal austerity have been primarily made in popular science articles (mainstream newspapers and general interest magazines), rather than in academic publications (see Stiglitz 2012, 2014a, 2014b).

⁶ Constitutional Amendment No. 95, dated December 15, 2016, which amended the Transitional Constitutional Provisions Act to establish the New Fiscal Regime.

emancipatory transformations.” The Portuguese author, attentive to the phenomena of community law and new power blocs, declares that the death of the directive constitution will be consummated if the constitutional text “is bent upon itself and indifferent to the processes of opening constitutional law to international law and supranational rights.”

However, CANOTILHO renews the concept of directive constitution, giving it new vigor, by proposing that “constitutional texts must establish the foundational material premises of public policies in a State and a society that are intended to continue to be called legal, democratic, and social.”

3. THE NEOLIBERAL MODEL AND THE CRITIQUE OF THE WELFARE STATE

The emergence of civil liberties and political rights addressed, within the capitalist order, the rise of the bourgeoisie and its need for predictability in conducting its business. This emerging class primarily feared the action of the State. Thus, the rights of freedom aimed, especially, at maintaining the status quo, the State’s abstention, and minimizing its intervention. The Belgian Constitution of 1832 is one of the milestones in this evolution, reflecting the spirit of the time. The document transforms the duty of abstention into rights enforceable against the State, removing its enunciation from the constitutional preamble and incorporating these guarantees into the body of the constitution as subjective rights and not mere programmatic norms (BONAVIDES, 2011, pp. 229-231).

The laissez-faire policy experienced a retreat during the period of the great wars and, especially, due to the 1929 Crisis and the subsequent depression. Theorists, particularly in economics, resumed the discourse of the market as a regulator of social relations in the post-war era.

They criticize state interventions in the economy, whether in the form of social programs, regulation, or even direction in economic policy. FRIEDRICH HAYEK and MILTON FRIEDMAN are among those who argue that state interventions would be ineffective, if not harmful. Numerous examples are presented by these authors and their followers as instances of detrimental limitations on free choice.

For example, the provision of education by the state would limit the freedom of choice for parents and students. At most, a voucher system could be used, allowing families to decide which education to provide for their children (FRIEDMAN, 1955). Another example is that interventions in labor relations would be futile, as wage increases above inflation would lead to an immediate rise in prices, since rational agents would anticipate the effects of such increases. The concept of rational expectations would, in fact, render all government active policies useless, as agents would fully anticipate their effects and adjust their expectations *ex ante*⁷. In all dimensions of social life, state action would be unnecessary and not recommended. The State should be minimal to preserve freedom and avoid inefficiencies.

⁷The concept was initially discussed in the context of active monetary policies (SARGENT and WALLACE, 1975).

These neoliberal proposals, in the view of other researchers⁸, are incompatible with empirical evidence. The cyclical nature of crises demonstrates the unstable nature of capitalism and its limited ability to ensure social peace. During the long period of stability following World War II, what was observed worldwide were the experiences of the Welfare State and active state policies.

Concerns about economic cycles were already on the agenda of academics and public policy makers from the early 20th century. Signs of this concern appear in the establishment of national accounting systems and major efforts to understand business cycles in institutions like the Cowles Commission and the Econometric Society. The 1929 Crisis and the success of Roosevelt's New Deal anti-cyclical policies were subjects of study and discussion, with significant theoretical production on the role of the State in the following years (BURNS and MITCHELL, 1946).

GUNNAR MYRDAL, who experienced the New Deal closely, proposed a new perspective on social programs, rejecting the then-prevalent handout-based interpretation of these initiatives. Social programs would have the nature of productive social policies, social regulations aimed at better organizing production. The characteristic of these programs would not be mere expenditure, but investments made for economic enhancement (ANDERSSON, 2004).

The most influential and enduring construction, however, comes from JOHN KEYNES, refined and extended by his followers. The ability to achieve equilibrium in a perfectly competitive market, in fact, does not exist. The level of aggregate savings would be a function of income, expressed in the marginal propensity to save and subject to a multiplier effect. In more developed societies, where the capital stock is higher, it would be difficult to achieve an adequate return for that mass of resources.

The reduction of investment under these circumstances is amplified by the same income multiplier mechanisms. The overall characteristic of the system is pro-cyclical, and the level of investments depends much more on the disposition of entrepreneurs (or, in KEYNES's terms, on animal spirits) than on aggregate savings. Additionally, the non-neutrality of money plays a role – for neoclassicals, an increase in resources in the economy would only have inflationary effects, whereas for Keynesians, it would have the effect of reviving the economy.

Active state policies, from this theoretical perspective, are necessary to steer the economy towards full employment and to avoid prolonged recessions. Market mechanisms would not lead to situations of social justice, and the pursuit of self-interest by agents, in a non-coordinated manner, would not lead to socially optimal outcomes. Keynesian approaches were at the core of policies that ensured about 30 years of growth and economic and social stability worldwide. According to DRAIBE (1988), the welfare state has a broader, political character, not just social – it aims not only at reducing economic inequality but also at addressing socioeconomic security.

Regarding Brazil and Latin America, various authors point out how late and insufficient the expansion of social protection was, with the benchmark for reducing inequality in Brazil being established by the 1988 constitution. KERSTENETZKY (2012) records what would be the late expansion of Brazil's social protection system, in line with what occurred in Latin America between

⁸ Criticisms come not only from Keynesian and neo-Keynesian schools but also from behavioral economics and finance approaches, new institutional economics, and sustainable economics theorists, among others.

the 1990s and the early 2000s. Countries in the region would share similarities regarding the degree of inequality, the low proportion of social spending relative to taxation, and a history of Iberian colonization. According to ARRETCHE (2018), the 1988 constitution broke the paradigm of separation between insiders and outsiders in the Brazilian welfare state, where only those in the labor market had social security rights and access to state services. This division and exclusion, despite the limited mobilization capacity of the excluded, led to an expansion of social rights and the coverage of public policies.

4. THEORIES OF MEDIUM RANGE

The Marxist, Neoliberal, and Neo Keynesian approaches can be classified, to some extent, as examples of what are known as Grand Theories. Inspired by the attempts to create all-encompassing philosophical systems by thinkers such as Kant, Schelling, and Hegel, social sciences have observed efforts to create these grand theoretical schemes since the 19th century. This can be seen in the attempts of Comte and Spencer, followed by the efforts to create a theory of social action and the definition of structural functionalism by Talcott Parsons in the 1930s (MERTON, 1968), which were influenced by Weber and Durkheim. Finally, we see these grand theoretical ambitions in the discussions on pluralism, elitism, and other forms of social organization suggested by political science.

The development of the concept of Theories of Medium Range (MRTs) – an approach that proved to be highly influential in academic circles, especially in post-war American sociology – can be traced back to T. S. MARSHALL and, above all, to the work developed by ROBERT MERTON over nearly twenty years. In his inaugural lecture at the London School of Economics in 1946, Marshall advocated for the use of what he called “intermediate steps in the development of social theory” (MARSHALL, 1963, pp. 3-24, also in MERTON, 1968, p. 51).

This caution against excessive concentration on the development of grand theories in social research gained momentum with the debate between Parsons and Merton, which began in 1948 with the article “The Position of Social Theory” published in the *American Sociological Review* (PARSONS, 1948, ARS, pp. 156-164). In it, Parsons proposed that social theory should converge towards the production of a single grand conceptual structure (PARSONS, 1948, p. 157), focusing on a comprehensive explanation for social action conforming to a structural functionalist like theory (PARSONS, 1948, p. 158). Although Parsons always rejected the label of Grand Theory for his conceptual scheme, he is historically known as the proponent of the ambitious structural-functional research program.

In the same issue of ASR, Robert Merton presents his counterpoint to Parsons’ propositions (MERTON, 1948, pp. 164-168). He emphasizes that Parsons’ suggestion was to create total systems for sociological thought, proposing a single conceptual structure. Merton observes that any systematized theory consists of accumulated parts of previous theories that have survived decades of research (MERTON, 1948, p. 165). By comparing this to the development of sciences like medicine and chemistry, he suggests that the pursuit of total systems should give way to a set of more limited theories, which are applicable to specific sets of data. In this initial

discussion, however, Merton does not yet use the term Medium-Range Theories (MRTs), a concept that he would gradually develop in the following years (especially in MERTON, 1957, 1963, and 1968).

This proposition of using theories more suited to empirical testing, however, does not mean reducing social research to a futile empiricism. Merton evaluates that the state of theoretical production in the post-war period had a general orientation towards data analysis, focusing on suggesting variables that should be somehow considered in social research, without making clear and testable assumptions about the relationships between these variables. In his words, “we have many concepts, but few confirmed theories; many viewpoints, but few theorems; many approaches, but few conclusions” (MERTON, 1948, p. 166).

In 1968, Merton consolidates his ideas about Medium-Range Theories in the second chapter of his book “Social Theory and Social Structure.” In his essay “On Social Theory of Medium Range,” he suggests that these theories involve abstractions but are close enough to the observed data to be incorporated into propositions that allow for empirical testing (MERTON, 1968, p. 39).

On the one hand, MRTs are not mere derivations from the so-called Grand Theories, and on the other, they are not mere empirical generalizations (MERTON, 1968, p. 41). In many cases, they are even compatible with various Grand Theories. For example, Principal-Agent Theory can be used in both Marxist and Neoclassical analyses.

Merton makes a distinction between theory, a set of logically interrelated assumptions from which testable empirical hypotheses are derived, and empirical generalization, a single proposition that summarizes observed uniform relationships between two or more variables (MERTON, 1968, p. 66). MRTs are essential for the accumulation of knowledge, allowing for the consolidation of increasingly larger bodies of thought.

Several examples of MRTs are explored by MERTON in his 1968 text, primarily in the field of Sociology. BOUDON revisits the discussion on MRTs in 1991, with other examples and reinforcing their role in the development of Social Sciences (BOUDON, 1991, pp. 519- 522). Of particular importance is his proposition for what he calls the negative aspects of Grand Theories. According to him, these represent a hopeless and quixotic attempt to determine long-range independent variables that operate in all social⁹ processes or to pinpoint an essential aspect of social theory (BOUDON, 1991, p. 519).

5. LAW AND MEDIUM-RANGE THEORIES

The debate on public policies and grand theories, such as functionalism and Marxist theories, finds its limits in the last quarter of the past century. The definition and implementation of

⁹ Boudon's mention of independent variables follows his long theoretical production on mechanisms and data-generating processes (BOUDON, 1979, 1998). These discussions fit into a reflection on causality and methodological individualism, which are important for understanding empirical research in law and public policies.

public policies do not seem to depend solely on the pressures from different interest groups, as suggested by less sophisticated versions of pluralism, nor do they exclusively reflect the interests of those groups in power, if a simplified elitist view is adopted. These are all important issues, but they can easily lead to determinism that would render theorizing about public policies useless.

It is recognized that the state's apparatus, its management mechanism, does indeed have some autonomy and is subject to external and internal influences. In their study, theorists and policymakers use methodological tools and medium-range theories to explain the nuanced reality that arises from the interaction between public policies and forms of state organization.

This analysis does not solely occur within the grand context of public policies. A detailed view and the need to establish causal relationships between policies and outcomes require examining competencies, allocation and distribution issues, the participation of various interest groups, and forms of federal coordination and between public and private agents, among other aspects. What is observed is that this type of analysis presupposes an approach of Law and Public Policies, and the production of testable hypotheses necessitates the migration from grand theories to MRTs. After this journey, broader explanatory schemes will be constructed from a deep empirical and theoretical base.

There are also many examples in this REI dossier of analyses conducted from the idea of Law as a building block of public policies. In the area of education, TOLEDO examines the policies for valuing basic education teachers, which are to be achieved through the establishment of a national career plan and the setting of a minimum salary. Also concerning basic education, JORGE examines how regulation for teacher training courses suffers from systemic inconsistencies in its norms. DUARTE notes how issues related to cooperative federalism and distributive conflicts are central to the difficulties in systematizing the National Education System (SNE). Cooperative federalism is also pointed out as an essential element of the Law and Public Policies approach in the study of urban roads and their social function (HADDAD, 2019), as well as distributive conflict being a central problem in addressing basic sanitation issues (VALENTE, 2019).

The combination of MRTs with establishing causal relationships through empirical verification of their validity via testable hypotheses is already finding some resonance not only in the evaluation of public policies but also in broader legal and political science issues, for example, examining supreme courts and other judicial instances.

In this sense, TAYLOR (2006) draws on TSEBELIS's (1995, 2002) theory of veto players to test whether the structure of constitutional courts would offer a path particularly advantageous to certain social groups in their quest to block public policies that would alter the status quo. For example, the author uses a typical medium-range theory to test the possibility that the Supreme Federal Court (STF) serves as a policy venue for certain social groups¹⁰.

¹⁰ Taylor's test, however, conducts this analysis by examining the outcomes of judicial actions without considering the possibility of what is known as selection bias. See, regarding the application of selection bias to judicial litigation, PRIEST and KLEIN (1984), and in Brazil, the pioneering contribution of RIBEIRO (2007a; see also NUNES et al., 2015).

For another example, see Ribeiro's analyses on arbitration (RIBEIRO, 2008) and specialized justice (RIBEIRO, 2007b). In both cases, the author adopts a methodological individualism perspective within the context of New Institutional Economics. The relationship between executives of publicly traded companies and the shareholders they serve is one of delegation of powers, through election at shareholder meetings. This type of relationship has been examined by economists and political scientists through what is known as agency theory (HOLMSTROM and MILGROM, 1987)¹¹. The agent, who operates under a mandate granted by the principal (in the case of publicly traded companies, the shareholder), is the person receiving the delegation.

The model examines the consequences of this delegation relationship. The agent, dealing directly with the task, becomes more informed than the principal. Their interests may diverge from those of their constituents, and the level of effort they exert - for example, following ethical behavior or doing their best for the benefit of society - may not be directly observable. It further complicates the issue that the outcome may not always reflect the agent's effort or ethical and diligent behavior.

In this context, the agent may behave in ways that go against the interests of the principal. They may approve policies detrimental to the shareholder but that provide personal gain opportunities, or they may become lenient, as the results of diligent behavior are not always observable. Based on Agency Theory, RIBEIRO establishes testable hypotheses regarding the outcomes of arbitration and the specialization of justice in corporate matters (RIBEIRO, 2008, 2007b).

A similar approach, based on agency theory, can be found in PRZEWORSKI's work (1998), from a neo-Marxist perspective of examining the structure of the state. As Merton suggested, MRTs can sometimes be linked to more than one tradition of grand theories.

Other methodological perspectives further refine the relationships that researchers attempt to establish between state action and public policies. HERBERT SIMON presents a caveat to the neoclassical assumption of unlimited rationality of agents, which is foundational to information theory approaches (in particular, JOSEPH STIGLITZ, WEISS, 1981). Further critiques of neoclassical assumptions come from behavioral currents that question the rationality of agents (e.g., KAHNEMAN and TVERSKY, 1979; TVERSKY and KAHNEMAN, 1974). Among analytical Marxists, there are various methodological approaches, including game theory and others with a methodological individualism bias.

One can also highlight, among the Middle Range Theories, the various strands of neo institutionalism (especially the economic-based neo institutionalism of Douglass North and the historical sociology). These approaches aim to examine the effect of institutions, with varied definitions, on the outcomes of state and societal actions. They are not theories that seek to provide a fundamental explanation for all social phenomena but rather aim to qualify the discussion by proposing a better alignment between empirical observations and their historical and social

¹¹ The so-called agency theory can, in some cases, be better understood as an empirical device rather than as a Middle Range Theory (MRT). This is the reading that can be made, for example, from McCubbins, Noll, and Weingast (1987).

contexts—Ribeiro’s analyses (2007a, 2007b, 2008) fall within this context of North’s less comprehensive institutionalism.

The possibility of starting from research focusing on MRTs and empirical approaches, with a view to establishing broader theoretical frameworks, could serve as a revival of studies in Brazil on the so-called Theory of the State. As Bucci (2018) points out, the Theory of the State would be responsible for the “systematic understanding of information and concepts present in research of various kinds, dispersed between empirical data and analysis of partial phenomena.”

This need to bridge empirical and theoretical fields in the approach to Law and Public Policies requires, again, the refinement of methodological tools and a renewed pursuit of interdisciplinarity, especially in legal¹² education. Empirical devices such as the Policy Analysis Framework and the Policy Problems Framework contribute to this integration and provide the conditions for more rigorous empirical testing and more aligned hypothesis testing and causal relationship establishment¹³.

6. CONCLUSIONS

Conceptions of the State have a significant influence on the definition and implementation of public policies. There are many Theories of the State applicable to the discussion, and their consequences vary widely.

As a final example, consider the issue of social participation in the definition of public policies. An approach based on democratic theories will be concerned not only with the possibility of formal participation but also with active efforts toward inclusion—the goal being, in this context, to achieve the participation of groups usually excluded from debates and underrepresented in policies, without the risk of having their rights withdrawn by temporary majorities.

From this orientation, the effort to increase societal participation in recent years has been remarkable, with intensive use of national public policy conferences, the expansion of public policy councils, and even the formulation of a National Plan for Social Participation (PNPS)¹⁴, among other measures. However, a change in the group controlling the government, which operates with a logic more aligned with a neoliberal vision, has led to the abandonment of this policy of increased social participation.

Symbolic of this shift is, for example, the change in the composition of the National Education Forum (FNE), with the exclusion of members, the postponement of the National Education Conference (CNE), and, in a similar vein, the National Cities Conference (CNC). This shift also included a reduction in the scope of deliberation. In an ordinance issued in August 2017, then-Minister of Education Mendonça Filho made substantial changes to the composition of the

¹² Regarding the challenges in teaching within a Law and Public Policies approach, especially concerning interdisciplinarity, see in this dossier Brunet, as well as Rizzi and Bambini.

¹³ See in this dossier, regarding these empirical devices, Ruiz and Bucci, Malheiros, Chilvarquer, and also Werner.

¹⁴ Decree No. 8,243, of May 23, 2014, revoked by Decree No. 9,759, of April 11, 2019.

FNE and the organization of the National Education Conference¹⁵, excluding representatives from 14 civil society entities and replacing them with a greater number of government-linked agencies. Furthermore, there was now competition for seats for the remaining representatives, and the organization of the event was transferred from the FNE to the Executive Secretariat of the ministry. Finally, the CNE was postponed to at least the second half of 2018¹⁶.

Thus, the debate on State conceptions is not merely a theoretical issue; it involves core aspects of discussions on the definition, implementation, and evaluation of public policies, which are of great interest to policymakers. The attempt to explain these cleavages based on so-called grand theories does not allow for empirical testing. Most of the time, the proposition of grand theories results in tautological and non-testable explanations in matters of public policy.

Specifically, a positive approach to public policy requires examining aspects such as competencies, budget execution issues, public participation, incentives, and others that demand close attention to the legal instruments used in the planning, implementation, and evaluation of public policies. This focus on legal aspects demands the so-called Law and Public Policy approach. However, this approach alone is not sufficient. To formulate testable hypotheses, less ambitious theories, closer to the data, are needed. The state of the art in Social Sciences research shows, in our view, this empirical turn, grounded in the construction of grand theories from MRTs and their empirical testing.

The very effort of designing a research approach by the State, Law, and Public Policy group, which resulted in this dossier, is based on a common view of what this state of the art would be. As we have pointed out on several occasions, BUCCI (2013, pp. 291-292) advances many of these aspects, and it is with some citations from this work that we conclude this article.

At the closest level of observation, the micro-institutional level, the governmental phenomenon can be analyzed by examining the role of subjectivities, individuals, groups, and their atomized or aggregated interests. The epistemological category of process, with its load of meanings for both the field of law [...] and political science and other social sciences, becomes the reference point for understanding how governmental decisions are formed at the micro-institutional level, how they are executed, and what forms organized the resolution of conflicts and their solutions within the apparatus of the state.

At a greater level of distance, we can observe the organizational forms at the medium range (middle range) level, or the meso-institutional plane of government action. In this plane, the category of institutions is taken as a reference, considering the long tradition of this concept in law [...] and its rooting in political science, to understand the objective dimension of governmental action, expressed in institutional arrangements that transcend individual scope, the initiatives of the rulers, and other participants in the action, to assume collective meanings.

¹⁵ Ordinance No. 1,017 of August 22, 2017, published by the Ministry of Education in the DOU of August 23, 2017, in Section 2, p. 9 - the event, in the end, took place from November 21 to 23, 2018.

¹⁶ The postponement was made through the Decree of April 28, 2017 of the Presidency of the Republic, without number, which presents a new date and schedule for the 3rd National Education Conference (Conae).

After addressing the need for this micro and meso-institutional approach, which resonates perfectly with the idea of adopting Middle Range Theories, BUCCI (2013, pp. 295-298) suggests an approach that, in our view, anticipates the importance of a deductive-inductive empirical perspective, grounded in methodological individualism for the establishment of causal relationships:

The deductive approach, from general to particular, is more appropriate for the construction of analytical models, in which the understanding of how public policies are formed and operate is organized. The inductive approach is substantiated in inferences, drawn from concrete and particular cases, to general hypotheses formulated within the models. [...]

What is not common is the systematic analysis supported by a method of isolating variables—specific to our object of interest, whether legal or legally regulated—that identifies the reasons for the success or failure of a given government action. This procedure is, of course, adopted, but in an individual manner and not particularly suited to extracting broader-reaching results.

The challenge is to create a roadmap or key for analysis, allowing for case comparisons that will provide the accumulation necessary for second-level studies, that is, based on reflections drawn from empirical findings through data comparison and the isolation of variables.

BUCCI highlights the need for structured comparisons, based on shared perspectives among researchers, that is, the need for a common vocabulary and analytical canons. Finally, he points out this structure for establishing causal relationships in other applied social sciences, especially in the application of quantitative approaches like econometrics, with the isolation of variables and tests aimed at establishing correlations¹⁷.

The adoption of a vision grounded in legal elements and the empirical examination based on Middle-Range Theories presents, in our opinion, one final challenge, which is to advance towards qualitative and quantitative approaches capable of isolating variables and allowing for generalizations. As BUCCI (2013, p. 298) points out, this effort is what was done, for example, in Medicine, which, after accumulating a large body of empirical evidence in the form of case studies, moved towards systematization as a way to test generalizable hypotheses and, later, to build broader-reaching theories. This is the challenge faced by scholars of Law and Public Policy.

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¹⁷ The author suggests that approaches such as econometrics and, we would add, jurimetrics, would find limits when indicators are not always quantifiable. Particularly, we disagree with this impossibility, since much of the statistical and econometric literature already deals with aspects of inference in qualitative research. For a detailed and in-depth argument in this regard, see BECKER (1970), chapters 1 to 3.

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