

Regulatory Agencies in Brazil vs. the United States: A Comparative Study

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Abstract: This article describes Brazil's regulatory agencies compared to the United States, emphasizing their similarities and differences and discussing the Brazilian regulatory agencies in detail. After careful content analysis, key findings pointed out a significant disparity within both countries: while in Brazil, the first regulatory agency was created in 1996 - National Telecommunications Agency (ANATEL), in the United States, the Interstate Commerce Commission (ICC) was founded 114 years before, in 1887, evidencing a long tradition and expertise regarding the regulatory environment from the North American agencies. There are currently eleven regulatory agencies in Brazil, while in the United States, there are 47. Different types and functions give North American regulatory agencies a higher level of sophistication than the Brazilian regulatory system, meaning that the Brazilian regulatory framework finds an excellent deal for improvement. One of the implications that compile the current work is the discussion about the existence of a political influence in regulating agencies needing to catch up compared to their American counterparts' pace of innovation.

Keywords: National Regulatory Agencies, Brazil, Regulation, Governance, Public Administration

I. Introduction

Regulatory Agencies (R.A.) are executive branch entities tasked with formulating, regulating, and enforcing laws passed by Congress and signed into Law by the President of particular economic sectors, with the following attributions: (i) promoting competition and preventing monopolistic and anticompetitive conduct; (ii) Development of particular regulations for the regulated industry; (iii) Analyze and investigate relevant market information; (iv) Inspecting, monitoring, and punishing firms in the industry for non-compliance with the rules; (v) when a company delivers a public service, it handles concession contracts; (vi) protection of consumer rights concerning businesses (Cuellar, 2015).

Executive power, some attributions, such as sector normalization, are attributes of the Legislative Branch, while monitoring and punishing firms in a given industry are attributes of the Judiciary Branch, somehow influencing the decision-making process within companies (Quirk, 2014).

Justen Filho (2002) argues that Regulatory Agencies are "intervention powers in the economic domain (in a broad sense), which involves delegation of regulatory powers and attribution of police powers to oversee private economic activities, including arbitrating disputes between individuals." (p.343)

This article addressed the R.A. of two countries as the units of analysis: Brazil, and the United States, deepening our knowledge of the similarities and differences between both countries, aiming to highlight the pros and cons of their governance structures to provide a new perspective on lessons learned and best practices, helpful to scholars, policy and decision-makers, and other practitioners.

The rationale behind the choice of the two countries lies mainly in their experience and highly contrasting usage of regulatory agencies in their Governance Structure: Brazil is a newcomer compared to the United States regarding regulatory agencies. Only 114 years after the first North American R.A. was created, the first Brazilian Regulatory agency, ANATEL (see Table 1). Therefore, this article examines R.A.s from both countries, comparing them through multiple qualitative methods. Finally, an exhaustive content analysis of the findings is discussed in the upcoming sections.

II. Methodology and Research Limitations

This work followed an interpretive approach and inductive rationale to reveal the nuances of the regulatory agency from the two units of analyses, the institutions from (a) Brazil and (b) the United States of America (Yin, 2009). Therefore, a multiple-methods approach combined archival research with a descriptive multiple case study. Findings were analyzed and discussed after subsequent content analysis interactions triangulated by the researchers.

Furthermore, this article is limited to R.A.s from Brazil and the U.S. Other countries, regulations, or regulatory agencies are separate from the scope of the present work and should be investigated in separate studies. Finally, although both countries have Federal, State, and City Regulatory Agencies, only the Federal Regulatory Agencies are investigated in this study.

III. Background

The United States has more experience with Republican governments and democracy than Brazil. While the U.S. declared its independence on 04 July 1776, Brazil only became a Republic on 15 November 1889, 113 years later. Regarding Regulatory Agencies, the first North American Agency, the Interstate Commerce Commission (ICC), was founded on 04 February 1887, during President Grover Cleveland's Administration, when Congress passed Interstate Commerce Act to oversee primarily the railroad industry, which became the first North American industry under federal regulation (National Archives, 2023).

After the American Civil War (1861-1865) ended, the ever-increasing private and unregulated railroad market became prominent as a monopoly. Therefore, the act established a five-member commission, the Interstate Commerce Commission. Lessons learned from the ICC proved to help set the pace for future Regulatory Agencies.

Until 1940, ICC included other transport models (excluding aviation), where its enforcement powers gradually expanded. However, in 1966, some of ICC's functions were transferred to the Department of Transportation. ICC continued operating until 1995 when the agency was terminated after 108 years of working. The remaining functions were therefore transferred to the new National Surface Transportation Board (NSTB). (Federal Register, 2023)

Conversely, in Brazil, the first Regulatory Agency, National Telecommunications Agency (ANATEL), foreseen in the Federal Constitution 1988 (Brazil, 1988, Art. 21, XI), started its operation on 01 November 2001, four years after the Congress passed Law 9.472/ 97 (Brazil, 1997), constituting:

The National Telecommunications Agency is, as a result of this created, an entity that is part of the indirect Federal Public Administration, subject to a special autarchic regime and linked to the Ministry of Communications, with the role of the regulatory body for telecommunications, with headquarters in the Federal District, with the possibility of establishing regional units. (Brazil, 1997, Art. 8)

In addition, Law 9.472/97 issued a Board of Directors, an Advisory Board, an Attorney's Office, an Internal Affairs Department, a Library, and an Ombudsman's Office through Art. 8, § 1 (Brazil, 1997), conceived to be "a special autarchy conferred on the Agency is characterized by administrative independence, absence of hierarchical subordination, fixed mandate and stability of its directors and financial autonomy." (Brazil, 1997, Art. 8, § 2). Finally, Brazilian Regulatory Agencies are illustrated in Table 1:

Table 1 - National Regulatory Agencies in Brazil

#	Federal Agency	Ministry	Law no.	Year	Type of Regulation
1	National Electric Energy Agency (ANEEL)	Mines & Energy	9.427	1996	Economic
2	National Telecommunications Agency (ANATEL)	Communications	9.472	1997	Economic
3	National Petroleum Agency (ANP)	Mines & Energy	9.478	1997	Economic
4	National Health Surveillance Agency (ANVISA)	Health	9.782	1999	Social
5	National Water Agency (ANA)	Environment	9.984	2000	Environmental
6	National Agency for Supplementary Health (ANS)	Health	9.961	2000	Social & Economic
7	National Water Transport Agency (ANTAQ)	Transportation	10.233	2001	Economic
8	National Land Transport Agency (ANTT)	Transportation	10.233	2001	Economic
9	National Film Agency (ANCINE)	Commerce & Industry	10.454	2002	Social
10	National Civil Aviation Agency (ANAC)	Defense	11.182	2005	Transportation
11	National Mining Agency (ANM)	Mines & Energy	13.575	2017	Economic

Table 1 shows the eleven Brazilian Regulatory Agencies (in Brazilian Portuguese, National Regulatory Agencies), from which the majority (54 percent) are exclusively concerned with economic and regulatory purposes, exerting a severe influence on the firms' performances (Quirk, 2014). Finally, in the next section, the differences and similarities of the R.A.s of both units of analysis are outlined.

IV. Similarities and Differences between RAs from Brazil and the United States

In both countries, the functions of the regulatory agencies overlap. They were created to regulate markets. In both cases, R.A.s' incomes are received through tax collections and government revenues. All R.A.s have quasi-legislative and quasi-judicial powers. All R.A.s passed through Congress and are considered attached to the Executive Branch. However, there is a crucial difference between North American and Brazilian R.A.s.

In Brazil, however, all R.A.s are linked to the correspondent Ministry. For instance, ANATEL is linked to the Ministry of Telecommunications and the National Electric Energy Agency (ANEL), which is subordinated to the Ministry of Mines and Energy (see Table 1). For example, according to Law 9.427/96, ANEEL acts "following the policies and guidelines of the federal government." (Brasil, 1996; Art.2). Therefore, every R.A. in Brazil is subordinated to the Executive Branch. As a result, there are no independent R.A.s in Brazil. Conversely, in the US, RAs are attached to the executive power, and some are independent agencies. Although considered part of the Executive Branch, Regulatory Independent Agencies (RIA) hold the regulation or legislative jurisdiction shielded from presidential control, often due to the President's limited ability to fire an agency head or member. Figure 1 illustrates the structure of the government of the United States (Breger & Edles, 2015).

THE GOVERNMENT OF THE UNITED STATES

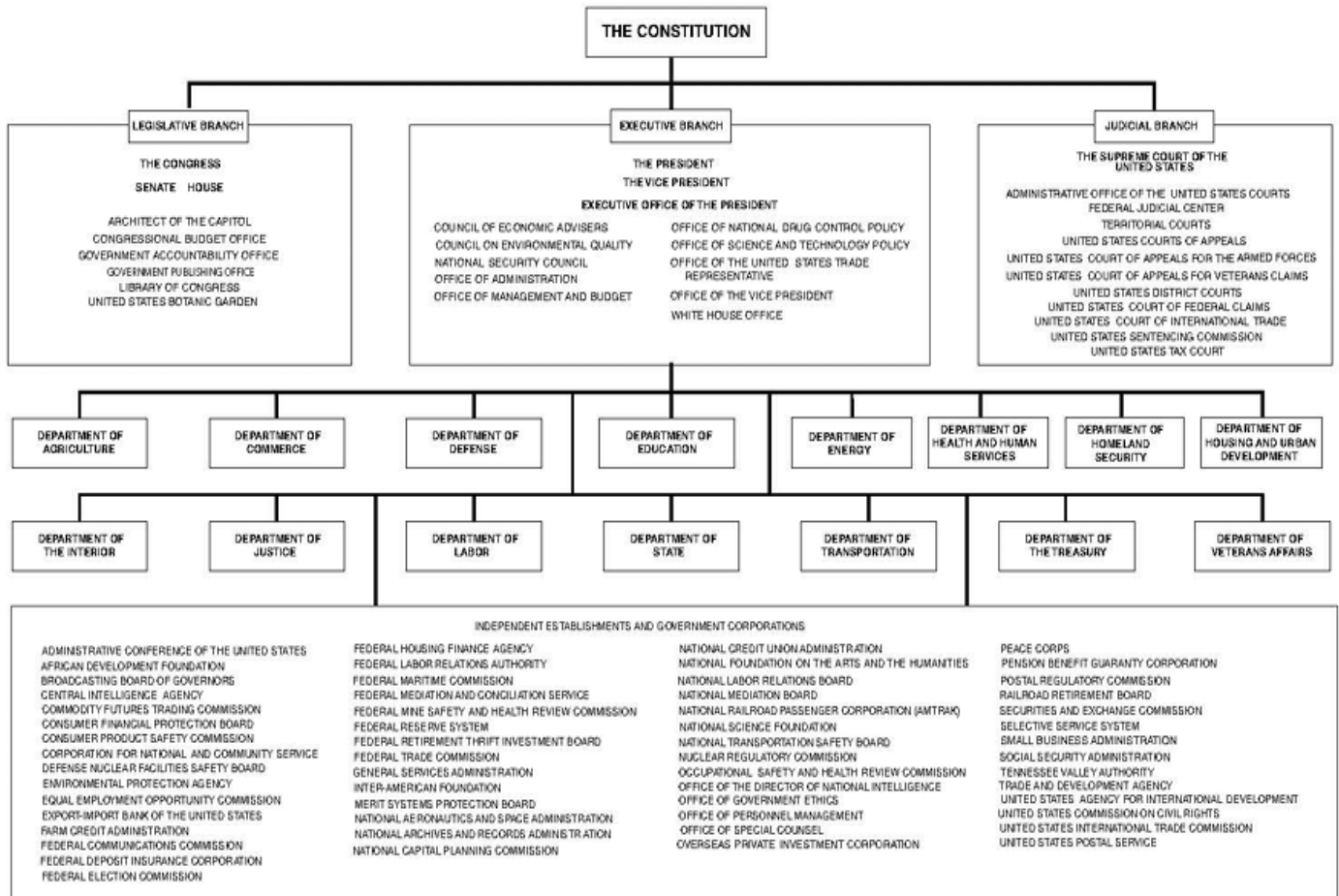


Figure 1 The Government of the United States. Source: US, 2023

Figure 1 shows (a) judiciary, (b) the legislative, (c) executive, and (d) the independent establishments and government corporations, including councils, offices, and 15 Departments (in Brazil, there are currently 30 Ministries). Furthermore, in the United States

Government, among the Federal Regulatory Agencies, seven are considered the most influential, strictly attached to the Executive Branch, known as the "Big Seven" Regulatory Agencies, outlined in Table 2:

Table 2 "Big Seven" Regulatory Agencies in the U.S.

#	"Big Seven" Regulatory Agencies in the U.S.	Attribution
1	Interstate Commerce Commission (ICC)	Jurisdiction covers railroads and related carriers, common and contract motor carriers, certain domestic water carriers, pipelines and freight forwarders
2	Federal Trade Commission (FTC)	Prevent practices leading to monopoly or restraint of trade, such as unfair methods of competition
3	Federal Communications Commission (FCC)	Regulates telephone and telegraph common carriers, including their rates
4	Securities and Exchange Commission (SEC)	Regulates security issues; supervises the stock exchanges; regulates holding companies and investment companies
5	Civil Aeronautics Board (CAB)	Licenses domestic air carriers; issues permits to foreign air carriers landing in the United States
6	National Labor Relations Board (NLRB)	Adjudicates charges of unfair labor practices on the part of employers or unions
7	Federal Power Commission (FPC)	Grants licenses to private power projects on navigable waters subject to federal jurisdiction

Source: US, 2023

As a result, according to the United States Government Manual (U.S., 2023), there are 47 independent regulatory agencies, including Central Intelligence Agency (CIA), Environmental Protection Agency (EPA), Federal Aviation Administration (FAA), Federal Reserve System (FED), Food and Drug Administration (FDA), National Aeronautics and Space Administration (NASA), for instance. Finally, Table 3 lists the 30 leading independent regulatory agencies as follows:

Table 3 Independent Regulatory Agencies in the U.S.

#	Independent Regulatory Agency in the U.S.	Attribution
1	Amtrak (National Railroad Passenger Corporation)	Provides intercity service throughout the contiguous United States and parts of Canada.
2	Central Intelligence Agency (CIA)	Gathers foreign intelligence and provides national security assessments
3	Commodity Futures Trading Commission (CFTC)	Regulates commodity futures and option markets
4	Consumer Financial Protection Bureau (CFPB)	Responsible for consumer protection in the financial sector
5	Consumer Product Safety Commission (CPSC)	Enforces federal safety standards
6	Election Assistance Commission (EAC)	National clearinghouse and resource of information regarding election administration.
7	Environmental Protection Agency (EPA)	Establishes and enforces pollution standards
8	Equal Employment Opportunity Commission (EEOC)	Administers and enforces Civil Rights Act of 1964
9	Federal Deposit Insurance Corporation (FDIC)	Insures bank deposits, approves mergers, and audits banking practices
10	Federal Election Commission (FEC)	Oversees campaign financing for all federal elections
11	Federal Energy Regulatory Commission (FERC)	Oversees interstate electricity sales, wholesale electric rates, hydroelectric licensing, natural gas pricing, and oil pipeline rates
12	Federal Housing Finance Agency (FHFA)	Regulates Fannie Mae, Freddie Mac, and the 11 Federal Home Loan Banks
13	Federal Maritime Commission (FMC)	Regulates the international ocean transportation
14	Federal Mediation and Conciliation Service (FMCS)	Preserve and promote labor-management peace and cooperation.
15	Federal Reserve System (FED)	Regulates banking; manages the money supply
16	Food and Drug Administration (FDA)	Administers federal food purity laws, drug testing and safety
17	General Services Administration (GSA)	Responsible for the purchase, supply, operation, and maintenance of federal property
18	International Trade Commission (ITC)	Determines the impact of imports on US industries, patent, trademark, and copyright infringement
19	National Aeronautics and Space Administration (NASA)	Responsible for the civilian space program as well as aeronautics and aerospace research
20	National Archives and Records Administration (NARA)	Preserves the nation's history by overseeing the management of all federal records
21	National Transportation Safety Board (NTSB)	Responsible for civil transportation accident analysis
22	Nuclear Regulatory Commission (NRC)	Licenses and Regulates non-military nuclear facilities
23	Occupational Safety and Health Administration (OSHA)	Develops and enforces federal standards and regulations ensuring working conditions
24	Postal Regulatory Commission (PRC)	Provides regulatory oversight over the activities of the United States Postal Service.
25	Selective Service System (SSS)	Serve the emergency manpower needs of the military by conscripting untrained men, or personnel with professional health care skills
26	Small Business Administration (SBA)	Advise, assist, and protect the interests of small business concerns
27	Social Security Administration (SSA)	Administers Social Security, a social insurance program consisting of retirement, disability, and survivors' benefits
28	Surface Transportation Board (STB)	Regulates railroad rate and service disputes and reviewing proposed railroad mergers (former ICC)
29	United States Agency for International Development (USAID)	Provides foreign aid and assists with international development
30	United States Postal Service (USPS)	Responsible for the collection, transportation, and delivery of the mails

Source: US, 2023

IV. Discussion

On 25 June 2019, the Brazilian Congress passed Law 13.848 (Brazil, 2019) that rules the organization, which unifies the decision-making process and the social control of the Regulatory Agencies. Law 13.848 includes the eleven R.A.s illustrated in Table 1 and granted "the absence of guardianship or hierarchical subordination, by the functional, decision-making, administrative and financial autonomy and by the term investiture of its directors and stability during the mandates." (Brasil, 2019, Art. 3) Brazilian R.A.s increased their autonomy with the Law as mentioned above. However, once each National Regulatory Agency used to abide by a specific law, totaling eleven, there were discrepancies among them, thus unified in a single Law 13.848, representing an improvement by establishing legal criteria valid for all regulatory agencies.

In Brazil, the regulatory agencies were responsible for the success of the Brazilian privatization program (Teles & Dias, 2022b). However, Brazilian Regulatory Agencies are under attack despite the autonomy granted by Law 1.848/2019. After the election of the left wing in the general elections of 2022, the new President expanded the number of ministerial positions from 22 to 37, adding, therefore, fifteen new ministries. In the first month of the mandate, 87 amendments were issued. Amendment 54 proposes the formation of new entities without specifying their aims and responsibilities, organizational structures, professional profiles and qualifications, budgets, and funding sources. It seems inconceivable that such far-reaching changes would be suggested for immediate adoption without previous and in-depth consideration of their consequences.

The imperative for regulatory agencies to serve as market protectors is the rationale for their independence. From a long-term perspective, the autonomy of the regulatory agencies turn them immune to the demands of governments (which are transient and driven by short-term objectives with an eye on the next election) and, much more so, hostages to the interests of political parties, and promises made before the election. In other words, regulatory bodies must be governed by technical, specialized, and apolitical conduct to ensure concession contract compliance.

Executive, Legislative, and Judiciary branches should work accordingly for the greater good. The regulatory agencies were directly responsible for the success of Brazilian privatizations (Teles & Dias, 2022, 2023). Therefore, regulatory agencies should comprise (i) primarily technical staff, not politicians; (ii) to ensure a completely transparent process for Brazilian society. Finally, performing the best results for society is impossible, implying no political intervention on regulatory agencies.

In comparison to Brazilian and North American regulatory agencies, there is a profound gap between them. Brazilian government should adopt the existing regulatory model, where agencies are mainly isolated from short-term political interests. In a real scenario, pressures come from large economic groups as well. However, the autonomy of independent agencies proved to be an example of best practice that the Brazilian Federal Government should adopt. Note in Figure 1 that 58 independent institutions (corporations and establishments) are linked to the Executive Branch. We presented 30 examples of independent regulatory agencies, such as the CIA, NASA, FAA, and FED (see Table 3). In Brazil, conversely, the equivalent to FED is the Ministry of Economy, in which the minister is a particular choice of the Brazilian President. In sum, all the economic decisions in Brazil are, in practice, subject to the decisions of the presidency of the Republic.

The regulatory agencies were vital to the development of the United States and still are. Before the civil war in the XIX century, the country was agrarian. The government was much more concerned with cultivation and natural resource exploitation. Large industries were few and concentrated in the north, opposing the agrarian and slave-owning south. After the creation of the first regulatory agency, the Interstate Commerce Commission (ICC), in 1887, the country experienced an unprecedented transformation, resulting in the economic powerhouse and only emerging superpower after the cold war. By far, the largest economy worldwide to date.

V. Implications

This article was designed to compare the Brazilian and North American regulatory agencies, the two units of analysis (Yin, 2009). Therefore, it has the merit of condensing sparse research on the subject in one article. Furthermore, the study has implications in related fields of research, such as (i) privatization in Brazil (Teles & Dias, 2023; 2022; 2022b; Dias, Teles, and Pilatti, 2018); (ii) new regulatory agencies in Brazil (Araujo & Dias, 2022; 2021); (iii) public health and ANVISA (Craveiro & Dias, 2019); (iv) Brazilian privatization cases (Dias, M., Duzert and Teles, 2018); (v) public transportation and ANTT (Dias, M., 2018; Dias, M. & Teles, 2018), for example. Finally, this research is helpful to scholars, policy and decision-makers, managers, students, and other practitioners.

VI. Future Research

Future studies are encouraged to investigate the regulatory agencies' impact on Brazil's privatization program. Other countries are also a topic for future investigation and a meta-analysis with a more influential group of countries. Moreover, additional studies are required to determine the boundaries between the regulatory agencies and the legislative and judicial powers. New regulatory

agencies in other economic sectors are also encouraged in the future. However, considering the size of Brazil's regulatory agencies and even the USA, future research should narrow the research objective to two agencies as the objects of comparison.

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