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ARTIGO

**POLICY IN THE SHADOWS A TYPOLOGY BASED ON
SALIENCE, REGULATION AND DEREGULATION**

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Policy in the Shadows: a Typology Based on Saliency, Regulation and Deregulation

Abstract

This article presents a new policy typology, based on the regulatory or deregulatory nature of the formal act instituting or changing a policy, and the saliency of such initiative. The case of environmental policy in Brazil illustrates the four different types of policy resulting from crossing these dimensions. Analysis of all formal acts issued by the Brazilian federal administration in relation to environmental policy between 2019 and 2020 indicates that the pandemic in 2020 enabled a large number of regulatory acts in the shadow – that is, without any relevant media repercussion or Congressional debate related to it. While the lack of public debate in general suggests limited input to improve policy, policy making in these circumstances may also generate unequal benefits for certain economic groups, given first movers' advantage.

Keywords: Policy Typologies. Environmental Policy. Regulation. Deregulation. Saliency.

1. Introduction

In May 2020, a video of a closed ministerial meeting held by the high rankings of the Government of Brazil became public, as part of a Supreme Court investigation. It revealed Brazil's Minister of the Environment telling the President, Jair Bolsonaro, that they should take advantage of the media's preoccupation with the COVID-19 pandemic "to push through and change all the rules and simplify norms." (in plain Portuguese: "*passar a boiada*"). What kind of policy was he referring to? What public opposition was the Minister trying to avoid?

Inspired by these events, this paper investigates how policies that receive higher or lower public attention relate to imposing additional regulations or deregulation to a policy area.

Crises present challenges and opportunities for public policy change. The Covid-19 pandemic is an outlier example of a context that governments experience with a certain frequency. Environmental catastrophes, terrorist attacks, and other circumstances demand, on the one hand, the need for immediate emergency action in certain areas of government. On the other hand, other areas - not directly impacted by these events - receive less public attention for some time and undergo policy interventions, like reducing environmental regulations and making it easier to secure new public concessions. This paper contributes to understanding what happens to sidelined policies, as government priorities shift to emergency programs.

We investigate this question by analyzing all formal acts taken by the Brazilian Government in relation to environment and climate change policies in 2019 and 2020. By scanning all official decisions, except the routine measures, such as nominations and contracts, this paper identified 671 acts in these first two years of President Bolsonaro's administration. A panel of experts classified these acts as regulation or deregulation. Next, by searching the coverage at the most popular Brazilian newspapers and by identifying Legislative repercussions, we measured the saliency of these acts.

Crossing these two dimensions - regulation/deregulation and salience - this paper proposes a new policy typology.

Usual policy typologies discuss who benefits and who pays from certain government actions (Lowi 1985, 1963, 1972; Wilson et al. 2016) and differentiate between substantive and procedural, or even between liberal and conservative policies (Birkland 2019). These typologies do not detail the policy process, and therefore do not relate the policy process to the impact of these initiatives. The alternative typology proposed here relates characteristics of the policy process to its impact on certain groups identified by their opposition or support to the government.

This study aims to provide theoretical and practical contributions. Theoretically, this article seeks a better understanding of the mechanisms adopted to implement policies during moments of diverted public attention, such as a pandemic, a scandal or any event that receives high media coverage and generates public commotion. This can be relevant to advance policies needed to solve certain public problems. On the other hand, there is a risk of specific groups using these mechanisms for their own benefit. In practical terms, this study may also contribute to avoiding or reversing policy initiatives occurring in times of diverted public attention, or in simpler words, in the shadows.

Results indicate that most environmental policy acts in Brazil receive very low media and legislative repercussions. The Covid-19 pandemic represented an opportunity for deregulation but also engendered many regulatory initiatives. These results are worrisome, given the imposition of obligations or lowering of environmental protections without public scrutiny.

This paper follows with an overview of the typological tradition in policy studies. Next, it presents relevant elements of the political, social, and environmental context in Brazil. The following section presents the methodology of this study. The paper then presents its results, followed by the discussion and conclusion, presenting its implications, limitations, and an agenda for future studies.

2. Typologies in policy studies

The typological tradition in policy studies has accumulated a plethora of policy categorizations since the establishment of Lowy's seminal proposal in 1964. This tradition has somehow inverted the causal relation between politics and policy, in the sense that “policies determine politics”, advocating for policy studies and helping to bring public policy to a status of discipline. This analytical accumulation appears in several Journals especially between the 1960s to the 1980s, with key precursor authors like Lowi, Froman Jr., James Q. Wilson, Gustaffson, and Gormley Jr.

Several books and published papers have already discussed, improved, and proposed modifications to the policy typologies (Birkland 2019; Greenberg et al. 1977; Hayes 2007; Hecl 1972; Kellow 2009; Smith 2002; Steinberger 1980). This accumulation of knowledge in policy studies improved the categorization of public policies, with several justifications: 1) to overcome atomization of

knowledge by accumulation of rigorous and comparable knowledge; 2) to better understand the relationship between substance and process of policymaking; 3) to bring explanatory insight across politics or policy domains. The shortcomings of typologies are also worth mentioning: 1) the oversimplification of complex policies into discernible aspects of their content; 2) the dependence on interpretations, or the limits of the analysts' social construction; 3) the variation of a policy's substance (and its classification) along the policymaking process; finally, 4) ambiguity, or the possibility of a public policy being dropped into several "boxes" at the same time.

One additional issue in having a multitude of policy typologies is that they end up creating distinctive and somehow competing research agendas, contending in scope, precision, and explanatory capacity (Steinberger 1980). For this reason, policy sciences have also developed recommendations for the construction of new typologies:

a) *Usefulness*: the typology must be useful to the analyst and must be able to bring important insights into the empirical reality at hand. This means that new typologies are acceptable once they specify the exact type of public policy being studied (i.e., a subtype of regulatory policies), the sector (i.e., a typology for foreign policy), the policy instrument (i.e., Welfare programs), or territorial delimitation (i.e. urban policies).

b) *Transparency*: a good typology needs to clarify its assumptions and ground rules for classification (Greenberg et al. 1977; Hayes 2007). To be useful not only for those who created it, the typology must be accompanied by a categorizing manual, with details on how to use it, with clear criteria, its limits and application potential, thus reducing interpretative variations.

c) *Exhaustiveness and exclusiveness*: the benchmark for a good typology is whether its categories reach simultaneously mutually exclusiveness and collective exhaustiveness. A mutually exclusive typology means that if a phenomenon appears in one type, it cannot be categorized in another type. A collectively exhaustive typology means that all possible and empirically verified phenomena will not be let out of any of the "boxes".

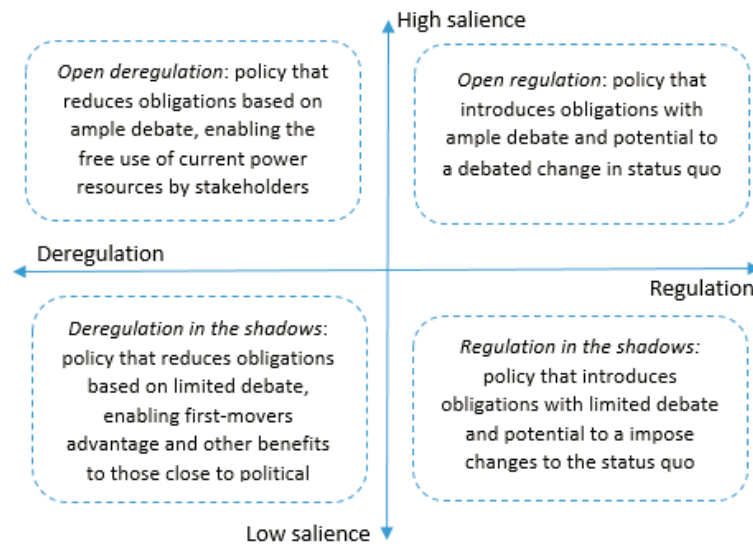
d) *Causality*: a typology must serve beyond the objective of synthesis and move forward to allow causal inferences. Based on Lowi (1963, 1972, 1985), the quality of a typology adapted for policy research is verified by its ability to predict how much variations in substance (policy) can impact the process (politics).

e) *Intelligibility*: following Steinberger's (1980) assumption, typologies are social constructions based on cultural and institutional realities. Thus, to be accepted by a variety of researchers and practitioners from various backgrounds, a typology must be widely intelligible, making practical sense to a broad audience.

Based on these lessons accumulated in the typological tradition in political studies, we propose a suitable typology focusing on the dimension of salience and regulation/deregulation. This typology

is partly inspired by the 1985 version of Lowi's typology, and partly by Gormley's typology (1986). On the one hand, our categorization considers the form of expressed intention as "regulation" (to impose obligations) or "deregulation" (confers powers or freedom to act). On the other hand, we benefited from Gormley's dimension of salience, operationalized as the capacity to draw media attention. Applied to the analysis of environmental policy in Brazil, this typology results in four groups of policies. Figure 1 illustrates these different arrangements.

Figure 1 - Regulatory vs. salience typology for public policies



Source: Prepared by the authors (2021)

Both categories presented on the left side of Figure 1 present liberal policies based on deregulation that typically reduce obligations and requirements for activities in different areas. In the case of *open deregulation* policies, however, these initiatives are based on extensive debate that, in theory, allows different groups to prepare for these measures. Since there are no protections to the balance of power in a pluralistic setting, the current power distribution of different groups remains. When, however, an extensive debate does not precede deregulation, there is limited opportunity for different groups to prepare for these changes. In these situations, privileged information may generate unequal benefits, empowering insiders that may have access to privileged information. Extensive literature discusses the advance of the first entry into a market (see, for instance, Kerin, Varadarajan, and Peterson 1992; Short and Payne 2008). In addition, previous studies relate deregulation with opportunities for first-movers' advantage (Fuentelsaz, Gomez, and Polo 2002; Pettus et al. 2018). Therefore, in an environment of limited debate, we name these policies as *deregulation in the shadows*.

A different situation occurs when there is a regulatory policy. Open regulation occurs when acts impose new obligations and requirements to act in a certain area, but this process receives high public attention, there is a potential for debate and for preparation of different groups that may take

advantage of these new rules to change the balance of power in a certain arena. There is also the possibility of regulation in the shadows, when changes in the *status quo* may surprise different stakeholders, frustrating their expectations and encouraging litigation or action in the Legislative power. This kind of regulation may also benefit groups of actors that receive privileged information or have access to resources, such as lawyers and specialists, which enable their action in the new regulatory environment.

2.1. Regulation / deregulation

Public policy is a generic concept that gains operationalization through a broad array of policy instruments. On a first layer of abstraction, these instruments can be summed up into three mechanisms to drive people's behavior: sticks, carrots, and sermons (Bemelmans-Videc, Rist, and Vedung 2011). On a second layer, one can find specific policy tools to translate policy intentions into administrative or social actions. Regulation, direct government, public information, taxes, expenditure, insurances, grants, loans, vouchers, and many others exemplify these "tools of government" (Salamon 2002). All of them have characteristics in common, patterns of usage, limits and potentials to induce cooperation. Hence, regulations and deregulations are objects of study in the field of public policy with their own nuances.

Regulation is a vast concept, which typically refers to intentional actions by public-sector actors in order to set standards, monitoring, and sanctioning private actors (Koop and Lodge 2017). Not only do different agencies use varied forms of regulation to address a wide array of market failures and other social problems, but the empirical data on regulation can also vary across different sources. Even the meaning of the term "regulation" itself requires careful definition, which relates to the fact that most articles discussing this phenomenon avoid an explicit definition (Koop and Lodge 2017). Colloquially, the term "regulation" refers to any legal requirement imposed by the government on individuals and businesses. However, federal regulatory officials, as well as scholars who study regulation, typically give regulation a more specific definition: a "rule" adopted by a regulatory agency or a stand-alone administrative agency. These regulations, whether issued by executive or independent agencies, implement laws and they can impose binding legal requirements on bureaucrats, businesses owners, and in the society. At times, formal government acts aim at relaxing legal requirements or rolling back previous standards and norms. These acts appear here as deregulation.

There is a significant strand of theory in economics analyzing the logics of regulation and deregulation using the lenses of economic efficiency (see, for instance, Cicala 2015; Keeler 1984). The public administration literature, on the other hand, analyzes regulation as a tool of governance (Salamon 2002). Following this view, efficiency is not the only dimension considered when

regulating or deregulating a sector (James 2000). There is not even a clear distinction between regulation and deregulation in certain cases. For instance, a recurrent rhetorical tactic used by governments championing for ‘better regulation’ in fact supports deregulation (Bunea and Ibenskas 2017). Regulation as a tool of government involves also regulation not of a market, but of government itself, which can both privilege the interest of regulated bodies or the regulators’ interests (James 2000). This way, it may be challenging to evaluate the result of a certain government act as regulation or deregulation.

Despite that, deregulation involves significant acts when removing, weakening, and delaying many rules that protect public health and the environment. As a rule of thumb, we assume here that in order to repeal a regulation, an agency must consider the options adopted in the existing regulation and explain why it has now chosen to reject those options. Although the Executive Branch has considerable leeway to revisit and change regulations adopted by prior administrations, in most national legal systems, such changes are subject to a well-established set of procedural constraints that apply to repealing or suspending regulations (Shapiro 2015).

2.2. Salience

Gormley Jr (1986, 598) has defined the salience of an issue as its capacity “to affect a large number of people in a significant way”. The consequence of a salient issue is broad and intense conflict among political actors. In defining low-salience policies, Koski (2010) adds another element: in addition to being initiatives with low attention, he suggests that these are non-controversial policies. Some authors define salience as “the importance of a policy area to members of Congress or their constituents” (Ringquist, Worsham, and Eisner 2003, 144). These authors, however, assume that a single policy area may have policies that receive different importance. In other words, salience refers to economically or politically significant, controversial, or otherwise newsworthy policy events.

Given the vastness of the regulatory arena, acts that are arcane, routine, or uncontroversial are usually considered non-significant. Instead, acts that are cultivated in relevant media and/or contested at courts are deemed salient. It is also expected that politicians will dedicate most of their limited time to these salient issues, following public interest in a given subject (Gormley Jr 1986). As a result, Calvert, McCubbins, and Weingast (1989) argue that agency discretion should be lower in areas where politicians pay close attention. That is, because of politicians’ interest in a given subject, there will be less room for government agencies deciding on that subject on their own. However, the complexity or lack of unanimity on a given topic may reduce this political salience (Ringquist, Worsham, and Eisner 2003; Spence 1997). Policies, however, may be low salient exactly because they are too technical (Koski 2010; Ringquist, Worsham, and Eisner 2003). Environmental protection

appears, generally speaking, as a high-salience and high complexity policy area (Neshkova 2014; Ringquist, Worsham, and Eisner 2003).

Whether a policy is low or high in salience matters, therefore for understanding who is involved in the decision-making and, potentially, who benefits from these decisions. Having access to what governments do, identifying responsibilities, judging government actions, and imposing consequences is at the core of public accountability (Bovens, Schillemans, and Goodin 2014). Without an accountability forum that includes civil society groups and political representatives, public policies lack a democratic, constitutional, and learning perspectives (Bovens, Schillemans, and Hart 2008). In fact, analyzing the supranational level in Europe, Neshkova (2014) argues that characteristics of policy areas are strong predictors of the type of actors that will be present in the policy process. Few bureaucrats and professional actors usually make decisions in low-salient policies (Gormley Jr 1986; Neshkova 2014). Despite that, Koski (2010) argues that interest groups can be influential on these low-salient policies, through a ‘knowledge broker’ able to access this network. On the other hand, high salience leads to more actors attempting to influence the decision making process, which, by its turn, relates to higher levels of goal ambiguity in these policies (Lee et. al. 2009).

To conclude this theoretical review, by no means we want to bring another typology to compete or overcome the previous most established typologies, nor as a competition on the explanatory power. The diffusion of typologies is a problem itself to accumulation of knowledge, as they divide what should be somehow unified (Steinberger 1980). However, this typology was meaningful for us to analyze the case at hand, and we believe it can serve those researching environmental policies, in a way that we can accumulate comparative knowledge across nations on the theme.

3. Methodology

This section first presents all data analyzed in this study and then informs the analytical procedure adopted to classify policy acts in this research. As a reminder, the goal here is not to indicate causality but only to identify the volume of acts that fit into high or low salience, and that classify as regulation or deregulation.

3.1. Data source

This study analyzes a dataset with all acts from the Brazilian Ministry of Environment and other public agencies related to environmental issues, between 2019 and 2020. All these acts come from the daily official government publication in Brazil¹. These were the first two years of President

¹ Available at: <https://www.gov.br/imprensa nacional/pt-br>

Bolsonaro's administration, during which the Minister of Environment was the same - Mr. Ricardo Salles. This allows to verify the types of policy action and the salience of these actions both in the beginning of a new government, when there is an opportunity to create changes in the policy agenda, and during a second year with a "window of opportunity" created by an external shock - the Covid-19 pandemic (Baumgartner, Jones, and Mortensen 2014; Kingdon 2002). The literature on implementation shows that public policies are more than formal acts, but this paper analyzes these documents based on the assumption that official manifestations remain an important indication on what the administration intends to be the effect of their mandate.

Following previous research, we differentiate types of salience (Lee, Rainey, and Chun 2009). Specifically, we measure congressional salience and media salience. Also according to previous studies (e.g. Baumgartner, Jones, and Mortensen 2014; Ringquist, Worsham, and Eisner 2003) we measure media salience as the amount of coverage a policy receives in the media. Different from these authors, however, this paper does not use print media but online news from the two biggest media groups with national coverage in Brazil (*O Globo e Folha de São Paulo*)². In each of these media groups, the search in their websites considered the number of the acts, their formal denomination and, whenever possible, their 'nicknames' or keywords. Then we checked the result of this search by opening each of the resulting news in order to confirm if they relate to that specific act. For congressional salience, we measure the number of debates³ that intend to discuss a specific policy act in the Brazilian House of Representatives. Here searches considered the formal denomination and abbreviations of the formal acts from the Ministry of Environment and others ministries. As in the media salience, for congressional salience, we read and confirmed each result. The data collection resulted in 91 acts in 2019 and 580 acts in 2020. Acts that have not received any media nor Congress attention during the period were classified as non-salient, whereas acts deserving one or more mentions were deemed salient.

3.2. Analytical procedure

A team of environmental policy experts classified the policy acts in different types. These specialists are five (5) people with degrees in public administration, law, biology, fishing engineering, ecology, environmental law and they have professional experience in climate and environmental policy. They are part of a panel of specialists convened by a think tank specialized in monitoring environmental policy acts in Brazil⁴. All experts classified all acts and came into agreement around their final labels.

² The exact links of the news are available under demand to the corresponding author.

³ Available at: <https://www2.camara.leg.br/atividade-legislativa/discursos-e-notas-taquigraficas>.

⁴ More information at: <https://www.politicaporinteiro.org/>.

Table 2 provides the guideline for classifying acts in different groups. If there was a doubt from the specialist in charge of classifying an act, she consulted the whole group. This analysis considers two major classes of acts: deregulation and regulation. This higher-level classification results from considering whether each type of act aided construction or deconstruction of public policies. Some types of act, such as institutional reforms, may contribute to establish new obligations or to revoke existing requirements. In this case, we discussed the actual anticipated consequences of the act. On that basis, in this study, the broad deregulation group also includes privatization, making existing regulation more flexible, institutional reforms pointing in this direction, major act revisions, and revocation of existing acts. In common, these acts contribute to the deconstruction or reformulation of policy. The remaining types fall within the regulation class: regulation, legislation, neutral, reaction and withdrawal. This categorization groups together acts that represent different forms and stages present in the regulatory process or in the formulation of public policies

Table 2 - Groups of policy act

Group	Description
<p>Regulation</p> <ul style="list-style-type: none"> - Legislation - Neutral - Reaction - Withdrawal 	<p>Act that seeks to institute a rule or rule by the public administration, giving guidelines and producing guidance to economic agents.</p> <p>Institutes a new rule, affecting economic actors and society in general</p> <p>Act with no significant effect in itself, but potentially influential if combined with other acts</p> <p>Act that creates rules and obligations responding to a significant external event, such as a natural disaster or a major accident.</p> <p>Act that establishes new obligations by revoking, replacing or modifying previously established regulations, due to political or popular pressure.</p>
<p>Deregulation</p>	<p>Act that seeks to revoke and / or reverse a previously established regulation, to change its understanding or orientation.</p>

- Institutional reform	Change in the structure, skills and institutional arrangement related to public policy, weakening the potential to establish new rules or to monitor the existing obligations
- Making existing acts more flexible	Making deadlines or conditions more flexible for compliance with environmental rules, standards and legislation. Cancelling existing rules and obligations
- Revocation	Changing an existing rule or obligation, diminishing its effects
- Major revisions	Act to resize the size of the government, and/or to reduce the size of the participation of the public administration in certain services or assets.
- Privatization	

Source: Prepared by the authors (2021)

Next, we classified the salience of policy acts categorized as regulation and deregulation, including congressional salience and media salience. Finally, given the high correlation between the types of salience (72%), a total salience variable, considers the sum of congressional and media salience. Given that the sample media utilized was limited to three major newspapers with national coverage, if there was any reference to these acts in one of the major Brazilian newspapers, or if there was a reference in a congressional act, that initiative was considered salient.

4. Results and Discussion

A first relevant result is the existence of more policy acts in 2020 than 2019. This may suggest that the window of opportunity created by the pandemic is broader than the one created by the beginning of the new presidential administration. It could also indicate that public managers in this area learned how to rule after the first year in office. In any case, this shows that the Brazilian Minister of Environment really meant what he said in the ministerial meeting of April 2020, when he stated that it was time to "open the floodgates" of environmental policy.

Also, data show that despite a beginning leaning more towards deregulation, most of the policy acts in 2020 established more rules and obligations. While 2019 had 91 acts almost evenly split between regulation and deregulation (45 and 46), 2020 presented 580 acts, being 412 regulations and 168 deregulations.

Considering the 91 acts in 2019, only 30 had any media or legislative repercussions in 2019, while from 580 acts in 2020, only 58 had any salience according to the same measures. That is, as expected,

the press and the legislators were proportionally less attentive to environmental policy in 2020 than in 2019.

By combining the two dimensions, salience and regulation vs. deregulation, a more detailed profile of the policy acts reveal.

Examples of policy acts that fit into each of these categories can help understanding the characteristics of the proposed typology.

First, an example of **open deregulation** is the *Decree 10,347 from 2020*. This act transfers from the Ministry of Environment to the Ministry of Agriculture the power to manage forests in Brazil. Its expected effect is to lower rules and obligations to protect the forest, given the incentives, measures, and indicators that prevail in the agricultural policy field, as a regulated sector. This act received some attention from the main media groups, with three mentions. There was also one reference to this act at the federal legislative power. Other examples of open deregulation include *Dispatch 4,410 from 2020*, *Conama Resolution 500 from 2020*, and *Decree 9,760 from 2019*. The dispatch enables previously irregular economic activities developed at preservation areas to remain active without environmental compensation. Resolution 500 canceled previous obligations imposed by regulation on irrigation licensing, permanent protection areas of the artificial reservoirs and acts related to mangrove protection. Finally, *Decree 9,760* introduces advantages, such as discounts and extended time to pay debts, for private actors fined by the Brazilian regulatory environmental agency. All of these examples led to more freedom for economic actors, but a minimal salience enabled that several groups could benefit from these new possibilities. This is not the case when deregulation happens in the shadows, or without a proper public debate.

An example of **deregulation in the shadows** is the *Normative Instruction 28 from 2020*. This act reduces requirements for installing artificial reefs. Reducing obligations for artificial reefs may result in the use of toxic components and lower the required studies on the impacts of these artificial reefs in fishing endangered species. The media and the legislative did not mention this act in the period considered in this study, despite its high impact on the marine ecosystem. That is, environmental groups and other actors opposed to this action had less information and lower possibility to debate this initiative. On the other hand, economic groups aligned with the government could immediately start to explore these activities. Others examples of deregulation in the shadows include *Normative Instruction 1 from 2020* that converts fines into environmental compensation and *Normative Instruction 19 from 2020*, which establishes more flexible procedures for signing contracts assigning use of water under the Union's domain for aquaculture purposes, without the need for a bidding process.

Similarly, there are examples of open regulation, which occur in a public and debated environment, and regulatory acts approved without such debate, in the shadows. *Decree 10,539* exemplifies **open**

regulation. This policy requires the military to support law enforcement actions in indigenous areas and conservancy units. Potentially, its effect imposes barriers for predatory environmental actions, in response to frequent invasions of these territories. This act received one mention at a major media group in Brazil, which given the low salience of the acts in general, puts it in the category of open regulation. Similarly, *Ordinance 341 from 2020*, which defined the new regulations of CONAVEG, a committee whose purpose is to formulate policies to reduce illegal deforestation and promote the recovery of native vegetation.

Finally, the *Normative Instruction 12 from 2020* exemplifies the most frequent type of act: **regulation in the shadow.** This act specifically establishes procedures for educational visits at federal conservancy units and it was one of the many acts with no major media coverage or any repercussion at the legislative power. The *Ordinance 26 from 2020* also represents regulation in the shadow, as it established the guidelines of the *Titula Brasil Program* in order to streamline the procedure for provisional and definitive title of the country's land regularization policy, based on cooperative federalism with municipalities, placing the competence at the municipal level. The regulatory obligation imposed here has a lower mandatory potential and can become largely ineffective, given the limited structure of municipalities to monitor its application. Besides, these examples indicate that regulation in the shadows may benefit larger economic groups that have legal teams following regulatory acts and preparing their companies to comply with updated obligations.

The application of the proposed policy typology has resulted in clear distinctions of environmental acts and statutes enacted in Brazil during Bolsonaro's administration. It is important to point out that the categorization of policies is value free, as environmentally friendly policies can be categorized as regulation or deregulation as it can be decided in the open or in the shadows. For example, a regulation can either be environmentally friendly if its content restricts deforestation by the landowners, but it can be harmful to the environment if the policy takers are environmental inspectors (i.e. public servants) charged with burdensome restrictions to do their jobs in the field. The same applies to the application of the salience dimension, as it depends on the attention drawn by media outlets and Congressional hearings, or debates held in Congress. This value free application of the typology is crucial to make it usable in other policy domains.

Besides normative or value independence, we tried to meet the aforementioned requirements and recommendations to build a robust typology for policy studies. Regarding usefulness, this typology can be applied to any polity, policy domain, policy instrument, if they are regulatory policies. In the methodology section, we tried to meet the transparency criteria, by stating the analytical procedures and its assumptions, so other researchers can apply it straightforwardly using other empirical data. The two-by-two table and its four types generate exhaustiveness and exclusiveness, as long as they are applied to regulatory policies. Regarding intelligibility, we believe the proposed typology, its

dimensions and categories are acceptable by researchers and practitioners from any policy domains, and intuitive even to non-specialized newbies.

The research design adopted in this study does not enable to guarantee the causality of the relations proposed by the typology presented here. Given that we focused on classifying the policy acts, instead of observing their consequences, we cannot establish a causal relationship between deregulation in the shadows and first-movers advantage, for instance, as theoretically proposed here. These causal links remain as a suggestion for future studies.

5. Conclusion

This study offers new insights for some established policy theories. Different from what previous research proposes (Neshkova 2014; Ringquist, Worsham, and Eisner 2003), environmental acts in Brazil present low salience. The pandemic may be part of the explanation, but even in 2019, before the pandemic, very few environmental policy acts had space in the public agenda. In addition, regarding windows of opportunity for policies, this study indicates that a major crisis such as the Covid-19 pandemic may be a privileged moment for introducing new regulatory acts in areas that are away from the spotlight at that moment.

This study also brings relevant practical contributions. First, policy approved without public debate fail to incorporate feedback that could improve its processes and impact. That is, policies approved in the shadow may be inefficient or present detrimental results. Second, deregulation without public debate may also cover economic benefits for certain groups. In 2021, beyond the period analyzed in this research, the Brazilian Federal policy conducted investigations relating to the Ministry of Environment and suspects of improper benefits conceded to lumber exporters after a deregulation on requirements for this transaction.

As indications of new research agendas related to regulation and, especially, deregulation is by retrieving the literature of policy termination (Bardach 1976; DeLeon 1978). Deregulation is a strategy for policy termination and, in many aspects, new regulations can be used to erase previous mandates or statutes, by overhauling its contents, boundaries, and application. The use of policy termination literature to understand deregulation phenomenon can enlighten aspects of the level of termination (i.e. Constitutional amendments, Legislative acts, executive orders, operational procedures), the reasons for termination (i.e. problem related, policy related, or politics related), and the obstacles to policy termination as intellectual reluctance, institutional permanence, anti-termination coalitions, high start-up costs etc. (DeLeon 1978).

The present study also enables some policy recommendations. The executive branch of government may want to improve its actions to promote awareness of its actions, accountability, and more participation in the policy process. This study, however, indicates that the government and some

economic groups can largely benefit from a low salience, which enables the introduction of new policies without, or with limited, opposition. Therefore, it is important that legislators and mobilized civil society take responsibility in highlighting and promoting public debate on those policy acts. Considering that this article focuses on formal policy acts, future research could analyze the implementation process of these acts to assess the role of street level bureaucrats, governance arrangements, and resources in generating the intended effects or different results.

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