

INSTITUTIONAL CHANGE IN BRAZILIAN PUBLIC  
ADMINISTRATION:  
THE CASE OF THE OMBUDSMAN'S OFFICES IN  
FEDERAL REGULATORY AGENCIES

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Abstract

This research study seeks to understand the process for the institutionalization of Ombudsman's Offices in federal regulatory agencies. It is based on a constructivist research strategy and examines five case studies. The theoretical framework is based on the Theory of Institutional Change advocated by Thelen and colleagues (2005 and 2010), associated with Lawrence and Suddaby's (2006) types of institutional work. The result of this analysis proves the existence of proactive actions by agents of change who belong – or belonged – to the Ombudsmen teams involved in the study.

**Key words:** institutionalization; institutional change; public Ombudsmen; regulatory agencies.

MUDANÇA INSTITUCIONAL NA ADMINISTRAÇÃO  
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Resumo

Esta pesquisa se propôs a compreender como ocorrem os processos de institucionalização das Ouvidorias das agências reguladoras. O estudo parte de uma estratégia construtivista de pesquisa realizada através de cinco estudos de caso. A base teórica é a Teoria da Mudança Institucional proposta por Thelen e colaboradores (2005 e 2010), aliada às formas de ação institucional de Lawrence e Suddaby (2006). O resultado desta análise comprova a existência de ações proativas de agentes de mudança que compõem – ou compuseram – a equipe das Ouvidorias pesquisadas.

**Palavras-chave:** institucionalização; mudança institucional; ouvidorias públicas; agências reguladoras.

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## Introduction

There has been considerable debate surrounding the process of institutionalization within the public bodies that were created in the wake of the 1988 Constitution (ALVES, 2009); (BARROS, 2011); (BUVINICH, 2009); (CARDOSO, 2010; 2011); (FARIA, 2007); (FORNAZARI, 2006); (LEMGRUBER, MUSUMECI & CANO, 2003); (MARQUES, 1997); (PECI, 1999); (ZAVERUCHA, 2008). One example is that of the Ombudsman's Offices in regulatory agencies, considered a fundamental channel for society's participation in, and the democratic oversight of, public management. However, few in the academic community have addressed this topic and there has been scant scientific analysis of the institutionalization of these Ombudsmen.

Thelen proposes a theory of institutional change, arguing that most forms of change occur on a daily basis, even in the absence of critical moments and that, in many contexts, the endogenous mechanisms of change are the most influential. This means that, in order to understand the institutional dynamic, social scientists must pay closer attention to the processes of change that occur during long episodes of relative political or organizational stability (THELEN, 2003).

By examining a specific investigation location, this study proposes to understand how the processes and mechanisms of change (MAHONEY; THELEN, 2010) occur within the institutionalization – the creation, maintenance or disruption (LAWRENCE; SUDDABY, 2006) - of Ombudsman's Offices. The research was structured and developed through a collective case study (STAKE, 2000) of the Ombudsmen of five federal regulatory agencies: the National Telecommunications Agency (*Agência Nacional de Telecomunicações*: ANATEL), the Health Surveillance Agency (*Agência de Vigilância Sanitária*: ANVISA), the National Waterway Transportation Agency (*Agência de Transportes Aquaviários*: ANTAQ), the National Land Transportation Agency (*Agência Nacional de Transportes Terrestres*: ANTT) and the National Civil Aviation Agency (*Agência Nacional de Aviação Civil*: ANAC).

A number of analyses have been conducted since the establishment of the first federal regulatory agency in 1999. However, we found no research studies specifically aimed at understanding the institutionalization process of the Ombudsmen. This study, therefore, makes two contributions: (i) it adopts the institutionalization of public Ombudsmen as an investigation location, and, (ii) it formulates an analytical model regarding institutionalization adapted from the Ombudsmen case studies, using a combination of ideas from Mahoney and Thelen (2010) and Lawrence and Suddaby (2006).

This analytical model will now be explained, following which there will be a discussion of the results, before we consider the contributions of the investigation, its limitations and proposals for future research.

## The Process of Institutional Change

According to Hodgson (2006), institutions are the most important structures in the social system, since they form the constituent material of social life. We agree with this supposition and consider institutions to be systems of established and prevalent social rules that structure social interactions. Furthermore, we suggest that the Brazilian public sector is governed by a series of institutions that guide the conduct of public policies in a range of areas, such as the concession and regulation of public services.

Studies about institutions have started to regain the position they occupied in the past and, in recent years, have begun to feature more prominently on the research agendas of public policy areas and government studies. A large majority of these studies were founded on the supposition that institutions change incrementally, so we think it is worth identifying the determinants of this stability. The term 'path dependence' has thus become widely disseminated, principally through the work of Douglass North (1990; 1994) and Paul Pierson (2000; 2004), and has been used to represent a trend

for institutional stability. According to these authors, once institutions are stabilized, as a result of occasional and ad hoc events, it is not unusual for a positive feedback mechanism to start functioning, which contributes to its maintenance and stability, even when the possibility of implementing alternative, more effective, institutions emerges. In other words, there occurs in institutions, what North calls the "matrix of institutional relationships", which provokes institutional stability.

However, we consider path dependence to be a mere label for a certain kind of dynamic phenomena, not a theory to explain the way in which these systems behave. Thus, to invoke the concept alone does not provide a satisfactory explanation for institutional change. To construct an explanation requires us to develop precise mechanisms through which history can influence present and future decisions.

Whilst we recognize that institutional changes are expensive, we agree with the present day consensus that they occur more frequently than expected. In fact, as discussed by Di Maggio (2008), Powell (1991) and Pierson (2004), there are currently a large number of academic works regarding institutional change in public and private organizations. In fact, the theme of institutional change has initiated a broad debate. As a result, different perspectives exist about how to characterize this process and what its determinants are. It is not the intention of this article to review these different perspectives, although it is worth mentioning the differentiation made by Pierson (2004) between analyses about "institutional choice" and "institutional development". Pierson characterizes studies about "institutional choice" as those centred on the deliberate action of rational actors, which are therefore influenced by a functionalist perspective, centred on the choices of specific actors. Studies that examine the theme of "institutional development" focus on an analysis of change processes over time, which occur gradually or as a result of the influence of critical junctures.

This work is, to a large extent, influenced by studies about institutional development. However, it differs from the classification proposed above, in that it integrates actors into the mechanisms of institutional development, while considering that their operations may not be characterized as functionalist or adequately represented through the suppositions of rational choice. We chose to analyse the process of institutional change based on the model proposed by Mahoney and Thelen (2010). The contribution these authors make arises from their critique that most studies in the area have concentrated on the consequences of exogenous shocks or critical junctures, which create windows of opportunity for change and bring about certain basic institutional reconfigurations, while neglecting changes based on endogenous developments, which frequently unfold incrementally. In this sense, the authors examine the relationship between institutional and behavioural variables. Mahoney and Thelen (2010) observed that actors within the same organization are constantly renegotiating the interpretation and application of certain rules, leading to institutional changes, which are highly incremental, but may have a significant impact over time.

In its original form, their model has two exogenous variables (political context and institutional features), an intervening variable (type of change agent) and an endogenous variable (type of institutional change). It is their conception that the characteristics of the political context (number of veto points) and the institution (discretionary powers for interpreting its meaning and effectiveness) condition the type of expected institutional change ("I" relationship), as outlined in Figure 1, below. This occurs because the political and institutional context incentivizes the adoption of specific strategies by the change agents ("II" relationship) which cause different types of institutional change ("III" relationship).

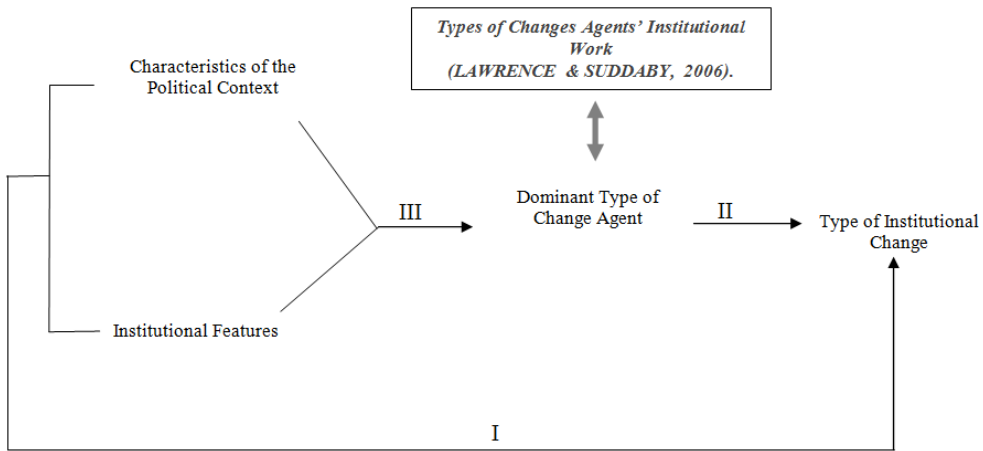
One of the key contributions of this work is its addition of another component to the model described above, highlighting the role of agents in the development, transformation, maintenance and disruption of institutions. In this sense, it is necessary to introduce the concept of institutional work, developed by Lawrence and Suddaby (2006). Institutional work is the intentional work of individuals and organizations with the aim of creating, maintaining and disrupting institutions. The authors suggest an approach to the study and understanding of institutional work containing three key elements: the awareness, skill and reflexivity of individual and collective actors; the

more or less conscious actions of these actors; and the set of practices through which these actors create, maintain or disrupt institutions.

Lawrence and Suddaby's (2006) contribution, incorporating the concept of institutional work, can be seen to open up a range of possibilities to investigate what they describe as 'interested actors', who act to influence both the political and institutional contexts. The results of this analysis prove that, in fact, proactive individual actions constitute an important element in the process of institutional change.

The view of formal and static structures, traditionally present in the literature of institutional change, is associated with a perception of passivity towards institutionalization processes. This perception may be erroneous, since certain organizations and actors, in specific situations, need to conform to institutional mandates and resource limitations, which may not occur passively (Lawrence & Suddaby, 2006). Therefore, the question that arises considers, on the one hand, the weight that institutions impose on agents and, on the other, the need to innovate new practices and strategies in order to understand how actors may break the ties that bind them and organize themselves to create and maintain or disrupt institutions. Combining the original model proposed by Mahoney and Thelen with contributions from Lawrence and Suddaby involves the insertion (in grey) of a component that characterizes types of change agents' institutional work. Through this, we intend to formulate an expanded model, which integrates institutional work with assumptions about the dynamics of institutional change.

**Figure 1: Expanded Institutional Change Model**



Source: developed by the author, based on Mahoney & Thelen (2010) and Lawrence & Suddaby (2006).

## Types of Institutional Work and Institutional Change

The above model also enables us to simultaneously analyse the types of institutional work proposed by Lawrence and Suddaby (2006) alongside the types of institutional change proposed by Mahoney and Thelen (2010).

The types of institutional work cited by Lawrence and Suddaby (2006) are: the creation, maintenance and disruption of institutions. Creative activities reflect three broad categories and activities: overtly political work, in which actors reconstruct rules, property rights and boundaries, which define access to material resources; work which emphasizes the reconfiguration of actors' belief systems; and work conceived to alter abstract categorizations in which the boundaries of meaning systems are altered.

Institutional work aimed at maintaining institutions involves supporting, repairing or recreating the social mechanisms that ensure compliance, such as ensuring adherence to values systems and reproducing existing norms and belief systems.

Finally, institutional work functions to confront or weaken mechanisms that members are obliged to comply with. This includes disconnecting sanctions, disassociating moral foundations and undermining legal assumptions. Lawrence and Suddaby (2006) emphasize that this form of specific investigation is rarely found in the literature.

In terms of types of change, Thelen and colleagues propose that changes such as displacement, a concept which emerged from the 'new' institutionalism in sociological thought (STREECK & THELEN, 2005, p.19), occurs when new models emerge and are diffused, substituting previous and well-established organizational forms and practices. In fact, Streeck and Thelen (2005), note that pre-existing institutional structures are not necessarily consistent, so their configurations may be fragile, vulnerable to attempts to change and, occasionally, eliminated and transformed by displacements.

Streeck and Thelen (2005) think that the type of change known as 'layering' operates through a mechanism known as differential growth. Thus, the introduction of new elements triggers a dynamic that, over time, may – actively – expel or supplant old institutions, so that their dominance progressively fades. The most important issue is knowledge of the extent to which new and old systems can coexist in harmony or whether tensions will inevitably emerge between these two systems and their respective defenders.

Change by drift is based on the statement that institutional steadiness is not permanent, even though the term "institution" is related to the notion of stability and adherence. (STREECK; THELEN, 2005). Contrary to other neo-institutional authors (North, 1990 and Pierson, 2004), Thelen (2003) commented on the difficulty of institutional survival based merely on the presence of positive feedback or growing returns. According to the author, institutions require active maintenance. In order to remain as they are, institutions need to be restored and reoriented and, in some cases, reassessed and renegotiated in response to changes in the political and economic environment in which they are incorporated (STREECK; THELEN, 2005). If such maintenance is deliberately withheld, the institution may not survive.

Streeck and Thelen (2005) indicate a fourth type of institutional change, known as conversion. In this case, institutions are deliberately abandoned, gradually reinterpreted, then redirected to achieve other objectives, functions and scopes. Such redirecting may occur as a result of changes to the environment, in power relations, or from political challenges to the functions and purposes that the institution should serve.

Based on this typology of institutional changes, the authors suggest that different types of change agents exist with varying strategies: insurrectionaries, symbionts, subversives and opportunists. Two basic questions illustrate the differences between these types of change agent: (i) Does the agent seek to preserve existing institutional rules? and (ii) Does the agent comply with institutional rules?

According to Mahoney and Thelen (2010), insurrectionaries deliberately seek to eliminate existing institutions and rules, while parasitic symbionts exploit an institution for their own gain. Subversives effectively disguise their preference for institutional change, without preventing the system from functioning strategically. Finally, opportunists are so-called because they strategically wait for the appropriate opportunity to promote change. Given that opposing an institution comes at a price, they do not oppose openly or continuously against the existing institutional structure. Their activities are aimed at taking advantage of the occasional possibilities that the dominant system provides.

In the next section, we will outline our analysis of the institutionalization of the regulatory agency Ombudsmen, based on the expanded model proposed above.

## Research Design and Composition

Studies about Public Ombudsmen in Brazil are still comparatively recent, although some have been conducted in the areas of public security and public health, such as Faria (2007), Lemgruber *et. al.* (2003) and Zaverucha (2008).

Most of these analyses are concerned with using a qualitative approach, through case studies and collection techniques, such as interviews and bibliographical and documentary research. Generally, results are based on content and document analysis. The quantitative approach has been applied in only a few works, principally to support data analysis.

In contrast to the traditional view that institutions shape the behaviour of actors, studies have not been able to explain the boundaries of influence of actors who are directly involved in the institutionalization of Ombudsmen. There are, therefore, indications that an analysis based on case studies (YIN, 2012) may be an appropriate research strategy, as it would then be possible to observe a phenomenon while it is happening.

The procedures for structuring the research were as follows: initial exploratory analysis; case selection; construction of analysis coding; selection of documents, legislation and interviewees; collection of documents and legislation and application of interviews; analysis of documents, legislation and interviews; preparation of analysis reports.

Following the choice of investigation location – the Ombudsman's Offices in federal regulatory agencies – a survey was conducted using basic information from the ten agencies and collected from their respective websites and relevant legislation. For this study, we used a collective approach (STAKE, 2000) and case selection focused on generating information about the institutionalization of Ombudsmen in federal regulatory agencies, rather than investigating extreme, unique or revealing cases, as suggested by Yin (2011).

What was the justification for the selection of cases? From the ten existing federal regulatory agencies, we selected those in which an Ombudsman's Office was actually proposed within the founding law and whose organizational structure was located in the Federal District. Five fulfilled this demand: ANATEL, ANVISA, ANTT, ANTAQ and ANAC.

In a letter to each Ombudsman, we requested access for interviews and permission for non-participant observation. All the Ombudsmen granted interview access, but, curiously, all also refused observation. The reason given for this stance was that Ombudsmen deal with a particular type of information (different kinds of complaints) which, in most cases, is confidential and for this reason, the presence of researchers may inhibit both the complainant and the work of employees.

The process of data collection was structured over two phases: (1) documentary research; and (2) semi-structured interviews. The documentary research was based on the survey and previous readings of institutional reports from the five agencies. Furthermore, laws, ordinances, provisional measures, decrees and opinions related to the Ombudsmen in question were also located and analysed. During the research, a survey was made in five national newspapers<sup>1</sup> with a wide circulation, in order to gather information about these agencies. Interviewees were chosen according to the following conditions: occupant or ex-occupant of the post of Ombudsman; career civil servants, or occupants of commissioned positions, who had served the longest time in their respective Ombudsman. As an exception, in the ANAC case, we interviewed two public servants outside the Ombudsman team. In total, thirteen informants were interviewed between March and May 2013, providing a total of 10.5 hours of recorded data.

Data analysis began with the construction of analysis coding. Documental analysis then sought to characterize the mode of data recording. Once organized, the data was examined in order to detect the most frequent themes (LÜDKE; ANDRÉ, 1986). To complete this classification of the five agencies, we constructed tables for each agency, highlighting the speeches extracted from those which exemplified each coding. The objective of this stage was to contrast, by analysis coding, what was perceived from the interviewees regarding each element in the theoretical model, separately for each agency. Summary charts were developed in which we confirmed the timeline of events and activity reports for each agency and its Ombudsman. We then

1 *O Globo, Folha de São Paulo, Correio Braziliense, Estadão and Jornal do Brasil*



developed an historical description of each agency and its Ombudsman. In the final phase of analyses, evidence was collated using the theoretical models of institutional change from Mahoney and Thelen (2010) combined with ideas from Lawrence and Suddaby (2006).

## Discussion of the Results

In this section, we will discuss how features from the political and institutional contexts influence the specific type of institutional change that emerges from the institutionalization of the Ombudsmen. Based on studies about institutional change, we would expect a combination of political context and institutional characteristics to indicate a specific type of institutional change, namely the one known as *drift*. To this end, we would need to observe characteristics from the political context demonstrating strong veto possibilities. In other words, we would need to find actors that have access to institutional (or extra-institutional) means of inhibiting change, as well as certain institutional characteristics which leave little space for choice, both in interpretation and in complying with its rules. Our analysis therefore focused on the legislation that was specific to the creation of the regulatory agencies we studied, with an emphasis on their internal regulations.

The result suggests that institutional change characterized as *drift* would occur if the research only focussed on an analysis of official documents, such as the agencies' foundation laws and their respective internal regulations. For example, the General Telecommunications Law (*Lei Geral das Telecomunicações*: LGT), which instituted ANATEL, cites the Ombudsman as one more agency element. Information about sector autonomy is not explicitly mentioned, nor does it specify hierarchical position. ANVISA's foundation law does not mention the Ombudsman's Office, only its Director. It is worth mentioning that this law only defines the responsibilities of the individual who takes up the post of Ombudsman. Finally, the law that created ANAC explains that:

[...] **Article 9.** ANAC will **have as its ultimate decision-making body the Board of Directors** as well as an Attorney, a Magistrate, an Advisory Board and an **Ombudsman**, as well as specialized units [...] (our emphasis)

Similar ambiguity regarding the Ombudsman's hierarchical position and autonomy is seen in the founding texts of the five agencies. However, if we observe their respective internal regulations, we can see that, in some cases, a specific legal framework for the Ombudsman's Office does exist. This is true, for example, of ANATEL, which recently (on 29/04/2013) approved new internal regulations, in which it describes, in Chapter 3 – about the Ombudsman – the Ombudsman's role and functions.

A series of functions regarding the office and person of the Ombudsman is listed in ANAC's internal regulations. It is interesting to note that, although this does not specify any hierarchical or administrative link, article 21 of the document mentions that the agency's board has the option to assign other responsibilities to the sector, which implies, at least implicitly, a subordination of power.

ANTT's current internal regulations state that the Ombudsman is linked to the Directorate General, in contrast to the trend observed in previous agencies. This is also observed in ANTAQ, where article 5 of the most recent version of the internal regulations (2012) confirms that the Ombudsman is part of the Directorate General. However, we note that the original internal regulations of 2006 state that "[...] *The Ombudsman, in the exercise of his or her duties, will act independently [...]*". Later on, the regulations also describe the functions of this office, and indicate a subtle link with the Board. Given this combination, we could expect, as mentioned, the prevalence of a specific type of institutional change: *drift*, through the operation of agents who exploit institutions for their own gain, despite jeopardising the effectiveness of the institution through their activities. In fact, these agents exploit the nature of the rules, while transgressing their foundation. Such agents are called *parasitic symbiont agents*.

However, the results of our analysis of the interviews and Ombudsman reports indicates the existence of a political context with weak veto possibilities. Most of the institutional characteristics manifest high discretionary powers for the interpretation and implementation of Ombudsman activities, in line with the evidence below. Despite being part of the second oldest regulatory agency, created in July 1997, the ANATEL interviewees agree that the formation of the agency and its Ombudsman remains a work in progress. Thus, between 1997 and 2005 “[...] *the Ombudsman was learning how the Agency functioned, its regulatory position and its interactions with citizens, and both ANATEL and its Ombudsman at that initial moment*, realized that it was little publicized or known by society in general [...]” (ANATEL interviewee).

From 2006, “[...] *the ANATEL Ombudsman was taking part in these things and participating as intensely as possible, with propositions and contributions which brought about important changes to the sector and to agency regulations* [...]” (statement from an ANATEL interviewee). The first ANATEL managers and superintendents came from Telebrás and their discourse about the role of a regulatory agency was influenced by the Fernando Henrique Cardoso Government, viewing it exclusively as a market regulator. In fact, the Ombudsman’s Office had to construct its own “freedom” of operations within each agency’s hierarchy. The first Board of Directors had “*the very singular view of a neoliberal State [...] which saw the agency much more as an obligation to guarantee the economic and financial equilibrium of the sector, rather than other issues related to a citizen’s diffuse rights*” (statement by one of the ANATEL interviewees). Over the years, the team from the ANATEL Ombudsman was made up of permanent employees, without prior experience in the area. The selection of the Ombudsman, like other agencies, is effected by the Presidency of the Republic (for a two-year mandate, except for ANTT and ANTAQ, which have three-year mandates, all renewable).

The interviews demonstrate that the Ombudsmen’s power to propose is of a very personal nature. In other words, it depends on who occupies the role at the time. While ANATEL’s current Ombudsman, who is in the role for a second term, is seen as a proactive, previous Ombudsmen were not seen in this way.

Another passage contains this assertion, “*which personalities had a role in the development of the Ombudsman? Mainly the Ombudsmen themselves.*” (Statement from one of the ANATEL interviewees). We can see that, in their first years, the Ombudsman found it difficult to make other sectors of the agency understand their role. To this end, the sectors needed to respond to the demands they received and understand what a public Ombudsman means. Our analysis of the interviews from ANVISA demonstrated that, as in the case of ANATEL, its Ombudsman is still undergoing improvements.

From 1999 to the middle of 2006, the ANVISA Ombudsman had a simple system, with no control over the responses each sector sent directly to citizens. The issue was referred to the Ombudsman for that particular sector, which responded directly to the complainant. There was, therefore, no control of response. At the end of 2006, the control system changed and, from then on, the Ombudsman team received the sector’s response before it was sent to the user. From the ANVISA interviews, we saw that users brought historical complaints about delays in process analysis, slow access to the agency’s internet page, and budget restrictions which hampered the Ombudsman’s freedom of action, as well as complaints about the small size of the team, especially given the volume of demand. Difficulties were also identified within ANVISA in terms of demonstrating the importance and functions of its Ombudsman to other agency employees. However, ex-Ombudsmen initiated a process to support understanding in other agency areas, with the aim of promoting a relationship with the Ombudsman:

*[...] We sought to do it and it is a maturing, isn’t it [...] It is working very closely with the areas [...] It is ... to work very closely with the areas, isn’t it, holding really regular meetings with the general management.* (Statement by one of the interviewees [ex-Ombudsman] – ANVISA).

From ANTT’s creation in June 2001, until the installation of the first Ombudsman in November 2002, the Magistrate retained the Ombudsman’s responsibilities. At



the beginning, the agency had very limited infrastructure, it was the (outsourced) Ombudsman's team at the time who answered the telephones. As a consequence, at the time, 50% of demand was not responded to, due to a lack of team members. It is worth noting that, in the act of ANTT's creation, no item differentiates the service sector from the Ombudsman. Today, the Agency has an outsourced call centre, which concentrates on demand that the Ombudsman professionals call "first level". If the user is not satisfied and activates the Ombudsman's Office, which then initiates so-called "second level" procedures.

In the ANTT interviews, we observed the same comments as in the previous agencies regarding the occupier of the Ombudsman office. Evidence demonstrates that their actions depend on their personal set up, in other words, on whoever occupies the role at the time. In respect of the ANTT Ombudsman, the office is still constructing an identity within the agency and struggles to work in harmony with those areas most often cited, such as inspection. In the agency's organizational chart, the Ombudsman is subordinate to the Board of Directors. However, this does not prevent constant positioning by the current Ombudsman, in order to confront problems related to the agency's transparency and accountability. It is worth noting that, at the time of the interviews, all the agency's directors were temporary.

The analysis of the ANTAQ Ombudsman demonstrated that, of the five studied, it suffered the most as a result of constant structural changes. Since its foundation in 2001, the agency has experienced a total of twelve modifications to its internal regulations. These modifications reflect a search for improvements to ANTAQ's organizational structure, as well as for a better definition of the functions of its sectors and regional units. On the other hand, they have contributed to a feeling of insecurity in relation to the Ombudsman's institutionalization, compared to the other sectors. In this way, we can see that ANTAQ was in a fragile state when it began operating. The Ombudsman team also underwent significant changes, most notably following the withdrawal of the last named Ombudsman. Today the post is occupied by an interim Ombudsman. She is the only one in the current office who is not contracted out. No comments were made about the office's financial independence, while the team is the smallest of the five Ombudsman's Offices considered here. It is also the only one of the agencies whose call centre is internal, which imposes a heavy workload.

During one of the restructurings, the press office, which managed the agency's "talk to us" section, was also redirected to the office. As she is a temporary appointment (since November 2012), the current Ombudsman's power to make proposals is practically non-existent. In her interview, one can sense her discomfort about suggesting anything: *[...] sometimes I report to the areas, I go to the Superintendent to request a better interpretation, we have to report to a larger, higher, forum, obviously [...]*. This position reflects the Ombudsman's behaviour and the current dynamic of the Ombudsman's Office. Finally, we note that the Ombudsman is subordinate to the Board of Directors in the ANTAQ organizational chart, despite article 7 of Resolution no. 369, which states that *"the Ombudsman will act independently in the exercise of his or her duties."*

ANAC is the newest of the agencies we studied and has been active for seven years. From the agency's creation in 2005 until January 2007, the Ombudsman only existed on paper. After that, there was only an outsourced team as well as the Ombudsman. The occupier of the role was discovering what *"they could do, in the context of the Ombudsman [...]"* (statement from one of the ANAC interviewees). We observe, then, that the office is still constructing its role.

Currently, the office team is composed of eight people, including the Ombudsman. Hierarchically, the Ombudsman's Office is subordinate to the Board of Directors and, according to the interviewees, does not have administrative or financial autonomy. *"[...] if the Ombudsman is autonomous and independent, in theory, it should have administrative and financial autonomy, but this does not happen [...]"* (statement by one of the ANAC interviewees). Despite the hierarchical subordination, the Ombudsman's power to propose is once again asserted. The interviewees are categorical *"[...] So, in this way, this power of the Ombudsmen, the force of an Ombudsman, it does not*

come about via a regulatory instrument, it comes from the Ombudsmen themselves [...]” In other interviews, we see that, despite the position of the Ombudsman’s Office on the organizational chart, there is, in fact, another dynamic at work:

[...] It [the Ombudsman’s Office] has, in inverted commas, “administrative” autonomy [...] he [the current Ombudsman] has some autonomy, but I don’t see him [the current Ombudsman] as internally subordinate [...] (statement from one of the ANAC interviewees).

In relation to the structure of the agency and the office of the Ombudsman, the interviewees, once again, emphasized a dilemma about the way user demands were treated: “[...] I also cannot consider, this inspection agency cannot examine every complaint and bring an action, there too, we don’t have the structure for this.” (Statement from one of the ANAC interviewees). This issue provided the Ombudsman’s Office with a place in which to debate its functions and its real role in the agency. The current Ombudsman and team members demonstrated that there is greater clarity today about the role of the Ombudsman in ANAC and that, despite the ambiguity present in its legislation, this role is still under construction.

Finally, we should note that, in the view of the current Ombudsman, the establishment of the Access to Information Law (*Lei de Acesso à Informação*: LAI) created some discomfort within ANAC. During his interview, he made it clear that, despite democratic advances in public management, this law has caused confusion regarding processes that had, until that point, belonged to the Ombudsman’s Office.

According to Mahoney and Thelen’s (2010) theoretical model, the next element to consider is type of institutional change. In the case of the ANATEL Ombudsman, we observed that there was evidence of the typology known as *conversion* in institutional change: (1) existing rules reoriented by actors and (2) gaps between the rules and their real application are actively produced by agents. The ANVISA interviewees also presented evidence of *conversion*. Below are examples from records about *existing rules reoriented by the actors*:

[...] today they [ANVISA employees] are afraid [of the Ombudsman’s demands] because if we send a response like this to a person who is fed up, impatient, they don’t want to respond to that company any more, when they send the same complaint for the nth time, if they send back something rude, incomplete, we return it, we say ‘please reassess this user complaint’ or we say ‘user consulted the site and could not find the legislation, please send in an attachment’, or: ‘please send a complementary response by e-mail’, **thus, we try to improve the quality, so that was a good change [...]**.

The same is seen in the interviewees from the ANTT Ombudsman. Here we highlight an example of a record of *existing rules reoriented by actors*:

[...] We send the third or fourth response to the same user, against the same company, an identical response, saying “Your complaint will be considered, will be analysed, will be included in a statistical table, so that, at a particular time, depending on the number of complaints to the company, a specific inspection will be carried out” – but this was already their fourth complaint, on the same topic, I don’t know, maybe about the same bus, this I won’t send, I prefer not to respond to this person, this is doubting people’s intelligence, and [...] for example, if the response he really wants, there are users that think that if you only respond, he will say, someone is paying me attention, but **if that user is someone more critical, if he has a bit more awareness, you know, he won’t be satisfied with the response he receives, if the response doesn’t lead to action [...]** (statement by the current ANTT Ombudsman).

In the case of ANTAQ, we only located evidence of the first type - *existing rules reoriented by actors*. Finally, the result of our analysis of the ANAC interviewees confirms the evidence found in the other agencies. There are examples of both classifications which configure the type of institutional change known as *conversion*. Thus, empirical evidence indicates a certain concentration of types, both of change and actors. Contrary to indications, changes by *conversion*, through the actions of *opportunistic* agents, occur more frequently than might be expected.

The result of the analyses (particularly the interviews) indicates the existence of a political context with weak veto possibilities, while, in most cases, the institutional

characteristics present high discretionary powers for interpretation and implementation of Ombudsman activities:

- There are no manifestations of the typologies of *drift* or *layering*;
- We only observed conduct representing the *displacement* type in one of the ANAC interviews.

Why did this happen? One possibility is that, despite conditions in the political context that suggest strong veto possibilities, political entrepreneurs manage to reduce the influence of these possibilities, so that it moves from strong to weak. This evidence indicates that Streeck and Thelen's (2010) model should perhaps consider one more variable – the institutional actor (LAWRENCE; SUDDABY, 2006).

As discussed in the presentation of the theoretical model proposed by this research (Figure 1), the institutional actor manifests proactive behaviour through activities for the creation, maintenance or disruption of the institution, in contrast to the concept of the change agent described by Streeck and Thelen (2010), who relies on the characteristics of political contexts and institutions in order to thrive.

In Mahoney and Thelen's (2010) theoretical model, another element for consideration is the 'dominant type of change agent'. The expectation at the beginning of the research was for the prevalence of a type of institutional change known as *drift*, through the operation of *parasitic symbiont agents*. However, the result of our analysis of the interviews and Ombudsman reports indicate that another type of change agent was frequently present.

An examination of the ANATEL interviews shows no evidence of *parasitic symbiont* agent behaviour in the interviewees' discourse. In fact, evidence points to a unique type of agent: the *opportunist*, who has ambiguous preferences about the continuity of institutions, rules or norms. According to Mahoney and Thelen (2010), this type of change agent does not attempt to change the rules, but rather takes advantage of the probabilities of what the system has to offer in order to achieve his goals.

We found the same situation in the ANVISA Ombudsman. There was no evidence in the interviews of behaviour typical of *parasitic symbiont agents* or *symbionts*, nor of *insurgents* or *subversives*. We only found the typology known as *opportunist*. Here we can see a clear example of the ambiguity of the norm exploited by agents:

[...] She [the ex-Ombudsman] **proposed a change which we still think is questionable today, I don't know how to tell whether it's positive or negative, but it was a significant change** [...]. In my opinion, it increased the trajectory a little [...]. (statement by one of the ANVISA interviewees, our emphasis).

The behaviour reported by the ANTT interviewees confirms the trend of perceived *opportunist* agents. The agency's current Ombudsman explains the approach he took to the Board not to follow the example of other regulatory agencies regarding the procedure that the user has to follow in order to register an event or complaint about a body regulated by the Ombudsman. This position is based on the inaccuracy of the agency's internal regulations, specifically in relation to the Ombudsman's role.

Our analysis of the ANTAQ interviews, like those of other agencies, provides evidence that the change agents' actions could be considered *opportunistic*. It is interesting to note that, although the agency's internal regulations state that the Ombudsman should produce bi-annual reports, these were suspended via a unilateral decision made by the then Ombudsman.

Finally, the results of our analysis of the ANAC interviews also reveal evidence of behaviour characteristic of *opportunist* agents. In the situation exemplified below, the current Ombudsman describes how the Ombudsman's Office has managed to support the agency in relation to the reform of the Brazilian Aviation Code (*Código Brasileiro de Aviação*: CBA). It outlines an opinion contrary to the current CBA:

[...] ANAC has not managed to increase its number of people, because it is limited by the Ministry of Planning. [...] ANAC's bible is called the CBA, it is a code from about 1986, **a work that ANAC has had to review over time, updating the CBA.** [...] Based on this, we made specific regulations complementing what was already in the CBA, [...] **and we have improved it as much as possible, slightly improving the**

**entire regulation of what ANAC does, creating more regulations, which could facilitate or approximate what ANAC does to what the Consumer Defence Code, for example, presupposes.** (Statement by ANAC's current Ombudsman).

Thus, the expectation of the research was to encounter *parasitic symbiont* agents; however, our analysis pointed to the *opportunist* type of agent since we observed ambiguous preferences about the continuity of institutions, rules or norms.

- There are no manifestations of the *parasitic symbiont* or *subversive* typologies;
- Only one interview by the ANAC interviewees mentioned conduct typical of an *insurgent* change agent.

In our analysis of the interviews, we also found evidence of institutional activities for the creation of institutions and, particularly in the ANTT case, evidence of *disruption*. In the interviews, we did not find any relevant evidence of conduct linked to the *maintenance* of institutions. The first agency we analysed, ANATEL, presented an example of institutional work – creation – through a record of *establishing rules*. This is an example of the type of work called *defining*:

*[...] What we did, and his [the current Ombudsman] participation was of fundamental importance, but we did it as a team, as a whole, beginning with a group dynamic, coordinated by the Ombudsman [...]. Then we conducted a diagnosis of the Ombudsman's Office, **what we do, how we do it, why we do it, what we will do, how we will do it, why we will do it and out of that result, we worked on the organization of the process** [...]* (statement from one of the ANATEL interviews).

During our analysis of the ANVISA interviews, evidence emerged of institutional work – creation (also through a record of *establishing rules*). Once again, the form of work is *defining*:

*[...] **I believe it was in 2007, there was a change to the system, a system which now allowed us to receive the response recorded by the area, and we assess this response, not technically, because we are not going to question the support of those who respond, who are much more qualified than the team here, to respond to specific topics... We look at how polite the response is, we see if it is consistent with the question [...]*** (statement from one of the ANVISA interviews).

In the ANVISA interviews, we also saw the institutional work of *creation*, found in *constructing rewards*, where the form of work is classified as *constructing normative networks*. There is also an example of *changing the abstract categories of meanings*, through a form of work called *changing normative associations*.

Our examination of the results of the ANTT interviews also included evidence of institutional work of the *creation* type, by *establishing rules* through the form of work known as *defining*:

***Each Ombudsman who comes in brings certain ideas to implement, to hear certain opinions, he goes through a time in which he finds out how it works, to understand how it functions and then he begins to put forward his opinions and we begin to implement them, so the [...]*** [ex-Ombudsman] was, "Oh, I think the three-digit number is interesting for facilitation." So, I mean, it was his idea (statement from one of the ANTT interviews).

Furthermore, ANTT featured the institutional work called *disruption*, through *undermining the mechanisms*. There, we found the form of work that Lawrence and Suddaby (2006) call *disconnecting sanctions*:

*[...] today we don't have any resolution, there are no mechanisms defining that he [the user] should go to the company first, then what he can [...]* (statement by one of the ANTT interviewees).

The results of our analysis of the interview conducted with the ANTAQ Ombudsman demonstrated the institutional work known as *creation*, by *establishing rules*. Once again, we found the form of work that Lawrence and Suddaby (2006) call *defining*:

***[...] Since part of the IT in regulatory agencies is outsourced, there were internal changes to the companies' contracting, bidding and we were even***

**fighting with the company to finish this job**, when last year [...] we finished it, after certain adjustments to improve it [...] we put it online and properly inaugurated the new system, which allows user satisfaction with the service to be graded at the end [...]

We also observed an example of *creation* through the *construction of norms and complementary practices*. In this situation, the form of work is classified as *mimicry*:

[...] And then he filed, investigated, examined, saw that really it was really irregular, he could even change the resolution, for example 902 - **this is being altered, there's already been an audience to change the points which aren't in agreement with the reality, you know, I even have to make my own contribution** [...]

Finally, the ANAC interviews present evidence of the institutional work called *creation* by *establishing rules*. Once again, we identify the form of work called *defining*, as seen in the following passage:

[...] The recommendations also serve, in my opinion, to institutionalize, to formalize, for what? Often the officer knows what is happening, knows that there is nothing to do, but at a strategic level, the Board has to do something. Often the officer knows, he shows them what is needed for him to effect that change, but he is at the operational level. So he needs things to be done at a strategic level.

What then is Lawrence and Suddaby's (2006) contribution to this research?

- We found evidence of institutional work in the form of the **creation of institutions**, specifically around the issue of *establishing rules*;
- There was also, particularly in the ANTT case, evidence of **disruption**;
- **No** relevant evidence was found of behaviour linked to the maintenance of institutions in the Ombudsmen we studied.

Mahoney and Thelen's (2010) original theoretical model to describe and explain how a change agent acts was insufficient on its own, since the change agent described by the actors displayed reactive conduct. It was therefore necessary to move from the concept of change agent to one of institutional actor, proposed by Lawrence and Suddaby (2006), in order to explain the institutionalization of the Ombudsmen we studied.

### Application of the Expanded Model of Institutional Change

The result of our analysis of the five agencies demonstrates that there is movement towards the institutionalization of their Ombudsmen, through the type of change that Mahoney and Thelen (2010) call *conversion*. This typology is illustrated by activities to readjust old institutions in line with new proposals, or even, to define new purposes for the old structures of a given organization.

According to the authors, these activities are defined by a change agent known as *opportunist*. This typology is exemplified by the inaccuracy with which the actors perceive an institution, since, for the agent to thrive in the process of institutional change, gaps must be observed between the rules and their exposure or interpretation; such gaps exist due to a lack of foresight or critical analysis of their consequences.

The type of change agent called *opportunist* in Mahoney and Thelen's (2010) conception may or may not seek to preserve the institution, and may or may not follow its rules. The point is that our content analysis demonstrated that the authors' original theoretical model to describe and explain how a change agent acts was insufficient on its own, since our analysis proposes a reactive change agent who only emerges within political contexts and characteristics specific to the institution. Lawrence and Suddaby's (2006) contribution about the institutional work of actors in creation, maintenance or disruption, therefore, supports the most robust understanding of our research results.



These results emphasize that the predominant procedure of change agents may be explained through the typology defined by Mahoney and Thelen (2010) as *opportunists*, behaviour found in the five Ombudsmen we studied. As observed in the theoretical model we presented, this typology describes those who *exploit the ambiguities in the interpretation and application of rules and remake the existing rules in a way that is different from the original intention of their formulators*. In relation to the processes of institutional change (MAHONEY; THELEN, 2010), each of the Ombudsmen had the following characteristics in common, in that there was no evidence of:

- behaviour typical of insurgent agents, associated with the typology called displacement;
- behaviour typical of subversive agents, associated with the typology called layering;
- behaviour typical of parasitic symbiont agents, associated with the typology called drift;

However, strong evidence of *opportunist* agent conduct was found, associated with the typology called *conversion*; and, more specifically, all the Ombudsmen we studied provided evidenced of existing rules being reoriented by actors.

Regarding the common characteristics related to institutional work (LAWRENCE; SUDDABY, 2006), we observed that:

- all the cases demonstrated evidence of creation, specifically in establishing rules;
- evidence of the form of work called *defining* was found in all the cases, characterized as *acting to construct systems of rules which confer status or identity and defining limits of adhesion, or creating a status hierarchy within the actor's area of operation*; and
- none of the interviews demonstrated action related to the maintenance of institutions.

We can infer from this specific fact that, given that the public Ombudsmen are still works in progress, this form of institutional work could not have occurred.

In relation to characteristics observed in only one case, the institutional work was seen thus:

- interviews conducted at ANVISA revealed other forms of institutional creation: constructing normative networks and changing normative associations;
- in respect of the ANTT Ombudsman, we observed institutional disruption in activities known as disconnecting sanctions and undermining associations and beliefs; and
- the result of the interview conducted with the ANTAQ Ombudsman revealed a form of creation not seen in the other cases: mimicry.

The only case analysed which demonstrated evidence of institutional change of the *drift* variety (MAHONEY; THELEN, 2010) was located in the ANAC interview.

## Conclusions

This research employed the concept of *institutions* as formal or informal rules that enable the emergence of a structure via interactions between individuals. The idea was to investigate the processes of institutionalization in five federal regulatory agency Ombudsmen. In other words, to examine how these sectors are institutionalized within their respective organizations - the regulatory agencies. An Expanded Model of Institutional Change was used, based on Mahoney and Thelen's (2010) Theory of Institutional Change, allied to Lawrence and Suddaby's (2006) Types of Institutional Work. These theories were adhered to because Mahoney and Thelen's (2010) original theory did not explore the possible proactive actions of so-called change agents.



The five Ombudsmen in the regulatory agencies we studied contained common elements which are worth highlighting in our explanation of the institutionalization processes. All demonstrated that the type of institutional change is defined as *conversion* (MAHONEY; THELEN, 2010). In other words, the change agents did not necessarily promote the alteration of rules and norms. Instead, rules were reinterpreted in favour of these agents. This happened because of ambiguity between the legislation (laws of creation and internal regulations) that covers the functions of the Ombudsman and their team and the structural, financial and human resources available, which are, themselves, scarce. According to Mahoney and Thelen, these circumstances give rise to an agent of institutional change known as *opportunist*.

What can we infer from these conclusions to explain the institutionalization process? In fact, the Ombudsmen for federal regulatory agencies are still becoming institutionalized within their respective agencies. The length of time between the creation of each agency did not affect the degree to which they were institutionalized. The institutional work undertaken by change agents – Ombudsmen, ex-Ombudsmen and teams of civil servants and advisors – exploits a space of negotiation for the reinterpretation of current rules defined by the governments that created these organizations. These change agents are not interested in maintaining institutions of which, in reality, they are not fully confident. However, they also do not work to undo or substitute them; rather they (re)construct them so that they establish the support required to fulfil their role. This finding is an important element in understanding the idiosyncrasies of the institutionalization process of Ombudsmen. It also demonstrates that the Expanded Model of Institutional Change, which combines elements from several proposals to analyse the institutionalization process, allows us to illuminate, with greater clarity, the institutional dynamic underlying the analysed cases.

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**Submission date: 21/07/2014**

**Approval date: 31/08/2015**