



São Paulo Law School of Fundação Getúlio Vargas – DIREITO GV
Research Paper Series – Legal Studies
Paper n. 93

**The experience of semi-formal infrastructure finance in developing countries:
Proposals for Brazil and Latin America¹**

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March 2014

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¹ This paper is a short version of the one presented on the Law and New Developmental Strategies: Brazil and Beyond (São Paulo, July 1-4, 2013), a seminar co-sponsored by the Institute for Global Law & Policy of the Harvard Law School, Wisconsin Law School, Faculty of Law of the University of São Paulo and Fundação Getúlio Vargas Law School.

Abstract: This paper has the purpose of analyzing the role of civil society in funding and providing infrastructure projects in developing countries. Considering that local associations around the world have been directly engaged on some infrastructure projects – some scholars define it as “semi-formal finance” –, the intention is to demonstrate that the experiences on such arrangements in developing countries have been responsible for fostering infrastructure investments in the poorer regions where the government is more absent. Based upon legal, economic and social aspects, this paper aims to contribute to a broader debate for the development of infrastructure in emerging countries. The conclusion is that, under a more social approach, the legal and economic mechanisms in developing countries are able to consider such arrangements in the benefit of their development.

Keywords: infrastructure; finance; civil society; developing countries; semi-formal sector.

JEL CODE: K23; O17; O19; R42

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1 Introduction: modern approaches to the theories of public administration

Before any analysis of the direct engagement of civil society and citizens in public infrastructure projects, it is necessary to take into consideration the intense process of change in recent decades regarding the public administration around the world. This initial approach will be crucial for the development of the ideas on this paper.

The new vision of public administration is brought by Sundfeld (2008, p. 87-89) through the *theory of antagonisms*: this means that administrative law, as a rule, deals with dichotomies – among these dichotomies there is the trade-off between the public and the private interest. This concept would be a reflection from previous theories that draw attention to the discussions only on an institutional or principle basis, by omitting the dynamics that occurred concerning the relations between public and private in the second half of the twentieth century. Besides these antagonisms, the New Public Administration shall pursue an activity even more *syncretized* among these classical points from management practices and market, in order to alleviate the tensions between state and market that characterize the twenty-first century – according to Lagos (2011).

In harmony with this concept, Oliveira (2007, p. 202) emphasizes the importance of public actions – which, to be more successful, shall be guided by a greater synergy between public and private sector within the normative basis of a country. I would say that, in this process, the public administration incorporated some typical principles from management of private companies – whose scope is much more focused on results rather than only on formal compliance with outlined objectives.

The idea of public governance follows this trend. Governance appears here in the sense conceived by Oliveira (2008, p. 26) as the *effectiveness of government action*. I.e., the public administration is not a mere institutional simulacrum anymore, and agents start to worry about the goals presented to the citizens. As teaches Lagos (2011), with economic growth stabilized in a country, the concern should be centered into public policy – which should be defined by the people, direct or indirectly. Those policies that have a strong social appeal become a key role in this process.

In this context of governance, it stands out the *plurality of public service providers* – as mentioned by Sano and Abrucio (2008, p. 66) –, which increases the range of contractual structures for public administration. An individual would not mind any longer whether the service is provided, or not, by the state – in other words, what is the legal nature of the service provider. In the same way, the state, based on a relational concept, would be only worrying about

sharing tasks (the so-called *institutional leadership*) (NIETO, 2008, p. 269-270; VERNIS; MENDOZA, 2008, p. 53).

Longo (2010, p. 81-82) came up with an interesting classification with respect to the subject: the author sets out five supporting areas for true governance in the public sector: political institutions, judicial, market, public administration and civil society. With regard to the last area, it should be discussed that the actions of other agents in public infrastructure would somewhat differ from those ones in other areas such as health and education. In such cases, one can debate whether the state should or should not have a role in providing such services.

In the case of infrastructure, it is natural that the state is much more prone to provide such services, which have a true *public accountability in its execution* – as confirmed by Gonçalves (2005, p. 165-169). Accordingly, the state is required to set these standards in the provision of services by the private sector. Because of this need for prominence of the state in public infrastructure, the role of the private sector will always be “indexed” by the state activity. In the case of civil society engagement, this “index” will be important to define the situation in which the state ignores infrastructure provisions and, therefore, in order to open a space for semi-formal sector investments in public infrastructure, especially those with high social impact over the communities.

2 A heterogeneous concept for privatization and the development of new forms of engagement focused on public infrastructure

The first consideration to find alternatives for new ways of public policy acts is the recognition of the state's indispensability and the depletion of its ability in the exclusive provision of public services in a modern context of high demand for meeting these needs (FRANCO, 2003, p. 47). Thereafter, the hypothesis of civil society participation in infrastructure services may be possible.

This new mode of participation can be seen as a *privatization* as exposed by Di Pietro (2005, p. 24-27, 37-38). It is necessary to be careful with this word in Brazil: in fact, it has been treated as a “language-game” to the extent that some terms usually have broad political rejection (as is the case of privatization), unlike others such as “alternative systems of public service delivery” or *public-private partnerships* in an attempt to mitigate the supposed negative bias on privatization. This is why its use is often avoided; but, in the end, all the species herein end up

being incorporated to the genre *privatization*. This is exposed, for instance, by Graeme Hodge and Carsten Greve (2007, p. 547).

In a strict sense, the “privatization wave” of the nineties is associated with a decreasing movement of the state intervention in the economy, alleviating the “overweight” in public sector. However, it has recently evolved to other meanings, which proves to be a concept in construction for increasingly using diverse forms of private intervention in state obligations – in a much broader view that privatization in twenty years ago (QUEIROZ, 2006, p. 71, 110). The civil society in this new “wave” becomes stronger and represents one of the novel methods of privatization: in this new context, the strategic activities considered transferable, such as justice and national defense, for example, remain under the exclusive provision by the state; notwithstanding, some social or economic activities are beginning to be provided by individuals, especially when the state is insufficient in such fields.

In the development of privatization in the nineties, it is possible to characterize a new culture that focuses on state reform through delegation and transfer of public goods and services responsibilities to the private sector. The exclusive focus on this last option over the next decades, with little considerations for new public investments, eventually caused a delay in the provision of services, particularly infrastructure – which is now being observed in the beginning of the second decade of this century in Latin America, mainly in Brazil.

Public administration theories should remain faithful to the classic argument of budget constraints to evade itself from this lag in the stock of infrastructure. The private sector also should not feel inclined to invest in projects that are not economically viable, given that the company usually assumes the risk of the business. Thus, it is outlined a seemingly “hopeless” deadlock on the infrastructure sector.

Hence, the previous model, in spite of not being in crisis as supposed, was insufficient to solve these particular issues. The civil society could become an alternative to these tasks in the postmodern public administration through their organizations to pursue the public interest (MORALES, 1999, p. 67). This would be a new vision about the role of the civil society. Franco (2003, p. 18) upholds that the civil society is an autonomous social reality, outside the state and market dynamics. Therefore, it would be a reference in the middle of public and private concepts.

The participation of civil society, nonetheless, is not a consensus among the scholars – especially due to a biased view about the provision of public services by state, which rejects any other engagement outside the direct public interference. Participation in public affairs is seen as

one of the faces of civil activism that emerges alternatively to the inefficient policies and institutions – since they do not meet the demand of public services from the individuals. However, participation is a dichotomy exposed by Nogueira (2004, p. 102-107): on one hand, it is seen by the dominant order as a source of problems in governance (such as when a specific public policy is debated); on the other hand, the civil society is a “hostage” of a dysfunctional state that fails to meet its basic needs. The recent riots in Brazil (in June 2013) demanding better public services represent this dichotomy.

It shall be noted that this *mutual distrust* was responsible for the evolution of the welfare state, in which public and private had well defined boundaries: private companies and civil society were not considered able to meet the public needs – that should be undertaken only by the state under the rule “governing is a synonym for spending”. It was the *paternalist state* (MENDOZA; VERNIS, 2008, p. 45-46) that characterized the history of modern states. The state did not have believed that individuals could provide such services, which has led to resume the public direct intervention in some cases or under the control of public law – when it is delegated and transferred to private companies (SANTAMARÍA PASTOR, 2009, p. 349-350).

2.1 *The third sector in public infrastructure*

The third sector, explains Oosterom (2009, p. 75), came to maximize the welfare of citizens by the fulfillment of their needs and using the close contact that independent organizations have with citizens, with the possibility of collecting suggestions for ameliorating the conditions of the society. Daniels and Trebilcock (1996, p. 379) considered the possibility of action of organizations in infrastructure by a list arrangements that can be conceived in such hypothesis, underscoring the role of non-profit operations through community organizations.

The role of organized civil society is not a hindrance to economic activities, as sustained by Morales (1999, p. 67, nt. 31) about the scholars’ criticism against the excessive attachment to the term “nonprofit purpose” of these institutions¹. This should not be confused with the profitability generated in the economy with respect to the activity carried out: in this sense, the

¹ Gidron, Kramer and Salamon (1992, p. 5-8) criticize the common view which considers the relationship between government and the third as a zero-sum game, i.e., a relationship based on competitiveness. This would be an idea supported by many schools of thoughts, especially by the liberal philosophy and the subsidiarity concept brought by the Catholic Church doctrine. However, the most controversial issue, which sometimes it is necessary to highlight, is related to the theory of the market economy, since it sustains that non-profit organizations would arise from the market failures and the government: the market, due to the *free rider effect*; the government, due to the need for majority support in democracy regimes. Thus, the third sector would come to “fill” this gap. Yet the authors clarify that a conflict in the relationship between state and third sector is only apparent. I prefer to adopt the latter position, designing a complementary conception to state/society relations in substitution to that competitive one.

provision of infrastructure by these organizations such as water, electricity or roads is seen as possible. Although it may also be an economic activity, it may or may not be profitable according to the model of service applied: for example, by the means of a concession or Public-Private Partnership (PPP), the provision is profitable. Otherwise, by the third sector direct engagement or revenues grants from the government, it will be non-profitable.

An interesting question is posed by Franco (2003, p. 57) with respect to the participation of the third sector in many areas of public policy (in this case, it could be included public infrastructure in this list), and not exclusively on social areas. He recognizes it as possible but dependent on a change of values inside the public administration and the politics of the nation. In Brazil, as it will be seen further on, there are legal obstacles to this participation.

2.1.1 The third sector in Brazil: possibility for infrastructure provision?

After the Master Plan for the Reform of the State in 1995, the Brazilian legal system started out the process of regulation on the third sector. In this context, the Federal Laws n. 9,637/1998 and n. 9,790/1999 were enacted. The first Law regulated the Social Organizations (SOs) and the second one the Organizations of Civil Society for Public Interest (OCSPIs). The widespread use of the SOs was noticed, e. g., in the State of São Paulo – though more as a maneuver to the constraints of the Fiscal Responsibility Act (FRA) than effectively as a new way of encouraging private sector participation in social sectors (SANO; ABRUCIO, 2008, p. 72). A current issue that has been on debate is that the lack of supervision and control for receiving these funds have been the target of constant criticism, since it may entail diversion of public funds and corruption – as emphasizes Gabardo (2009, p. 148).

The instrument of public law that formalizes this kind of partnership is called as *management agreement*. However, in my opinion, the Federal Law n. 9.637/1998 does not allow management agreements for SOs with regard to infrastructure provision. The management agreement is defined as a non-transferring of public goods property or services authority to a private entity (OLIVEIRA, 2008, p. 287). In the case of OCSPIs, the *partnership term* is the instrument executed for this collaborative agreement. Federal Law n. 9,790/1999 might set forth that an OCSPi can manage an infrastructure project due to the allowance contained in article 3, subsection VIII, which provides for that OCSPIs can “promote economic and social development”. Yet I believe that this category of participation cannot easily fulfill this requirement, insomuch as it may be subject to further litigation. This is the reason why it is not

recommended to qualify an entity or association who wants to promote infrastructure services as an OCSPI.

Thus, I propose a new concept of engagement of civil society for public infrastructure in Brazil. Given the lack of regulatory rules for SOs or OCSPIs provide infrastructure, other civil organizations could be enrolled to this task through many forms of organizations. The role of civil society involves other modalities that are not limited to the ones already referred to above and specifically taken into consideration by the Brazilian legal system. Moreover, in order to obtain funding, there is no such rule that prevents public law agreements with any entity for obtaining transfer or grants of public revenues to an infrastructure project – except to SOs or OCSPIs².

There are no legal bars for a lawmaker to, by the Budget Law (Budget Guidelines Law or the Annual Budget Law) and by the means of a parliamentary amendment, grant public resources to a particular civil society entity, so it may be able to provide infrastructure services (article 166, paragraphs 2nd to 4th of the Federal Constitution)³.

This assumption leads to the following conclusion: for investments in infrastructure projects, the relations should be guided by local associations or other NGOs organizations, with the purpose of meeting the interests pertaining to these small projects. Large projects or ones which are considered as “national public interest” are not viable for the third sector, inasmuch as the profitability of the project is prevalent in such cases. This fact may justify, to a greater extent, the utilization of PPPs as a framework of mixed investment in infrastructure, besides other possibilities such as the concessions or permissions provided for the Brazilian Concession Law.

² The Federal Decree n. 6,170/2007, in its article 1, sets forth – based upon article 10 of Law-Decree n. 200/1967 and regulated subsequently by the Joint Ministerial Ordinance MP/MF/MCT n. 127/2008, in conjunction with article 48 of Federal Decree n. 93,872/1986 – how private non-profit organizations enter into agreements with the Brazilian Federal Public Administration. As a consequence, civil society entities are entitled to access public revenues for some infrastructure projects – since other devices, such as the article 116 of the Public Procurement Law and the article 25 of the FRA, are expressly referred to intergovernmental cooperation, which is not the case.

³ Regarding this issue, the Explanations and Justification for the Veto Bill of FRA n. 627 of May 4, 2000, vetoed the subsection II of paragraph 1st in article 25, which had a previous statutory requirement to assign these intentions through a pact agreement, with the justification that it could not set limits to governments that might harm programs with non-conditional governmental transfers.

3 The direct engagement of civil society in the provision of public infrastructure

3.1 *The legitimacy of civil society participation in infrastructure*

The idea of direct engagement of civil society in Brazil is not recent: there are evidences of partnerships, in the Brazilian Pre-Imperial Age, between state and civil society. The concept is back at this moment with more influence due to a context of current crisis inside the state provision to society. In 1814, the governors of the Captaincies had some responsibility with public works and, according to historical records, the Governor of State of Pernambuco started works at the Port of Recife with “voluntary” contributions from part of the population (LIMA NETO, 2001, p. 85).

In the same way, Campos (2007, p. 129-130, 373-376) asserts that the initiative concerning the creation of the *Tea Viaduct* in the city of São Paulo was originated by an association of investors who started to charge a fee for crossing the Anhangabaú Valley. Such fact also occurred in Campinas and Santos (cities in the state of São Paulo) with similar private initiatives. This is just some of the many examples of such initiatives, inspired by the concept of private associations in the United States – as stressed by the Engineer Antonio Francisco de Paula Souza at that time, a major contributor to the Brazilian infrastructure, most importantly in the railway sector.

Therefore, scholars often affirm that, in the Brazilian history of planning, the central issue to be dealt with was the *participation of social groups*. Even with the desire of some *nationalists* (since the Imperial times) to develop – albeit in a voluntary manner – the newly created nation, what predominated were concessions without clear defined criteria: so these voluntary initiatives were set aside over time (LIMA NETO, 2001, p. 467-468).

Nonetheless, all the recent process of change in public administration has set up a new administrative culture inside the country in connection to the provision of public services. The Portuguese scholars demonstrate that the shift of public functions assignments to private entities exposes the modern trend of *sharing responsibilities* between state and civil society – unlike before, when the definitions of the public interest and private affairs were incommunicable. This concept evolved into a greater inter-relationship of the public interest with private ones (GABARDO, 2009, p. 113; GONÇALVES, 2005, p. 139-145).

By the concept of a “trigger state”, the citizen can go beyond the idea of mere user of public services. She or he starts to behave as the main actor in this process, pursuing, along with the state, the public interest: the state will enjoy the so-called “endogenous potential of the

society” in order to “[...] trust to private providers 'new' tasks and responsibilities (private ones) and put the state into a position of guarantor (*'Garantenstellung'*), invested with 'new' tasks of public regulation” (GONÇALVES, 2005, p. 150-151, 161). The Brazilian scholars, along with this sense, indicate a subtle change in the core view of public activities – the focus is a movement *from* public administration *to* civil society (OOSTEROM, 2009, p. 48 et seq; GABARDO, 2009, p. 115).

In our opinion, the legitimacy of civil society participation in infrastructure is implicitly set forth in the Brazilian Constitution, according to article 1st; subsection II, which states citizenship as the foundation of the Federative Republic of Brazil. Silva (2009, p. 35-36) adds that the *representation* is one of the characteristics of citizenship and it should also be considered in the *participatory integration in decision-making process*. Therefore, the mere fact that the infrastructure be a peculiar sector as an economic activity does not impede actions from population in favor of their own development and the development of the community.

It is under this view that the activity of civil society organizations is legitimate by the Brazilian Constitution, provided for it does not conflict with other constitutional assumptions. For instance, civil society cannot be organized by an associative non-profit entity for seeking oil deposits because it is a monopoly granted to the Federal Government – whose exploitation is regulated by specific provisions when the market is involved. But the fact remains that, by the principle of subsidiarity⁴, nothing prevents the society to organize itself to undertake services like surfacing recovery of streets in a particular neighborhood. This is only a hypothesis that does not exclude many other possible arrangements. Sometimes even the business community

⁴ The principle of subsidiarity – described in the Maastricht Treaty as restricted to the public sector – serves to avoid the mistaken concept of superiority of state over society. As a result, the idea that the word “government” is not only a synonym for public spending begins to be more important: governing is spending too, however, it specially depends on the state's ability to lead the provision of this services and, moreover, to raise public and private resources to meet social expectations in a satisfactory way (VERNIS; MENDOZA, 2008, p. 53-54). In Europe, this principle emerged based on a vision of changing on the existing focus: with the restraint of public expenditures and the reform of the welfare state model in order to act directly on the distribution of governmental competences (GABARDO, 2009, p. 232). For investment in public infrastructure by the civil society, the principle of subsidiarity must have another meaning when compared with sectors such as health and education, more focused on social rights. It is hard to affirm that civil society should play a major role in sectors such as economic infrastructure – as it has several strategic characteristics and this fact justifies a greater provision by the state. Moreover, this provision requires high amounts of investments and high initial availability of intensive capital, which hinders the participation of civil society in any case. The state always remains the main provider of the citizens in such public duties, as well as the receptor of the demands from civil society: the Brazilian constitution, v. g., is guided primarily by state duties, not society duties. Accordingly, the subsidiarity would appear as a new possibility of the public administration in order to allow the activity of the private sector in a substitutive or complementary manner, and not only by delegation. The forms of organizations proposed by civil society will have great importance in the context of fiscal crisis in modern states and its exhaustion of providing services. Citizens shall start to notice, inside civil society organizations, new alternatives in the provision of services. Furthermore, the key factor of success on this trend is linked with how the state shall demonstrate to citizens that some activities do not rely solely on its own initiative (MORALES, 1999, p. 66-67, 73-75).

can organize such initiatives in infrastructure for non-profit purposes, with the support of civil society, as evidenced by Peterson (1990, p. 128) in the cases of Cleveland, Ohio, and California.

In short, the civil society occupies an important role in this process: it may be directly engaged in infrastructure with its own resources, as well as with government revenues transfers or other arrangements. In the next chapter, it will be assessed as a new form of engagement in developing countries, in a less formal financing framework for public infrastructure – i. e., with a reduced state engagement.

3.2 Infrastructure funding by the semi-formal sector

Usually, the mainstream idea is that the state may fund the major infrastructure works – with revenues from the payment of taxes or other fees by individuals. This would be a classic concept of Western culture that tends to except it when the subject is more deeply analyzed. Shaw (2012, p. 134-135), studying the Mayan Highway *Sacbeob*, exposes that the ancient western civilizations also had – and has – privately community-operated roads, by traders, clubs, religious organizations or academic institutions. The construction of this Mayan Highway pursued the same objectives well-know today: it was guided by the interests of the communities about connecting themselves.

More fundamentally, what is important to know about this provision concept is the presence of an *associative* culture, independently of the necessity of the provision of services by the state – as occurs in the United States. In contrast, there is a presence of the *political patronage* in Brazil, namely, a reciprocal and interdependent system of exchanging favors, which historically represented an impediment to the development of the associative culture in the country. Such culture only took place from the mid-fifties of the twentieth century (MENDES, 1999, p. 75-76).

This means that the scholars tend to emphasize the role of civil society in relation to the tradition of the legal system within each country: civil law countries are more likely to have a strong provisional state, unlike the common law ones – that usually intervene much less in the market and in civil society itself (GIDRON; KRAMER; SALAMON, 1992, p. 15).

The outstanding lesson of John Metcalf may illustrate the private participation in public affairs: he was a blind man who used to build roads, by his own, in England around the Eighteenth-century. He himself explored the land and calculated how the construction should be, creating an efficient and economic method that helped in the construction and maintenance of various roads in England (MANTOUX, 1928, p. 100). The Mao Zedong's *Great Leap Forward*

– although not the best and relevant example because of the disputes with respect to his industrial development policy – also had the feature of requiring peasants to mandatory work into paramilitary brigades in order to construct public works (KISSINGER, 2011, p. 188).

The premise adopted and already mentioned in this paper is that some infrastructure industries tend to be not economically viable for the private sectors – which are always *cherry picking* and do not interest themselves for investments that are not economically profitable, despite its positive impact on society. Thus, the best investment from a company view would be concentrated in the most favored regions at the expense of the poorer ones.

As a remarkable example, it may be pointed out the provision of water supply in Manila, Philippines, whose concession was divided into two: one with lower fees for the richer parts of the city and another one with higher fees for poorer regions. This happened because less favored regions may represent higher risks and costs to the market provider – such as the default risk, for example: these factors are assessed for the definition of the fee charged by the companies. The state is sometimes, not very often, present in developing countries and it does not provide all the special needs. In other cases, even the market may not be interested in the project due to the small economic potential for returns – as in rural infrastructure investments. In the latter case, it is suggested that the users and the investors interested in the provision should participate in the formulation and planning of their projects – including with the permission granted to civil society to participate in the operation and maintenance of infrastructure (WORLD BANK, 1995, p. 56-57; KOPPENJAN; ENSERINK, 2009, p. 287).

Being aware of these aspects in developing countries, the OECD (2011, p. 58-59) recently highlighted that, in Latin America, this type of association between state and civil society represented by non-profit organizations can arise a new way of *innovative thinking* connected to the provision of essential public services. Still, with the exception of Mexico and Chile, the region has not been using this form of outsourcing compared to developed countries⁵.

All of that considered, the hypothesis assessed in this paper is that the civil society organizes itself in partially providing and financing these projects. In this sense, a proposal is brought by Chandavarkar (1994, p. 34) with respect to the semi-formal (or informal) sector providing and financing these services, as occurred in some developing countries. The framework of this arrangement is quite simple: a community, NGO or local association promotes the provision and funding of some projects without any government support – although under its

⁵ The constant dialogue with the population in the case of São Francisco River transposition project in Brazil is mentioned as new measures towards a closer public-private engagement, albeit they do not foster institutional arrangements for providing and financing infrastructure. The example serves only as an illustration of this new trend.

supervision –, such as roads and sewerage systems. An informal and noncompulsory “taxation” over their own community may be needed to meet the small infrastructure requests of such place, which is not on the attention of governmental programs. Governmental transfers, although possible in a second moment, become dispensable for the accomplishment of such model. Chandavarkar cites the examples of Karachi (Orangi District), in Pakistan, and Lima, in Peru – in the latter, the informal sector was responsible for almost 93% of the urban transportation system.

In Brazil, however, this hypothesis could only be conceived via concession or permission grants of public transportation to private companies, according to the restriction of article 30, subsection V, of the Brazilian Constitution. Furthermore, this type would not strictly correspond to investment in infrastructure by the concept of the Brazilian Constitution, because it is a public service, although it has been related to urban infrastructure for such purposes.

Likewise, in Nigeria, there is a partnership between the Ministry of Agriculture, Water Resources and Rural Development with United Nations Children's Fund (UNICEF) and United Nations Development Program (UNDP), which has the support of civil society in the financing and maintenance of the water supply. And it can also be remembered the case of South Africa's Limpopo Province concerning the transfer of the irrigation program to local management. Additionally, this country charged fees to implement services such as water, sanitation, electricity and solid waste removal, levied by municipalities. For their improvement, it was created a three-year plan called *iGoli 2002* that established semi-independent entities to provide public services (AYOGU, 1999, p. 177; TANNERFELDT; LJUNG, 2006, p. 119, Box 17; VELDWISCH, 2006, p. 75-91; JOHANNESBURG METROPOLITAN MUNICIPALITY, 2002, p. 18; BOADWAY; SHAH, 2009, p. 434).

Another initiative with greater involvement of the state – perhaps in this case the term “semi-formal” is very suitable – can be verified in the Community-Led Infrastructure Finance Facility (CLIFF), a fund maintained by the United Kingdom and Sweden, which serves to support community initiatives in Indian slums for the betterment of local infrastructure. In addition to assist local people, the CLIFF also provides bridge loans to larger investments in infrastructure, with the subsequent compensation by the government. The CLIFF deals with community organizations and NGOs focused to assist these communities (TANNERFELDT; LJUNG, 2006, p. 121, Box 18). An example is the CLIFF Community Sanitation in Maharashtra and Tamil Nadu, whose project provided resources to Samudaya Nirman Sahayak (SSNS) – the non-profit arm of the NGO Society for the Promotion of Area Resource Centres (SPARC).

Therefore, “[t]he local government provided water and sewerage connection, access to land, and funds for the construction; SSNS was responsible for construction management, and in many cases slum dwellers themselves built the toilets” (KENNY; LAVANCHY, 2013, p. 21).

According to Bird (1994, p. 6), the participants of such projects can be involved in the provision of better infrastructure, since the government often neglect investments to these communities. In fact, the Orangi Pilot Project in Karachi was conceived in a densely populated region – but with poor infrastructure, either economic or social – in which the citizens decided to carry out investments in the sewer system, as well as hospitals and schools, in their locality.

In the abovementioned Peruvian experience, there was an intense action of the semi-formal sector through local associations, who financed road projects and sewage systems by informal taxation (*in-kind taxation*, or the usage of goods and services as taxation). As stated by Bird (1994, p. 7) – based on studies of Hernando De Soto –, the mechanisms of *extralegal laws* are useful for small infrastructure initiatives whose needs are not well provided by governments.

Other examples brought by Koppenjan and Enserink (2009, p. 291) can be listed in several countries. In Guatemala City, e. g., there were over two thousand communities and private companies operating in the sanitation sector, in addition to the example of the municipality of San Pedro Almolonga, where the population handles with their own solid waste production. In Addis Ababa, Ethiopia, there are examples of these types of organizations as well. In Buenos Aires, Argentina, the company *Agua Argentinas* would simultaneously have involved the local society in building the infrastructure in poorer regions. In Abidjan, Ivory Coast, there was the possibility to grant a “license to operate” to private operators and associations to bring water to poor communities. Similarly, another form of “resale” occurs, among other places, in Jakarta, Indonesia, and Ho Chi Minh City, Vietnam: individuals can resell water to other neighborhoods, being charged for this additional consumption. Moreover, in Port au Prince, Haiti, there is the possibility of installing meters masters around an area and the payment is supported by a local organization. The advantage, as stressed, is that the involvement of localities brings greater commitment and “ownership” of these infrastructures, which ensures sustainability over the time (TANNERFELDT; LJUNG, 2006, p. 122, Box 19).

Other proposals for civil society involvement in infrastructure are related to the safety and well-being of the community, i.e., how the infrastructure is conceived has a direct impact on the security of the region. In this sense, scholars advocate for greater social participation *vis-à-vis* the decisions of the surroundings, including active actions to the public space (ACEVEDO RUBILAR, 2010, p. 66). Despite this approach being more related to social infrastructure, such

as parks and sports centers, it can be extended to other economic infrastructure sectors such as roads or public lighting.

Consequently, this mechanism is (i) typically used to meet a demand that is local, and (ii) for small-scale projects that normally are not implemented by “formal institutions of government”. It is noteworthy to say, however, that the success of this method is highly dependent on monitoring and cooperation of local authorities, in addition to prior authorization and control by the government in relation to such semi-formal sector activity. It is demonstrated that, in the case of Orangi, the biggest problem was connected to the fact that the government failed to maintain the sewer system funded by the community informally. This validates the notion of extreme importance about complementarity and cooperation between both sectors, formal and semi-formal/informal (CHANDAVARKAR, 1994, p. 34-35).

In short, one of the main factors for the success of this form of promoting infrastructure is that there is a *bounce effect* at the local level, so that the organization of these projects can benefit these productive initiatives. This is essential, in the long term, in order to avoid the further lack of interest in such projects due to poor planning in the implementation phase. Accordingly, remember the architect Hehl (2011, p. 166) that local residents can make some decisions on its own infrastructure. In spite of this, he warns that local communities and interest groups will only be in conditions to take responsibilities based on a holistic urban view. This is strongly dependent on the support given by higher organized structures.

These interest groups with influence and popular legitimacy can stir up the so-called “pressure groups” to infrastructure, or *clubs infrastructure* (VOGL, 2009, p. 133). This happens because one big issue that stimulates civil society actions in certain public policies has relation with the *degree of coincidence of objectives*, i.e., that a project shall be common to society and government and both of them must have co-responsibilities for it (MENDOZA; VERNIS, 2008, p. 52). To sum up, civil society taking care of these small projects does not necessarily mean that the state is under no obligation as to the effective promotion and development.

It is important to remember that this new approach, with a plurality of actors in participating on infrastructure, requires monitoring from the formal sector over the time, even though it might be able to produce immediate results. Moreover, Oosterom (2009, p. 78-79) highlights the peculiarity of *innovation and continuous improvement* in participation within successful models, since it is an important element of competitiveness in the private sector and it can be transplanted into the public services.

3.2.1 The engagement of the direct beneficiaries in such projects

The definition of the beneficiaries is given by the identification of the public interest underlying the respective action, which should pursue the improvement of the conditions in such community. If this public interest is not fully identified, it does not mean that the local organizations cannot act in small activities of self-interest – provided that they do not cause injury to others. A perverted example would be an illegal initiative of creating an “enclosure” with the infrastructure, an odious practice that tends to occur at some specific areas in large cities, such as the existing “streets enclosures” in the city of São Paulo. In doing so, the infrastructure becomes an exclusive asset to certain rich residents, consequently excluding the poorer ones, without any prior authorization from the public authority.

As Kessides (1997, p. 38) argues, households can be stimulated and encouraged to promote small repairs through microcredit mechanisms or other ways in order to foster this kind of outsourced investment on the interest of themselves. The author sheds light on the hypothesis with services related to domestic matters: in this case, small works as repairs on various sidewalks of a neighborhood by local organizations, v. g., could be considered ancillary contributions to major investments in infrastructure. It also helps to identify the interested individuals on such initiatives.

Indonesia and Philippines have programs that give rise to communities that invest in small ancillary or secondary projects. A suitable manner can be extracted from the maintenance of rural roads in Indonesia: in this case, usually a private company or a group of farmers, willing to sell their production by a local or rural road to a regional, national or primary one, undertakes the responsibility of maintaining such local road before the society and state (BIRD, 1994, p. 23). Such practice has become current in Brazil, due to the necessity of the farmers to export soy by the remote ports of the country. The same phenomenon occurs in India with the water service in rural regions, as the community helps to manage and design the systems, even supporting the costs of operation and maintenance (BOADWAY; SHAH, 2009, p. 420).

With respect to Brazil, it is possible to extract some models of this type of association, albeit not from this perspective. The actual system of semi-formal passenger transportation in the Metropolitan Region of São Paulo is one of the self-organized forms of associations in order to supply the deficiency in daily passenger transportation in the region. And Kessides remembers (1997, p. ii-iii) that the Technical Assistance Project to the Local Sanitation in Low Income Areas Program, held by the Brazilian Federal Savings Bank (PAT PROSANEAR Program) also

has these characteristics in Brazil – as well as the Orangi Program. This Brazilian Program, therefore, appropriates the initiative from the low-income communities and it has the support of the civil society. It is, according to the author, an excellent alternative to the traditional arrangements that fail to encompass the lower levels of the population in the mid-term scenario.

The PAT PROSANEAR Program is a joint initiative with the International Bank for Reconstruction and Development (IBRD) to meet technical and financial support (by spontaneous funding) in order to develop the Local Integrated Development Plans (LIDP) to States, Federal District and Municipalities. It is not infrastructure finance by the semi-formal sector, but it demonstrates a concern for local needs and the importance of the participation of civil society in this process (BRAZILIAN FEDERAL SAVINGS BANK, 2013).

As already remembered Kessides (1997, p. vii), the expansion of these programs has obstacles that go beyond the issue of insufficient public resources – although one of the factors is lack of funding, but not the preponderant one. According to her opinion, the obstacles are more related to political and institutional issues. It is, therefore, required a change of public management conceptions in order to meet those demands and to compensate the failure from state.

In the end, as already emphasized by Oliveira (2007, p. 203) in previous lessons about NGOs, the use of civil society to promote infrastructure is only *one* among the several forms of investments in the sector by public-private arrangements – and, clearly, the most uncommon to any policy-maker. Any objection that this arrangement shall face is much more originated from public management or political theories than from legal issues.

As dealt in this paper, although the Brazilian legal system does not set forth the possibility for the Third Sector to be in semi-formal schemes, there is no such provision that prevents the stimulation of investment by semi-formal structures together with all other forms of public funding, either private or public-private infrastructure. This is the statement of Article 174, paragraph 2, of the Federal Constitution, as it manifestly demonstrates a constitutional preference for associations and other forms of cooperation. In addition, even if it is not the most common “tool”, the budgetary laws – essentially the Budget Guideline Laws – can help on this regulatory process.

4 Conclusion

This paper addresses the infrastructure question in a legal, economic and social approach, though more focused on social aspects. As the theoretical basis for such assumption, it is important to highlight that an evolution occurred in recent decades in public administration theories: it has been proved that some traditional principles related to the government provision need to be revised in order to include alternative ways to achieve the real concept of governance in the public sector. As a consequence, civil society has nowadays a fundamental role in cooperation with public authorities, so that both government and society can act in a complementary and coordinated manner towards the same goal: promotion of actions and investments in various sectors of public and social interest.

In this context, it raises the possibility of civil society be engaged in the provision of small and specific public infrastructure projects, in order to match demands that are not provided by the state (or provided unsatisfactorily). For this reason, local projects in many areas may emerge as alternatives to satisfy such small demands. This type of funding by a semi-formal sector is conceived among developing countries, where the states are not self-sufficient in their public duties. Latin America is more connected to this concept due to its uniformity in key public policy issues and the respective state's failure with the direct provision, so that it is a proposal to be considered by the region for reducing the existing economic and social disparities.

It is possible to illustrate it with some examples: in the case of transportation, public works like surfacing recovery of streets or road obstacles installation, construction of bus stops, bike paths and small docks in a private margin of a river, lake or sea; in sanitation, minor public works of local systems which interconnect local water supply and sewage systems to central ones. In energy infrastructure, construction of light poles that carry electricity to communities who are running out of this public service.

These are some cases of the use of civil society organizations for ancillary or secondary infrastructure projects, which could obviously include various other cases according to the peculiarity of each site. This initiative can occur either with public funds transferred to local entities as with the voluntary and non-obligatory contribution to the organization – which expands even further the range of possibilities for investments in infrastructure. These days, it is becoming very common in the artistic sector a new form of financing called *crowd funding*, in which there are collective efforts towards a common cause – usually through the Internet. Not only for these hypotheses, but the crowd funding has also been envisioned to grace victims of natural disasters, which usually lose all their possessions due catastrophes. The act of thinking of

alternatives to infrastructure improvement seems to be something that only aims to increase the supply of these public goods to best meet the needs of local and poor communities.

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