

## THE POLITICAL ENGINEERING OF FEDERALISM IN BRAZIL<sup>1,2</sup>

Celina Souza<sup>3</sup>

### 1 INTRODUCTION

Brazil has been a federal country, a republic and has adopted a presidential system for almost two centuries. Federalism was introduced in 1889 and laid out in the 1891 Constitution. Brazil is now under the aegis of the 1988 Constitution, approved as a result of the country's return to democracy after almost 20 years under a military regime. The study of Brazilian federalism is closely connected to the study of the country's seven constitutions and its amendments because although the country has preserved its federal status, constitutions have always altered the way the federation works.

Unlike many polities, Brazilian federalism was never a response to social fissures along ethnic, linguistic, and religious lines but rather of regional disputes when the country became a republic in 1889. Political elites understood that regional disputes at that time would be better accommodated under a federal rather than a unitary structure. During colonial times, Brazil's unity was threatened by Spanish, Dutch, and French invaders, but they were all defeated. Separatist movements were relatively common only during Portugal's domination, but at the beginning of the nineteenth century, the unity of the country was not an issue, in contrast to the former Spanish colonies in Latin America. Since the promulgation of the 1988 Constitution, pressures, but not threats, for territorial subdivision has come from municipalities, not from states.

As many federations created in the 19th century, it was influenced by US federalism. Later there has been an influence of the Weimar and of the Mexican constitutions as regards social provisions. Since mid-1960s, however, constitution-makers have learned from previous experiences and the influence of other constitutions was no longer necessary.

---

1. Published in Spanish in the book edited by W. Hofmeister e J. T. Aranda, *Sistemas Federales: Una comparación internacional*. 2017. Madrid: Fundación Konrad Adenauer e Fundación Manuel G. Abad.

2. This research paper has been commissioned by the Konrad-Adenauer-Stiftung (KAS). It draws partially from several other publications by the author (Souza, 1997; 2002; 2005a; 2005b; 2013; 2015).

3. Visiting scholar of the Graduate Program in Political Science of the Federal University of the State of Rio de Janeiro (UNIRIO).

Despite the absence of threats to territorial integrity, Brazil is marked by high levels of territorial inequality. The most striking inequality is among Brazil's five geographical regions, in particular between the Southeast and the Northeast. Although in the last decade this socioeconomic divide has decreased, in 2012 the Southeast contained 42.06% of the country's population but generated 55.2% of its GDP while the Northeast, with 27.79% of the population, was responsible for 13.6% of the country's GDP. In 2014, however, the Northeast's GDP grew by 3.7% and the Southeast's declined by 4.6% while Brazil as a whole grew by only 0.1%. Social indicators nevertheless amplify this economic inequality.

If theories of federalism do not incorporate regional disparities as a threat to the unity of federal countries, they imply that the capabilities of subnational governments to respond to the demands of their constituencies and to provide public goods are highly uneven. This is why since the 1930s political elites have always pursued the decrease of regional imbalance with more or less success.

Unlike in many federations, Brazil is a three-tiered federation. This is because the municipalities are not a creation of the states and because the 1988 Constitution incorporated municipalities as part of the federation together with the states, reflecting a tradition of municipal autonomy and little state control in municipal matters. The federation is now made up of 26 states plus the Federal District (Brasília) and 5,570 municipalities.

Over the last century, Brazil had a history of economic boom and bust and its development was hampered by high inflation, excessive indebtedness, political turmoil and two long periods of authoritarian rule. After a decade of economic growth and social achievements, in 2015 the country began to face another turmoil when the economy started to slow down, unemployment raised, corruption scandals reached private companies and politicians and in an impeachment procedure of the President re-elected in 2014 is now under way. The macroeconomic crisis of the last two years has affected the finances of the three levels of government with consequences for the provision of policies under their jurisdiction.

During periods of authoritarian rule subnational units, the states in particular, were affected by political and financial centralization led by the federal level. Federalism, however, did not play a role in the two breaking downs of democracy. The federal system experienced periods of centralization followed by decentralization. Since the 1930s, the federal government has always led social and economic changes.

This paper presents an overview of Brazilian federalism to those not familiar with its details and trajectory. This might be important because as students of federalism know, federations are different and political, cultural, historical and economic features of each country bound their design. The paper argues that the stabilization of federalism as one of the country's longest institutional device is

a product of constitutional designs that make the centralization-decentralization continuum adaptable to changing political and macroeconomic circumstances. This has been particularly so since the enactment of the 1988 Constitution.

The paper is organized as follows. The first session presents an overview of federalism in Brazilian constitutions. The following sections analyze the main aspects of the way federalism works, i.e. how power is allocated between levels of government and how resources are distributed between them. The final session discusses the pros and cons of the current design of the Brazilian federation.

## 2 FEDERALISM IN BRAZIL'S CONSTITUTIONS

Brazil first promulgated a written constitution in 1824 following its achievement of independence from the Portuguese Empire. This Constitution devolved administrative authority to the existing 16 provinces although they had no formal or informal political autonomy. The decentralization of administrative authority was seen as paving the way for federalism.

The 1891 Constitution, promulgated after the republic had been set up, accomplished the decentralization promised by the republican slogan “centralization, secession; decentralization, unity”. Economic resources, however, were channelled to a few states, which shows that the federation was born under a concentration of resources in a few states.

Brazil's experience of isolated, or dual, federalism ended in 1930 with a coup led by a civilian, Getulio Vargas, as a result of regional disputes over the presidency. One of Vargas's first measures was to write off the states' debts to the federal government, including São Paulo's enormous debt incurred from subsidizing coffee growers. In 1932 Vargas sponsored an electoral reform that, among other things, increased the political representation of smaller states in the Chamber of Deputies. Initially conceived to counteract the power of a few states, this principle of representation remains one of the bases of Brazilian federalism.

The 1934 Constitution, promulgated as a result of the 1930 coup, expanded intergovernmental relations by introducing several measures allowing the federal government to grant resources and technical assistance to subnational units. Municipalities were allowed to collect their own taxes and received half of their revenues from one of the state taxes. Nevertheless, the 1934 Constitution was unable to survive conflicts between measures increasing economic intervention and social spending, on the one hand, and the strengthening of regional elites and Congress, on the other.

Vargas sponsored a new constitution in 1937. One of his objectives was to decrease the importance of regional interests in Congress, and to build political

and administrative unity in order to advance socioeconomic modernization. Vargas closed down Congress and the state legislatures and replaced all elected governors with his allies with no ties to state oligarchies. Subnational governments lost revenue to the federal government, which was granted the right to regulate Brazilian exports and interstate exchange. By denying regional oligarchies the right to prescribe their trade rules, Vargas paved the way for industrialization. Nevertheless, horizontal imbalances remained: by 1945 three states possessed more than 70% of all state revenues (Mahar, 1976).

In 1945 Vargas was overthrown by his war minister after pressures from the military and after calls for a liberal democracy arose as a result of the worldwide wave of democratization that followed the end of the Second World War. The 1945 election was won by General Dutra. Vargas won the following presidential election in 1950 and governed Brazil under democratic rule until 1954, when he committed suicide as he was about to be overthrown by the military.

To inaugurate the return to democracy, a new constitution was approved in 1946. It was influenced by liberal ideals. However, they did not last long given the need for rapid economic growth under the aegis of the federal government. As democracy and decentralization have always gone hand in hand in Brazil, the revenues of municipal governments increased. The Constitution introduced a scheme requiring higher territorial units of government to share revenues with lower units in an attempt to address the issue of vertical imbalance. Horizontal imbalance was partially addressed by defining federal revenues to be spent on Brazil's poorer regions. These measures, however, were of limited effect due to the disproportionate growth in federal activities, an increase in the number of new municipalities, inflation, and the non-payment of federal quotas to states and municipalities. Consistent with its liberal approach, the 1946 Constitution was the first and only one, with the exception of the 1891 Constitution, in which only principles, rules and rights were set up in the constitution. All other constitutions, including the current one, regulate public policies and define government functions along with the definition of principles, rules and rights.

The 1946 Constitution lasted until the military coup of 1964. Democracy did not survive a major economic and political crisis, placing Brazil among the wave of dictatorships that ruled Latin American countries during that time. The military did not immediately issue a new constitution. Only in 1967 was a new constitution approved, and in 1969 it was again changed through a long constitutional amendment. The 1967-69 Constitution, together with a 1966 fiscal-reform law, boosted the centralization of public finance. Competitive elections were forbidden for federal and state executive positions and for mayors of state capitals and municipalities considered "national security areas" or "mineral sites".

By the end of the 1970s, the fragility of the military regime became apparent and the country's economy began to slow. The military allowed direct elections for the state governors in 1982 and tried to pacify local elites by gradually increasing federal transfers to municipal governments. Financially weak, the military started to lose support.

Redemocratization started in 1985, and a new constitution was designed to end authoritarian rule. The creation of the 1988 Constitution was coupled with enthusiasm and optimism about the country's future. For 20 months, Congress and Brasília were the centre of Brazilian life, engaging in a visible exercise in democracy and political participation.

The rules determining how the constituent assembly would function were the first signal that drawing up the constitution was going to be a bottom-up process: there were 24 thematic subcommittees, which later merged into eight committees and finally into a systematization committee of 97 members, followed by plenary sessions with two rounds of voting.<sup>4</sup>

The 1988 Constitution was the outcome of a political milieu that aimed to make credible and to legitimate the new democratic regime given that the constitutional assembly was called into being while the political transition to democracy was still incomplete. Because of this, the framers left three options open which later affected the wave of constitutional amendments, many of them with influence on federal arrangements. The first was to make the rule of constitutional amendment relatively easy to fulfil: three-thirds in two rounds of roll call voting in which the House and the Senate vote separately. The second was to increase the number of issues on which the Union (federal executive and legislature) has the exclusive capacity to legislate, thus delegating to future legislators and presidents decisions on policy preferences as well as on whether or not and when to put constitutional clauses into force. There has also been an expansion of issues subjected to concurrent authority vis-à-vis previous constitutions. The third was the increase in the number of issues that are embraced by the constitution i.e. a great deal of public policies and of governmental functions became constitutionalized. These decisions, coupled with changes in the macroeconomic and political contexts of the 1990s made the 1988 Constitution the most amended Brazilian constitution to this day and one that has a high rate of amendments compared to other constitutions in the world.<sup>5</sup>

---

4. This bottom-up process and the openness of the constituent assembly contrasted with the process of constitution making in Spain. For the secrecy and close participation in writing up the Spanish Constitution of 1978, see Bonime-Blanc (1987).

5. Unlike in Australia, India, Mexico, Switzerland, and the United States, where amendments to federal constitutions have to be ratified by state legislatures or by the electorate, there is no such requirement in Brazil. Rather, it is assumed that the states' representation in the Senate guards their interests.

One can say that the 1988 Constitution was the result of political momentum, marked by a need to legitimize democracy, including leveraging the political and financial status of subnational units. This meant reconciling conflicting interests among old and new actors given that the transition to democracy was still in progress. This is also why the Constitution has several mandates requiring further regulation either by amendments or by ordinary or complementary law, despite being very detailed. Consensus was the way forward given the lack of a clear political or ideological majority.

Soon after the promulgation of the constitution, some scholars argued that the constitution would make Brazil ungovernable because of the combination of a federation controlled by state governors, a presidential system and an electoral system of open list proportional representation, hence blocking the approval of reforms and of the federal government's agenda either because of the veto power of several actors or of the high costs for approval (Ames, 1996, 2003; Mainwaring, 1999; Samuels and Abrucio, 200; Samuels and Mainwaring, 2004)). Some scholars went further to argue that this combination was a threat to democratic consolidation (Ames, 2003; Stepan, 2000). These claims reflected, of course, the importance of institutions for the capacity of the government to govern. Nevertheless, scholars did not pay attention to another constitutional rule: the relatively low barriers to constitutional amendments. Furthermore, several issues that had been embedded in the constitution required constitutional amendments to be put into force and they also required fiscal and political stability, which was achieved only six years after the enactment of the constitution.

Scholars did not also pay attention to the evolution of the decisions about the distribution of resources between levels of government during the constituent assembly. Constitution makers were committed to decentralize the distribution of resources after the centralization of the military regime. The states were granted proportionally more resources than the municipalities in the first stages of the assembly. As shown elsewhere (Souza, 1997) the municipalities, however, started to expand their participation in the division of resources and ended up as the winning player of the game. This has weakened the power of state governors in the federation, challenging the analyses above.

Amendments to put into force constitutional mandates became possible after inflation control and the stability of democracy. This was because several issues that had been embedded in the constitution required amendments to be put into force. When the political and the macroeconomic contexts became stable, amendments were approved. The most important amendments affecting the operation of the federal system was the earmarking of resources from the three levels of government for the provision of fundamental education and health care. These amendments also clarified the role of each level of government in the provision of these universal

policies. This decision challenges part of the literature on welfare policies in federal countries which often concludes that federal systems are less redistributive than unitary ones and that federalism decreases the redistributive capacity of the state (Obinger et al., 2005). Part of this literature claims that in “federal countries social policy initiatives are highly interdependent but often only modestly coordinated” (Pierson, 1995, p. 451). This is not the case for Brazil since the late 1990s. The Brazilian experience on social policies supports Congleton et al.’s (2003) conclusions, which deny much of the modern analysis of federalism that emphasizes the importance of competition among local governments as a device for promoting the efficient supply of government services.

The constitutionalization of several issues, making Brazilian constitutions more like a code rather than a document of principles and rules, is not a Brazilian peculiarity. As several authors have shown, there is an increasing trend for issues that would be a matter of ordinary legislation to become constitutionalized. In Ferejohn’s words, “few of the world’s constitutions actually seem to be systems of higher order or regulative rules that stand apart from ordinary legislation” (Ferejohn, 1997, p. 505). Detailed constitutions are also likely to be adopted in consensus democracies and they tend to be a feature of several federal countries, as Lijphart (1999) points out. Furthermore, either by constitution interpretation or by design, policy-making authority (and policy preferences) within a nation emerges gradually over time by a process of constitutional or quasi-constitutional negotiation between regional and central governments, as pointed out by Congleton et al. (2003, p. 169). However, policy-making authority has gradually been incorporated into Brazil’s several constitutions as a matter of federal jurisdiction and not as a process of negotiation between regional and federal governments. National politicians themselves have taken decisions about policy preferences, their financing and the division of labour between the tiers of government. Amendments to the 1988 Constitution have affected intergovernmental relations and the distribution of revenue among the three tiers of government.

What may be to a certain extent a Brazilian peculiarity is the degree of detail that the 1988 Constitution dedicates to policy provisions and its financing and to the distribution of governmental functions among the three levels of government. These details, however, have not prevented the approval of amendments. Furthermore, after 1994 amendments regulating the implementation of social rights, in particular health care and fundamental education, further earmarked revenue from the three tiers of government for their provision, hence expanding a trend of previous constitutions to earmarking. An OECD report estimated that around 80% of federal taxes are now earmarked, in contrast to less than 60% in 1988, when the constitution was approved and around 45% before 1988 (OCDE, 2005).<sup>6</sup>

---

6. Earmarking of federal revenue is not only to finance universal policies but several other policies.

The same occurred with taxes collected by subnational governments or transferred to them. As it also happened with federal taxes, subnational taxes became earmarked by constitutional amendments to the federal constitution.

### 3 MAIN FEATURES OF BRAZILIAN FEDERALISM<sup>7</sup>

Constitutionally, each constituent unit has the same powers, i.e., Brazil has adopted symmetrical federalism in a socioeconomically asymmetrical federation. There are two main sources stimulating symmetrical federalism. First, the rules governing subnational jurisdiction, revenue and many public policies are detailed chapters of the Constitution.

Second, Brazil adopted a judicial review mechanism and the Federal Supreme Court systematically decides that the state constitutions and laws should reflect the federal constitution, therefore imposing a hierarchical interpretation of constitutional norms.

The states have their own constitutions promulgated in 1989. The writing up of these constitutions followed the same rules applied to the federal constitution, as did the rules for their approval and further amendments. Although state constitutions are not bound by federal constraints, except that they should follow the principles in the federal Constitution, most of them replicate federal mandates.

State political institutions are similar to those of the federal sphere, except for bicameralism. Although the states enjoy relatively little constitutional authority, they levy and determine the rates of the highest tax in absolute terms, the ICMS, a type of value added tax that, unlike many federations, is under the states' jurisdiction. State constitutions were modelled, therefore, on the federal constitution.

The constitutions have always listed the jurisdictions of the three orders of government and the 1988 Constitution has furthered this trend. The federal executive holds the largest number and the most important exclusive powers. Although residual authority rest with the states, the high level of detail in the Constitution about concurrent authority leaves little room for the states to make use of their residual powers. Concurrent authorities are listed in the Constitution, covering a wide range of issues, as shown in Table 1.

Except during authoritarian periods, the separation of executive, legislative, and judicial powers has been a prominent constitutional principle, which provides detailed rules concerning the jurisdiction and functioning of these powers. Federalism is seen as another mechanism for check-and-balance. As in many other presidential countries, the executive branch has become the main proposer of legislation and

---

7. For descriptions and analyses of the constitutional characteristics of federal countries, see Kincaid and Tarr (2005).

the Federal Supreme Court has become an active player in decisions regarding the interpretation of the constitution. Power conflicts between the three orders of government and their legislatures are resolved by the Federal Supreme Court through judicial reviews provided for in the Constitution.

Governors may initiate judicial reviews, as may the president, the Senate board, the Chamber of Deputies board, state assembly boards, the general public prosecutor, the bar association, political parties with representation in Congress, and union and business confederations. Governors have been active initiators of judicial reviews.

The 1988 Constitution and subsequent decisions by the Federal Supreme Court have given uniformity to state laws that comply with federal objectives; thus state and municipal interests are consistent with a federal rationale, and there is constitutional and legal homogeneity despite varying state and municipal interests and socioeconomic characteristics.

The federal, state and municipal governments have their own legislative and executive institutions, and the federal and state governments have their own courts. The states are represented in the Senate but are not formally represented in the federal government. However, informally there has always been a tradition of having the states' interests represented in the federal executive through political appointments that often reflect a combination of party memberships and the state interests of those who support the president's governing coalition.

Elections for president, governors and for Congress and state representatives take place simultaneously every four years. Two years later, mayors and municipal councillors are elected simultaneously to four-year terms. Re-election of those occupying executive positions was introduced in 1997, with only one re-election permitted. For federal and state executives and in municipalities with more than 200,000 voters, a second round must be held if no candidate receives a majority of the popular vote. All legislatures are elected through a system of open-list proportional representation, except for the Senate, which relies on a variant of the first-past-the-post rule. The electoral system strengthened the interdependence between national–state–municipal elections, displaying an important feature of theories of federalism, i.e. the importance of the nationalization of political parties to make federal democracies stable (Riker, 1964).

#### **4 ALLOCATION OF AUTHORITIES**

Brazil's constitutions have always defined the jurisdictions of the three orders of government, and the 1988 Constitution furthered this trend. The federal Executive holds the largest number of exclusive authority, including those that are most important. Residual authorities reside with the states, as in the United States,

Australia, and Mexico. However, the high degree of detail in the Constitution and the earmarking of revenues leave little room for subnational units to make use of their residual authorities.

Unlike in many federations, Brazil's federal executive retains most of the legislative authority regarding concurrent powers. The long list of powers shared by the three orders of government, most of which cover public policies, might suggest that the drafters of the Constitution intended to broaden the scope of cooperative federalism in Brazil.<sup>8</sup> However, this has not happened. One of the reasons is that the capabilities of subnational governments to carry out public policies are highly uneven. Table 1 displays the allocation of jurisdiction between the three levels of government.

TABLE 1  
Exclusive and concurrent authorities in Brazil

Level of government	Spending category
Union only	Defense Foreign affairs International trade Currency, banking Use of water resources National highways Planning: national and regional Guidelines: urban development, housing, sanitation, urban transport Postal service Police: federal and frontier areas Regulation of: labour, energy, interstate commerce, telecommunications, insurance, interstate transport, mining, employment, immigration, citizenship, and native rights Social security National statistical system Guidelines and basis for national education
Union-state-local (shared)	Health and social welfare Services for disabled persons Historic, artistic, and cultural preservation Protection of the environment and natural resources Culture, education, and science Historic and cultural preservation Forest, fauna, and flora protection Agriculture and food distribution Housing and sanitation Combating poverty and social marginalization Exploitation of minerals and hydroelectricity Traffic safety Small-business improvement policies Tourism and leisure

(Continues)

8. According to the Regional Authority Index, a measure of the authority of regional governments in 81 democracies or quasi-democracies on an annual basis over the period 1950–2010, Brazil's current score is close to the type of cooperative federations. See <[www.arjanschakel.nl/regauth\\_dat.html](http://www.arjanschakel.nl/regauth_dat.html)>. For an excellent discussion of the distribution of authority between levels of government in Latin America covering the period of 1950–2010, see Osterkatz et al. (2012).

(Continued)

Level of government	Spending category
State only	Residual powers: any matter not assigned to federal or local orders by the Constitution
Mainly local	Preschool and fundamental education Preventive health care
Local only	Public transport (inner-city) Land use

Elaborated by the author.

The logic governing the distribution of authorities in the Constitution is paradoxical: on the one hand and between 1988 and 1994 a decision was made to decrease the federal government's revenues vis-à-vis the other orders of government; on the other hand, the federal government's legislative role and jurisdiction have been increased. Constitution makers of 1988 were committed to strengthen the federation by providing a more equitable distribution of governmental powers, given Brazil's two long periods of authoritarianism and centralization at the federal executive.

Despite the large number of concurrent authorities, neither mechanisms nor institutions to regulate intergovernmental relations are provided for in the Constitution. This is not to say that intergovernmental relations are nonexistent. Subnational governments share federal taxes, the municipalities share state taxes, and there are some social policies, particularly health care and fundamental education, for which the federal government provides guidelines and resources according to rules determined by federal legislation. With the exception of these policy areas, intergovernmental relations are highly competitive, both vertically and horizontally, and marked by conflict. Cooperative mechanisms only come into being with federal support. Although there are several constitutional mechanisms for stimulating cooperative federalism, such as concurrent policy areas, Brazilian federalism tends to be federal-dominated. Furthermore, and unlike in many federations, such as Australia, Belgium, Germany, Mexico, and South Africa, the Brazilian federal government has no formal or informal intergovernmental council, and relations between the states have been marked by competition, particularly in attracting investment. There is only one interstate council, which is made up of the states' secretaries of finance, but its rules require approval by unanimity, which is seldom reached because of the states' different interests given the country's regional disparity. In contrast, intermunicipal relations have developed rapidly in recent years. The municipalities have created hundreds of consortia through which they share the costs, equipment and personnel required to deal with issues such as health care, environmental protection and economic development.

## 5 TAXATION AND FISCAL FEDERALISM

The current design of the Brazilian tax system is a result of the legacies of three different political and economic momentums. The first legacy comes from the military regime, which ruled the country from 1964 to 1985, when financial centralization was the main characteristic of the tax system and when the trend to raise taxes started. The military regime, however, deepened a previous system of intergovernmental transfers aiming at addressing Brazil's long-lasting and enduring regional inequality. As a result, regional economic disparity decreased slightly. This decrease, however, can be attributed neither to centralization of public resources nor to authoritarianism but rather to good economic performance during decades of accelerated economic growth. Economic growth rates of almost 10% a year for more than a decade allowed decision makers to adopt policies aimed at decreasing regional inequality. However, economic and regional inequality between regions has marked the Brazilian federation since its early years and despite attempts by the military regime and, later, by the 1988 Constitution, it remains as one of Brazil's main constraints. Improvements in the economic performance of poorer regions in the last decade shown above can also be credited to Brazil's economic growth between 2003 and 2014.

The second legacy comes from the 1988 Constitution. The constitution made profound changes on the tax system, mainly by increasing resources to subnational governments vis-à-vis the federal government. This Constitution, as much as previous ones, grants taxation authority to the three orders of government. Some taxes are exclusive to one order, others are collected by the federal government and shared with states and municipalities, and others are collected by the states and shared with their municipalities. The rates and rules for certain taxes, including state and municipal taxes, are determined either by the Constitution or by federal legislation.

The 1988 Constitution expanded the complex mechanism for intergovernmental tax transfers introduced by the military by earmarking federal revenues. Federal revenues from income tax and from the tax on industrial products collected by the federal government are shared through participation funds established for this purpose. The states receive 21.5% of these tax revenues, 85% going to the North, Northeast, and Centre-West regions and the remaining 15% to the South and Southeast regions, Brazil's two economically better-off regions. The formula for determining state shares is based on population size and an inverse of per capita income. The municipalities receive 22.5%, 10% going to the state capitals and the remaining 90% being calculated using a formula based on the same criteria mentioned above, hence favouring small and poorer municipalities. All these rates and formulas are stipulated in the Constitution. These formulas, however, do not compare to the extensive systems of equalization payments provided for in Canada

and in Germany and the new mechanisms introduced by the 1988 Constitution have not significantly decreased horizontal imbalance. Horizontal imbalance has been partially reduced only during periods of economic growth.

The third legacy began with the launching of a stabilization plan, in 1994, which has succeeded in controlling Brazil's hitherto unstoppable inflation. Following the plan, a fiscal adjustment program became a priority and constitutional amendments were passed to address new issues in an attempt to take the country in a new economic direction. The new macroeconomic agenda has led to a re-centralization of resources at the federal level and to an unprecedented increase on federal taxes as compared to GDP. As it also happened during the military regime, the states' finance were and still are the most affected vis-à-vis other levels of government. Table 2 displays the trajectory of the distribution of financial resources between the three levels of government.

TABLE 2  
**Financial revenue by level of government, including intergovernmental transfers (1960-2015)**  
(In %)

Year	Federal		State		Local	
	As a % of GDP	As a % of total revenue	As a % of GDP	As a % of total revenue	As a % of GDP	As a % of total revenue
1960	10.4	59.4	5.94	34.7	1.11	5.81
1980	16.7	68.2	5.70	23.3	2.10	8.57
1988	13.5	60.1	5.97	26.6	2.98	13.3
2006	20.4	57.2	8.66	25.4	6.22	17.4
2010	18.7	56.5	8.34	25.1	6.13	18.1
2013	19.2	56.9	8.22	24.4	6.30	18.7
2014	18.6	55.7	8.35	25.0	6.47	19.3
2015 (estimated)	18.4	55.1	8.38	25.1	6.63	19.8

Source: Adapted from several databases compiled by José Roberto Afonso and Kleber Castro, available at: <<https://www.google.com.br/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=blog%20jose%20roberto%20afonso>>

The table shows that in 1960 the states had a share of 34% of public revenue. The military regime made a radical change, when the states' share dropped to around 23%. In the initial years of the transition to democracy, the states increased partially their resources. After that year, however, the states' participation has fallen steadily, reaching ¼ of public resources in 2015. The states did not lose resources in absolute terms; however, their share of the total amount of public resources levied by the three orders of government has decreased. There are several reasons for this relative decrease, varying from a reaction of the federal government against its financial losses brought by the 1988 Constitution to tax

breaks by state governments to attract private businesses and to the decision to grant municipalities the provision of social policies with the financial backing of the other levels of government.

In contrast to the states, revenue administered by local governments has increased dramatically throughout the decades. This is particularly so after the approval of constitutional amendments earmarking federal, state, and local resources to the provision of fundamental education and health care. Since the mid-1990s, municipal governments have become the main providers of health care and fundamental education, following rules and using earmarked resources determined by constitutional amendments. The reason for this federal and state financial support to local governments for the provision of health care and fundamental education is to guarantee local citizens access to these public services based on national programs and minimum standards. Being a federal country, local governments had the choice of adhering or not to the implementation of these programs. The transfer of responsibilities to municipal governments has been, however, a success. This success can be credited to a policy favouring a complex system of intergovernmental relations and transfers that combines incentives and sanctions. The health care program injects additional resources into the municipal purse, and the education program penalizes municipalities that fail to improve school attendance rates at the fundamental level (Arretche, 2000). This transfer of policy implementation has reduced conflict among municipal governments for federal resources. Because of the design of these two services, intergovernmental relations are now more common between the federal government and the municipalities rather than between the states and their municipalities.

Important to notice that since the military government and particularly after the enactment of the 1988 Constitution, taxes never stopped rising, reaching 33.47% of GDP in 2014, only a little less than the average of OECD countries. Tax growths were not necessarily a result of economic improvements but rather of increasing the rates of some taxes and/or creating new ones.

As the table also shows, the federal government administers the bulk of public resources. As it also happens with the interdependence of political parties for electoral results, the tax system is also closed intertwined. When macroeconomic measures started to be adopted to tackle the current economic and fiscal crisis, the federal government stepped in to sort out part of the states' debt. There are now pressures from mayors of large cities to receive the same benefits granted to the states.

The Brazilian experience can be used to test the often-quoted assumption of the fiscal federalism literature, i.e., that federalism constraints fiscal policy making. The Brazilian case can be an example that although federal institutions do indeed

pose certain obstacles to addressing solutions to fiscal problems vis-à-vis unitary systems, other variables play a role in opening the way for bargaining and negotiations toward changing fiscal policies. These variables include *i*) the way federal institutions are designed, in particular intergovernmental relations; *ii*) the degree of consensus toward the introduction of a new macroeconomic and social agenda; and *iii*) the interdependence of the different levels of government in policy making. In certain federal countries such as Brazil bargaining and negotiation among actors of the three levels of government toward changing fiscal policy making are possible, showing that the design of federal institutions is an important variable when it comes to changing the status quo.

## 6 THE PROS AND CONS OF THE CURRENT DESIGN OF THE BRAZILIAN FEDERATION

Recent theories on federalism have tended to dedicate more importance to what make federations stable and sustainable rather than what they are (their definitions) and their characteristics (the centralization-decentralization continuum) (Bednar, 2009; Filippov et al., 2004).

According to this literature, there are two major threats faced by federations: if the federal government surpasses its competences and if the states do not fulfil their commitments to the federation. As shown above, Brazil has been a stable federation throughout the centuries and federalism has survived the country's political and economic turmoils. This is not to say that there is no need for improvements.

There is a consensus that redemocratization and the 1988 Constitution have strengthened the federation, despite later changes in the fiscal system destined to overcome the country's economic problems. Macroeconomic demands brought by changes in the international environment first and in the domestic environment more recently have arisen, requiring tight fiscal control and budget surpluses. This, of course, affects the financing of policies by the three levels of government and increases tensions between them.

The functioning of federalism, however, became much more complex since the enactment of the 1988 Constitution. Brazil is now marked by federally regulated policies and by constraints on subnational freedom to introduce legislation, blocked also by juridical interpretation, with few constitutional authorities allocated to the states and municipalities. At the same time, subnational governments now enjoy considerable administrative autonomy, responsibility for policy implementation, and a share of public resources that they had never enjoyed previously.

These characteristic begs some words about the views of the literature on fiscal federalism on the decentralization-centralization continuum. The literature on fiscal federalism is controversial. On the one side, there are those who claim that decentralization provides incentives for regional and local politicians to address different

demands from their constituencies. On the other side, centralization might decrease the veto power of subnational politicians against macroeconomic policies and the provision of public goods. In countries where regional imbalance is high, such as in Brazil, centralization of regulation and resources coupled with decentralization of implementation of public policies, in particular those designed as universal, may be one of the ways to preserve unity and to provide services on national standards. This feature, however, is rapidly affected when the economy slows down.

As for the literature on decentralization, Falleti (2005) has convincingly shown that decentralization policies in Brazil (in the fiscal, administrative, and political spheres) in the last two decades has produced significant changes to the intergovernmental structure given that more authority was devolved to governors and mayors. According to her, this was evident along the subnational share of expenditures and revenues and the distribution of policymaking authority. This is not to say, however, that subnational politicians control the federation as the literature on the early years of the enactment of the 1988 Constitution predicted.

Although the constitutionalization of a wide range of issues, in particular the earmarking of revenues, limits politicians' and governments' room to manoeuvre, it has been the way found by politicians to adopt national standards in a unequal polity. This constitutionalizations, however, is far from addressing many of the country's conundrums such as regional inequalities. History has shown that reducing this inequality is not a direct result of policies but rather a consequence of moments of economic growth.

The 1988 Constitution has strengthened the federation and provided for a broader role for government in key policy areas. The constitutionalization of several aspects of the country's life has resulted in tensions between the need for rapid responses to macroeconomic demands and the lengthy process of meeting these demands through constitutional change.

Although changing the status quo requires long negotiations with Congress, the outcomes are so far usually positive, as shown by several works.<sup>9</sup> Governors did not act as veto players in the approval of constitutional changes affecting their role and resources. As Cheibub et al. (2009) show, based on extensive data set of roll-call votes at the chamber of deputies between 1989 and 2004 in matters affecting the interests of governors, there is no indication that governors exert more pressure over national legislators than their political parties. Consequently, one cannot say that the federal system in Brazil introduces a bias toward the status quo that cannot be overcome by the national government on the basis of alternative institutional resources. The high degree of constitutionalization, however, gives rise to conflicts and judicial reviews requiring decisions from the Federal Supreme Court.

---

9. See, for instance, Figueiredo and Limongi (2016).

The main problems currently facing Brazil's federalism concern three issues. First and most important, Brazil is a federation that has always been characterized by regional and social inequality. Although the 1988 Constitution and those preceding it have provided several political and fiscal mechanisms for offsetting regional inequality and tackling poverty, these mechanisms have not been able to overcome the historical differences among regions and social classes. If improvements on the provision of health care and fundamental education have been achieved, regional and class divide remains.

Second, there has been a trend toward uniformity in subnational orders of government. Although the 1988 Constitution provides more freedom to subnational governments as regards implementation, other political, economic, and juridical forces restrict this freedom.

This freedom, however, is more limited to the states than to municipalities. One of the crucial issues in the states' decision-making freedom is how to reconcile the need for fiscal adjustment with the need for more autonomy for the constituent units. The states' investment capacity is also bound by their debt payments.

In the division of labour in the Brazilian federation chain, the states might be considered the weakest one for three reasons. Firstly, they have been losing resources vis-à-vis federal and local governments. Secondly, a survey carried out in 2013 found that citizens perceived the relative position of governors in the federation as minor, as compared to that of presidents and mayors. Presidents were seen as the most important player by 51.3%, followed by mayors, with 22%. Governors were perceived important by only 7% of citizens interviewed (Arretche and Schlegel, 2014). This perception reflects both the concentration of resources at the federal level and the broad jurisdiction of the federal government to legislate on policies subjected to the scheme of concurrent authority. Thirdly, the states are solely accountable for fighting violence and drug trafficking, a crucial unresolved issue in Brazil for the last decades.

Summing up, since the 1988 Constitution it is difficult to describe the Brazilian federation as either centralized or decentralized. The way the federal structure works changed several times since the enactment of the 1988 Constitution. Reforming the operation of a complex and constitutionalized federal country like Brazil depends on the design of the institutions such as constitutions and federalism, both flexible enough to adjust to new socioeconomic and political environments. If Brazil has been a federation free from threats of secession, there is certainly room for improvements.

## REFERENCES

- AMES, B. **Os entraves da democracia no Brasil**. Rio de Janeiro: Ed. FGV, 2003.
- ARRETCHE, M. **Estado federativo e políticas sociais: determinantes da descentralização**. Rio de Janeiro: Revan; São Paulo: Fapesp, 2000.
- ARRETCHE, M.; SCHLEGEL, R. **Os estados nas federações**. Tendências gerais e o caso brasileiro. International Development Bank, 2014.
- BEDNAR, J. **The robust federation: principles of design**. Cambridge: Cambridge University Press, 2009.
- BONIME-BLANC, A. **Spain's transition to democracy: the politics of constitutionmaking**. Westview Press, 1987.
- CHEIBUB, J. A.; FIGUEIREDO, A.; LIMONGI, F. Political parties and governors as determinants of legislative behavior in Brazil's chamber of deputies, 1988–2006. **Latin American Politics and Society**, v. 51, n. 1, p. 1-30, 2009.
- CONGLETON, R. D.; KYRIACOU, A.; BACARIA, J. A theory of menu federalism: decentralization by political agreement. **Constitutional Political Economy**, v. 14, p. 167–190, 2003.
- FALLETI, T. G. A sequential theory of decentralization: Latin American cases in comparative perspective. **American Political Science Review**, v. 99, n. 03, p. 327-346, 2005.
- FEREJOHN, J. The politics of imperfection: the amendment of constitutions. **Law and Social Inquiry**, v. 22, p. 501-531, 1997.
- FIGUEIREDO, A. C.; LIMONGI, F. Political Institutions and governmental performance in Brazilian democracy. *In*: **The Political System of Brazil**. Alemanha: Springer Berlin Heidelberg, p. 63-82, 2016.
- FILIPPOV, M.; ORDESHOOK, P. C.; SHVETSOVA, O. (Eds.). **Designing federalism: a theory of self-sustainable federal institutions**. Cambridge: Cambridge University Press, 2004.
- KINCAID, J.; TARR, A. (Eds.). **Constitutional origins, structure, and change in federal countries**. Montreal: McGill-Queens University Press, 2005.
- LIJPHART, A. **Patterns of democracy: government forms and performance in thirty-six countries**. New Haven: Yale University Press, 1999.
- MAINWARING, S. **Rethinking party systems in the third wave of democratization: the case of Brazil**. Stanford: Stanford University Press, 1999.

MAHAR, D. Federalismo fiscal no Brasil: a experiência histórica *In*: REZENDE, F. et al. (Eds.). **Política fiscal e programação dos gastos do governo** Rio de Janeiro: Ipea, p. 241-80, 1976.

OBINGER, H., LEIBFRIED, S.; CASTLES, F. (Eds.). **Federalism and the Welfare State: New World and European Experiences**. Cambridge: Cambridge University Press, 2005.

OECD – ORGANIZAÇÃO PARA A COOPERAÇÃO E DESENVOLVIMENTO ECONÔMICO. **Estudos econômicos – Brasil**. Rio de Janeiro: Ed. FGV, 2005.

OSTERKATZ, S. et al. **Regional authority in Latin America: an analysis of 27 countries (1950-2010)**. Paper prepared for the American Political Science Association Meeting, New Orleans, 2012.

PIERSON, P. Fragmented Welfare States: federal institutions and the development of social policy, **Governance**, v. 8, n. 4, p.449-478, 1995.

RIKER, W. **Federalism: origin, operation, significance**. Boston: Little Brown, 1964.

SAMUELS, D.; ABRUCIO, F. L. **Federalism and democratic transitions: the “new” politics of the governors in Brazil**. *Publius: The Journal of Federalism*, v. 30, n. 2, p. 43-62, 2000.

SAMUELS, D. J.; MAINWARING, S. Strong federalism, constraints on the central government, and economic reform in Brazil. *In*: **Federalism and democracy in Latin America**. Baltimore: The Johns Hopkins University Press, p. 85-130, 2004.

SOUZA, C. **Constitutional Engineering in Brazil: the politics of federalism and decentralization**. London: Macmillan; New York: St. Martin's Press, 1997.

\_\_\_\_\_. Brazil: The Prospects of a Center-Constraining Federation in a Fragmented Polity. **Publius: The Journal of Federalism**, v. 32, n. 2, p. 23-48, 2002.

\_\_\_\_\_. Federal Republic of Brazil. *In*: **Constitutional origins, structure, and change in federal democracies**. Montreal; London; Ithaca: McGill-Queens University Press, v.1, p. 76-102, 2005a.

\_\_\_\_\_. Brazil's Tax System: The Dilemmas of Policy Reform. **February Policy Paper for Focal: Canadian Foundation for the Americas**, 2005b.

\_\_\_\_\_. Brazil: from 'Isolated' Federalism to Hybridity. *In*: **Routledge Handbook of Regionalism & Federalism**. 1. ed. New York: Routledge, p. 457-470, 2013.

\_\_\_\_\_. Breaking the boundary: pro-poor policies and electoral outcomes in Brazilian sub-national governments. **Regional & Federal Studies**, v.25, p. 347-363, 2015.