

Brazil: The Challenges of Constitutional Implementation

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With seven different constitutions in its 115 years of federal governance, Brazil is now under the aegis of the 1988 Constitution. It is a result of the country's return to democracy after almost 20 years under a military regime. Brazil has had a variety of federal arrangements and has experienced periods of authoritarianism and democracy. The country's main social conundrums, regional and social inequality and poverty, while of concern to constitution makers since the 1930s, have not been vigorously addressed by any political system.

Federalism was introduced in 1889 and laid out in the 1891 Constitution. Unlike in many federal polities, federalism in Brazil was never a response to deep social fissures along ethnic, linguistic, and religious lines. Because the unity of the country has not been an issue since Brazil became a federal republic, the Constitution states that “all power emanates from the people”, not from the nation as a community with a common history, from the state as organized under one government, or from the constituent units as member states of the federation, signalling that Brazil’s federal system is built on the principle of individualism rather than communalism.

The 1988 Constitution expresses a constitutional tradition developed throughout the writing of seven constitutions. What distinguishes the 1988 Constitution is the popular participation that went into its creation. This was a vital element of the transition to democracy and became an important instrument for the legitimization of the Constitution and re-democratization overall. The Constitution's main political and policy objectives were to create a just society, to guarantee national development, to eradicate poverty and marginalization, to reduce social and regional inequalities, and to promote the well-being of all people without prejudice and discrimination. It provides the basic principles, rules, and rights, but also a wide range of public policies. It also (a) institutes municipalities as a tier of governance in addition to the states; (b) provides more resources to constituent units, in particular to local governments; (c) expands societal and institutional control over the three orders of government by increasing the power of both the legislature and the judiciary and by recognizing the role of social movements and of non-governmental institutions in controlling the government; and (d) universalizes social services, in particular access to health care.

Why then has Brazil had difficulties maintaining a stable federal democracy—one that is capable of preventing periods of authoritarian rule, reducing social and regional inequality and poverty, and reconciling social democracy with the constraints of the world economy? **The main problems Brazil faces today are due more to governmental difficulties in changing policy priorities and dealing with economic constraints not foreseen by constitution makers than to deficiencies in the Constitution itself.** There is a gap between the areas constitutional governance explicitly covers and politico-economic circumstances, and the latter still continue to take precedence over constitutional mandates.

The specific problems currently facing Brazil's federalism and constitutional governance involve several issues. First and most importantly, 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.

Governments of the three orders have not been able to reduce poverty and regional inequality. Their ability to act is limited by a number of factors, not the least of which is the fiscal requirements of international lenders and federal financial institutions and regulations. The states' capacity is also limited by their debt payments.

Another factor adversely affecting states is the opening up of Brazil's economy. This tends to make intergovernmental relations more complex, as it increases the differences between developed and less developed states. This also contributes to the current trend toward reversing previous, although timid, initiatives favouring economic decentralization.

An added issue is that in Brazil there are few mechanisms to provide for coordination between the three orders of government. This has become more important because municipal governments have had their financial standing upgraded within the federation vis-à-vis the states and have also been given responsibility for important social policies.

The prospect of transforming constitutional principles into policies for regional development is not currently on the agenda for Brazil. But transformation is not impossible given that overcoming regional inequality has always been a priority of Brazil's constitution makers. As well, it is not impossible to foresee greater clarification of the role of the states in the federation. This is because the states' debts and problems, including their failure to fight violence and drug trafficking, are now a high priority for the country as a whole.

Finally, there is now consensus that an in-depth review of fiscal and taxation mechanisms and of the role of each order of government in the federation is necessary. Enough short-term measures have been taken to alert decision makers that significant changes are needed. These changes, however, are likely to be preceded by broad debate involving governmental and private interests.

How the resolution of significant conflicts of interest is likely to be negotiated is not yet clear. One thing is almost certain: changes in sensitive areas of interest are likely to create uncertainty among the electorate and investors.

Resolving Brazil's main problems, in particular social and regional inequality depends less on federalism and on the Constitution itself than on addressing broader political conflicts, redefining policy priorities, and improving economic performance. Nevertheless, the use of public policies to overcome a long history of inequality require governmental intervention and resources at a time when many see governments more as a hindrance than as a solution. This view would limit the role of governments, particularly in the developing world, to achieving budget surpluses, much to the detriment of increased public spending.