

Federal Republic of Brazil

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Brazil has been a federal country for more than a century. With a land area of 8,514,215 square kilometers, Brazil has a population of 175,568,265 and an annual population growth of 1.4 percent. The urbanization rate is 81.2 percent. In 2002 Brazil's gross domestic product (GDP) amounted to approximately US\$451 billion, and its GDP per capita was \$2,582. According to the 2001 Census, most Brazilians (54 percent) declare themselves white, followed by mulatto (39.9 percent), black (5.4 percent), Oriental (0.5 percent), and indigenous people (0.2 percent). The great majority said they belong to the Roman Catholic Church (73.6 percent), followed by those who said they belong to no religious group (7.4 percent). Because the country was colonized by Portugal, Brazil's official and predominant language is Portuguese.

Brazil is under the aegis of its seventh constitution, drafted between 1987 and 1988 as 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.

This chapter discusses why Brazil has had difficulties maintaining a stable federal democracy 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. I argue that 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.

Creation of the Federation and Recent Developments

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, and the country has never had a civil war. 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. For these reasons, there is no constitutional provision for secession, and the 1988 Constitution states only that no constitutional amendment may abolish the "federal structure of the state." Because the unity of the country is not threatened, the Constitution states that "all power emanates from the people" (Art. 1), 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 federation was created with 20 provinces previously established by a unitary state. Brazil is now comprised of 26 states plus the Federal District (Brasília) and 5,561 municipalities. Since the promulgation of the 1988 Constitution, pressure for territorial subdivision has come from municipalities, not from states. The country is officially divided into five regions: North, Northeast, Centre-West, Southeast, and South.

There is a consensus that regional inequality is Brazil's major constraint against federalism and that regional economic concentration worsened during the 1990s. Data show the existence of three “Brazils” composed of: (1) an area covering seven states in the South region that, together with the Federal District, share a high level of human development; (2) an area starting in Minas Gerais and extending northwest that has a medium level of human development; and (3) an area composed of the states of the Northeast region plus the states of Pará and Acre that is characterized by low levels of human development.¹

Regional economic disparity decreased slightly under the military regime that governed from 1964 to 1985. However, this decrease 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 percent a year for more than a decade allowed decision makers to adopt policies aimed at decreasing regional inequality.

Federalism and Constitutionalism in Previous Constitutions

The characteristics of Brazil's federation and constitutionalism can be better understood by examining the country's previous constitutions. This is because the constitutions mirror major political and territorial pacts made throughout the country's history and because each new constitution, while expressing changes in the political regime, retained or strengthened the constitutional mandates of previous constitutions, with few exceptions.

Debates on the territorial division of power began before the end of colonial rule. The main goal of the republican movement was federalism, not freedom. Nevertheless, together with decentralization, federalism and freedom were presented as synonymous. The option of federalism, despite mirroring the US model, was not simply a copy of its predecessor because its adoption was preceded by debate and because the provincial elites were in favour of decentralization, which was seen as better achieved by a federal than a unitary system. Although US institutions such as the presidential system, federalism, and judicial review were adopted and remain the bases of Brazilian political institutions, and although the Weimar Constitution influenced the trend in Brazil toward constitutionalizing social rights and benefits, Brazil has built its own constitutional history. The 1988 Constitution expresses a constitutional tradition developed throughout the writing of seven constitutions.

Brazil first promulgated a written constitution in 1824 following its achievement of independence from the Portuguese Empire. This Constitution devolved administrative powers to the existing 16 provinces although they had no formal or informal political autonomy. This decentralization 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 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, introduced the constitutionalization of socio-economic measures to clarify that Brazilians had several social and economic rights. It also expanded intergovernmental relations by introducing several measures allowing the federal government to grant resources and technical assistance to subnational units. The municipalities were permitted to collect their own tax revenues 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.

The Constitution of 1937 was conceded by Vargas after he took power in a military coup. This coup was deemed necessary to combat communism and the oligarchies, the latter nourished by the impossibility of decreasing the importance of regional interests in Congress, and to build political and administrative unity in order to advance socio-economic modernization. Vargas closed down Congress and the state legislatures and replaced all elected governors with intervenors. Subnational governments lost revenue to the federal government, which was granted the right to regulate Brazilian exports and interstate exchange. By denying the 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 percent of all state revenues.²

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.

The drafting of the 1946 Constitution was influenced by liberal ideals. However, they did not last long given the urgent 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 designating 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 nonpayment of federal quotas to states and municipalities.

The 1946 Constitution is still Brazil's longest-lasting constitution. Its measures and the democratic regime that it regulated survived several crises: Vargas's suicide, the resignation of President Quadros in 1961, and the accession of Quadros's vice president, Goulart, to the presidency despite the hostility of the military and the entrepreneurs. However, democracy did not survive the major economic and political crisis of the mid-1960s, and a military coup followed, finding Brazil's government among the wave of dictatorships that ruled Latin American regimes during this time.

The military did not immediately issue a new constitution. Only in 1967 was a new constitution promulgated, and in 1969 it was again changed through a constitutional amendment. The 1967-69 Constitution, together with a 1966 fiscal-reform law, boosted the centralization of political power and public finance. Competitive elections were forbidden for federal and state executive positions and for the 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.

Creation of the 1988 Federal Constitution

Redemocratization started in 1985, and a new constitution was designed to end authoritarian rule. The Constitution's key political and policy objectives were to create a just and solidary society, to guarantee national development, to eradicate poverty and marginalization, to reduce social and regional inequalities, and to promote the wellbeing of all people without prejudice and discrimination. In response to pressure from social movements, in particular from minority communities, the Constitution's preamble and several articles address the issue of prejudice and discrimination. Surprisingly for a country in the process of freeing itself from a military regime, restoring or maintaining democracy is not among the Constitution's stated objectives, although Article 1 does declare Brazil to be a democratic state and several mechanisms were created to guarantee the maintenance of democracy.

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 National Assembly (CNA) would function were the first signal that drawing up the constitution was going to be a bottom-up process: Instead of only one committee to design a draft, there were 24 subcommittees, which later merged into eight committees and finally into a systematization committee of 97 members, as well as plenary sessions with two rounds of voting. One innovation in the rules was to allow the proposal of amendments to come from outside Congress if up to 30,000 voters signed a petition. This was widely used by social movements and corporatist organizations for lobbying. In another attempt to encourage popular participation, citizens were invited to send their suggestions for the Constitution by post. The bottom-up intentions of the constitution makers proved successful: 122 popular amendments were signed by more than 12 million voters, and 72,719 suggestions from

individuals were sent to Congress.³ Popular participation was a key element of the transition to democracy and became an important instrument for the legitimization of redemocratization.

The 1988 Constitution is more detailed than its predecessors. When approved, it had 245 articles plus 70 articles in the title on Transitional Constitutional Measures. It is divided into nine titles: Fundamental Principles, Fundamental Rights and Guarantees, Organization of the State, Organization of the Powers, Defence of the State and of Democratic Institutions, Taxing and Budgeting, Economic and Financial Order, Social Order, General Constitutional Dispositions, and Transitional Constitutional Measures. This range of legislative matters reflects the tradition of constitutionalizing whatever is considered important but also constitutes a reaction against the military's contempt for constitutional mandates and constraints. With the approval of constitutional amendments, the Constitution was expanded to 250 articles plus 94 articles in the title on Transitional Constitutional Measures, which is similar to the number of articles found in the Indian and the South African constitutions.

The Constitution stipulates not only principles, rules, and rights, but also a wide range of public policies. The title on Economic and Financial Order, for instance, regulates the liberal principles of the state and also provides guidelines both for urban and agrarian policies and for private financial institutions. The title on General Constitutional Dispositions similarly details the limits imposed on the federal government to finance the creation of new states and provides for other matters then considered important that had been ignored by the military regime. The Transitional Constitutional Measures created a new state, upgraded two territories to the status of states, and regulated specific issues regarding civil and military service, the judiciary, and public administration, although each of these is also detailed in the Constitution's main body. The title on Defence of the State and of Democratic Institutions allows the president to take exceptional measures if democracy is threatened.

The 1988 Constitution is unique vis-à-vis other Brazilian constitutions. First, it was not based on a draft drawn up by experts, as happened in 1891 and 1934, nor did it mirror previous constitutions, as in 1946. Second, previous constitutions were a result of conclusive political processes and the inauguration of a new order, whereas the 1988 Constitution came into being as part of the political process of transition to democracy. Third, and directly related to federalism, the CNA was free to decide whether to abolish the federal system, an option previously prohibited.

The 1988 Constitution was not influenced by any particular ideology or any foreign power. Although there was no constitutional debate, such as occurred among the US founding fathers, one can say that the 1988 Constitution was the result of political momentum, marked by a need to legitimize democracy. 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 ordinary or by complementary law, as happens in Switzerland, despite being very detailed. Consensus was the way forward given the lack of a clear political or ideological majority.

For these reasons, the constitution makers had several incentives to design a federation in which power is decentralized and in which several unequal but competing power centres have the strength to play a part in the decision-making process. All of

these factors promoted unprecedented constraints against a previously centralized federation.

In many senses, the 1988 Constitution contrasted with previous constitutions, particularly (1) in providing more resources to subnational units, (2) in expanding societal and institutional control over the three orders of government by increasing the power of the legislature and of the judiciary and by recognizing the role of social movements and of nongovernmental institutions in controlling the government, and (3) in universalizing social services, especially access to health care, which until then had been restricted to those who had formal jobs. However, the 1988 Constitution maintained certain characteristics from previous constitutions, such as (1) the trend toward constitutionalizing a wide range of issues, which has also been maintained in the constitutional amendments approved so far; (2) the strengthening of municipal governments vis-à-vis their state governments, as also happens in South Africa; (3) the trend toward uniformity in subnational orders of government, particularly state governments, which has tied their hand on the introduction of policies closer to their priorities; and (4) the failure to overcome regional and social inequalities despite the existence of policy mechanisms in the Constitution designed to offset these inequalities.

Constitutional Principles of the Federation

Federalism

Unlike many federations, Brazil is a three-tiered federation, as is Belgium. This is because the municipalities were never a creation of the states and because the 1988 Constitution incorporated municipalities, together with the states, as part of the federation, reflecting a tradition of municipal autonomy and little state control in municipal matters.

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, which is referred to in the Constitution as “the Union.” 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.

Even though the 1988 Constitution decreased the number of cases in which the federal government may intervene in state affairs and in which the states may intervene in municipal affairs, the Constitution still permits federal and state intervention, subject to approval by the legislature. Federal intervention was widely used only in the early years of the republic and by Vargas to reduce the powers of subnational political elites. Federal intervention may occur if there are threats to national unity, public order, the republic, or the democratic order and if state and municipal finances require reorganization. When an intervention has been declared, no constitutional amendment may be approved.

Since the 1988 Constitution, it has been difficult to describe the Brazilian federation as either centralized or decentralized, as is also true of Australia's federation. The Brazilian federation has been marked by federally centralized policies and by constraints on the subnational freedom to introduce legislation, a freedom also restricted by juridical interpretation. Moreover, few constitutional powers are allocated to the states

and municipalities, as also happens in Mexico and South Africa. At the same time, state and municipal governments now enjoy considerable administrative autonomy, responsibility for policy implementation, and a share of public resources they had never enjoyed previously.

Status of Constituent Units

Constitutionally, each constituent unit has the same powers as those granted to constituent units in the United States and Mexico (i.e., Brazil has adopted symmetrical federalism in a socio-economically asymmetrical polity). Two main factors have stimulated this symmetrical federalism. First, the rules governing subnational jurisdiction, revenue, and many public policies comprise detailed sections of the Constitution, unlike in the United States and Australia, for instance. Second, the Federal Supreme Court systematically requires the state constitutions and laws to reflect the federal Constitution, thereby imposing a hierarchical interpretation of constitutional norms even though the Constitution does not state this explicitly.

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.

The states have their own constitutions, which were promulgated in 1989. The drafting of these constitutions followed the same rules applied to the federal Constitution, as did their approval and further amendments. Although state constitutions are not bound by federal constraints, except that they must adhere to the principles in the federal Constitution, most of them replicate federal mandates, as in South Africa. Attempts by those drafting state constitutions to create rules not explicitly considered by the federal Constitution have generally been overturned by the Federal Supreme Court. This is because both the 1988 Constitution and its further amendments are highly detailed and because of the Federal Supreme Court's view that the state constitutions and laws should reflect the federal Constitution.

Elections for the president, for 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. Reelection of those occupying executive positions was introduced in 1997, with only one reelection 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 Allocation of Powers

Brazil's constitutions have always defined the jurisdictions of the three orders of government, and the 1988 Constitution furthered this trend. The Union holds the largest number of exclusive powers, including those that are most important, as is the case in Russia. Although residual powers reside with the states, as in the United States, Australia, and Mexico, the high degree of detail in the Constitution leaves little room for the states to make use of their residual powers. Concurrent powers are listed in Article

23 of the Constitution. Although these powers cover a wide range of issues (see Table 1), gaps remain between what the article says and how its provisions are put into practice. If a state government introduces legislation regarding an issue on the list of concurrent powers and if federal legislation on the same issue is later approved, the federal legislation prevails. Unlike in many federations, with the notable exception of India, 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. However, this has not happened because the capabilities of subnational governments to carry out public policies are highly uneven.

Police powers are also regulated by the Constitution. The federal government is responsible for the federal police and for the railroad and highway police forces. The states are responsible for military and civil police forces and for a fire brigade linked to the state police force. The Union finances these two police forces and the fire brigade in the Federal District. Local governments may, if they wish, have a municipal guard to protect their assets and services. Municipal guards may not carry weapons, but there is pressure to arm them because of increasing urban violence.

The rights and duties of the military forces and of the federal and state police forces are detailed in the Constitution, as are those of civil servants. Coupled with rules and procedures governing public administration, these regulations reflect the trend in Brazil toward constitutionalizing whatever is considered important as well as the strength of certain lobbies in the CNA.

The logic governing the distribution of powers in the Constitution is paradoxical: On the one hand, a decision has been made to decrease the federal government's revenues to amounts lower than those received by the other orders of government; on the other hand, the federal government's legislative role and jurisdiction have been increased. It seems that the constitution makers, given Brazil's two long periods of authoritarianism, were still influenced by the notion of an all-powerful federal government.

Although the Union enjoys considerable legislative and assigned powers, scholars differ on how powers have been informally divided among the three orders of government since redemocratization. There are those who argue that the Brazilian political system is blocked by state interests given the informal power that the governors have over their state delegations in Congress.⁴ Others have pointed out the federal executive's success in dealing with Congress.⁵ Another view is held by those who regard the current features of Brazilian federalism as strengthening democracy through the creation of several, albeit unequal, power centres that compete both among themselves and with the federal executive.⁶ From this perspective, because the federal and subnational governments share powers, increasing the powers of subnational political elites, in particular the state governors, does not diminish the role of the Union.

Constitutional lawyers argue that the balance of power favours the Union because of its central role in many public policies, the lack of financial resources of poor states, and federal legislation ensuring excessive uniformity among state governments.⁷

Certain analysts argue that the balance of power within the federation favours local governments given the historical and current strength of Brazilian municipalities,

although their financial strength and their role in implementing social policies can be considered a matter not of federalism but rather of decentralization.

Neither mechanisms nor institutions to regulate intergovernmental relations are provided for in the Constitution. A paragraph in Article 23 states that a complementary law should be issued regulating cooperation among the three orders of government, but this has not been on the agenda and has yet to be done. 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 regarding health care and primary 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 Union-dominated and frequently competitive.

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 the most active initiators of judicial reviews. Paradoxically and until very recently, judicial reviews proposed by state governors have not normally been an attempt to defend the states' autonomy vis-à-vis federal legislation but rather have called for federal juridical intervention against measures taken by the state assemblies.

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.

The Structure and Operation of Government

General Institutions

Brazil has always had a presidential system, except for during 14 months between 1961 and 1963. Nevertheless, some attempts have been made to introduce a parliamentary system, including during drafting of the 1988 Constitution and, in the early 1990s, when a plebiscite was called to change the system.

Except during authoritarian periods, the separation of executive, legislative, and judicial powers has been a prominent principle in the Constitution, which provides detailed rules concerning the jurisdiction and functioning of these powers. However, as in many other presidential countries, the executive branch has become the main proposer of legislation.

A system of checks and balances prevails. The Federal Supreme Court may declare laws issued by the executive to be unconstitutional and may overturn Congress's decisions. The judiciary's revenue comes from the federal budget approved by Congress. Regarding relations between the executive and the legislature, Congress has to approve: (1) international treaties; (2) peace agreements and declarations of war; (3) exceptional

presidential decisions to preserve democratic order, provided for in the section of the Constitution on Defence of the State and of Democratic Institutions; (4) the Union's accounts; (5) referendums and plebiscites; and (6) the use of water and mining resources in indigenous areas. The Chamber of Deputies may initiate procedures to impeach the president, with the Senate holding responsibility for passing judgment in such cases. The Senate has a broader role in implementing checks and balances among the three powers (as detailed in Article 52 of the Constitution). It is responsible for ruling on the removal of members of the Federal Supreme Court, ratifying certain appointments of officials by the president, and deciding on issues regarding any internal and foreign loans to the three orders of government.

Federal Legislature

The federal legislature is bicameral. Congress is made up of the Chamber of Deputies and the Senate. There are 513 federal deputies and 81 senators. Each state and the Federal District elects three senators to serve eight-year terms. In the Chamber, the number of seats per state is determined by population, with a minimum of 8 and a maximum of 70 seats, and in practice each state acts as an electoral district. Given the enormous population differences among states, this rule results in highly disproportionate representation, with São Paulo's 24 million voters electing 70 representatives (one deputy per 350,000 voters), while in Roraima, Brazil's smallest state in terms of population, 186,000 voters elect 8 representatives (one deputy per 23,000 voters). The overrepresentation of smaller units was introduced in 1932 to counterbalance the power of the states of São Paulo and Minas Gerais in the federation. It has been maintained ever since.

Like most legislatures, Congress must approve laws proposed by the executive. It also has to vote on the budget tabled by the executive. The Senate not only shares most of the Chamber's powers, as in Australia, but also has constitutional powers of its own.

Since redemocratization, no president has achieved a majority in Congress; consequently, presidents have had to build coalitions of several parties represented in Congress in order to pass legislation. This is crucial for constitutional amendments, when a qualified majority is required.

As mentioned above, the Union holds a considerable amount of constitutional power, including power to propose legislation and to introduce and change public policies. This does not mean, however, that Congress is a minor player, particularly given the constitutionalization of a wide range of issues. Congress has also played an active role in scrutinizing public issues, having set up several commissions of inquiry in recent years.

Federal Executive

The federal executive comprises the president and ministers. The 1988 Constitution increased the executive's powers, which now encompass 25 items of Article 21. The areas covered by these powers range from those normally overseen by executive governments in a presidential system (e.g., foreign affairs, national defence, and monetary policy) to several specific policies on which the executive provides guidelines. There is no constitutional measure requiring cooperation or consultation between the Union and the states on matters concerning the Union's jurisdiction.

Although the Constitution increased the number of individuals entitled to propose legislation -- Congress members, the president, members of the Federal Supreme Court, the attorney general, and citizens, the latter if a petition is signed by at least 1 percent of the national electorate distributed among at least five states -- the Union has exclusive jurisdiction to initiate legislation on 29 subjects detailed in Article 22. These include civil, commercial, penal, electoral, agrarian, maritime, aviation, space, and labour laws, citizenship, macroeconomic measures, public utilities, the postal service, foreign and interstate commerce, indigenous populations, social security, and general rules for bidding. The Union's jurisdiction to print money is exercised through a nonautonomous central bank without representation from the states. Article 22 stipulates that only the Union may pass legislation on the following areas in which municipal, state, and Union powers are concurrent: hydroelectricity, traffic and transport, mining, and education. This apparent contradiction reflects the Brazilian trend toward uniformity among the three orders of government and a quest for national standards.

Article 23 states that the three orders of government are concurrently responsible for preserving the Constitution and democratic institutions and also lists several policy areas in which the three orders share jurisdiction. Article 24 lists 16 matters that may be concurrently legislated by the Union and the states (but not by the municipalities). These include taxation, finance, control of the economy, budgeting, urban laws, use and protection of natural resources and the environment, and imprisonment.

Federal Judiciary

There has always been a division of powers between the federal and state courts; thus the constituent polities are not represented in the federal judiciary. Brazilian constitutionalism has never been influenced by traditional or religious law, and no demands have ever been made for the recognition of traditional, communal, or religious courts. The constitutions have always reflected a civil-law tradition, like those of Mexico and Quebec.

The federal judiciary comprises several court networks: the Federal Supreme Court, the Superior Court of Justice, regional federal courts, labour courts, the Electoral Court, and the Military Court.

The Federal Supreme Court is the federation's highest court. Since 1988 it has enjoyed the juridical-political attribution typical of a constitutional court, but it also judges certain cases of appeal. Its jurisdiction includes: (1) judicial reviews of federal and state laws and rules; (2) deciding conflicts between the federal government and the states, between two or more states, and between state governments and their state assemblies; and (3) judicial reviews of municipal legislation considered unconstitutional. This means that the Supreme Court may declare federal, state, and municipal laws unconstitutional and therefore null and void. It has no advisory jurisdiction. The Superior Court of Justice has the jurisdiction to rule on administrative conflicts between two or more of the constituent units.

The Supreme Court has 11 members appointed by the president subject to Senate approval. Members of all other federal and state judiciary branches enter the service through a selection procedure open to all law graduates. Federal and state judges may be removed only by their peers, except for those sitting on the Supreme Court, who may be removed only by the Senate.

State Institutions

As in South Africa, Brazil's state political institutions are similar to those of the Union, except that they are not bicameral. The number of state deputies and their pay ceilings are determined by the federal Constitution. Although the states enjoy relatively little constitutional power, they (1) levy the highest tax, determining its rate in absolute terms (this is a value-added tax that, unlike in many federations, is under the states' jurisdiction);⁸ (2) administer more public resources than they did before redemocratization; and (3) enjoy greater administrative freedom. Nevertheless, given the economic disparity among states, their financial and decision-making capabilities are highly uneven.

As with the separation of powers at the federal level, the separation of state powers is constitutionally guaranteed. Each state has a court hierarchy, with a judge generally based in each large municipality, and a state tribunal. Members of the state tribunal are appointed by the governor subject to the approval of the state assembly. State courts exercise only state jurisdiction because there is a regional federal court in each state. Labour courts in the states also belong to the federal court network. Decisions by state courts may be reviewed by superior federal courts.

There is no constitutional provision regulating relations between the states. 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 great competition, particularly in attracting investment. There is only one interstate council, which is made up of the states' secretaries of finance, but this council is not mentioned in the Constitution.

Article 43 states that for administrative purposes, the Union may create special regional agencies, run by the federal government, with the aim of decreasing regional economic and social disparities. Based on Article 43, the governors of less developed regions have a seat on a federal council that decides on federal fiscal incentives for investors to locate in these regions. This mandate has not yet led to coordinated federal actions nor has it contributed to alleviating regional inequality.

More recently, as a result of pressure from the media concerning urban violence, the federal government has sponsored a joint program with the federal and state police forces, public prosecutors, and judges designed to ensure that they work together. As with other programs, this program was initiated by the Union, which is providing federal resources to stimulate state cooperation and adherence to the program. Nevertheless, there are few examples of cooperation between the Union and the states and among the states.

Municipal Institutions

The rules that apply to municipal governments, including those concerning financial resources, are written in the federal Constitution. The autonomy of municipal governments has always been preserved by Brazilian constitutions under democratic regimes. However, Brazil's deep-rooted inequality affects local autonomy and resources as well as the capacity of municipalities to implement policies.

The rules for municipal elections are stipulated federally. The number of councillors varies from a minimum of 9 to a maximum of 55 according to population size, as determined by the Constitution. Councillors' pay ceilings are also determined federally. Moreover, the 1988 Constitution states that the municipalities have to issue their own constitutional rules, known as Organic Law.

Since the mid-1990s, municipal governments have become the main providers of health care and primary education, following rules and using earmarked resources determined by constitutional amendments. The reason for this federally supported municipalization of public services was to guarantee local citizens access to health care and education based on national programs and minimum standards. In terms of their adherence, this transfer of responsibilities to municipal governments has been 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 primary level. This transfer of policy implementation has reduced conflict among municipal governments for federal resources. And intergovernmental relations are now more common between the Union and the municipalities than they are both between the Union and the states and between the states and their municipalities.

Inter municipal 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.

Municipalization is not limited to the transfer of responsibility for policy implementation to local governments. It also gives local communities a share of decision-making responsibility regarding the provision of local public services. The 1988 Constitution contains several mechanisms enabling grassroots movements to participate in certain decisions and to oversee public matters, particularly at the municipal level. Participatory forums stimulated by the 1988 Constitution, federal legislation, federal programs, multilateral organizations, and municipal governments themselves are now widespread in Brazil's local communities in an attempt to increase local democracy.

Fiscal Powers

Taxation

The Constitution grants taxation authority to the three orders of government. Some taxes are exclusive to one order, others are collected by the Union and shared with states and municipalities, and others are collected by the states and shared with their municipalities. The Constitution does not grant any order of government the autonomy to introduce a new tax without an amendment to the federal Constitution, although there are a few exceptions, such as the imminence of a war or the need to finance the social-security system, the latter requiring the enactment of a law. The rates and rules for certain taxes, including state and municipal taxes, are determined by federal legislation. Royalties paid by companies for the natural resources they use are collected federally and redistributed to states and municipalities that produce minerals, oil, natural gas, and hydroelectric power.

Two constitutional tax principles are worth mentioning. First, Article 150:IV prohibits any order of government from taxing another order's property, income, or services, thus guaranteeing intergovernmental immunity from these taxes. Second, Article 145, Paragraph 1, bases taxation primarily on the ability-to-pay principle rather than on the benefit principle, stipulating that taxes "whenever possible, shall be graded according to the economic capacity of the taxpayer," which signals that the tax system should be predominantly redistributive. This principle, however, may be applied only to direct taxation, whereas the bulk of taxes levied are indirect.

The Constituent National Assembly's promotion of fiscal decentralization was an exercise in political and constitutional engineering for which there were several reasons. First, there was consensus among participants in the CNA on weakening the federal government financially. The challenge was deciding how to divide resources among the country's unequal and diverse regions. Second, there was consensus on rejecting whatever had been done by the military regarding the centralization of resources, which entailed confronting the federal executive. Paradoxically, the federal executive did nothing at this time to prevent its financial losses. Third, economic issues such as the public deficit, inflation control, and globalization -- issues that would later confront the new democracy -- were on neither the drafters' nor the country's agenda given the enthusiasm at the prospect of restoring democracy. The importance of the 1988 Constitution rests on the fact that the decision to increase the financial role of subnational governments was made not by the government but by the constitution makers.

The drafters' responses to demands for decentralization were very positive. Today subnational governments collect 32 percent of all taxes collected in the country. With transfers from federal taxes, they are now responsible for 43 percent of tax revenue. In terms of spending, subnational governments are responsible for 62 percent of payroll expenditures and for 78 percent of public investment.⁹

Borrowing

To be able to borrow, federal, state, and local governments must (1) obtain the approval of their legislatures; (2) submit their requests to the Central Bank, which sends a report to the Senate recommending approval or rejection of a request; and (3) receive Senate approval. However, in 1996 a major scandal was disclosed involving certain states and municipalities that were making improper use of a mandate in the 1988 Constitution that allowed subnational governments to issue bonds in order to pay for debts contracted before 1988. The bonds could be issued only when the courts recognized the debt as pertinent. Because of the high rates of inflation before 1994, politicians had overestimated the amount of these debts still owed to creditors and had apparently used the excess financial resources for other purposes. As a result of this scandal, the Senate set up a Parliamentary Inquiry Commission. Although the commission failed to start procedures to punish officials responsible for the misuse of financial resources, there were important consequences. Several new rules and laws were passed restricting subnational debts, and the Senate issued a self-binding resolution that delegated some of its powers to the Central Bank and opened the way for the promulgation of the Fiscal Responsibility Law in 2000. This law imposes limits on public-sector debt and on payroll expenditures and prohibits the federal government from covering new debts contracted by subnational governments.

State and municipal governments may borrow from the market and from federal financial institutions, although the rules and restrictions on borrowing are now tougher.

Public debt has always been a serious constraint, and subnational debt was of major importance until the 1990s. The states were the largest debtors, with 42 percent of the public-sector debt in 1997, when the federal government launched a program to renegotiate the states' debts. Although a part of their debts was transferred to the federal government and another part was renegotiated with the federal government, the states' capacity to fulfil their obligations to the Union has been a matter of concern.

Allocation and Expenditure of Revenue

Despite the constitution makers' efforts, concentration of revenue in the Union has continued, particularly since the constitutional amendments approved in the 1990s, as has the concentration of economic activities in a few regions. However, this does not mean that a system of regional equalization was not pursued by the drafters of the 1988 Constitution.

The 1988 Constitution introduced complex mechanisms for intergovernmental tax transfers. Federal revenues from income tax and from the tax on industrial products are shared through participation funds established for this purpose. The states receive 21.5 percent of these tax revenues, 85 percent going to the North, Northeast, and Centre-West regions and the remaining 15 percent to the South and Southeast regions. The formula for determining state shares is based on population size and an inverse of per capita income. The municipalities receive 22.5 percent,¹⁰ 10 percent going to the state capitals and the remaining 90 percent being calculated using a formula based on population size and per capita income. 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 by the Canadian and the German constitutions.

There are also schemes for federal transfers to subnational governments. Approved by constitutional amendments in 1996 and 2002, these transfers enable subnational governments to carry out national policies such as health care and primary education. Grants are also sent by the federal government to specific subnational governments. These grants, known as negotiated grants, were of great importance before the policy of tight fiscal control was implemented, and they were highly conditioned by the need to keep the federal governing coalition together.

Apart from the revenue-sharing scheme mentioned above, the 1988 Constitution also stipulates that 3 percent of the federal tax transfers should be used to finance programs in the North, Northeast, and Center-West regions. Furthermore, Article 165, coupled with Article 35 of the title on Transitional Constitutional Measures, attempts to provide for a more equitable and more transparent distribution of federal budget resources. The former states that national public revenue should be regionalized to ensure a more equitable distribution of federal spending on regions and on states. The latter stipulates that ten years after the Constitution's promulgation, the allocation of federal resources among regions and states should be proportionate to their populations. However, these initiatives have not decreased horizontal imbalance, either in absolute or in proportional terms.

Foreign Affairs and Defence Powers

Responsibility for foreign affairs and defence lies exclusively with the president and the Union. The president has supreme authority over the armed forces. According to the Constitution, military service is mandatory for everyone except women and clerics. The Constitution provides alternative service for those who argue against military service on religious, political, or philosophical grounds.

Congress has to approve presidential decisions concerning declarations of war, peace agreements, and granting foreign powers authorization to cross the national territory. Congress is also responsible for ruling on international treaties involving financial resources. The states have no authority in these matters. Trade, investment, and tourism promotion are carried out by federal ministries and agencies, although more recently certain states and large municipalities have established agencies to promote their interests abroad.

Regarding supranational institutions, Article 4 states that Brazil should pursue the “formation of a Latin-American community of nations.” To date, there has been only one regional commercial agreement, the Mercosur, signed by Brazil, Argentina, Paraguay, and Uruguay. Joining the Free Trade Area of the Americas is now under debate. The states have no formal representation in these agreements, and they do not organize specific lobbies for or against supranational agreements.

Protection of Individual and Communal Rights

The Union is the only order of government authorized to legislate on citizenship, nationality, naturalization, migration, and extradition of foreigners. Dual citizenship does not exist; Brazilians are citizens of the Union alone, not of the states.

The title of the 1988 Constitution on Fundamental Rights and Guarantees is dedicated to individual and communal rights, with 11 articles and several chapters and sections. It assures all Brazilians and foreign residents the right to life, freedom, equality, security, private property, and religious freedom. Men and women are equal before the law. Bail is not granted in criminal cases involving racism, torture, drug trafficking, and terrorism or for crimes committed by armed groups acting against either the constitutional order or the democratic federation. There are also several articles protecting the rights of the accused and the imprisoned.

Social rights are also found in this title, including those related to education, health, work, housing, leisure, public safety, social security, protection of mothers and children, and help for vulnerable members of society. However, given the financial and economic difficulties Brazil faces, these rights are poorly protected. The protection of workers' rights is the main focus of this title's Chapter II on Social Rights, reflecting the strength of the unions during the democratic transition and the effectiveness of their lobbying in the CNA.

This title's Chapter IV on Political Rights regulates both voters' and candidates' rights and obligations. Women have had the right to vote since 1932. Chapter V of this title covers the creation and functioning of political parties, which must receive at least 0.5 percent of the valid votes in the Chamber of Deputies' last election. There is no public funding of election campaigns, although this is now under debate. Political parties are entitled to a party fund, financed in part by the Union, and to free access to television and radio broadcasting according to federal rules.

In the title on Social Order, Articles 231 and 232 of Chapter VIII regulate the rights of indigenous populations. They have the right to their own social organization, language, religion, and traditions and the right to live on the land they have traditionally occupied, as delimited by the Union.

The title on Defence of the State and of Democratic Institutions allows the president, with the authorization and participation of Congress, to suspend certain individual and collective rights if there are threats to democracy, such as the right to meet with others, the right to privacy in personal correspondence, and the right to freely come and go.

All state constitutions have a list of individual and communal rights, incorporating rights provided for in the federal Constitution as well as a few other rights. Like the Union government, the states do a poor job of protecting social rights due to financial constraints.

Constitutional Change

Since the promulgation of the 1988 Constitution, its reform has been on the agenda of the federal and state governments and of multilateral and business organizations. These bodies have called for a broad constitutional review, particularly regarding privatization, the taxation and social-security systems, and workers' rights. They argue that the Constitution should be reformed to guarantee the country's "governability" and to make Brazil a global player with the ability to adapt to changes in the international environment. More recently, other arguments for constitutional reform have been used, such as the need to decrease government spending in order to free the country from its dependence on foreign resources and also to redirect resources in the fight against poverty. Many changes have been made, but they are more likely to tighten fiscal control than to free taxpayers, particularly businesses, from what they claim is a heavy tax burden preventing them from competing abroad.

The number of votes required for a constitutional amendment is low in comparison to the number required in other countries: three-fifths of the members of Congress. However, amendments have to be approved by two rounds of roll-call voting in both houses. Proposed constitutional amendments must be supported either by one-third of Congress members, by the president, or by more than 50 percent of the members in at least half of the 26 state legislatures. Provisions immune from amendment are the federal system; direct, secret, and periodic voting; the separation of executive, legislative, and judicial powers; and individual rights and guarantees.

The 1988 Constitution was promulgated on the condition that it be reviewed within five years, as stated in Article 3 of the title on Constitutional Transitional Dispositions. However, because those who advocated a total revision at the end of this review period were still poorly organized, only six amendments were approved. These amendments required an absolute rather than a qualified majority and are referred to as revision amendments.

Thus far the 1988 Constitution has been Brazil's most amended constitution. As of mid-December 2003, 42 amendments had been approved as well as six revision amendments. Despite being a constitution drafted with high levels of public participation, its main aim was to legitimize democracy; thus little attention was

dedicated to economic issues. The great majority of the amendments, most of which have been approved, have come from the federal executive.

Constitutional amendments, however, have revised certain of the drafters' important decisions regarding subnational resources. These changes were mainly designed to (1) impose limits on the subnational freedom to spend resources, this being a requirement of the federal policy of fiscal control; (2) earmark specific resources to be spent on health care and primary education; and (3) decrease the amount of resources to be freely transferred from the federal to the subnational governments. Constitutional amendments have also either created new federal taxes or raised the rates of certain taxes not shared with the subnational governments.

Amendments passed in the mid-1990s were intended to address new issues such as globalization and the demand for fiscal constraint and poverty alleviation and to take the country in a new direction. However, old issues that had received special attention from the 1988 drafters (e.g., the country's regional inequality) have remained unresolved. This is not because of constitutional blockades but rather because this issue has never been on the government's agenda and thus lacks public policies to address it.

Prospects and Trends

Brazil's experience of seven constitutions in a century demonstrates the country's difficulty sustaining constitutional governance. Constitutional governance comes under threat when economic and political environments are restructured or are on the verge of major crises. Although the constitutionalization of a wide range of issues limits politicians' and governments' room to manoeuvre, the constitutions have often failed to sustain democracy and address Brazil's social and regional inequalities. In light of this, what are the prospects of the 1988 Constitution overcoming the political and economic constraints that still seem to prevent the political system from addressing Brazil's main problems?

The 1988 Constitution has strengthened the federation and provided for a broader role for government in key problem areas. Nevertheless, the constitutional design is now exposed to two types of tensions. First, new macroeconomic demands due to changes in the international environment have arisen, requiring tight fiscal control and budget surpluses. This has left little room to increase government spending on regional and social policies, thus heightening tensions between the pressures for fiscal control and the need to address regional imbalance and poverty. Second, 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 usually positive for the federal government. However, the increasing degree of constitutionalization gives rise to many conflicts and judicial reviews requiring a decision from the Federal Supreme Court, including decisions about the constitutionality of legislation and sometimes even about the constitutionality of ordinary laws.¹¹ Congress is also under pressure from the federal executive to approve changes to constitutional mandates in order to adjust the country to a new economic reality and to fight poverty. These two types of tensions raise issues that may have an impact on the country's future.

The main problems currently facing Brazil's federalism and constitutional governance 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.

Second, there has been a trend toward uniformity in subnational orders of government. Although the 1988 Constitution provides more freedom to subnational governments, other political, economic, and juridical forces restrict this freedom. Furthermore, a crucial issue 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 and more federal and state investment in social and regional programs. The states' investment capacity is also bound 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 deconcentration.

Third, there are few mechanisms ensuring vertical and horizontal coordination between the three orders of government. Coordination and cooperation have occurred only when the federal government has stepped in, although there have been some exceptional examples of cooperation between municipal governments. Coordination 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.

What are Brazil's prospects of solving its regional and social problems? First, although no separatist or antidemocratic threats are foreseen, it is uncertain that the country can continue to support substantial inequality among its regions and social classes. The implementation of constitutional normative principles aimed at a better regional and social balance might become part of the government's agenda if high levels of economic growth are achieved, as has happened in the past. Although the prospect of transforming constitutional principles into policies for regional and social development is not yet foreseeable even if fiscal policies become less important on the agenda, transformation is not impossible given that overcoming regional and social inequality has always been a priority of Brazil's constitution makers. Second, 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 on the agenda. Third, there is now a 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 are likely to be negotiated is not yet foreseeable. Furthermore, changes in sensitive areas of interest are likely to create uncertainty among the electorate and investors.

Resolving Brazil's main problems depends less on federalism and on the Constitution itself than on addressing broader political conflicts, redefining policy

priorities, and improving economic performance. Nevertheless, public policies to overcome a long history of inequality require governmental intervention and resources in a time when governments are seen more as a hindrance than as a solution and when the role of governments, particularly in the developing world, is being restricted to achieving budget surpluses to the detriment of increased public spending.

¹See Instituto de Pesquisa Econômica Aplicada (IPEA) and Programa das Nações Unidas para o Desenvolvimento (PNUD), *Relatório sobre o Desenvolvimento Humano no Brasil* [Report on human development in Brazil] (Rio de Janeiro, RJ: IPEA and PNUD, 1996), pp. 15-20.

²See Dennis Mahar, "Federalismo Fiscal no Brasil: A Experiência Histórica," *Política Fiscal e Programação dos Gastos do Governo*, ed. Fernando Rezende et al. (Rio de Janeiro, RJ: IPEA, 1976), pp. 241-80.

³See Stéphane Monclaire, ed., *A Constituição Desejada* (Brasília: Senado Federal, 1991), pp. 39-40.

⁴This view is shared, for instance, by David Samuels and Fernando L. Abrucio, "Federalism and Democratic Transitions: The 'New' Politics of the Governors in Brazil," *Publius: The Journal of Federalism* 30 (Spring 2000): 43-61; Barry Ames, *The Deadlock of Democracy in Brazil* (Ann Arbor, MI: University of Michigan Press, 2000); Scott Mainwaring, *Rethinking Party Systems in the Third Wave of Democratization: The Case of Brazil* (Stanford: Stanford University Press, 1999); Alfred Stepan, "Brazil's Decentralized Federalism: Bringing Government Closer to the Citizens?" *Daedalus* 129 (Spring 2000): 145-69; and David Samuels, "Concurrent Elections, Discordant Results: Presidentialism, Federalism, and Governance in Brazil," *Comparative Politics* 33 (October 2000): 1-20.

⁵See Argelina Figueiredo and Fernando Limongi, "Presidential Power, Legislative Organization, and Party Behavior in Brazil," *Comparative Politics* 32, no. 2 (January 2000): 151-70.

⁶See Celina Souza, *Constitutional Engineering in Brazil: The Politics of Federalism and Decentralization* (Houndmills and London: Macmillan; New York: St Martin's Press, 1997); Celina Souza, "Brazil: The Prospects of a Center-Constraining Federation in a Fragmented Polity," *Publius: The Journal of Federalism* 32 (Spring 2002): 23-48; and Wayne Selcher, "The Politics of Decentralized Federalism, National Diversification, and Regionalism in Brazil," *Journal of International Studies and World Affairs* 40, no. 4 (Winter 1998): 25-50.

⁷For an overview of constitutional lawyers' analyses of Brazilian federalism in English, see, for instance, Fabio K. Comparato, "Economic Order in the Brazilian Constitution of 1988," *American Journal of Comparative Law* 38 (Fall 1990): 753-72; Keith S. Rossen, "Brazil's New Constitution: An Exercise in Transient Constitutionalism for a Transitional Society," *American Journal of Comparative Law* 38 (Fall 1990): 773-802; Jacob Dolinger and Keith S. Rosenn, eds, *Panorama of Brazilian Law* (Miami, FL: University of Miami North-South Center, 1992); and Marcelo Neves and Julian T. Hottinger, eds, *Federalism, Rule of Law and Multiculturalism in Brazil* (Basil, Fribourg: Institut du Fédéralisme and Helbing and Lichtenhahn, 2001).

⁸Constitutional Amendment No. 42, issued in December 2003, provides more resources for subnational governments but also limits the states' prerogative to determine the rate of this value-added tax.

⁹José Serra and José Roberto Afonso, "Federalismo Fiscal à Brasileira: Algumas Reflexões," *Revista do BNDES* 6 (1999): 5-24 at 15.

¹⁰Constitutional Amendment No. 42 increased this percentage from 22.5 to 23.5 but did not increase the percentage for state transfers.

¹¹Between 1988 and 1998, 1,935 judicial reviews were proposed. See Luiz Werneck Vianna et al., *Judicialização da Política e das Relações Sociais no Brasil* (Rio de Janeiro, RJ: Revan, 1999), p. 63.