

## *Hybridism as a national policy style: paths and dilemmas of the majoritarian and consensus approaches in Brazil*

*Hibridismo como um estilo nacional de políticas públicas: trajetórias  
e dilemas dos enfoques majoritário e consensual no Brasil*

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### **Introduction**

One of the key debates surrounding Brazil's political institutions over the last thirty years is whether the traits they exhibit are more characteristic of the consensus or majoritarian models presented in the classical definition by Lijphart (1999). The scholarly literature on Brazil initially viewed its fragmented political system as an extreme case destined to suffer governance problems (STEPAN, 1999; AMES, 2003). Brazil's centrifugal federalism, intensified by the decentralization to subnational governments initiated at the end of the military regime in 1988, was combined with an open-list proportional representation electoral system and, equally important, with multipartism (MAINWARING, 1997). Presidentialism completed this framework, but despite the vast power wielded by the head of government, presidents have struggled to ensure governability and decision-making effectiveness in the face of multiple

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political institutions. The political system's "exaggerated consociationalism", with multiple veto points, had led to decreased decision-making productivity (LAMOUNIER, 1992), since the Brazilian policy-making style is considered to be atavistically hindered by such political-institutional ties.

Brazil was not included in the first edition of the book *Policy Styles in Western Europe*, edited by Jeremy Richardson in 1982. Thus, there is no way to assess changes in policy making in the country since then. However, according to Brazil's mainstream scholarly literature, until the mid-1990s Brazil was a typical case of dispersed power and poor policy-making capacity. The "exaggerated consociationalism" was believed to be caused by the veto points in the political-institutional structure, especially those caused by political party fragmentation and centrifugal federalism. The political system was expected to be more likely to block than to produce policies.

Contrary to this view, this study argues that it is possible to identify more than one dominant decision-making style in Brazil. The Brazilian case is characterized by hybridism, in which the political system and federalism can have different effects on public policies, while seeking compromise in both arenas. From this standpoint, the analysis will consider two dimensions proposed by Lijphart (1999): the relationship between executives and parties and federal-unitary dimensions. The first dimension is related to the dominance of the executive over the legislative, mostly associated with a strong agenda setting capacity. At the same time, the two branches of government expanded the use of incentive mechanisms for interest group participation that resemble consensual practices. It is noteworthy that, even after the end of the military regime in 1985 and as constitutionally mandated, presidents have remained key political actors who have been allowed to use forceful measures to propose and approve their policy agendas. In addition to this prerogative, the president has exclusive initiative on such topics as proposing budget policy (FIGUEIREDO; LIMONGI, 2001). Therefore, policy-making in Brazil cannot be understood without

considering executive power. However, the president also needs to compromise with Congress, by distributing nominations in the executive proportionally to party seats in the legislature (AMORIM NETO, 2007; BERTHOLINI; PEREIRA, 2017).

In the second dimension and in conformity with the post-1988 new constitutional order, the federal government-initiated decentralization. The consociational and incremental focus is complemented by federal cooperation arrangements with the participation of society and subnational entities in policy design and implementation. Although federal coordination concentrates many normative and financial resources in the central government, the rationale underlying the process is not antagonistic. In many policies areas, like health and social assistance, the national government does not have unilateral decision-making power or exclusive dominance in intergovernmental relations. The expanding policy-making paradigm, with its different levels of formalization, if not dominant, reinforces the involvement of the federation's constituent units as well as civil society.

This more consociational national policy style, supported by intergovernmental arenas, although influenced by the executive's agenda, is neither anticipatory nor reactive, but rather seeks compromise. Essential to this design is the way in which the Federal Constitution of 1988 established that responsibilities for public policies, especially welfare policies, would be shared by all three levels of government (ALMEIDA, 2005). In a heterogeneous country, with social and territorial inequality, aligning different levels of government in policy-making arenas, in a context of decentralization, has become essential (SOUZA, 2005).

The path adopted was the creation of intergovernmental cooperation arrangements, with varying degrees of coordination and decision-making authority, to design and implement policies. In addition, a "guarantee" for the participation of the population, through representative organizations, was sought through multi-level design of policies and controls (SOARES; CUNHA, 2016, p.

94). Policy-making in Brazil cannot be understood without considering its consensual trait, despite the Union's leadership role.

The goal of this article is to discuss how these two dimensions are structured and function in the new Brazilian democratic constitutional order after 1988. A hybrid model combining majoritarian and consociational traits became hegemonic, especially between the two impeachment processes (1992-2015). The text thus addresses two central issues: (a) executive dominance over the legislative, with interest group interfaces; and (b) the predominantly consensual character of decision-making in the federal arena, despite the central government's power of the purse (PAINTER, 1996).

To analyze the majority and consociational dimensions of Brazilian presidentialism, the essay discusses three issues related to these two dimensions: (i) firstly, the characterization of the Brazilian policy style; (ii) secondly, its functioning and decision-making; and (iii) thirdly, the limitations of the Brazilian policy style. In the conclusion, we discuss whether, due to the dilemmas of institutional hybridity, an alternative institutional format that accounts for political governance and public policies, is possible. The discussion is centered on how the Bolsonaro government tried to radically reshape the predominant public policy-making style of the last thirty years and on the outcomes of this attempt.

In addition to this introduction, this essay is organized as follows. The first section addresses the main theoretical concepts. Next, the methodological procedures are presented. The third section discusses the literature on the Brazilian political system's majoritarian traits. The fourth organizes the main arguments and cases on the consociational approach as applicable to the Brazilian case, and is followed by the conclusion.

### **Dual decision-making in the Executive branch: the majority role of the President in the legislative agenda and consensus bias through social participatory channels**

This section addresses two useful theoretical issues for the empirical analysis: first, how so-called coalitional presidentialism

works in terms of the political relationship between the Executive and Legislative branches; and secondly, what instruments of social control are used by the Executive branch in seeking consensus in policy-making.

*The functioning of coalitional presidentialism: the majoritarian side*

The classic view of presidentialism as dividing policy-making with the legislature and in which the head of government would have reactive powers (e.g., veto power, its key political resource) (SARTORI, 1994; COX; MORGENSTERN, 2001; GINSBURG; CHEIBUB; ELKINS, 2013), does not apply to the Brazilian case. The president has many legal, constitutional, and legislative prerogatives that make him or her a dominant political actor, such as the exclusive power to propose the budget and the authority to legislate through legally binding decrees (CAREY; SHUGART, 1992; HOWELL, 2003).

It should be noted that the 1988 Constitution extended the autonomy of National Congress over the Executive, especially to amend budgetary and tax laws. However, the president has the exclusive right to initiate all budgetary legislation, while parliamentary amendments are limited by forecasted expenditures. Though not a take-it-or-leave-it model, there is little chance of the legislature changing a president's policy agenda, which is most often approved (CAREY; SHUGART, 1992; FIGUEIREDO; LIMONGI, 2001; AMORIM NETO; COX; McCUBBINS, 2003).

“Categorical agenda power” (PALERMO, 2000) became a decision-making style of presidents when democratic order was restored after 1988. The legislative competencies of Congress were reduced in comparison with those extended to the Head of Government (FIGUEIREDO; LIMONGI, 2001). Brazil is an extreme case of presidential legislative power with few requirements to work with Congress (CAREY; SHUGART, 1992).

The presidency has powerful political resources with which to obtain high rates of parliamentary cooperation (PALERMO, 2000; MELO; PEREIRA, 2013). It can also unilaterally force (COX; MORGENSTERN, 2001) the legislature to consider issues within

specified time frames. Additionally, presidents have great advantage over Congress because they are the lawmakers' main sources of information. Thus, mechanisms seeking to abbreviate the legislative process, such as Provisional Measures (PMs) (*Medidas Provisórias*), or provisional executive orders, provoke two complementary effects: Congress only has access to that information that is most convenient for the government to supply and, therefore, it adopts a more reactive stance (ALMEIDA, 2015). But since presidents rely on majority coalitions to approve presidential priorities this reactive power (CAREY; SHUGART, 1992) has been ineffective in the Brazilian legislature. The president retains a formidable advantage in the legislative process, as he or she can bring policy decisions closer to their political preferences (CAREY; SHUGART, 1992; AMORIM NETO, COX; McCUBBINS, 2003; MELO; PEREIRA, 2013).

In this case, the political relationship between the executive branch and the legislature is based on two main characteristics: (a) parliamentary delegation to the president to legislate (CAREY; SHUGART, 1992); (b) the rules of legislative procedure that concentrate decision-making in the presidential powers, and diminish party coordination problems in governmental coalitions. In other words, Congress faces a trade-off between reduced agency and the coordination of the collective preferences of the majority of parliamentarians.

Presidents who are delegated decree powers have, in general, veto powers or exclusive rights to propose legislation. In Latin American countries, presidential decrees are law-making powers while in the United States decrees are regulatory capabilities for executive agencies to standardize congressional decisions (CAREY; SHUGART, 1992). These political resources enable presidents to better adjust their agendas in congressional decision-making (CAREY; SHUGART, 1992; CAREY 2005; MELO; PEREIRA, 2013).

In this kind of institutional design, presidential powers, and the results accomplished by a proactive presidency, have legal, political and administrative resources to induce and control the legislative process (MELO; PEREIRA, 2013). However, such delegation

requires negotiation, since the president cannot rule over the legislature, impose his or her agenda, or circumvent parliament. Also, presidential dominance requires congressional consent, without which the presidency cannot approve policies, but in order to obtain consent, it must negotiate the participation of different political parties in the government.

In Brazil, the prevalence of the Executive Branch and the Presidency over public policies have historical and constitutional origins. The state has played a central role in economic development in the twentieth century, especially during the authoritarian regimes of 1930-1945 and 1964-1985. Alongside this expanded role of the state, the relevance of the Legislature declined (AMORIM NETO, 2007). Secondly, the 1988 Constitution, despite changing its name and rules, essentially preserved a political tool used by the military government that left power in 1985, enabling presidential initiatives or exclusive powers for many issues (FIGUEIREDO; LIMONGI, 2001; CAREY, 2005).

The strategic advantages of the executive are enormous, given that it is able to influence congressional preference formation. Cooperation generates a system that is neither “divided nor unified”, but in which the president is a critical political actor (PALERMO, 2000). However, the presidency needs to build compromise solutions with the government coalition. Multipartism makes it hard to form legislative majorities only with the president-elect’s party. Building and maintaining majorities, despite presidential dominance, finds support in the consensual aspects of the political system, in light of the electoral rules and party system. In Brazil, the term “coalitional presidentialism” (ABRANCHES, 1988) is used to analyze how presidents make up their partisan and regional support base.

### *The functioning of consultative presidentialism: the more consensual side*

If more centralized political power is the main characteristic of Presidential political action over the Brazilian Congress, this is not the same as for the implementation of forums involving the national government and society. This dimension is characterized by forums

composed of governmental members and societal representatives to collaborate or deliberate on public policies. Since the enactment of the 1988 Constitution, there have been changes in the state's interaction with society. Even though the Brazilian national government has been implementing such forums since before then, it was especially between 2003 and 2015 that this process was expanded. In these arenas, government decisions tend to be more incremental, consensual, and reactive to society's demands.

This procedure of consultative democracy is closer to a more incremental and consensual policy style before society's demands. Since the enactment of the 1988 Constitution, there have been changes in the state's interaction with society. Mainly, "the constitution, dissemination and operation of participatory institutions – differentiated forms of incorporation of citizens and associations of civil society in policy deliberation" (ALMEIDA, 2011, p. 325; TATAGIBA, 2004). Some of these forms of consultation, social control, and deliberation (IPEA, 2012) will be discussed below.

These instruments of consultative democracy –the interplay between state and society– reveal a policy style based on inclusiveness, social participation, and control, institutional characteristics incorporated in public policy design with the return of democracy in 1988 (GRIN; ABRUCIO, 2019). However, since the Temer administration (2016-2018), these arenas have been losing political momentum as channels of dialogue between government and society. This distance increased in the Bolsonaro government, given that his authoritarian view on how to exercise political power precludes any dialogue with the organized society.

The political and institutional paths that influenced the construction of these arenas of consultative democracy, with their different forms of formalization and decision-making capacity, depended on the normative trajectory and design of each public policy.

In this arena, debate mostly centered on three types of policies and their levels of priority: redistributive, distributive, and regulatory policies (LOWI, 1964). For instance, the focus of such social policies as health, education, democratization of culture,



employment and income generation, and social work is redistributive. Agrarian reform, in turn, can be viewed as a more distributive issue, whereas communication, environment, human rights, and science and technology are mainly regulatory policies. Not all public policies, however, were the subject of debate in these forums, e.g., infrastructure, except for housing, or even economic issues, such as the national debt or interest rates. The main goal of these arenas was to deliberate on policies to respond to citizen demands.

However, unlike the majoritarian dimension characteristic of the executive-legislative relationship, where the president faces greater constraints to his or her discretionary power, the same does not occur in the relationship with civil society forums. If in the legislative arena constitutional rules and control institutions constrain the incumbent's action in a more pronounced way, executive political agency prevails in participatory councils. In other words, even though after 1988, dozens of participatory councils and bodies have been created, their existence and capacity to influence public policy-making has always depended on the political will of each president. Indeed, the legal, constitutional, and institutional support for most of these participatory arenas is weaker when compared to support for a majoritarian national policy style.

Therefore, if the power of a majority in an executive-legislative relationship can be influenced by the need to generate support for a strong government coalition, in the case of executive-society relations, the political will of each Brazilian president is vital for guaranteeing social participation.

In effect, Brazil can be considered a successful multiparty presidential democracy, with high levels of decentralization and political fragmentation. But the country has a small number of "majoritarian" institutions that centralize agenda-setting power in the President (for instance, the possibility to issue PMs). Though these two sets of national policy styles (majoritarian and consensual) represent endpoints on a continuum, Brazil cannot be viewed as purely one or the other, but rather as a hybrid simultaneously combining

consensual and majoritarian elements, to use Lijphart's language (MELO; PEREIRA, 2013, p. 12).

### **Conceptual model and methodological procedures**

The methodological path adopted by this essay is simple and based on its central objective: to analyze three key arenas of the Brazilian political system, namely, the executive-legislative relationship, the inter-federalist relationship, and institutionalized social participation, with the aim of showing that there is a connection between them. Building on the reading of the book *Patterns of Democracy* by Lijphart (1999), we set out to review the literature that integrated the majoritarian and consociational characteristics of the Brazilian institutions into a single analytical model.

The review focused on authors who discuss both dimensions of presidential action and was organized on the basis of the concept of national policy style (RICHARDSON, 1982). The theoretical proposal of national policy styles explores the following question: What are the institutional and political characteristics that countries adopt to decide on public policies? However, unlike countries where a single style is easily identifiable or even dominant, in Brazil, reality is different. Comparing this concept with the Brazilian authors who analyze public policy-making, we identified two central theoretical and analytical paths: (a) the first addresses the major role of the president in his relationship with the legislative branch; and (b) the second deals with the more consensual performance of the executive branch in its relationship with participatory councils and in the federalist arena. This second path presents cases of horizontal and vertical intergovernmental cooperation that operate to reduce the unilateral power of the national sphere and to produce decisions with broader support from subnational entities.

When comparing the concept of national policy style with these two forms of decision-making, Brazil's political system can be characterized as a hybrid system in terms of policy-making. This hybridism is derived from the intertwining of, in Lijphart's terms, majoritarian and consensual traits and was further strengthened

after the 1988 Constitution, especially between Collor's impeachment and Dilma Rousseff's second term in 2016. Although both decision-making styles have their own institutional frameworks and operating dynamics, the combination of these two dimensions is the cornerstone of the "Brazilian public policy-making style".

Based on this key concept, this essay is organized to highlight how the two dimensions are understood by the national political science literature. The integration of both dimensions in a single article also aims to emphasize the hybrid nature of political institutions responsible for policy-making in Brazil. Considering that, the main methodological procedures used were:

- 1) Reviewing the literature on this subject guided by the notion of a "Brazilian policy-making style". Since the majoritarian and consociational approaches are usually discussed separately, this notion enables us to discuss both through a single analytical lens; and
- 2) Relying on secondary data to provide empirical evidence in support of the theoretical arguments, especially when analyzing the consociational approach.

### **The majoritarian side of the Brazilian political system**

In this section we discuss how the Brazilian mainstream literature on political science analyzes the Brazilian style of executive dominance over the legislature. In terms of policy-making, this process needs to consider two main issues: budgetary legislation and the president's success in approving her or his programs through decree power (FIGUEIREDO; LIMONGI, 2001, 2008). It is the Brazilian president's prerogative to decide on tax matters and on the federal staff and administration (FIGUEIREDO; LIMONGI, 2001, 2008).

The president also wields enormous power through the PMs. According to the 1988 Constitution, presidents may issue PMs with force of law in matters of relevance and urgency, but must submit them immediately to Congress for approval. This resource was intended to allow the president to quickly adopt decisions whenever necessary. But an exceptional legal resource became, in practice, a

substitute for the decree-law (“Decreto-Lei”) of the military regime era, that did not did not require congressional approval. PMs require approval within 60 days to be enacted as laws, but if Congress fails to consider them within 45 days of their issuance, they are considered “urgent” and take precedence over other business under congressional consideration. The head of government may reissue a PM once again if it fails to be approved<sup>2</sup>. With these rules in place, the presidential agenda gains priority within Congress. Out of 1,341 PMs issued between 1989 and 2017, the government’s approval rate was 87% (CEBRAP Legislative Database). And since the likelihood of a PM being approved is very high, the executive resorts to them continuously.

Between 2002 and 2007, an average of 64% of Chamber of Deputies sessions was obstructed by the dominating presidential agenda (TAVARES FILHO, 2008). As for ordinary bills, the average presidential success rate was 34.3% (excluding matters already being considered). Indeed, presidential decision-making based on constitutional prerogatives has been a winning strategy. All governments after 1988 approved many of their policies through PMs, especially economic (economic proper, tax-, and trade-related), social (labor and employment, health, education, housing), and legal, budgetary, and administrative matters. As there are few constitutional restrictions to issuing a PM – except for those cases requiring laws or constitutional amendments –, this resource has become the most routinely used Presidential political tool since 1988.

In addition, the criterion of urgency and relevance became even more flexible, which increased discretionary use of PMs for the submission of policies. Since PMs come into effect immediately, if parliament rejects a PM, it must justify and regulate the retroactive effects of this decision, which further reinforces the president’s ascendancy and shortens consideration of the matter. The political burden

2 Furthermore, when requesting and approving matters of urgency – 45 days is allowed in each of the two legislative houses – or matters of “*urgência urgentíssima*” (immediate effect), the president ensures priority for his or her bills on the congressional agenda. This mechanism constrains the power of minorities as veto points in seeking to postpone decisions (FIGUEIREDO; LIMONGI, 2001, 2007).

is transferred to Congress and the cost of forming a majority to reject a PM falls on the opposition (FIGUEIREDO; LIMONGI, 2001).

Between 1988 and 2014, the difference between the number of bills coming from the executive (3,852) and the legislature (1,363) is enormous, with 73.8% of the bills approved originating in the presidency. Budget laws are the most common type of legislation sent by the executive (280 on average per presidential term), followed by PMs (159 on average). Until 2006, the number of PMs approved was, on average, 145.5 per term, compared to the average of 111 legislative initiatives (VERDE, 2017). Executive decision-making becomes indeed a dominant public policy-maker after 1988 (MAJDALANI, 2014).

Between 1989 and 2017, 61.4% of approved legal matters were PMs and budgetary laws. The president's dominance over the legislative process ranged from 75% to 90% (an average of 76.6%) and the success rate was close to 80% (CEBRAP Legislative Database). In addition, except between 1995 and 2006, the average length of time to process executive bills was 271.4 days, while that for bills initiated by the legislature was 964.8 days (MOISÉS, 2011). This is another aspect of presidential decision-making power: primacy in the approval of executive initiatives. Even if defeated in Congress, the president has veto power. Although a veto can be overridden, Congress rarely respects the 30-day constitutional deadline for doing so. The veto can be overridden by an absolute majority in both houses, a breakthrough considering the 2/3 needed during the military regime.

After 2008, presidential dominance shrank with the expansion of Legislative autonomy. Between 1995 to 2002 and 2007 to 2014, the average annual number of bills submitted by the presidency decreased from 64.6% to 50.4%, while those by lawmakers increased from 38.4% to 80.9%. From 1995 to 2002, the average annual percentage of presidential laws following ordinary legislative procedures was 19.4%, compared to 36.5% between 2007 to 2014. However, in this period, laws introducing homages and commemorative dates increased from 6.3% to 38.1%, 47% of which were

submitted by parliamentarians (ALMEIDA, 2015, p. 47-48), thus calling into question the relevance of these bills.

But the use of PMs remained high. President Michel Temer, who was sworn in after Dilma Rousseff's impeachment in 2016, intensified their use for his executive bills. On average, more than one PM per week (77 in one year) made him the president who has, proportionately, most used this resource since 1989. In addition, 62% of the bills passed in Congress were proposed by the executive branch– the highest rate since 2007 (BURGARELLI; DUARTE; VENCESLAU, 2017). Since periods of greater presidential dominance match with governments in which the governing coalition is more homogeneous, the reduction of this preponderance occurred in situations of oversized but disconnected coalitions (POWER, 2015), as between 2008 and 2015.

When lawmakers realize the benefits of considering a PM, they do not hesitate to make alterations to the presidential agenda, even when not opposing it. Between 2001 and 2010, the amendment rate was 56%, with 82.6% approval of bills whose original text was modified (CUNHA, 2014). Reactive and incremental power has been the lesson learned by lawmakers in approving PMs. But what might seem a more consensual process reveals yet another model of aggregation of preferences, in line with the strategic behavior of parliamentarians. The Executive remains the dominant political actor, bringing its agenda forward and obtaining high approval rates.

Revoking the presidential prerogative to issue PMs, thus decreasing executive dominance over the legislature, was not proposed even at the height of intense political conflict in two distinct periods – during the Collor administration (1990-1992), whose coalition became a minority in Congress, and in the dispute between the House of Representatives and the Dilma Rousseff administration (2015-2016), which ultimately led to her impeachment. Congress did not amend the Constitution, which would expand its responsibility as policy-maker. The 1988 Federal Constitution delegated legislative prerogatives to the president. This style of decision-making gives the president greater capacity for proposing legislative

initiative as well as to obtain cooperation in the congressional arena (PALERMO, 2000).

Although Congress may slow down consideration of PMs, this is a reactive power. “Non-decisions” have costs, since the president can use his or her non-legislative powers to reduce patronage benefits to parliamentarians (FIGUEIREDO; LIMONGI, 2001). Appointment to ministries and key offices in the public administration is part of the president’s non-legislative powers. The more this division is proportional to party representation in Congress and reflects budget allocation, the greater the likelihood of legislative support (AMORIM NETO, 2007; BERTHOLINI; PEREIRA, 2017; PEREIRA; MUELLER, 2004).

Not coincidentally, in the two impeachment processes that took place in Brazil, the governments were the minority. The compromise based on the need to share the government in order to govern, which results from the existence of multipartyism in the parliamentary arena, instigates presidents to form a “coalition with total aversion to the risk of being a minority. This aversion is justified since minority presidents hardly complete their mandates in Brazil” (BERTHOLINI; PEREIRA, 2017, p. 546).

Moreover, it is imperative to analyze the characteristics of the legislative decision-making process, which is rather centered around party leadership. Procedural power resources and floor voting rules increase the probability of bringing the presidential agenda closer to the interests of the governing coalition (FIGUEIREDO; LIMONGI, 2001). PMs are analyzed by special parliamentary committees organized according to partisan proportionality. The government faces no difficulty in guaranteeing a “majority in these deliberative instances and [controlling] the positions of president and rapporteur” (DINIZ, 2005, p. 355). As for party discipline, Freitas, Izumi and Medeiros (2017) show that, from 1989 to 2010, parliamentarians behaved during legislative sessions in conformity with their association with the government.

The average passage rate for the period is 81%, which always favors the majority coalition. Finally, PMs are approved by symbolic

vote or a simple majority, which facilitates the approval of presidential agendas with decisions concentrated in party leaders. In sum, the President's constitutionally-mandated agenda power, coupled with Congress's centralized decision-making pattern, strengthens the executive's dominance, and expected approval, of its public policies.

### *Coalitional presidentialism: explanatory limits of the model*

The previous section presented the institutional design of coalitional presidentialism with the aim of highlighting the existing incentives for the president to exercise a majority role in his or her relationship with Congress. However, although this continues to be the dominant view in Brazilian political science, other critical approaches have sought to show the limits of this mainstream perspective in the literature.

This section focuses on discussing critical approaches that highlight political and institutional weaknesses in coalitional presidentialism and its limits as a model for presidential action. Criticism of the literature is essentially four-pronged: (a) there are limits to the exercise of majority power by the president; (b) coalitional presidentialism has political weaknesses whose conflict resolution mechanisms have been shown to be ineffective, so that this decision-making dimension of public policy faces dilemmas intrinsic to its own institutional design; (c) difficulties for the president to control the coalition's behavior in systematic and continuous fashion; (d) the president's constitutional powers are limited by a network of external control institutions.

As for the first approach, Palermo (2000) proposes several caveats to the vision of the presidential majority power. The first is that if political parties in a multiparty system are deemed disciplined, this means they have veto power. If political parties are a bridge between the legislature and the executive, it cannot be said that decision-making power is concentrated in the president. Likewise, if the congressional rules of procedure grant power to party leaders, they, too, are actors with the capacity to influence the agenda and, eventually, to veto measures. Therefore, the legislature's forced



cooperation with the executive has explanatory limits. The second criticism, in line with the first one, is that even though PMs are a presidential prerogative, they are negotiated with parliamentarians more than one would expect.

The third caveat is that even broadly majoritarian government coalitions in Congress, despite the stability of the decisions they produce, can create problems. As presidential coalitions are often large and politically heterogeneous, party leaders can strategically make use of their position within them in negotiations with the president, especially when the approval of measures requires qualified majorities, such as constitutional amendments. The fourth criticism is the need to analytically separate the president from the presidency as a collective actor that includes allies from various parties, which can influence the cohesion of the governmental agenda. The presidential cabinet can be made up of different parties and regional actors, which can make it difficult for the President to produce an aligned agenda.

In short, elements such as the President's autonomous decision-making powers, the relationship with Congress in ordinary legislation and during constitutional reforms (which do not include PMs), and the formation of presidential cabinets give nuance to the thesis of "simply considering the executive's legislative arena to be the majority" (PALERMO, 2000, p. 12). Governance may not only be a product of this form of action, but also be derived from the need to negotiate.

In effect, these criticisms address whether the system operates through the delegation of powers or through unilateral actions by presidents in their relationship with the legislative branch (PEREIRA; POWER; RENNÓ, 2005). Put another way, it is necessary to consider how coalitional presidentialism is capable of generating a style of policy-making that has a strong propensity to adhere to the majoritarian preferences of the executive branch and how desirable this institutional characteristic is for democracy (POWER, 2015).

The main formulator of the second criticism is Abranches (2018). Coalitional presidentialism is not an ungovernable system, but its dependence on large and heterogeneous coalitions requires agile decision-making and conflict resolution mechanisms that are lacking in the legislative process and electoral rules. In the three decades of experience after the end of the military regime, there is evidence that this political model has robust decision-making capabilities, yet also has deficiencies and problems. The first problem is institutional and connects with executive-legislative relations; the second relates to the “quality, coherence and persistence of the public policies it produces” (ABRANCHES, 2018, p. 341-342). Presidential reelection, which has been possible since 1997, increased the concession costs for the incumbent, since second term presidents are weaker, which makes maintaining the governmental coalition more complex.

The argument for robust governance should also be nuanced in the face of, as of 2018, two impeachments in less than thirty years, out of a group of six presidents. Furthermore, coalitional presidentialism generates incentives to increase party fragmentation, which affects the stability of coalitions, their size, and chance of success. A multiplicity of parties only increases the extent and heterogeneity of alliances. This is a safeguard against eventual loss of support, while also being instrumental in approving measures such as constitutional amendments. These characteristics of coalitional presidentialism increase the spiral of political and fiscal costs for maintaining coalitions (ABRANCHES, 2018).

Therefore, the coalition’s internal demands tend to consume political time and resources that can lead to suboptimal results. Veto points tend to generate policy stability, which can make it difficult to render further reforms feasible. For this reason, the majority style of public policy decision-making would be marked by “excessive incrementalism and/or a political dilution” (POWER, 2015, p. 36).

The third critical aspect addresses the difficulties a president faces to systematically control the coalition’s behavior, which can lead to decision paralysis in executive-legislative relations and

produce high costs for maintaining the coalition (RENNÓ, 2006). According to this argument, Brazilian presidents complete their terms of office with the support of fragile *ad hoc* coalitions (AMES, 2003; AMORIM NETO, 2006). Examples to support this criticism come, above all, from the Workers' Party (PT) administrations. That party's coalition abandoned the presidents in key votes, as it did in 2005, when, despite broad government support, a candidate for Speaker of the Chamber of Deputies was defeated by a backbencher of the "lower clergy" – Severino Cavalcanti. In December 2007, President Lula was defeated in the Senate in a vote on the renewal of the CPMF tax on financial transactions, despite the wide coalition majority backing the government. In May 2012, President Dilma Rousseff, supposedly having the sound support of 70% of Congress, was forced to veto 12 of the 32 articles of the Forest Code. Finally, from 2015 onwards, in the midst of a growing economic and political crisis, President Dilma Rousseff had to start dealing with instability within the government coalition that ultimately led to her impeachment (POWER, 2015, p. 17).

In this sense, even though the institutional design is hinged on the great power wielded by the presidential agenda and on the centralization of legislative business, it cannot be inferred that this format completely defines the game, since institutional rules cannot do without the hard work of presidents to implement their programs and policies and to exercise their constitutional powers (POWER, 2015). For this reason, coalition management relies heavily on political leadership styles.

According to Rennó (2006), institutional design does not permanently condition the behavior of the president, whose styles influence his or her ability to succeed in forming and managing a coalition. The different political profiles and conduct of Presidents Fernando Henrique Cardoso (FHC) and Jair Bolsonaro exemplify this argument. If FHC was able to consolidate a stable majority to implement his reform program, the current president, in his first year in office, "rowed against the tide" by denying the need of composing his political coalitional base in Congress.

For this more critical view, despite the importance of the governance patterns of the FHC and Lula administrations, when compared to difficulties presidents faced before 1994, the question remains whether that model was not episodic and dependent on the profile of those two political leaders. In other words, in counterfactual terms, would the institutional resilience of this model sustain itself if an anti-systemic political leader were elected, as is the case with President Bolsonaro? Would there be enough political knowledge learned by the Brazilian democracy over these last 25 years to avoid the governance problems of other periods of our history?

The fourth approach does not criticize the arguments based on the power resources that the President uses in order to obtain collaboration and support in the Legislative, but adds another component in limiting the executive's governmental capacity. In addition to the president's constitutional powers and the political resources leveraged to compose the coalition (cabinet posts, pork barrel projects, patronage, etc.), there is also a strong network of institutional checks on executive discretion. There is no contradiction between a constitutionally strong president and an institutional set of counterbalancing institutions acting to constrain presidential actions. Along these lines, the 1988 Constitution also delegated extensive powers to the Judiciary and to autonomous control institutions such as the Courts of Accounts and the Public Prosecutor's Office. "In other words, the constituents delegated powers to presidents but empowered a web of watchdogs to prevent wrongdoing" (MELO; PEREIRA, 2013, p. 13).

The constitutionally guaranteed possibilities for exercising the majority power of the president are also controlled by strong autonomous institutions, also in line with the "web of accountability" argument (POWER; TAYLOR, 2011). These institutions, to which the Comptroller General of the Union could be added, are important for moderating those positions that assume that the governability of the political system in Brazil depends only on the majority power of presidents and their vast and powerful political resources to ensure coalition support in parliament. The moderation imposed on the

exercise of presidential powers by those institutions also explains much of the democratic governance stability that the country has built since 1988.

The debate over whether the institutional and political design of presidential coalitions remains valid for understanding the way in which the majority side of the production of public policies in Brazil is exercised continues to be relevant. Despite criticisms about its explanatory limits, the basic format of this political model remains a benchmark for analyzing the performance of Presidents. Even Bolsonaro, who has been surfing the anti-politics wave that has grown in the country in recent years and who once criticized coalitional presidentialism as synonymous with corruption, patronage, and political favor exchange, began to surrender to the need to form his own coalition, after a year and a half denying the need to negotiate and divide power. As the possibility of his being impeached grew by mid-2020, the presidential strategy has been seeking, to some extent, to build a legislative majority to gain political and even electoral strength (PEREIRA, 2020).

The political crisis that has engulfed the country since 2015 has also affected the pillars of the model, but is it possible to adopt another model in a multiparty presidential regime? So far, the political conduct of the Bolsonaro government – and its confrontational attitude towards Congress, as well as towards federalist arenas – has led to loss of governance capacity and further crisis, which reinforces the search for institutional responses. If disruptive initiatives and the confrontational presidentialism adopted in the first two years of the mandate (2019-2020) proved to be dangerous for the president's political survival, more incremental alternatives to the current institutional model seem to be the most likely way out. In other words,

recognizing that institutions matter is not the same as saying that only institutions matter. There is no crisis-immune political system. There is no political system that works without politicians making choices, defining their goals

and strategies for dealing with their allies and enemies [...]. There is no system that does without politics. (LIMONGI; FIGUEIREDO, 2017, p. 96).

The majority side of the political decision-making process in Brazil continues to maintain its institutional base, even though political actors, such as presidents and members of the legislative branch, have the agency to make choices. On one hand, critical studies of coalitional presidentialism fail to refute the fact that there are majoritarian traits in the Brazilian model. On the other hand, there are also elements of a consociational and extra-institutional nature – e.g., political leadership – that should be taken into account. Thus, a parsimonious review of the literature should focus more on hybridism than on the failure of coalition presidentialism.

### **The most consensual side of executive political action: the institutionalization of relations with social control forums**

With respect to this more consensual side, it is possible to analyze four instruments which contributed to increase and diversify the number and forms of interface between the State and society at the federal level (PIRES; VAZ, 2012). These participatory spaces can be considered hybrid institutions, since they share decisions on public policies with representatives of the government and civil society (AVRITZER; PEREIRA, 2005).

The first is public policy conferences with the participation of society that involve participatory arenas and dialogic processes between government and society to formulate public policy proposals. Between 2003 and 2011, 82 conferences were convened mainly by the executive branch in such areas as: development, employment and income generation, social inclusion, health, education, environment, women's rights, racial equality, agrarian reform, youth, human rights, science and technology, communication, democratization of culture, urban reform and public security. Conferences can be consultative or deliberative, as in health and social assistance, as their resolutions become binding. But their effect on the production

of laws is insignificant: from 1989 to 2009, of the 26% of congressional initiatives that were based on conference deliberations, only 1.2% were enacted into law (FARIA; SILVA; LINS, 2012).

The conferences “constitute a participatory way of creating a common agenda between state and society that occurs after federal government convocation” (AVRITZER; SOUZA, 2013; p. 12; AVRITZER, 2012; SOUZA; PIRES, 2013). National conferences can be understood as “participatory processes that bring together, with a certain periodicity, representatives of the state and civil society for the formulation of proposals for a specific public policy” (SOUZA, 2012, p. 9).

The second is the institutionalization of forums for dialogue with social movements and society. Councils are public “spaces linked to the executive branch agencies that aim to allow for the participation of society” in policy cycle (LIMA *et al.*, 2014, p. 9; VAZ *et al.*, 2013). The councils emerged demanding more participation in decision-making process in policy-making (SILVA; JACCOUD; BEGHIN, 2009; AVELINO; ALENCAR; COSTA, 2017). The number of councils grew substantially after 1988, as the Federal Constitution institutionalized some of them and generated the conditions necessary for creating others (FONSECA; POMPEU, 2020). In a study of forty active national councils and commissions, Avelino, Alencar and Costa (2017) concluded that 75% of the councils were created after 1988.

In general, after 1988, these forums were granted greater decision-making powers in policy sectors such as health, education, social assistance, food security, economic and social development, youth, racial equality, women, elderly, children and adolescents’ rights. In 2011, there were 35 national public policy councils and five committees with societal representatives. Fifty eight percent of the councils are deliberative and 42%, consultative. On average, society has 55% of seats, compared to 45% of seats held by government officials (ALMEIDA, 2011). Some councils were established in compliance with constitutionally mandated policies (such as health, social assistance and the rights of children and adolescents).

In other areas, councils were prompted by the institutional evolution of public policies and society's demands for more participation (e.g., public safety).

The National Health Council is formally within the administrative structure of the Ministry of Health and is made up of federal, state, and municipal management representatives (25%), health professionals –scientific community, service providers and health-related organizations– (with another 25%), and National Health Service customers, e.g., entities and social movements (50%). The 1988 Constitution established the council's deliberative power to formulate strategies and control policy execution. Furthermore, the council decides about intergovernmental financial transfers to subnational entities, approves criteria for paying providers, controls private companies, and strengthens social participation. The council also assesses and approves the national plan, and the conditions for its fulfillment according to guidelines set down by the National Health Conference (FRUCTUOSO, 2010). The National Health Council is very influential in the Ministry of Health's decision-making process.

In education, the council formally integrates the ministry's administration, and is composed of civil society representatives appointed by the president of Brazil. Its Basic Education Chamber plays a normative, deliberative, and advisory role within the ministry and seeks to assure social participation. The council's duties include deliberating on curriculum guidelines proposed by the Ministry and controlling the federal educational budget. Still, this forum had no influence on the high school reform provisional measure, its approval in 2017 a mere formality, since the bill had already been drafted in Congress. The Higher Education Chamber deliberates on: (a) curriculum guidelines as proposed by the Ministry for undergraduate courses; (b) certification of courses and programs offered by universities; (c) authorization, accreditation, and re-accreditation of universities; (d) federal university statutes; and (e) certification of master's and doctoral programs.



As for state/society interaction, the councils reveal a policy style marked by inclusiveness, social participation, and social control, institutional features incorporated in the education policy design with the return of democracy in 1988. Even for councils existing for more than five decades, with this innovation they were integrated into the national, state, and municipal public policy logic. As we have seen, these are institutions whose experts and social actors hold significant decision-making power. In this arena, consultative democracy is the dominant style even as the president manages to circumvent the councils, such as has occurred in the cases of health and education.

The third instrument are public consultations, which are required by legislation applicable to various public policies. The holding of public hearings is mandated by specific laws governing the environment, the statute of the city, bids and administrative contracts, the concession of public services, telecommunications services, and regulatory agencies. They must be performed in conformity with legal provisions established by the government clarifying their process, purpose, and effect, according to the list of attributions provided for in the 1988 Constitution.

Public hearings are important instruments for social participation in Brazil. They have a consultative, face-to-face, collective character, presupposes an oral manifestation by the participants, implies a debate between the actors involved, is open to all interested parties and has specific rules for their functioning (FONSECA *et al.*, 2013a; FONSECA *et al.*, 2013b).

When hearings are mandatory and fail to take place, the process may be nullified. However, although mandatory in some cases, public hearings are not legally binding, thus the government may justify the need to perform the work or service in the manner originally intended and does perform it. Transparency is also ensured in the aforementioned law by encouraging popular participation through public hearings related to budgetary policy-making (DELFORGE, 2012; IPEA, 2012).

Finally, the fourth instrument, participatory planning mechanisms began in preparation of the 2003-2007 Multiyear Plan. At the time, 27 Social Participation Forums were held in Brazil. Although the experience was timid in practical and quantitative terms, it sought to create a new mechanism for the participation of society. In the 2011-2015 Multiyear Plan, the government announced that the purpose of dialogue with society and state and municipal governments was to make the plan an important instrument of interaction between the state and the citizen with a view to effective public policy-making (IPEA, 2012; COUTO; CARDOSO JÚNIOR, 2020).

Participation around the Multiyear Plan took place through the creation of the Inter-Council Forum, which had representatives of civil society from various National Councils, as well as other organizations, networks and social movements. This participatory channel differs from the policy conferences in various ways: (a) meetings occurred with specific periodicity in which the main issues and normative directions of thematic areas in public policies were defined; (b) they generally took place at the three levels of government, with related issues discussed at each level and, as negotiations progressed, brought to the next level; (c) participation was open to the public, even though, at the state and national levels, only delegates chosen in the context of prior level conferences had voting power (IPEA, 2012, p. 19-21).

Among the topics addressed by the Inter-Council Forum in the debate on the 2011-2015 Multiyear Plan were economic, social and regional development, education, culture, environment, infrastructure, sanitation, social inclusion, housing, solidarity economy, and land reform. Debate also included urban reform, women's policies, job creation, employment and income; human rights; science and technology; water use; racial equality, participatory democracy, indigenous health, traditional communities, defense of the rights of sexual minorities, among many other issues (FORNAZARI; MACEDO; BESERRA, 2016; AVELINO, 2017).

The institutionalization of the most consensual model involves several areas and forms of participation. Although each

president used these resources differently, between 1988 and 2016, the dominant vision to strengthen social participation. It is necessary to take into account that many of these bodies are deliberative and produce legally binding norms, particularly the conferences and policy councils. Furthermore, the influence of social organizations is significant in terms of generating commitment by and alignment with the Executive and Legislative Branches. However, if relations between the two branches have since 1989 been characterized by the dominance of the executive, it is also true that the national government has sought to implement more consensual and incremental arrangements in its relationship with different interest groups.

It may happen that political actors act refuse to cooperate and set out to pursue their immediate interests without any concern for collective and institutional consequences (CONLAN, 2006). For instance, the current president has opposed the inclusive and participatory political and institutional design that characterized the relationship between government and society in agenda setting and policy-making. That is the case of Decree No. 9,759/2019, issued for the purpose of terminating all councils, committees, commissions, groups, boards, teams, forums, and all other names given to multimember decision-making bodies. However, the Supreme Court acted as a control institution when ruling that, by decree, the president could not change the composition of the councils or end them – even though this is not the same as valuing and requiring their participation in executive policy-making (MELO; PEREIRA, 2013).

Additionally, according announced in different media, the Bolsonaro government changed the composition of the National Environment Council by restricting the participation of subnational governments and civil society. The same occurred with the nomination of members for the National Council of Education, all of whom are more aligned with the conservative presidential preferences. In the same vein of weakening the role of these bodies by changing their composition, the Council Children and Adolescent

Rights, the Council For Drug Policy, and the Superior Councils for Cinema and the Legal Amazon, to name a few examples, had new members appointed.

However, such concentration of power and opposition to a more inclusive relationship between the government and society does not come without deleterious effects. A first effect is the loss of consensus enjoyed by public policies agreed upon and formulated with the presence of society, regardless of the different degrees of participation in each policy sector. Second, it affects the government itself, as the quality of decision-making declines – thus hindering public policy-making – and the ability to dialogue with society decreases. The resulting institutional gap has been filled by subnational governments and civil society itself, as seen during the Covid-19 pandemic (ABRUCIO *et al.*, 2020). Moreover, considering that the federal government is primarily responsible for formulating the rules, and for their funding, the decision to abandon and reduce the role of this dialogue will further insulate public policy-making, with great risks to the effectiveness and legitimacy of government programs.

### **Consensus democracy and decentralized government in the Brazilian federation**

Lijphart's (1999) explanatory model, for the unitary-federal dimension, does not address an essential aspect for understanding decentralization in Brazil: cooperative arrangements and federal pacts, and their impact on public policies. If the 1988 Constitution laid down the foundations of executive/legislative relations in the decision-making process, institutional development in terms of intergovernmental relations came later. In this article, three arenas are analyzed in two federalist dimensions of policy decisions: (a) federative horizontal and vertical cooperation forums, mostly focused on the formulation process; (b) in the implementation phase, public policies councils as spaces of participation and social control, especially at the municipal level.

It is also worth considering Brazilian federalism and the decentralization of policy-making, given that the design of sectoral arenas of intergovernmental cooperation is conditioned by both issues. As mandated by the 1988 Constitution, the federal sphere delegated the implementation, especially of welfare policies, to municipalities (ABRUCIO; GRIN, 2015). Decentralization was seen as the way to solve the challenge of implementing policies common to the three levels of government. But in this process, one must distinguish between policy decision-making authority and policy-making attributions (ARRETCHE, 2009, p. 8): the former is incumbent upon the central government, the latter, delegated to municipalities, mainly.

However, the policy devolution that took place up to the mid-1990s generated a centrifugal model that is less oriented toward cooperation between the three levels of government (ABRUCIO, 2005). Decentralization was organized on the basis of different arrangements that considered the characteristics of each sector and public policy, the previous sharing of responsibilities, and financial control over resources among the three levels of government (ABRUCIO; GRIN, 2015). However, especially after 1995, the Federal Government began to adopt measures designed to bring decentralization and joint coordination closer together.

In a federalism characterized by shared attributions among entities, the national sphere has strong normative, administrative, and financial power, which allows it to establish national public policy standards that may drive cooperation (FRANZESE; ABRUCIO, 2013; ARRETCHE, 1999). One path derived from this federalist model was the creation of intergovernmental cooperation arrangements steadily moving towards organizing around national policy systems. Since the beginning of the 1990's, the Health Care area has been a pioneer in organizing around such intergovernmental cooperation forums. This decision-making style was followed by Water Resources and, later on, by Social Assistance policies. Other areas have territorial or sectoral cooperation mechanisms, yet have not adopted a national public policy system such as the one adopted by Education. There two main types of

consociational arenas: municipal-state-federal cooperation and public policy councils in subnational spheres.

### *Arenas of municipal-state-federal cooperation*

As for municipal-state-federal cooperation, Table 1 shows arenas of horizontal cooperation between subnational entities for many public policies. These councils are not the same as mentioned above, for their role is less normative and more cooperative. Intergovernmental organization has incrementally influenced federal decisions in different ways in each policy. As a rule, the federal government does not formulate policies without formally or informally consulting these intergovernmental bodies. Finally, many councils are not dependent on the political will of the national government and they can work more autonomously because their members are only states or municipalities,

Table 1 – Principle horizontal councils and Forums of state and municipal secretaries established in Brazil since 1975

Councils and Forums of State and Municipal Secretaries	Started
National Council of Finance Policy (CONFAZ)	1975
National Council of Health Secretaries (CONASS)	1982
National Council of Municipal Health Secretaries (CONASEM)	1983
National Forum of State Secretaries and Directors of Culture	1983
National Council of Education Secretaries (CONSED)	1986
National Union of Municipal Education Officers (UNDIME)	1986
National Council of State Secretaries for Science, Technology and Innovation Affairs (CONSECTI)	1987
National Council of State Secretaries for Administration (CONSAD)	1991
National Council of State Secretaries of Planning (CONSEPLAN)	2000
National Board of State Secretaries of Public Security (CONSESP)	2003
National Forum of Tourism Secretaries	2003
National Board of Municipal Social Work Managers (COGEMAS)	2001

National Forum of Secretaries of Labor (FONSET)	*
National Forum of Secretaries of Agriculture (FNSA)	*
National Forum of Housing Secretaries	*
National Forum of Secretaries of Social Assistance (FONSEAS)	*
National Council of State Secretaries of Penitentiary Administration	*
National Forum of State Secretaries of Environmental Sanitation	*
National Forum of State Secretaries of Transportation	*
National Forum of Secretaries for Energy Affairs	*
National Forum of State Secretaries and Managers for Sport and Recreation	*

Source: Abrucio; Sano; Sydow (2010).

The importance of these forums grew as more federation-coordinated policies were adopted by the central government. For example, CONSAD expanded its ability to formulate policies and present demands to the federal government (SANO; ABRUCIO, 2011). CONSAD performs “federative advocacy” and aligns the interests of the Brazilian states. In 2008, it proposed a National Public Management Agenda to modernize the Brazilian State. CONSED was important to press for legal changes in favor of decentralization measures, which occurred after the 1988 Constitution. COGEMAS and CONASEMS are influential regarding, respectively, social assistance and health policies. Horizontal cooperation, with its consensual and incremental emphasis, is a reality in the “Brazilian public policy-making style”.

Analyzing the three main social areas (Health, Education, and Social Assistance) to understand their decision-making styles, we find that, from 2002 to 2015, with the exception of social security expenditures, the three areas accounted for 77% of federal social spending (SECRETARIA DO TESOURO NACIONAL, 2016). Below we analyze these three public policies in order to show how Brazilian federalism and its cooperative arrangements vary along with the variation of rules, relations, and political actors. In other

words, even in this more consensual and decentralized form of government, different mechanisms and institutional designs exist.

The dominant paradigm is the Unified Health System (SUS), created by the 1988 Constitution, which institutionalized a collegiate and consensual federative coordination and decision-making style (ABRUCIO; GRIN, 2015; FRUCTUOSO, 2010). In 2005, the Single Social Assistance System (SUAS) was implemented as an example of the SUS-based institutional learning process. In these two areas, this collective format, in which federal entities also take part, has established stronger and more stable roots. Other areas have followed this path, but without the same success: public safety, environmental conservation, sports, traffic, culture, housing, drug policy, and the promotion of racial equality. Due to its relevance, it is worth noting the creation, but not the implementation, of the National Education System in 2009 (ABRUCIO, 2010). This style of participatory council decision is focused on policy-making and implementation, even though there are distinct institutional and federal constraints in each area.

The tendency has been to organize, with different levels of formalization, federative cooperation arrangements. These, at least as regards decision-making rules and federative implementation, strengthen the construction of agendas supported by greater consent and coordinated by sectoral and dedicated ministries. This style of policy making has grown in the intergovernmental arena. In a heterogeneous and territorially unequal country like Brazil, this has been a response to the centralization dominant during the military regime's, which proved incapable of dealing with the country's complex reality. Ideally, policy systems are characterized as shown in Box 1.



### Box 1 – Institutional characteristics of national public policy systems

- a) Formally installed, unified, national, and based on organizational and normative terms;
- b) Equipped with intergovernmental forums formally established to agree on binding goals and rules (FRANZESE; ABRUCIO, 2013);
- c) Stable and continuous financial transfer schemes from federal government; funding also shared by three levels of government;
- d) Funds transferred are earmarked;
- e) Autonomy of each government level and duties acknowledged;
- f) Sectoral ministries as drivers;
- g) Skilled subnational management to address complexity of rules;
- h) Institutional designs developed by national councils with deliberative powers;
- i) National plans and organic laws required;
- j) Participation and social control required.

Source: Based on Franzese; Abrucio, 2013; and Grin; Abrucio, 2018.

Health and Social Assistance are areas where this model operates in line with this institutional framework, and therefore will serve as our basis for discussion. The counterpoint will be Education, because, despite its centrality in post-1988 decentralized federalism, systemic logic is still not available.

Since the 1970s, health policy community advocacy has been significant. When the 1988 Constitution was being drafted, this group proposed and was successful in ensuring the right to universal access to health care. As an attribution shared by all the states in the Brazilian federation, the challenge lies in defining deliberative and decision-making mechanisms. This has been addressed with the creation of institutional decision-making forums in which municipal, state, and federal managers participate: The Tripartite Intergovernmental Committee (CIT) brings together officials from the three

levels of government and, in Brazil's 27 states, Bipartite Interagency Committees (CIB) bring together state and municipal officials. These committees interact with CONASEM and CONASS, which are horizontal federation forums (ABRUCIO; GRIN, 2015; PAIVA; GONZALEZ; LEANDRO, 2017).

These cooperative bodies were not included in the federative design laid out by the 1988 Constitution. The appearance and evolution of the arrangement created by the health care policy became a very relevant contribution to Brazilian cooperative federalism. The SUS was so innovative in terms of intergovernmental agreement that its institutional format was replicated in social work area (ABRUCIO; GRIN, 2015; LEANDRO; MENICUCCI, 2018; PAIVA; GONZALEZ; LEANDRO, 2017). What is more, the political influence of the institutional design of SUS has been critical to establishing tripartite government cooperation to tackle the COVID-19 pandemic. For instance, the conflict between the Health Ministry and state and municipal secretaries over the measures to deal with the pandemic has taken place within the SUS. The federal government lacks the unilateral power to impose policies on subnational entities. Again, according to Abrucio *et al.* (2020), the Federal Supreme Court decided that states and municipalities are autonomous to implement the measures they see fit to tackle the pandemic. These two cases show that in the federative health arena the national government's majority power cannot be unilaterally exercised.

Concerning SUS, cooperative federalism is mediated by CIT and CIB management boards that are controlled by national, state, and municipal participatory councils. The success of this decision-making style stems from the cooperative behavior of the three government spheres, decentralization, and social participation. With the institution of the CIT, the federal government is no longer able to unilaterally establish norms for subnational governments (FRUC-TUOSO, 2010, p. 93-94). SUS is not synonymous with perfect balance of forces between the federation's three levels of government in intergovernmental relations, since in these consensus-driven

policy-making bodies, political dispute also arises, as each level seeks to achieve best possible outcomes. The federal government provides the funding and drives cooperation, while subnational governments rely on their power of implementation (FRANZESE; ABRUCIO, 2013).

Social Assistance, prior to 1988, was characterized by federal centralization and the transfer of resources to states and municipalities, which signed contracts with philanthropic organizations to perform social assistance services. Enshrined in the 1988 Constitution as a universal right, since 1993, Social Assistance sought to mirror the national health system. But as its own advocacy coalition in the drafting of the 1988 Constitution and its institutional trajectory differed from that of health care, its federation-based and participatory governance model was harder to consolidate (ABRUCIO; GRIN, 2015). It was only in 2005 that the Single Social Assistance System (SUAS) was established as the national arena for intergovernmental coordination. The framework is similar to that of the health care system and is consistent with the characteristics of an “ideal type” system, especially the consensus-based dynamics of federal cooperation and participatory decentralization to subnational governments.

This new institutional reality enabled the implementation of cross-federation negotiation and deliberation mechanisms (CIBs and CIT), coordination, and division of competencies across government levels. As with health care system SUS, the system was implemented according to levels of social protection and by means of earmarked grant transfers (SPOSATI, 2004). The CIT and CIBs are permanent joint management forums that deliberate on the operational aspects of policy implementation by subnational governments. The centrality of the federal government (SOARES; CUNHA, 2016) was decreased in favor of a more consensus-based and incremental construction.

Similarly, social assistance councils and conferences have become important forums for participation and social deliberation on the implementation of federal policies. For example, the creation of SUAS

in the 4th National Conference on Social Assistance, in 2003, was preceded by social mobilization prompted by municipal and state conferences (SOARES; CUNHA, 2016). The institutional architecture of the area has several civil society and federal government spheres to support its collective, consensus-based, and incremental management.

However, since social assistance is historically less organized than the health area, the federal sphere has kept strong regulatory power over the area. This process is marked by

a leading role for the national executive branch, that requires the approval of its initiatives in the national legislature, that induces but not imposes rules, and opens channels for the participation of subnational entities and civil society in policy-making (SOARES; CUNHA, 2016, p. 95).

This national policy style, featured by the ascendancy of the federal government, requires reinforcing the participatory process in conferences and councils in the social assistance area.

Education policy has followed a different path, because state and municipal governments can provide this education to the same universe of students through their separate school networks. Education policy has been marked by little collaboration between these two levels of government (ABRUCIO; GRIN, 2015). The 1988 Constitution sought to address this reality by establishing a federatively balanced model founded on three pillars:

- The importance of decentralization of duties to municipalities;
- The adoption of common instruments to avoid centrifugal decentralization: one government level acts primarily in one educational cycle, yet another level is equipped to do the same, avoiding, in theory, gaps in access to education.
- The retention of power by the federal government to produce national guidelines that, together with redistributive and supplementary functions, are aimed at ensuring minimum standards of educational quality through technical and financial assistance to subnational entities (ABRUCIO, 2010).

The 1988 Constitution also established a collaboration regime to foster coordination between federation entities. Given the existence of dual networks, particularly in elementary education, intergovernmental cooperation should avoid overlapping (ABRUCIO, 2010). In 1996, the national sphere acted in federal coordination by implementing the Fund for Maintenance and Development of Elementary Education and Valorization of Teaching. In 2006, that fund was transformed into the Maintenance Fund for Education Professionals by including basic education for all children up to 17 years of age. Both funds redistributed resources that increased access to public education.

However, in intergovernmental management there are no cross-federation pacts or institutionalized arrangements for negotiation, as exist in the Health and Social Assistance areas. The history and municipal/state duality of the educational networks are not conducive to intergovernmental cooperation. Though constitutionally enshrined since 2009, the National Education System has not yet been implemented, largely due to difficulties in implementing the collaboration regime between states and municipalities. A second hurdle has been the absence of tripartite government-level forums to mediate the interests of the three levels of government (ABRUCIO; GRIN, 2015).

For this reason, the decision-making style, although oriented towards the participation of municipal, state, and federal governments and social control, is not formalized as occurs in the health and social assistance areas. CONSED and UNDIME are horizontal federation forums, just like CONASS and CONASEMS in the health area and FONSEAS and COGEMAS in the social assistance area. But in education, these forums have not been integrated into a national system and are not represented in negotiation committees such as CIBs and the CIT. Possibly, in education public policy, this institutional federative design influenced even more the disorganization caused by measures adopted by the Bolsonaro administration to deal with the pandemic and generated negatives effects (e.g., the High School National Exam calendar, lack of a definition for the 2020 school year, and problems related to the provision of school meals). Despite these problems, CONSED has been a key political actor in countering decisions by the

Education Ministry, yet another example of the difficulties the federal government faces when attempting to unilaterally impose its policies on this intergovernmental arena (ABRUCIO *et al.*, 2020).

### *Public policy councils in subnational spheres*

As for this second dimension, especially for the subnational governments, the emphasis has been on participatory decentralization with social control of the policies coming from the Federal Government (GOHN, 2001; LAVALLE, VOIGT; SERAFIM, 2016), especially in the municipalities). The channels of democratic participation were broadened in line with a growing process of institutionalization of these participatory arenas (GOHN, 2016). According to Abers, Serafim and Tatagiba (2014, p. 332), “institutionalized participation”, one of the repertoires of state-society interaction, requires the use of sanctioned channels of dialogue with rules accepted by the political and social actors involved. And this format derived from a long history in which reformist social movements and bureaucrats contributed to the formalization of policy councils (ABERS; KECK, 2008).

Bibliographic survey carried out by Almeida, Cayres and Tatagiba (2015) identified the main focuses of research on the councils: the profile and performance of the actors involved, historical-institutional processes, external relations, internal dynamics, and their achievement. Research has sought to understand who are the actors involved in these councils’ activities and how they act. These participatory institutions expanded representation because social actors started to call themselves representatives of society and the state started to deal institutionally with an official representation of civil society (WAMPLER, 2010; AVRITZER, 2007; ALMEIDA; TATAGIBA, 2012; ROJAS BUVINICH, 2014).

Table 2 shows the magnitude of this style with reference to the number of municipal policy councils. These arenas are important for two reasons: (a) they demonstrate the presence of local society in policy-making; (b) especially in areas that receive earmarked federal transfers, accountability is mandatory in such forums, which further strengthens their political-institutional weight.

Table 2 – Type, number, and percentage of municipal councils across Brazil (2011-2017)

Type of council	Number of cities	As % of total cities
Health Council	5,557	99.9
Council of Social Work	5,560	99.8
Fundeb Social Monitoring Control Board	5,494	98.6
Council for the Rights of Children and Adolescents	5,484	98.5
Guardianship Council	5,472	98.3
School Food Council	5,433	97.5
Board of Education	4,877	87.6
Environment Council	4,250	74.0
Council for the Rights of the Elderly	3,450	62.0
Housing Council	3,317	59.6
Council of Culture	2,151	38.6
Food Safety Council	1,629	29.3
Council on the Rights of Persons with Disabilities	1,093	19.6
Urban Policy Council	981	17.6
Women's Rights Council	976	17.5
Sanitation	952	17.1
School Transportation Council	696	12.6
Security Council	692	12.4
Sports Council	623	11.2
Youth Rights Council (or similar)	608	10.9
Transportation Council	533	9.6
Human Rights Council	324	5.8
Racial Equality Council (or similar)	280	5.0
Lesbian, Gay, Bisexual, and Transgender Rights Council	4	0.1

Source: IBGE (2011, 2013, 2014, 2017).

As can be seen from the data available on municipal councils from 2012 to 2017, there are at least 61,698 municipal councils, or an average of 11.08 councils per city (GRIN; FERNANDES, 2019). Thus, this type of participatory council is now widespread in the municipalities, with federal legislation as a key factor in driving its expansion and consolidation after the 1990s. However, it should be noted that the establishment and the political-institutional capabilities of these councils have been very uneven both across territories and sectors (TATAGIBA, 2004).

In the health area, for instance, councils are permanent, deliberative, and overwhelmingly present in every city. They are composed of public management and services providers representatives (25%), health care workers (25%), and national health system SUS users (50%). They formulate strategies, control policy execution, including economic and financial aspects, and submit their decisions to mayors for approval. They assess and approve the municipal plans and conditions for their fulfillment according to guidelines set by the Municipal Health Conference. They have operating norms defined in rules and regulations approved by the councils (FRUCTUOSO, 2010; GAEDTKE; GRISOTTI, 2011). The same rationale guides social assistance. In education, municipal councils have four main duties: *(a)* to set rules for municipal compliance with federal and state norms; *(b)* to deliberate on the functioning of schools and the curriculum of the municipal school network; *(c)* to address any requests by the public authority and society; and *(d)* to supervise policy execution and to monitor results.

In general, these three policies – health, social assistance, and education – inspire the modelling of the councils in the other areas included in Table 2. In this analytical dimension, it is worth noting that the institutionalization of state- and municipal-level participatory forums has strengthened consensus and incrementalism, thus in line with the conception of participatory decentralization. In different ways, the three arenas analyzed have focused on the formulation and implementation of policies.



To conclude the argument, it is worth stating that the strength of the public policy coordination model anchored in national public policy systems is basically concentrated in the social area – with the exception of the National Water Resources Management System (SINGREH). This model is not present in several sectors or is just a formality with little effectiveness, as is the case of the Unified Public Security System (SUSP). Although this more associative model of negotiation and of tripartite government and social participation has not been replicated in a majority of public policy-making areas, it is worth emphasizing that it has been fundamental to building and expanding the Brazilian welfare state. Without this standard, this undertaking would probably not have been carried out. The counterfactual argument in this case lies in the first years of the Bolsonaro administration: by excluding subnational governments and key civil society actors from educational and health policy-making the federal government rendered each respective ministry inoperative, with policies being disputed and an annual budget unspent.

## **Conclusion**

There is no single style of public policy-making in Brazil, since concentration and sharing of power coexist and are both formally institutionalized. Brazil's presidentialism and the 1988 Constitution engendered different models that are not always complementary. On the one hand, the conception of a strong and decisive executive branch after the end of the military regime in 1985 is path dependent. On the other hand, this conception seeks to extend the role of society in governmental arenas. But the strengthening of federation cooperation arrangements and participatory decentralization has not meant that the executive branch ceased to be the "center of gravity of the political system" (AMORIM NETO, 2007).

There are relevant arenas of participatory and advisory democracy, yet viewing them as the preponderant influence in determining public policy-making should be taken "with a grain of salt". In both dimensions analyzed in the light of Lijphart (1999), the

executive plays a key role, as presidents have many constitutionally-mandated powers.

In the relationship with the legislature, the evidence over the last thirty years shows two characteristics: presidential dominance (the majority of legislative proposals in congressional debate originate from the president) and anticipatory bias (the president has political and constitutional instruments capable of reducing uncertainty as for the approval of his/her agenda). Regardless of the great importance of the constitutional and political role played by National Congress the characteristics of the political model approved in 1988 enable this kind of presidential stance. Creating institutions for interest group participation does not counterbalance presidential preponderance, however relevant their contribution might be. Despite the importance of a number of national public policy-making councils, it would be a mistake to argue that they are indispensable arenas for government decision-making. It suffices to bear in mind the rather small number of bills enacted into law proposed by participatory policy-making conferences.

However significant presidential dominance remains, giving primacy to approving executive policy agendas requires compromising with political parties in Congress. This balance between presidential preponderance and the establishment of government coalitions – or between the majoritarian and consensus styles – shows the hybridity of the public policy-making process in Brazil.

With respect to federative relations, the central government has the means to “bind independent subunits around a given national goal” (ARRETCHE, 2012, p. 199). This “democratic centralization” is driven by the federal government’s financial and normative resources. However, there are different designs for federative cooperation, depending on the background and institutional characteristics of each public policy. In effect, the formulation of many public policies calls for intergovernmental compromise in arenas in which subnational entities also have much power.

It would be wrong, however, to conclude that a consensus model equals balanced municipal/state/federal relations, even if the

central level cannot impose decisions in many public policy areas. If the participation of the federation's constituent units accounts for, above all, policy implementation, the executive can claim its status as coordinator, especially with regard to financing (FRANZESE; ABRUCIO, 2013). Thus, even though decentralized government requires for more federative and multilevel cooperation, this is not a sufficient condition to assert that the production of policies renders all actors equal<sup>3</sup>.

Power of initiative remains highly concentrated in the executive and in sectoral ministries (GRIN; ABRUCIO, 2018), although they must obtain consent from subnational spheres. This fact amplifies the incremental character of decisions more than broad changes in the agenda. Therefore, consensus building through the heavy hand of the federal government in various intergovernmental arenas is only another aspect of the hybrid nature of policy-making in Brazil.

This is complemented by participatory decentralization and the role of policy councils in municipalities, central to the implementation of federal initiatives. The 1988 Constitution and the institutional evolution of public policies largely adopted the participation of local civil society in the deliberation, supervision, and consultation phases. The existence of multiple councils does not necessarily mean participatory quality, even though there are important participatory forums in the municipalities. Nevertheless, a style of consensus-based policy implementation is gaining momentum building on the interface between government and society.

In Brazil, there are two aspects of policy-making: executive power dominance and the consensual bias that connect the political system and federalism, occurring when rules formulated through laws demand decentralized implementation. However, exhibiting

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3 Two examples further strengthen this point. In 2014, the PT government proposed, through a provisional measure, the *Mais Médicos* Program, deemed essential by the president, yet opposed by medical associations. The debate did not take place in SUS arenas, but Congress approved the measure and the initiative was implemented. In 2016, the PMDB government submitted a secondary-education-reform provisional executive order, a debate that had been dragging on for years with society, without any discussion with Consed, Undime, and other social organizations. Still, the measure was approved by Congress. In sum, presidents do not hesitate to use their prerogatives whenever they deem them necessary.

this dual nature does not mean that each kind of national policy style is homogeneous in its functioning. On one hand, presidential preponderance needs to generate more consensus-based, compromise solutions, especially to build a majority coalition with the political parties that have votes in Congress. The functioning of coalitional presidentialism also faces challenges in order to keep the President's political power over Congress. However, political constraints make even the more vocal adversaries of this model adopt its rules, as is the case of President Bolsonaro. Also, in its relationship with society the executive uses various negotiation tools in its interactions with interest groups.

On the other hand, decentralized federalism, although emphasizing its predominant consociational characteristics, is still strongly influenced by the central government. In addition, presidents can sometimes adopt unilateral decisions about policies without building compromise in the federation's arenas, despite the costs this entails when it comes to implementing these policies. In this arena, even if there are many legal norms regulating the relationship between the federal government and these participatory forums, the president enjoys a very high level of political discretion either for circumventing these forums or for changing their composition or number of council members.

Brazilian hybridity implies the coexistence of two national public policy-making models, one majoritarian, the other consensual. Each must "pay attention" to the political and institutional resources of the other model whenever possible and/or necessary. There are two dimensions of policy-making, with their arenas, political actors, and institutions, whose functioning and balance depend on how the majoritarian and consensus approaches behave.

This essay has also revealed dilemmas and problems of institutional hybridism. It is possible to think of aspects that need to be improved in the process of building congressional coalitions, federation-level coordination, and participatory arenas. But the refusal to adopt this hybrid model, especially regarding negotiating

with social actors and subnational governments, has not proven successful as a standard of governance.

President Bolsonaro's first two years is one of the greatest examples of the failure of this alternative strategy. He preferred not to set up a legislative coalition for the sake of criticizing the so-called "old politics". He has weakened federation-level coordination in the name of devolution of powers to subnational governments, while a majority of participatory forums were closed or saw their roles diminish in the name of protecting technical decisions against social lobbies. The result of this strategy was a decrease in the size of the executive's agenda in Congress, and the greatest number of presidential vetoes being overridden since the re-democratization period started in 1985. At the subnational level, the strategy has led to state governments taking different paths in policies, if not engaging in outright confrontation with the federal government.

The behavior of the federal government during the pandemic was not even close to its potential coordinating role. The adoption of confrontational federalism (ABRUCIO *et al.*, 2020), the authoritarian threats against the other branches of government made by *bolsonaristas* and the president himself, as well as the enormous division provoked in Brazilian society led the country to imagine democratic breakdown. But the deepening of the crisis and fear of an impeachment made Bolsonaro change his political behavior. Since then, the option has been to reestablish a model of dialogue with Congress, by strengthening his relationship with the so-called *Centrão*. It is not yet known whether this will result in a broader transformation, but there is no doubt that the attempt to upend hybrid public policy-making has failed. In this sense, the Bolsonaro administration could be characterized as a "natural experiment", since it has shown how resilient the institutional nature and structure of the majoritarian side is in the Brazilian political system.

Learning about Brazil's hybrid model of governance should lead not to its complete rejection, but rather to incremental improvement of its functioning pattern. In fact, this is taking place, as evinced by institutional changes in the relationship patterns between the

branches of government, e.g., provisional executive measures, and in federalism itself. With its more radical initial proposal, the Bolsonaro government is helping us to better understand an institutional blend that may possibly ensure greater stability for the Brazilian political system and how only incremental reformism can adequately improve the country's public policy-making style.

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### Resumo

Este estudo revisa a literatura sobre política e políticas públicas no Brasil argumentando que o estilo de política nacional dominante pode ser caracterizado como híbrido, pois mescla características majoritárias e consociativas. Esse estilo de política pública foi hegemônico principalmente entre o período dos dois processos de impeachment presidenciais (1992-2015). Esse arranjo tem duas características principais: o domínio presidencial sobre o Congresso, ainda que também marcado por ampla negociação com este poder, e a maior cooperação federativa liderada pela União junto aos entes subnacionais e também a implantação de arenas de participação social. Há dilemas e problemas nesse hibridismo institucional, mas tem sido difícil escapar dessa combinação ao tentar manter padrões mínimos de governança política e de políticas públicas. Conclui-se que melhorias incrementais são mais eficazes do que a modificação completa do modelo.

**Palavras-chave:** Estilo de políticas. Dominância presidencial. Majoritarianismo. Consociativismo. Coordenação federativa. Participação social.

## Abstract

This study reviews the literature on politics and public policies in Brazil arguing that the dominant national policy style may be characterized as hybrid, since it combines majoritarian and consociational traits. This public policy style was mainly hegemonic between the two presidential impeachment processes (1992-2015). This arrangement has two main characteristics: presidential dominance over Congress, albeit also marked by broad negotiation with this branch and greater federative cooperation led by the Union, alongside with subnational entities, and the implementation of social participation arenas. There are dilemmas and problems in this institutional hybridity, but it has been difficult to evade this combination when trying to maintain minimum standards of political governance and public policies. It is concluded that incremental improvements are more effective than the complete modification of the model.

**Keywords:** Policy style. Social participation. Presidential dominance. Majoritarian approach. Consensus approach.

## Resumen

Este estudio revisa la literatura sobre política y políticas públicas en Brasil argumentando que el estilo de política nacional dominante se puede caracterizar como híbrido, ya que mezcla características mayoritarias y consociativas. Este estilo de política pública fue hegemónico principalmente entre el período de los dos procesos de acusación de los presidentes (1992-2015). Este arreglo tiene dos características principales: el dominio presidencial sobre el Congreso, aunque también marcado por una amplia negociación con este poder, y la mayor cooperación federativa que lidera la Unión con las entidades subnacionales y también la implantación de espacios de participación social. Hay dilemas y problemas en este hibridismo institucional, pero ha sido difícil escapar de esta combinación al tratar de mantener estándares mínimos de gobernabilidad política y políticas públicas. Se concluye que las mejoras incrementales son más efectivas que la modificación completa del modelo.

**Palabras clave:** Estilo de políticas. Dominio presidencial. Mayoritarismo. Consociativismo. Coordinación federativa. Participación social.

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