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*Beyond formal process: evidence of veto-players in Brazilian
legislature*

Author(s)

Adriana de Oliveira Pinheiro

University of Brasília - Brazil

adrianaopinheiro@gmail.com

Suely Mara Vaz Guimarães de Araújo

University of Brasília and Brazilian Institute of Public Law - Brazil

suelymvg@gmail.com

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ABSTRACT:

The covert face of power, which is still largely ignored theoretically, surrounds policy-making process. In Brazil, the literature tends to emphasize the political power of the federal executive in the legislative process. The objective of this paper is to revisit the position of prominent actors (federal Executive and party leaders), especially in fiscal matters. In order to do so, we analyze processes in which the influence of state governments in Congress is visible, with emphasis on fiscal measures adopted since the 1990s.

We believe that fiscal and budget issues are permeated by federal conflicts that make difficult the approval of relevant government legal propositions. The subnational governments (governors and mayors) pressure parliamentarians to paralyze any proposal that involves a change in the tax collection system in federated entities.

Beyond the fiscal matters, the federalism structure has affected the intergovernmental relations in other areas of public policy, such as the building of the legal framework for basic sanitation.

Our results indicate that the centralization of the federal Executive power in Brazilian legislative process is not absolute. The parliamentary dynamics is also shaped by many other factors (public servers, partisan ideologies etc.).

Keywords: Parliamentary Behavior; Fiscal Federalism; Legislative Process.



1. Introduction

This paper tries to discuss whether the position of the Executive and party leaders represents the "dominant" orientation in the Brazilian legislative arena when the matters affect the interests of subnational governments in the fiscal and budgetary sphere.

How the processes in which the coordination of the governmental coalition has no power in the decisions should be analyzed? It is important to understand that it is not always possible to keep the coalition under control. Therefore, it is limiting to assume the congressional dynamics only with the framework directed to the Executive and party leaders, as many political scientists have done (Figueiredo & Limongi, 2001, Santos, 2003, Pereira, Power & Rennó, 2007, Cheibub, Figueiredo & Limongi, 2009). This literature, dominant in the last two decades within Brazilian political scientists, neglects the fact that parliamentarians can organize their actions by alternative means. Among other situations, it is evident in cases in which party discipline cannot explain the decision-making process. The logic of the coalition presidentialism paradigm tends to be broken when state or municipal fiscal matters are in the agenda.

The recent economic recession and the impeachment of Dilma Rousseff's government in the year of 2016 undermine the thesis that the formation of coalitions by the President is enough to ensure its support (Bedritichuk, 2016). Studies that analyze the elements that challenge the coordination between the Executive and party leaders of the coalition are not frequent yet.

The legislative processing of fiscal matters demands theories capable of explaining the regional impact, even when there are regimental, partisan and government obstacles. How can we explain the difficulties in approving a robust tax reform in the last three decades? Are not patronage resources and pork-barrel enough to shape the behavior of parliamentarians around the interests of the federal government?

In the study presented here, we deal with elements that highlight the performance of state governments in the national parliamentary dynamics. The hypothesis is that when fiscal issues are in focus, congressmen defend the interest of the predominant region in which they were elected, even when the state's interests contradict political party's position.



We analyze the parliamentary dynamics and the performance of the state governments, bringing examples from the fiscal and budgetary area, focusing on the most recent round of debt renegotiation (2013-2018) and the recent case involving the legal framework of the Brazilian basic sanitation (2018-2019). A detailed study was performed to understand which orientations have shaped parliamentary behavior in these processes. We used process tracing (George & Benett, 2004) and content analysis (Collado, Lucio & Sampieri, 2006), based on several legislative documents (propositions, technical advices, votes and technical notes) and 12 interviews of central actors in the process of renegotiating debts that took place in 2017.

In the sequence, we present a critical review of presidential coalition. Based on this re-interpretation, we identify and analyze the fiscal and budget cases of governor's pressure after 1988 and the performance of state governments in the recent debate on basic sanitation legislation.

2. Revisiting the literature about Coalition Presidentialism

The traditional papers of coalition presidentialism usually explain the legislative process from a macro point of view and defend that the Executive and party leaders would be much more efficient and powerful in coordinating their preferences than states (Figueiredo & Limongi, 2001; Santos, 2003, Limongi, 2006, Pereira, Power & Rennó, 2007, Cheibub, Figueiredo & Limongi, 2009).

There are critical perspectives about the costs of negotiations and the stability of this system (Rennó, 2006, Abranches, 2015; 2018), but even the critical authors do not refute the Executive's political power in the legislative arena.

The reduction in public revenue over the last few years, the largest corruption scheme ever discovered, called *Lava-Jato*, and the popular protests started in 2013 were factors of deterioration of Dilma Rousseff's image, which resulted in the impeachment in 2016. This event has weakened the theories that emphasize the strength and power of the federal government to coordinate political coalitions in Brazil. The political stability and capacity for governability started to be questioned (Bedritichuk, 2016).



It is important to understand that the coalition control is not always possible. Araújo and Silva (2012) pointed out gaps regarding the performance of parliamentarians and other political actors in the legislative process, which are often underestimated by the excessive emphasis on the power of the Executive and party leaders. The formation of state coalitions and parliamentary fronts with a thematic basis demonstrate that parliamentarians also organize their actions by alternative ways. Unfortunately, the majority literature about coalition presidentialism, which overestimate the supremacy of the Executive and party leaders, neglects the influence of other forms of collective action present in the legislative processes.

Abranches (1988) emphasizes that the formation of political coalitions in Brazil follows a logic that has two branches: the partisan and the regional (states). For the cited author, this element clarifies the occurrence of "big coalitions, since the basis of political support of the government is not only partisan-parliamentary, but also regional" (Abranches, 1988, p. 22, own translation). This concern about the regional logic is often overlooked in the references to this author's positions. We have tried to fill this gap presenting the debates that involve fiscal issues in the federalism structure. The political power of state governments still matters, even though it has weakened since the barony thesis (Abrucio, 1998) faded with the renegotiation of debts and the closure of regional banks during the Fernando Henrique Cardoso's government (Monteiro Neto, 2013; 2014).

Within the scope of renegotiation of state debts, the congressman is expected to mobilize to approve better payment conditions for his or her home state. In the discussions about fiscal federalism, as the territorial costs and gains generated are often identified, it is not plausible to expect that one parliamentary votes favorably to a serious loss for his or her home state revenue, which could represent a serious electoral threat. As Abrucio (1998) points out, voting during electoral years and the possibility of "married elections" between parliamentarians and governors tend to change the parliamentary orientation in favor of regional policies. Besides that, due to the uncertainties of the political scenario in the electoral years, the chances of voting on structuring and controversial matters become reduced.

Apart from the political structure, regional defense in federal conflicts by parliamentarians, rather than the accommodation of private interests, represents a way to seek legitimacy of



their own mandates by serving the bases that elected them, especially in federative issues that affect, directly or indirectly, the governors' ability to collect taxes. The issue is sensitive for senators, elected according to federalist logic, but also relevant in the Chamber of Deputies, since the Brazilian electoral district is equivalent to the territory of the states.

We will analyze a set of situations in which there is evidence of relevant action by subnational governments influencing the decisions of the Brazilian National Congress, with a focus on fiscal federalism. Firstly, we present other studies and then detail the renegotiation of state debts, exposing the cases in which process tracing (George & Benett, 2004) has been applied.

3. Evidence of subnational power in fiscal and budget legislative processes

The dominant approaches about parliamentary behavior (with the aim of identifying uniform patterns of action) seem to have been unable to sustain themselves over time, at least to explain part of the reality. The fiscal restrictions of the 1990s weakened the literature that extolled the power of state governments in the federative context (Monteiro Neto, 2013; 2014), just as the recent economic recession accompanied by the process of impeachment in the Dilma Rousseff's government weakened the theory that the formation of coalitions by the Executive is enough to guarantee political support to the federal government (Bedritichuk, 2016; Abranches, 2018).

We will analyze the main fiscal measures adopted since the 1990s, focusing on the renegotiation of state debts, and, in sequence, the emblematic case that resulted in the rejection of adjustments in the legal framework of the Brazilian basic sanitation in 2018. Subnational pressures, especially the state governors' influence in Congress¹, had a direct impact on the outcome of these legislative processes.

¹ The limits of federative action with focus on municipalism have already been well pointed out by the literature (Souza, 1996, Fernandes & Wilson, 2013, Fernandes & Araújo, 2015).

3.1 Post-1988 General Context

Firstly, it is important to recognize the active capacity and protagonism of the legislative in the decision-making processes (Araújo & Silva, 2012; Silva, 2014). In the fiscal and budgetary arena, the exclusive competence of the Federal Senate to elaborate resolutions that rule the contracting of internal and external credit operations of subnational units (Brazil, 1988, article 155, § 2, item V), changes made by the parliamentarians in budget laws, the approval of an authoritative status to parliamentary amendments (Constitutional Amendment n. 86/2015) and the frequent postponement of the approval of Budgetary Guidelines Law point out in this direction.

In accordance with art. 165, paragraph 9, item I, of the Federal Constitution, complementary law should provide rules for "the financial year, the term, the periods, the preparation and the organization of the multiannual plan law, the budget guidelines law and the annual budget law" (own translation). However, this general law does not exist yet and the guidelines for approving the budget laws are still those established by the Temporary Constitutional Provisions Act. This legal gap since 1988 seems to show that the Executive's ability to coordinate parliamentary behavior has limitations.

A similar situation occurs in relation to the *Imposto sobre Operações relativas à Circulação de Mercadorias e Prestação de Serviços de Transporte Interestadual e Intermunicipal e de Comunicação* (ICMS) [Tax of Circulation of Goods and Provision of Interstate and Intermunicipal Transportation and Communication Services]. There is a fiscal war between states that results in the reduction of tax rates in order to attract investment from the industrial sector to stimulate jobs and the local economy. In practice, this war generates predatory disputes and affects the states' competitive capacity and general revenue collection (Monteiro Neto, 2013; 2014; Afonso, 2016a).

Art. 146, item I, of the Federal Constitution establishes that "it is the responsibility of the complementary law to dispose of conflicts in tax matters between the Union, the States and the Municipalities" (own translation). Even with global losses generated by the fiscal war being evident, the federal complementary law that will discipline and make compatible the 27 existing state legislations about ICMS has not been created yet. The lack of constitutional

regulation after three decades brings to light the impact of federal conflicts in the legislative process. There seems to be no political space for the adoption of such legislation.

It is common that federative tensions generate reactive behavior from the subnational levels in relation to the central government. This may explain, at least partly, the postponement of the fiscal adjustment and the obstacles involved in the approval of the Brazilian Tax Reform. Rejection of structural reforms, such as that proposed by *Imposto sobre Valor Agregado* (IVA)² [Value Added Tax] and the approval of merely punctual adjustments derived from the tax legislative debates are evidence of the veto power of governors related to changes in this arena.

For example, the *Lei Kandir* [Kandir Law], Complementary Law n. 87/1996 that regulates ICMS, is portrayed in literature as one of the biggest losses for the exporting states (Arretche 2009, p. 389). However, the law itself has established a fund to compensate this losses.

Considering the largest measure of economic recovery post-1988, the *Plano Real* (Real Plan), Abrucio (1998) found that the proposal was only approved due to the capacity of state political actors to behave cooperatively for the approval. Without the mobilization of the governors allied with the President, the matter probably would not have passed.

Fiscal measures adopted since the 1990s - creation of constitutional funds, such as the *Fundo de Emergência Social* (FSE) [Social Emergency Fund]; the *Lei de Responsabilidade Fiscal* (LRF) [Fiscal Responsibility Law], which consists of rules designed specially to hold subnational levels spending; rules attaching expenditures to specific areas such as health and education; and the *Desvinculação de Receitas da União* (DRU) [Executive Revenue Unttached], which increases the federal Executive's freedom to allocate revenues - have not represented serious damage to tax collection capacity and subnational autonomy. These measures are a consequence of the primary objective to restore the fiscal balance of the country and also to recover state economies (Leite, 2005, Afonso, 2016b).

There is a thesis that defenders of the "power of governors" were not supported empirically since the 1990s, mainly because of the fiscal debts of the states and progressive fiscal

² The IVA proposal establishes that taxes should be on consumer goods rather than on personal income (Junqueira, 2010).



centralization in the central government (Monteiro Neto, 2013; 2014). According to this, how is it possible to explain the difficulty to approve structural reforms in the fiscal area since 1988? Are not patronage resources and pork-barrel enough to shape the behavior of parliamentarians around the interests of the Executive?

As an indication of the power of the governors in the legislative processes, we should cite the oil royalties bill (Law n. 12,351/2010). With the discovery of oil in the pre-salt layer, in 2009, the royalties derived from the strip in the coastal area of the Southeast, which were mostly from two states of the region (Rio de Janeiro and Espírito Santo), would be equally distributed with all other Brazilian states. In Congress the states numerically favorable to the measure were more than the opposing. The conflict ended up being arbitrated by the Judiciary, which opted for the unconstitutionality of the approved law³, maintaining the initial logic that would favor only the producing states (Junqueira, 2010, p. 82).

The cases presented above weaken the affirmative that the orientation of the federal Executive is always predominant in the legislative arena. They are examples in which the state interest can prevail. It should be mentioned that most studies in the area of parliamentary fiscal behavior are focused excessively on the parliamentary amendments in the federal budget. It should be noted that the fiscal and budgetary field is complex, involving the tax system, public finances, and the federative arrangement itself. Considering the Brazilian reality, this area remains still unexplored in the legislative studies.

The most recent round of renegotiation of state debts (2013-2018) seems to be representative of the current parliamentary behavior in fiscal affairs, considering the extreme gravity of the financial situation of some Brazilian states. In sequence, we will explain in detail the agenda of the renegotiation of state debts and its fiscal repercussions, based on the historical facts and the results of process tracing (George & Benett, 2004).

³ Direct Action of Unconstitutionality n. 4.917. Source: Superior Federal Court of Brazil.

3.2 Renegotiation of state debts

In the discussion about renegotiation of state debts, one congressman is expected to look for to the improvement of the payment's conditions of his or her home state, when there are no effects that counterbalance this. The states use the discussion as an opportunity to pressure the government for more resources (Afonso, 2016b). The defensive performance maintains the status quo and the possibility of veto to the undesirable changes.

We need to contextualize events, because there are historical, institutional and conjunctural factors that explain the renegotiation over the years. In the 1980s, the autonomy of state banks and low fiscal responsibility made banks the major creditors of municipalities and state governments themselves. As a result, the debt of the subnational spheres grew dramatically over the 1990's decade (Monteiro Neto, 2013; 2014, Abrucio, Franzese & Sano, 2013).

Although the Federal Constitution has granted the distribution of the administrative and legislative functions in a cooperative model in which the competences and tax revenues are shared among the federated spheres, the fiscal crisis in the states turned out to require federal interference. This happened mainly in the government of Fernando Henrique Cardoso (1995-2002), through national economic plans (Real Plan - 1994) and imposition of fiscal austerity on the renegotiation of state debts.

There were three laws about the renegotiation (Law n. 7,976/1989, Law n. 8,727/1993 and Law n. 9,496/1997) that preceded the LRF. But only in 2000, after the approval of the LRF, that the accounts and the fiscal framework have been rebalanced. The LRF has had relevant political support, even the governors themselves sought fiscal adjustment and economic recovery (Leite, 2005).

According to Tavares (2005), “our political-administrative culture until the approval of the *Lei de Responsabilidade Fiscal* (Fiscal Responsibility Law) was characterized by a lack of institutional commitment to the debt” (own translation). Beyond targets and limits on personnel expenses and debts, institutional sanctions for noncompliance cases have become more rigorous, prohibiting new renegotiations between the spheres of the federation, as provided in article 35 of the LRF. This law was the most centralized response to the fiscal behavior of federalism arrangement since the 1988 Federal Constitution. The most visible

impact was the ensuring of fiscal discipline at the different levels of government through strong fiscal constraints on the allocation of revenues at the subnational levels.

After the 2000s, the renegotiation was discussed again only in 2013, with the *Projeto de Lei Complementar* (PLP) [Complementary Law Project] n. 238, authorizing the changing of the debt indexer in order to reduce inflationary distortions in the payment rules of the debts.

In recent years, the discussion of public debt and federal deficits has become more complex because of the slowing economic activity and fiscal laxity, resulting in the reduction of investment on infrastructure in the states between 1998-2006 (Gobetti, 2010). At the same time, from 2007 to 2012, personnel expenses have increased comparing to revenues (Rezende, Carneiro & Rezende, 2014, p.13).

The growing of state debts and distortions of payment conditions became worrisome because the contracts with state governments had not been revisited for more than ten years. The emergency situation of financial calamity in which some Brazilian states are now, such as Rio de Janeiro, Minas Gerais and Rio Grande do Sul, forced the federal Execution to rediscuss the monetary indexator with the *Lei Complementar* (LC) [Complementary Law] n. 148/2014. This LC opened space for the resumption of the agenda about the renegotiation of state debts. This new phase involving the renegotiation of state debts and emergency aid is composed of LC n. 148 (2014), LC n. 151 (2015), LC n. 156 (2016), LC n. 159 (2017) and Law n.13,631 (2018), and their respective legislative processes, which contents is set out in **Table 1**.

Table 1 – Laws of the renegotiation of the state debts (processes 2013-2018)

Complementary Law (LC) n. 148/2014	Changes the Fiscal Responsibility Law and the debt indexer.
LC n. 151/2015	Authorizes the changing of the debt indexer.
LC n. 156/2016	Establishes the State Aid Plan and measures to stimulate fiscal rebalancing.
LC n. 159/2017	Establishes the Tax Recovery Regime of the States.
Law n. 13,631/2018	Concerns about the renegotiation of credit operations.

Source: own elaboration. Retrieved from www.planalto.gov.br.



From the data collected in previous work (Pinheiro, 2018), complemented, it was possible to understand in depth the interaction and the negotiation process among the actors who participated in the most recent round of state debt renegotiation (2013-2018). If state crises persist, the federal government will probably take other tax measures to rebalance the public accounts.

The interviews conducted together with the process tracing provided information that went beyond formal processes. We tried to show a more complete and reliable view of parliamentary behavior, and bring also concrete evidence of governors' pressures in decision-making processes that affect the federalism structure.

This theme is sensitive in Congress, because institutional changes in this field take time and are gradual. In addition, since subnational levels have a direct impact on the fiscal structure, it is expected that they will also act in the legislative processes. The problem is when incrementalism becomes a constraint to effective change, leading to breach of rules. It is known that each new government action becomes incremental and constrained by previous rules (Souza, 2006).

This is what happened at LC n. 148/2014, since the Executive did not apply the law, under the justification of the economic crisis. But the states already expected the application of the new indexer, as approved by the law. Consequently, the Judiciary had to arbitrate this federative conflict between federal government and subnational levels.

Regarding the performance of the federal government, the Executive assumed a centralizing behavior on fiscal federalism during the period 2013-2018. The President operated within Congress through technical authorities of the Civil House and the Ministry of Finance (specifically the National Treasury), besides the parliamentarians of the coalition.

However, this centralization is not absolute. During the process, the federal Executive lost space, especially in the plenary, where there is more pulverization of political forces, as well as there are other aspects that shape parliamentary dynamics (pressure from state governments, pressure from public servants, ideological-partisan conflict and others, as evidenced in process tracing).



It was noticed the effort of the Legislative Houses to act more independently in the debates about renegotiation, which was reflected in the behavior of the rapporteurs. The fact that six of the eight rapporteurs of the complementary laws are representatives of states that would be more intensively contemplated by debt renegotiation (Rio de Janeiro, Santa Catarina, Rio Grande do Sul and São Paulo) reinforces the importance of the federative dimension in the legislative discussions. Parliamentarians' autonomy in the plenary was evident, marked by independence action of the rapporteurs and by pronouncements of congressmen. This agenda was so expected because of distortions of payment conditions, that the parties' leaders agreed among themselves that the matter should be processed faster than other legislative proposals in Congress.

Considering the Plenary votes, the possible party orientations are: favorable (yes), opposite (no), liberation of the party members, or obstruction. The recurring party liberations in the studied processes are signs that there was dissent between the partisans in the votes. Other demands, such as regional pressures, may have been present and forced the leaders to liberate the parliamentarians.

The biggest ideological conflict perceived in the processes was related to the level of tolerance on the requirements imposed by the federal government, especially in relation to the privatization of state enterprises, since left parties clearly stood against the measure. The requirements that implied a reduction in expenditure in the last renegotiations (LC n. 156/2016 and LC n. 159/2017) mobilized categories of public service, which pressured parliamentarians to reject this part, because they could imply reductions of personnel expenses.

Based on Nicolau (1999), we elaborated the State's Loyalty variable by state⁴, which consists in the total number of parliamentarians of a state who accompanied their votes with the most favorable indication to their home states, divided by the total number of members of that state. Some votes showed this variable significant, suggesting that parliamentarians from these states voted disciplined.

⁴ In order to avoid selection bias, this index was controlled by others, such as party loyalty.

For example, we can mention the voting of the Agglutinative Amendment n. 1 in the project that resulted in LC n. 148/2014. This amendment limited the cost of the refinanced contracts in 1993 and it was approved with 264 favorable votes and 111 opponents in the Chamber of Deputies. The regional dimension seems to be affected the vote. **Table 2** presents the data according to state and partisan loyalty:

Table 2 – LC n° 148/2014 – Voting of Amendment n. 1

PARTISSAN LOYALTY		STATE ⁵ LOYALTY	
PcdoB	100,0%	GO	100,0%
PRP	Liberation	SE	100,0%
PT	96,7%	ES	100,0%
PP	Liberation	MA	92,3%
PROS	Liberation	PB	90,9%
PSD	Liberation	PR	90,0%
PR	87,0%	RJ	88,6%
PMDB	90,4%	DF	75,0%
PTB	93,3%	RR	75,0%
PDT	100,0%	SC	73,3%
PV	100,0%	MS	71,4%
PMN	Liberation	MG	69,4%
PRB	Liberation	SP	69,1%
PTdoB	Liberation	MT	66,7%
PSDB	100,0%	TO	66,7%
PSOL	100,0%	PE	63,2%
DEM	94,7%	AM	60,0%
PSB	94,7%	AP	60,0%
PSC	90,0%	RS	60,0%
SD	82,4%	CE	58,8%
PPS	71,4%	AL	50,0%
TOTAL	92,9%	RO	50,0%
		BA	48,4%
		PA	44,4%
		AC	40,0%
		PI	37,5%
		RN	33,3%
		TOTAL	67,9%

Source: own elaboration.

There has been liberation in seven parties, which indicates dissent within the parties. This divergence should have been the reason for some parties (even from the governmental coalition) have chosen to liberate the parliamentarians. The coordination by unit of federation was significant, considering that the representatives accompanied with their votes the most

⁵ The full name of the respective states of Brazil is in Annex 1.



favorable position to their home states. Even though the organization in states is formed by parliamentarians from various parties, deputies voted in a coordinated way. One good example is the state of Goiás (GO): the 13 deputies, from 8 different parties, voted in the same way.

It is important to note that the governors, who went to Congress personally and participated in meetings, as verified by process tracing, acted offering technical suggestions and facilitating the process by proposing ideas for the improvement of laws in their interested. There was direct pressure from the governors (personally or by telephone) on the parliamentarians of their respective states. The discourses of congressmen have often expressed critical positions in defense of their home state. The states pressures were active to approve what had already been established in favor of them and to ensure that the benefits granted were extended. But the governors acted in a reactive way also, through the rejection of the conditions imposed by the federal Executive.

The individualistic and isolated fiscal relationship that normally occurs between states in the called "fiscal war" is not being reproduced at the states' performance in the National Congress. Leastwise in the renegotiation of state debts, the results brought collective gains.

We can conclude that the centralization in the legislative arena is not absolute, as there are other pressures that shape parliamentary dynamics in a relevant way. The capacity of action of different pressure groups was not equal in all the studied processes, they have varied according to the issue and the political events. The articulation by the federal government was fundamental in the construction of agreements. The agenda required a minimum of consensus among parliamentarians, federal government, opposition, parties, state governments and public servants to move forward, since the fiscal issue involves a multidimensional area with disagreements and interests that are ambiguous and contradictory.

4. Provisional Measure⁶ on Basic Sanitation

The legislative debate on the new rules of basic sanitation policy is directly related to conflicts between the federal government, state and municipal levels, as well as the discussions about the privatization of state enterprises, a subject that was present in the negotiations discussed in the previous section.

In the military regime (1964-1985), the federal Executive directed a big amount of resources for water and sewage services through the *Plano Nacional de Saneamento* (Planasa) [National Sanitation Plan]. By determination of the federal government, these services began to be rendered in most of Brazil by state companies, which act formally as concessionaires of the municipalities, but in practice autonomously (Galvão Jr. & Alceu, 2009). This organizational model is still very present in the country, but recently with a little more control by local governments, based on renegotiations and new contracts performed by part of the municipalities after the expiration of concessions of Planasa.

Until Law n. 11,445/2007, there was not a law of national application with guidelines about the issue. The Basic Sanitation Law was the result of three sequential legislative processes. One proposal was presented to the Chamber of Deputies in 1991 and approved by the National Congress in 1994 but vetoed fully by President Fernando Henrique Cardoso in the same year. In 2000, a new parliamentary project was presented. In 2001, a proposal of the Executive was added, focusing on the privatization of state companies. Lula's government removed this project and presented his own version in 2005, which became law in 2007 (Araújo, 2013).

After a decade, the federal government decided to change this law in two ways: 1) by the delegation to the *Agência Nacional de Águas* (ANA) [National Water Agency], related to the Ministry of the Environment⁷, to edit national standards for sanitation services; and 2) by the adoption of an explicit option for the privatization of services. The inclusion of the ANA in this theme implies a relevant innovation and, clearly, empowerment of the central

⁶ The Provisional Measure is created by the Executive and the legislative process in the National Congress is accelerated. It produces legal effects of law already at the date of its edition (Pereira, Power & Renno, 2007).

⁷ In the Bolsonaro's government, ANA was transferred to the Ministry of Regional Development. For more information, we recommend the reading of MP n. 870/2019.



government. Considering these objectives, the *Medida Provisória* (MP) [Provisional Measure] n. 844 was edited in July of 2018. This normative act has generated big controversy.

This Provisional Measure was approved at the end of October 2018 by the committee of deputies and senators, which, according to the Federal Constitution, analyze this type of normative act. The MP did not get voted by Parliament, losing its effectiveness in November. What matters to this paper is the fact that this provisional measure was not voted by direct pressure from the subnational governments. Entities representative of state companies joined voices with municipal entities, in a rare meeting in the sanitation sector.

Governors who were in power and governors-elected to start in January 2019 signed a letter requiring the rejection of MP n. 844, totaling 24 signatures. It was an unprecedented political movement that showed the strength of the state sanitation companies, which control almost 80% of water and sewage services in the country, and the power of the governors.

In the last days of 2018, another version of the proposal was edited by Temer's government (MP n. 868), but the provisional measure lost its effectiveness on June 2019.

5. Final Considerations

There is still little literature that worried about the impact of states on national legislative processes. Regional governments are autonomous, with their own interests and power and private competences. They are part of the federative pact and are not just passive agents on the national institutional context.

We believe that the relevance of the subnational levels in the legislative dynamics is frequently present in the decision-making process, as it was demonstrated by the movement of the governors and municipalities opposed to changes in the rules of sanitation services, as well as in many fiscal and budgetary matters. Political Scientists should study how much power these actors have in the legislative arena, and when and how they use it. It is a fact that the federative dimension must contemplate all subnational spheres and thematic areas, because depending on the sensitivity of the theme or the nature of public policy, the political

outcome may have different results. Fiscal and administrative decentralization in many areas of public policy has affected intergovernmental relations.

The process of implementing the *Sistema Único de Saúde* (SUS) [Health Unic System] in Brazil, for example, has opened space for the union of states in the regional and inter-municipal articulation. At the same time, other public policies, such as the education area, require federal articulation. In this sense, we stimulate future research involving thematic areas in which decentralization occurs. The state issue should be reinforced in legislative studies not only in Brazil, but also in other countries that adopt the federative system.

We defend medium range theories because the political and economic scenarios are determined by the way the parliamentary dynamics operates. The suggestion is the analysis of legislative processes that involve fiscal federalism in order to check whether the agenda continues, and whether the findings of this paper can be expanded.

References

Abranches, Sérgio H. *Presidencialismo de coalizão: raízes e evolução do modelo político brasileiro*. São Paulo: Companhia das Letras, 2018.

_____. *Presidencialismo de Coalizão: o Dilema Institucional Brasileiro*. *Dados: Revista de Ciências Sociais*, v. 31, n. 1, pp. 5-38, 1988.

_____. *Os ciclos do Presidencialismo de Coalizão*. *Ensaio da Ecopolítica*. 2015. Retrieved from <http://www.academia.edu/6411308/Os_Ciclos_do_Presidencialismo_de_Coaliz%C3%A3o> Acesso em: 31 jan. 2018.

Abrucio, Fernando. *Os barões da federação: governadores e redemocratização brasileira*. São Paulo: DCP/USP/Hucitec, 1998.

_____, Franzese, C. & Sano, H. *Trajetória recente da cooperação e coordenação no federalismo brasileiro: avanços e desafios* (Capítulo V). In: Cardoso, José C.; Bercovici, Gilberto. (Org.). *República, Democracia e Desenvolvimento: contribuições ao Estado brasileiro contemporâneo*. v. 10. IPEA, 2013.

Afonso, José R. *Federalismo Fiscal Brasileiro: uma visão atualizada*. IDP, 2016a.

_____. Uma História da Lei Brasileira de Responsabilidade Fiscal. In: *Crise e Evolução no Direito Regulatório e Financeiro*. RDU, Porto Alegre, Edição Especial, pp. 126-154, 2016b.

Araújo, Suely M. V. G. *Política ambiental no Brasil no período 1992-2012: um estudo comparado das agendas verde e marrom*. Brasília, tese de doutorado, Instituto de Ciência Política, UnB, 2013.

_____. & Silva, Rafael S. Reflexões e Novas Agendas de Pesquisa para os Estudos Legislativos no Brasil. *Revista Ibero-Americana de Estudos Legislativos*, v. 2, pp. 58-74, 2012.

Arretche, Marta. Continuidades e Descontinuidades da Federação Brasileira: de como 1988 Facilitou 1995. *Dados*, Rio de Janeiro, v. 52, n. 2, pp. 377-423, 2009.

BRASIL. Constituição. *Constituição da República Federativa do Brasil*, 1988.

Bedritchuk, Rodrigo Ribeiro. *Da popularidade ao impeachment: Medidas provisórias, mudanças institucionais e a crise política no governo Dilma*. Brasília, dissertação de mestrado, Instituto de Ciência Política – UnB, 2016

Cheibub, J. A., Figueiredo, A. & Limongi, F. Partidos políticos e governadores como determinantes do comportamento legislativo na Câmara dos Deputados, 1988-2006. *Dados*, v. 52, n. 2, pp. 263-299, 2009.

Collado, Carlos F., Lucio, Pilar Batista & Sampieri, Roberto. Seção 9.6.3 – Análise de Conteúdo. *Metodologia de pesquisa*. 3 ed. São Paulo: McGraw-Hill, 2006.

Fernandes, Antônio S.A. & Wilson, R. H. Mudança Institucional e Gestão Metropolitana no Brasil: O Municipalismo Autárquico e as Finanças Municipais Metropolitanas. *Revista de Administração Pública* (Impresso), v. 47, pp. 777-800, 2013.

_____. & Araujo, Suely. M. V. G. A criação de municípios e a formalização de regiões metropolitanas: os desafios da coordenação federativa. *Urbe. Revista Brasileira de Gestão Urbana*, v. 7, pp. 295-309, 2015.

Figueiredo, Argelina & Limongi, Fernando. *Executivo e Legislativo na Nova Ordem Constitucional*. Rio de Janeiro: FGV; FAPESP, 2001.

Galvão Jr. & Alceu C. *et al.* Marcos regulatórios estaduais em saneamento básico no Brasil. *RAP*, Rio de Janeiro, v. 43, n. 1, 2009.

George, Alexander L. & Benett, Andrew. *Case Studies and Theory Development in the Social Sciences*. EUA: MIT Press, 2004.

Gobetti, Sérgio Wulff. Ajuste fiscal nos estados: uma análise do período 1998-2006. *Revista Economia Contemporânea*, v. 14, n. 1, pp. 113-140, 2010.

Junqueira, M. D. O., *O nó tributário: porque não se aprova uma reforma tributária no Brasil*. São Paulo, dissertação de mestrado, Departamento de Ciência Política da Universidade de São Paulo. 2010

Leite, Cristiane K. S. *O processo de ordenamento fiscal no brasil na década de 1990 e a lei de responsabilidade fiscal*. São Paulo, tese de doutorado, Departamento de Ciência Política da Faculdade de Filosofia, Letras e Ciências Humanas, USP, 2005.

Limongi, Fernando P. Presidencialismo e Governo de Coalizão. In: Leonardo Avritzer e Fatima Anastasia. (Org.). *Reforma Política no Brasil*. Belo Horizonte: Editora da UFMG, pp. 237-257. 2006.

Monteiro Neto, Aristides. Governos estaduais no federalismo brasileiro: capacidades e limitações no cenário atual. *Textos para Discussão n° 1894*. Brasília: Ipea, 2013.

Monteiro Neto, Aristides. Governos estaduais no federalismo brasileiro: capacidades e limitações no cenário atual. In : *Governos Estaduais no Federalismo Brasileiro: capacidades e limitações governativas em debate*. Brasília: Ipea, 2014. Retrieved from: http://www.ipea.gov.br/portal/index.php?option=com_content&view=article&id=23030

Nicolau, J. Disciplina partidária e base parlamentar na Câmara dos Deputados no primeiro governo Fernando Henrique Cardoso (1995-1998). *Dados*, Rio de Janeiro, v. 43, n. 4, 1999.

Pereira, C., Power, T. & Renno, L. R. Presidentes, poder de agenda, e as consequências imprevistas da reforma das medidas provisórias. In: Jairo Nicolau; Timothy J. Power. (Org.). *Instituições Representativas no Brasil: balanço e reforma*. Belo Horizonte: Editora da UFMG, pp. 75-96, 2007.

Pinheiro, Adriana O. *Federalismo Fiscal e Dinâmica Parlamentar: um estudo sobre a nova rodada de renegociações da dívida (2013-2017)*. Brasília, dissertação de mestrado, Instituto de Ciência Política – UnB, 2018.

Renno, L. R. Críticas ao Presidencialismo de Coalizão no Brasil: Processos Institucionalmente Constritos ou Individualmente Dirigidos? In: *Reforma Política no Brasil*. Belo Horizonte: Editora da UFMG, pp. 259-271, 2006.

Rezende, Aline M. R. T., Carneiro, Ricardo & Rezende, João V. S. Federalismo fiscal e crise das finanças públicas no Brasil: uma análise de indicadores fiscais nos estados de 2007 a 2012. In: *Encontro da Anpad XXXVIII*. Rio de Janeiro. Anais Anpad, 2014.

Santos, Fabiano. Em Defesa do Presidencialismo de Coalizão. In: *Reforma Política no Brasil – Realizações e Perspectivas*. Fortaleza: Fundação Konrad Adenauer, pp. 19-38, 2003.

Silva, Rafael S. Beyond Brazilian Coalition Presidentialism: the Appropriation of the Legislative Agenda. *BPSR*, v. 8, n. 3, 2014. Retrieved from : <http://dx.doi.org/10.1590/1981-38212014000100022>.

Silva, Rafael Silveira & Araujo, Suely Mara Vaz Guimarães de. Ainda vale a pena legislar: a atuação dos agenda holders no Congresso brasileiro. *Rev. Sociol. Polit.*, Curitiba, v. 21, n. 48, 2013.

Souza, Celina. Reinventando o poder local: limites e possibilidades do federalismo e da descentralização. *São Paulo em Perspectiva*, v. 10, n. 3, 1996.

_____. Políticas públicas: uma revisão da literatura. *Sociologias*, n.16, pp. 20-45, 2006.

Tavares, Martus. Vinte anos de política fiscal no Brasil: dos fundamentos do novo regime à Lei de Responsabilidade Fiscal. *Revista de Economia & Relações Internacionais*, v. 4, n. 7, pp. 79-101, 2005.

Law's Reference :

Law n. 7,976/1989. Concerns about the refinancing by the federal executive of external debt. Brasília, DF. Retrieved from: http://www.planalto.gov.br/ccivil_03/Leis/L7976.htm

Law n. 8,727/1993. Concerns for the refinancing by the Union of internal debt. Brasília, DF. Retrieved from: http://www.planalto.gov.br/ccivil_03/LEIS/L8727.htm

Complementary Law n. 87/1996. Concerns about the ICMS tax. Brasília, DF. Retrieved from: http://www.planalto.gov.br/ccivil_03/Leis/LCP/Lcp87.htm

Law n. 9,496/1997. Establishes criteria for the consolidation and refinancing of public debt securities by the federal Executive. Brasília, DF. Retrieved from: http://www.planalto.gov.br/ccivil_03/leis/L9496.htm

Complementary Law n. 101/2000. Establishes public finance standards for fiscal responsibility. Brasília, DF. Retrieved from: http://www.planalto.gov.br/ccivil_03/leis/lcp/lcp101.htm

Law n. 11,445/2007. Establishes national guidelines for basic sanitation. Brasília, DF. Retrieved from: http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/Lei/L11445.htm

Law n. 12,351/2010. Concerns about the exploration and production of oil, natural gas and other fluid hydrocarbons. Brasília, DF. Retrieved from: http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2010/Lei/L12351.htm



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Complementary Law n. 148/2014. Concerns about indexation criteria for debt refinancing contracts. Brasília, DF. Retrieved from: http://www.planalto.gov.br/ccivil_03/leis/lcp/Lcp148.htm

Complementary Law n. 151/2015. Changes Complementary Law n. 148/2014. Brasília, DF. Retrieved from: http://www.planalto.gov.br/ccivil_03/leis/lcp/Lcp151.htm

Complementary Law n. 156/2016. Establishes the Plan of Assistance to the States and measures to stimulate fiscal rebalancing. Brasília, DF. Retrieved from: http://www.planalto.gov.br/ccivil_03/leis/lcp/Lcp156.htm

Complementary Law n. 159/2017. Establishes the Tax Recovery Regime of the States. Brasília, DF. Retrieved from: http://www.planalto.gov.br/ccivil_03/leis/lcp/Lcp159.htm

Law n. 13,631/2018. for the contracts, addition, renegotiation and renegotiation of credit operations, relating to Complementary Laws n. 148/2014, n. 156/2016 and n. 159/2017 Brasília, DF. Retrieved from: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/L13631.htm

Provisional Measure n. 844/2018. Updates the legal framework of basic sanitation in Brazil. Brasília, DF. Status : revogada. Retrieved from: http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2018/Mpv/mpv844.htm



Annex 1 - List of Brazilian States

State	Abbreviation
Acre	AC
Alagoas	AL
Amapá	AP
Amazonas	AM
Bahia	BA
Ceará	CE
Distrito Federal	DF
Espírito Santo	ES
Goiás	GO
Maranhão	MA
Mato Grosso	MT
Mato Grosso do Sul	MS
Minas Gerais	MG
Pará	PA
Paraíba	PB
Paraná	PR
Pernambuco	PE
Piauí	PI
Rio de Janeiro	RJ
Rio Grande do Norte	RN
Rio Grande do Sul	RS
Rondônia	RO
Roraima	RR
Santa Catarina	SC
São Paulo	SP
Sergipe	SE
Tocantins	TO