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Municipal decentralization in Brazil: a long, but still incomplete and challenging process

Eduardo Grin

Introduction

Brazil is a perfect case to analyze the decentralization of public policies, since in comparative literature it is a case characterized by its high levels of autonomy of subnational governments (Rodden, 2004). In the face of more normative positions that assume that the greater the freedom of political, administrative, and fiscal action of states and municipalities, Brazil would be classified at the end of a continuum between extreme concentration of power and devolution of powers. However, looking at the historical trajectory of the last 35 years, the analysis of the design and results achieved by decentralization are not so virtuous. As a federation, whose central premise is to be organized based on the autonomy of its constituent units (Fenna and Schnabel, 2024), decentralization in Brazil is supported by two foundations that may not coincide. In formal and constitutional terms, subnational governments are endowed with their own legal personality that guarantees them autonomy to manage their territories. In the reality of intergovernmental relations, the central government has increasingly been acting to limit the actions of states and municipalities to defined spheres of action based on the symmetrical vision of the federation, according to which it is up to the central level to organize how public policies will be implemented at the subnational level.

Considering this initial comment, the objective of this text is very modest: to gather empirical evidence that shows how the trajectory of decentralization of public policies in Brazil, especially those related to social welfare, is a reality, but remains incomplete. This is the organizing argument of the discussion, because in the dimensions of analysis used, what is observed was not a process of progress in decentralization, from the perspective of strengthening subnational autonomy in decision-making on public policies, but rather a delimitation, or, if we will, a reduction in the political, administrative and fiscal authority of states and municipalities. Is decentralization in Brazil going backwards? The paper does not gather sufficient empirical evidence to answer this question. The intention is to present data that contribute to shedding light on this empirical phenomenon and thus stimulate reflection on this field of study of intergovernmental relations in Brazil and from a comparative perspective.

To address this issue, the work is organized as follows. The first section describes the trajectory of decentralization and how it faces a reversal in the face of recentralizing logics on the part of the federal government, associated with a more regulatory action on subnational autonomy, especially in the field of political autonomy. The second section addresses this topic focusing on de/centralization in the administrative dimension. The third and fourth sections address two important topics from the perspective of decentralization for the municipal sphere: local autonomy and the main powers that the Federal Constitution grants to municipalities within the framework of their decision-making autonomy. The fifth and sixth sections address the fiscal issue, since decentralization processes that are not accompanied by fiscal instruments (intergovernmental transfers and own revenues generated at the local level) are less likely to be sustainable over time. This is a problem that arises when the central government begins to regulate the way local governments spend their budgets, which interferes with their autonomy, associated with underfunding of public policy instruments. The conclusion presents brief considerations on this scenario considering the reality of decentralization in the Brazilian federation.

1. The context of the decentralization process

Brazil is a decentralized federation, which has already been the object of analysis in numerous works and there is consolidated knowledge about this form of state organization since the late 1980s (see

Arretche, 1999; Souza, 2002). However, some additional information are relevant to qualify this assertion: a) decentralization is almost synonymous of municipalization as these sphere acquired political, financial, and administrative autonomy guaranteed by the FC; b) decentralization was more characteristic in welfare policies than other policies; c) decentralization was more focused on policymaking rather than decision policymaking, which gives to the federal government many exclusive and privative powers; d) the decentralization, since mid-1990's started has been subjected to recentralizing backsliding.

It is important to know the sequence of the decentralization as its trajectory indicates different political and institutional possibilities for the design of federalism and intergovernmental relations. In Brazil, political decentralization¹ preceded the others, followed by the fiscal area and finally the administrative one. This trajectory as different in Mexico where the fiscal arena was the first, followed by the political and administrative ones. In Argentina, the decentralization started with administrative issues followed by the fiscal topics, and finally the political dimension (Falletti, 2010).

With CF 88, Brazilian federalism began to organize itself in an increasingly decentralized way, so that subnational governments assumed more responsibilities, mainly in public policies for social protection (health, education and social assistance), especially at the municipal level. This process, it is worth noting, began in the process of transition from authoritarianism to democracy, when the first elections for governor of the state took place before the change at the national level (Abrucio, 1998).

CF 88 can be identified as a reference for decentralization and the transformation of municipalities into autonomous federal entities (Kugelmas and Sola, 1999; Grin and Abrucio, 2018). The federation was redesigned in favor of the states and especially the municipalities, as the subnational governments became federative entities in financial and political terms (Abrucio, 2005). The decentralization initiated in Brazil resulted in a strengthening of the Federation, since, according to Affonso (2000): there was the reintroduction of direct elections for state and municipal governments with the end of the military regime, the attributions of the subnational levels of government were increased and the own and available fiscal capacity of states and municipalities increased.

In any case, the decentralization of policies, initiated in the 1980s, generated demands both for elections and for increased resources and subnational autonomy. At the same time, it was a way of reaching agreements between the central level and subnational governments around an agenda of redistribution of power regarding financial resources and responsibilities for public policies. This process supported the decentralization of authority, powers and resources, as well as an emphasis on increasing the efficiency of local governments (Tulchin, 2012; Wilson et al, 2009).

The assumption that guided the adoption of decentralization was that the more public policies that can be decided and/or implemented at the local level, the closer they would be to citizens, which would encourage government responsibility. In this way, the tendency to municipalize the management of public goods and services was very strong, since decentralization was considered the basis for more democracy and increased efficiency in the provision of services, in addition to being a reaction to the centralization that prevailed in the military regime. (Grin, Lotta, and Abrucio, 2023; Souza, 2016; Souza and Grin, 2021). However, the literature shows that these assumptions do not necessarily coincide with reality at the local level and can generate patronage incentives (Arretche, 1996).

Decentralization was organized by attributing a strategic role to municipalities as key actors in the provision of social assistance policies. Melo (1999) maintains that CF 88 understood the municipality from two different approaches: a) as a democratic principle (nucleus of political life associated with social control and citizen participation (the social democratic matrix); b) as a principle of administrative engineering to efficiency in providing public services (neoliberal vision that diminishes the role of the

¹ Due to the influence of subnational political actors, especially governors, political decentralization occurred first because it was the most advantageous to subnational actors, since it has the potential to improve negotiation conditions in subsequent decentralization processes (Falletti, 2010).

national government typical of blame avoidance behaviors emphasized by Pierson (1995). Decentralization has redefined the attributions of public policy management, especially those of social welfare under the foundations of a federal state (Arretche, 1999; 2002).

In this context, the decentralized provision of universal social policies has become a reality, especially for municipalities. This is not a trivial task, mainly because the CF universalized access to health care, for example, whose advances in terms of service provision were very significant, which also applies to access to basic education. The main reason for this success is that the acquisition of these services by the municipalities was incremental and financed by the federal government, state and local funds. The reason for this federally supported decentralization of public services was to guarantee local citizens access to health care and education based on national programs and minimum standards, regardless of where they live. This process distinguishes Brazil from countries like Argentina, under the leadership of Menem, and from the United States, during the Reagan administration, because in these countries the decentralization of social services to subnational entities did not rely on shared funding between the spheres of government (Souza, 2016). In Brazil, given the autonomy of states and municipalities, the challenge consisted of balancing this form of action based on CF rules and also on the government's practice of pass the buck as federative coordination (Arretche, 2004; Abrucio, 2005) so as not to generate deleterious effects of a centrifugal decentralization that would generate more territorial inequality and social inequality and in the opposite direction to the virtuous promises of this model of organization of federalism for the provision of public policies.

The CF did not ignore the need to create intergovernmental relationship mechanisms and to guarantee resources and power so the federal government could play an active role in combatting inequalities and in regulating/encouraging the behavior of the federative bodies. This is why most legislative competences were the responsibility of central government, giving it the capacity to establish national standards for public policies (Franzese, 2010). The administrative and financial resources of the federal government also have a lot of power to induce, although it does not completely determine behavior in the federative game. But there were some gaps in the federative plan, to the extent that since 1988 legislation is being drafted to improve the federative framework and intergovernmental relations are still one of the most sensitive of sore points in public policies. Furthermore, decentralization assumed different meanings and had different content, depending on the design of each policy, the prior distribution of competences and the control exercised over resources by the three levels of government (Grin, Lotta, and Abrucio, 2023).

It is worth emphasizing that the common competences defined in the CF can only be made possible by decentralization, as there would be no way for the federal government to assume these responsibilities. In this sense, decentralization was the alternative found to coordinate and generate intergovernmental cooperation between the three orders of government to nationalize the offer of policies, especially of social welfare that the CF transformed into universal rights. However, as the CF was not specific as to the attributions of each sphere of government, the design of decentralization assumed specific characteristics in each sector of public policy, as well as on how to share responsibilities.

In summary, decentralization is a reality of Brazilian federalism that can be characterized by the expansion of political, administrative and financial autonomy of states and municipalities. However, it is necessary to distinguish between who regulates (policy decision-making) and who executes (policymaking) (Arretche, 2012). Decentralization was and continues to be a process in which the federal government did not generate devolution of policies (legislative powers) (Agranoff, 2004), but decentralization of many powers that, during the military regime were centralized at the federal level, to the constituent units in terms of execution (e.g. provision of services health) or (e.g. purchase and distribution of school meals) (decentralization of *administrative* powers).

As the federal government has enormous regulatory capacity, the formulation of policies was markedly an attribution assumed by this sphere of government, while states and municipalities assumed

more significant roles in the implementation and operation of policies, notably in health, education and social assistance (Franzese and Abrucio, 2013). In other words, the centralization of rules on the design of public policies is a reality, although different intergovernmental cooperation arrangements mitigate this reality (see the chapter on this topic; see Grin, Bergue, and Abrucio, 2017), while decentralization it is more implementation oriented. In line with the uniformity and symmetry of Brazilian federalism, regulatory centralization took place precisely to coordinate the process of decentralizing the execution of public policies. Brazil has a symmetrical federalism in an asymmetrical federation. Rules on the competences and public policies of subnational entities are detailed in the FC and leave little room for maneuver for own initiatives (Souza, 2005; Grin, 2023).

It is along these lines that Brazilian federalism also coexists, alongside decentralization, with recentralizing logics initiated since the 1990s. Recentralization means restricting the autonomy of subnational entities with the resumption of competencies, attributes and spheres of decision-making power for the Union, especially for federal countries that had extended subnational autonomy. The normative ascendancy of the national level over subnational entities has grown through legal and constitutional changes that increase the powers of the national sphere (Cravacuore, 2015; Grin and Silva, 2021). According to Almeida (2005), two other characteristics may also be signs of recentralization: definition or redefinition of governmental relations for the provision of services in favor of the national government and the consequent decrease in the autonomy of subnational entities.

As decentralization in was organized in the fiscal, political and administrative dimensions (Falleti, 2010), it is in these areas that it is important to analyze recentralization and its effects on subnational autonomy and the balance of intergovernmental power in favor of the center (Dickovick and Eaton, 2103; Olmeda and Armesto, 2017). The national sphere's vision is to recentralize competencies, reduce tax transfers, diminish political authority and expand regulatory power over subnational entities (Dickovick and Eaton, 2013). Recentralization expands the power of the national government over previously decentralized policies (Olmeda and Armesto, 2017; Olmeda, 2014; Dickovick, 2011; Dickovick and Eaton, 2013). In this post-decentralization scenario, it is a question of “reversing reforms that previously expanded subnational autonomy and that had limited the national government’s prerogatives” (Eaton and Dickovick, 2004: 94).

The fiscal dimension can be assessed through instruments designed to increase the federal government's revenues or fiscal authority vis-à-vis subnational governments. This process can occur in three ways: decrease in the percentage of transfers to subnational governments through new national sources of revenue that are not shared, resumption of tax authority that was decentralized (Falleti, 2010) and introduction of rules directing and reducing spending autonomy and subnational debt.

As for the first topic, the allocation of taxes has been one of the factors identified as constituting the centralizing process of Brazilian federalism. While the CF made it possible to increase the participation of states and municipalities in the distribution of tax resources, it also allowed the expansion of federal government resources through social contributions and tax relief from shared taxes. Since the mid-1990s, the Union has managed to withhold some constitutional transfers (Arretche 2005). According to Eaton and Dickovick (2004), there was no broad reversal of the revenue transfer system, but the bases of federal sharing were changed in favor of the Union. There was a reversal of the original design after 1988 regarding the characteristics of the binomial fiscal federalism and decentralization.

The rationalization of subnational spending has underpinned several measures adopted since 1994 to reduce intergovernmental transfers to the Union, because after 1988 subnational entities had been more favored (Abrucio, 2005; Melo, 2005; Dickovick, 2011). Constitutional Amendments (EC) defined rules that, even if changed until the last EC in 2016, had a recentralizing effect on local finances, because the composition and values of intergovernmental transfers agreed in CF 88 were changed (Grin, Lopes and Abrucio, 2020; Eaton and Dickovick, 2004; Arretche, 2012). Starting with the Social Emergency Fund (1994), the Fiscal Stabilization Fund (1996), the Untying of Union Revenues (2000) until the last EC of

the Untying of Revenues of states and municipalities (2016), all of them changed the rules of the federative pact in favor of the Union.

There is no consensus in the literature that the concentration of tax revenues is evidence of recentralization, as it would have served for the Union to increase its share of tax revenues shared with subnational entities (Almeida, 2005). However, if recentralization can be further analyzed as per its different dimensions, in this federative arena, after 1994, the concentration in favor of the Union was considerable as a response to fiscal decentralization.

As for the direction of expenditure, the Fiscal Responsibility Law (LRF), approved in 2000, advanced in norms not presented in 1988. In line with Arretche (2012), the contents of the LRF were not foreseen by the constituents. With the LRF, the Union redefined several budget and fiscal management activities carried out with greater subnational autonomy. Justified as a need to obtain macroeconomic balance, the LRF restricted the autonomous management of subnational expenditures in a way that was not anticipated in 1988, in addition to restrictions on indebtedness and expenditure expansion. Effective control over subnational finances was established (Rezende, 2013) and subnational autonomy in the allocation of expenses was limited, as it was a centralized response to the Union's difficulty in coordinating the fiscal behavior of other spheres (Almeida, 2005). It should be noted, however, that the LRF does not apply to the federal government.

Another dimension of fiscal recentralization resided in the reduction of the borrowing capacity of state governments from their official banks since this expedient was not the subject of deliberation in the 1988 constitutional pact. In Brazil, states retained considerable authority to contract their own debts and manage their finances with the support of their banking institutions. For Eaton and Dickovick (2004), the ability to borrow resources is part of the fiscal system, which allows identifying the scope of the recentralizing measures that occurred, in a close period, in Brazil and Argentina in the mid-1990s.

On the issue of reducing the tax powers of subnational entities, in addition to the powers of the Union to regulate the matter at the federative level, constitutional amendments altered the original constitutional pact. A municipal tax on services had a new rule added to the constitutional text that established its minimum rate at 2%. Municipal autonomy to collect the tax was effectively reduced.

In the political dimension, the CF, by defining municipalities as autonomous federative entities, delegated to them the task of defining their own political-administrative organization. Except for federative matters, municipalities do not need authorization from other levels of government on matters within their exclusive competence. However, the reversal of the 1988 constitutional pact advanced in two areas: the organization of Municipal Chambers and the creation of new municipalities.

Constitutional rules after 1988 redefined the conditions for municipal emancipation: a) instead of depending on a state supplementary law, this became the attribution of a federal supplementary law; b) instead of consulting the interested populations, through a referendum, a Municipal Feasibility Study was also required. The recentralization of norms was clear, without going into the justification here that the creation of thousands of new municipalities increased the public debt in the country, as many could not maintain themselves, beyond the implementation of administrative structures for their operation.

As for the organization of the City Councils, non-existent rules were added in 1988, without a definition of constitutional powers to legislate on this matter. The first measure also affected the states, as state deputies and councilors now had their maximum subsidies defined in relation to those received by federal deputies². The other changes went even further in restricting political autonomy by establishing spending ceilings for City Councils (5% of the municipal budget) and restricting spending by legislative houses by population size. The introduction of new rules reversed and limited the conditions for self-organization of local power.

² State deputies (75% of subsidies for federal deputies) and councilors (75% of subsidies for state deputies).

2. Administrative de/centralization

In the administrative dimension, the recentralization generated by the Union materialized in two ways: definition of rules on how to implement policies and restrictive norms on how to allocate public spending. Both, in the end, affected the administrative autonomy of subnational entities in a way not foreseen in the CF in 1988, without, however, resuming the centralization in the execution of many public policies that prevailed in the military regime. Two examples follow.

Articles 79 to 82 were added to the policy to combat poverty in the Transitory Constitutional Provisions, disciplining its organization not only at the federal level, but also in the States and municipalities through EC 31/2000 and EC 42/2003. For the financing of State and District Funds, an additional amount of up to two percentage points may be created in the ICMS rate on superfluous products and services. For the financing of Municipal Funds, it was authorized to increase the ISS rate on superfluous services by up to half a percentage point. Even though the fight against poverty is a common competence of the three levels of government, CF 88 did not contain any provision granting the Union the definition of federal rules to organize this policy (Grin, Lopes, and Abrucio, 2020).

In educational policy, the federal government created the Fund for the Maintenance and Development of Elementary Education and the Enhancement of Teaching (FUNDEF) (EC 14/1996) and defined new rules directing subnational spending (Souza, 2002). "Fiscal control and raising educational performance were the main objectives. [The] main fiscal issue of the central government was to guarantee that resources for primary and secondary education were in fact applied by subnational governments in a specific way " (Melo, 2005, p. 872). Over a 10-year period, at least 60% of the 25% of subnational resources earmarked for education would be spent on paying teachers actively involved in classroom activities or teacher training. This work does not discuss the merits of the measure (universalizing elementary education and reducing regional inequality in access to school), but rather the rules of the 1988 constitutional pact were changed. The rule defined education as a common competence of the three levels of government, it maintained the autonomy of state and municipal school networks. As of 2006, with the creation of the Fund for the Maintenance and Development of Basic Education and the Valorization of Education Professionals (FUNDEB), the withholding of the same taxes increased to 20%. Subnational autonomy over the use of tax collection and transfers was managed by a new federal rule, in addition to the requirement that they apply 25% of their tax revenue (Grin, Lopes and Abrucio, 2020).

It is important to present a change in the federative rule for health financing through a constitutional amendment that added article 77 of the Transitional Provisions in the CF, and reconfigured the way in which subnational entities should organize spending by linking percentages (Viana, Lima and Ferreira, 2010) that the three levels of government must allocate the taxes collected, including transfers, by 2004. A period of four years was defined for these percentages to be reached, in case there was someone who invested less than these amounts. Failure to comply would allow federal intervention in subnational governments. "The law also established that all transfers would be channeled to a fund subject to audits" (Melo, 2005: 871). The CF added new subnational spending binding rules that did not exist in 1988, in addition to authorizing federal intervention in case of non-compliance.

In the scope of urban policy, even though Article 21 of the Federal Constitution is the competence of the Union, and the City Statute was the means of regulating Article 182, even so there was an addition of requirements that did not exist in 1988. The federal legislation enacted in 2001 (City Statute) introduced the participatory budget management through debates, hearings and public consultations on the proposals of the pluriannual plan, the law of budget guidelines and the annual budget as a mandatory condition for its approval by the City Council. Thus, the requirement to implement the "participatory budget management" defined in that Law was met. It turns out that this rule did not exist in 1988, and its applicability now requires a style of municipal management and the relationship between public power and society that also affects local autonomy. This is another example of reversing the rules of the federative game.

The decentralized offer of universal public policies through municipalities is far away to be trivial in a country such as Brazil with its territorial heterogeneity. To organize this huge process, the federal government implemented financial incentives in order to obtain municipal adhesion since would not be possible to enforce any public policy from above since localities acquired constitutional autonomy. So, based on national standards, federal regulation and financial transference, decentralization process was successfully put in place (Souza, 2016).

Anyway, decentralization was implemented in very heterogeneous country (88% of the municipalities have up to 50,000 inhabitants and 32% of all national population while in 39 metropolises and big cities live 59,5 million people (almost 30% of all country). Also, cities are very unequal as for their economic and social characteristics which hamper *de facto* to exert their *de jure* constitutional autonomy (Franzeze and Abrucio, 2013). The administrative difference between municipalities charges a higher price to implement decentralized public policies. The lack of local state capacity unveils this inequality because smaller municipalities are more affected for this absence of organizational resources

Decentralization continues to be a premise of the reform of the Brazilian federal state, but centralizing and recentralizing impulses keep straining this model. The presence of the view that the most adequate solutions to national problems reside in the federal government provokes centralizing impulses. This process with inverted signs ends up generating the construction of different institutional arrangements in which the three entities of the federation are articulated in a diversified way in many areas. In this way, Brazilian federalism not only became a means for resolving controversies between its entities, but also for unbalancing the 1988 constitutional pact, in several areas, in favor of the national government. If, in comparative terms, Brazil is considered one of the countries with the highest levels of fiscal decentralization (Rodden, 2004), the path that began in the 1990s begins to tell a different story. Recentralizing tendencies, in turn, are at odds with international criticism of "good government", as they continue to be associated with hierarchical and centralized administrations associated with bureaucratic-authoritarian regimes (Rich and Gómez, 2012). Brazilian federalism is not making this way back, but there are noteworthy *recentralizing reversals*.

3. Local autonomy

The Brazilian federation is formed by 26 states, the Federal District, and 5,570 municipalities (which are the smaller political and administrative unity). All municipalities enjoy the same legal by-law in line with the conception of a symmetric federalism (Souza, 2016; Grin, Segatto and Abrucio, 2016)³. The official name, the *município*, is the legal personality under public law and holders of rights and duties to attend the demands of local population. The municipalities can complement federal and state rules when they do not exist although the local residual power is very small since the regulating role of national government encompass many issues of local responsibility. The main characteristic of the FC enacted in 1988 is the expansion of the political, administrative, and financial municipal autonomy (before the localities were considered political and administrative unities, but not autonomous federal entities).

According to the FC, the three orders of government are autonomous among them, and the possibilities of upper-level intervention is very limited. The FC enables municipal self-government based on the Municipal Organic Law approved in the City Council⁴ (a kind of municipal chart), direct election of mayors – that can be re-elected for one more term of four years - and councilors), self-regulation (to approve local laws considering their competences), and self-management (to keep and to provide local services, and to define their administrative structures), taking into account constitutional rules and federal laws (Pires, 1999).

³ Until 1985 there was a different electoral regime for state capitals, borders cities, hydromineral resorts, and localities considered areas of national security which had their mayors appointed by the state governors.

⁴ Before 1988 this approval was dependent on the State Legislative Chamber.

The political autonomy implies that political authority of mayors does not accrue from upper-level government, since they are directly elected. As for the local administration, even if local autonomy is significant, municipalities must obey federal laws (e.g. for public biddings and contract with vendors). In administrative terms, cities have full autonomy to organize human resource management with their careers and wages although they must obey the thresholds of a federal law (at most 60% of the net revenue with personnel expenditures). Local governments can legislate and regulate local public service provision (e.g. public transportation and traffic) in line with the broad concept of “local interest” (Resende, 2008). However, “to legislate on matters of local interest” and “supplemental federal and state legislation when it is possible” should be understood by the lenses of predominance, but not as an exclusivity, “since hardly exists a local interest that it is not also state and federal one (Silva, 2009). Municipalities can keep programs in infant and basic education, even if respecting many federal and state laws, health, territorial planning, rules on urban ground, Master Plans, and urban development, also respecting a Federal Law (the so-called *Estatuto da Cidade*), protect historical and cultural asset, approve three budget laws (Multiannual Plan, Budget Guidelines, and Annual Budget).

The financial autonomy is based on the expansion of own source revenue (tax over urban real state, services⁵, and real estate transactions). However, cities are constitutionally forbidden of creating other tax except these three, and they must charge all tax to avoid legal process against mayor (Grin, Segatto and Abrucio, 2016). There is not any possibility to delegate tax charge to upper-levels government or even of outsourcing because this is a core local function.

Despite the progress in the political autonomy and self-government, ensuing constitutional amendment reverted some of these changes: stricter procedures to municipal emancipation⁶ under the argument that this spread on new cities was affecting the federal budget since the localities has constitutional transferences guaranteed; the number of councilors considering the population size, and federal norms defining how City Council must spend their budget (Arretche, 2012; Grin, Abrucio & Lopes, 2020).

As for the organization of the Municipal Councils, their subsidies began to have as reference those received by the federal deputy: state representatives earn up to 75% of the federal deputies’ wages and councilors up to 75% of the state deputies’ wages. Maximum expenditure amounts were defined for the Municipal Councils (5% of the municipal budget) and with staff limited to 75% of the annual budget (including councilors). These calculation rules suppressed subnational decision-making (Arretche, 2012). Also, the local autonomy cannot oppose to the federal and state constitutional rules (for example, in the fighting against the COVID-19 states enacted “state of calamity”, and cities do not legal base to interpose it).

4. Main powers of municipalities

In the case of municipalities, according to Losada (2008), with the democratic opening, consolidated with the new Federal Constitution of 1988, the municipality consolidated its position as a component of the federative structure. In Brazilian federalism, local governments are understood as municipalities and have the constitutional status of autonomous federal entities. Municipalities are not considered administrative units, but rather political entities endowed with political, administrative and financial and even legislative autonomy. Like the States, the Brazilian Municipality is endowed with autonomy. Broad powers are conferred by the CF in its article 30, although its exclusive competences are equally reduced and housed in a general competence attributed to “legislate on matters of local interest”. But municipalities cannot assume roles constitutionally assigned to higher levels of government, especially the federal government with its great power of regulation.

⁵ In the case of Tax over Services, the aliquots are defined in the Federal Constitution.

⁶ From 1988 to 2000, 1,438 new cities were created (25% of all extant in 2002, for example).

Even so, municipalities have two areas in which they have exclusive autonomy, according to the Federal Constitution:

- a) Administrative: self-organization, regulation and execution of public services organize and provide, directly or under a concession or permission regime, public services of local interest, including public transport under its ownership and collect taxes within its competence, as well as apply your rents.
- b) Legislative: competence to legislate on matters that are exclusively reserved for it. According to the CF, municipalities can legislate on “matters of local interest”, as well as supplement federal and state legislation when applicable.

In other fields of action, like the states, the Union's exclusive competences delimit municipal attributions that can supplement federal and state legislation where appropriate, although in practice this prerogative leaves little room for autonomous or residual action in the areas of education children's and elementary education and health care services for the population that allow technical and financial cooperation from the Union and the State, in compliance with federal legislation. They can promote territorial ordering through planning and control of the use, subdivision and occupation of urban land and promote the protection of historical and cultural heritage, in line with federal and state legislation and supervisory action.

The municipal autonomy is based on following principles without facing any hierarchical subordination to the powers of State and Federal Government:

- a) power of self-organization (elaboration of its own organic law and its own laws in terms of the materials within its competence).
- b) power of self-government, through the election of the mayor and vice-mayor and councilors and the existence of their own Legislative and Executive Powers. However, although municipalities are federal entities with political autonomy, they cannot decide on the number of aldermen as the FC sets ranges according to the municipal population.
- c) legislative powers on “matters of local interest” (e.g., on urban tax rates) while respecting the FC and federal and state laws, through the drafting of municipal laws in the area of its exclusive and supplementary competences.
- d) power of self-administration: they have their own direct or indirect public administration, with public servants and bodies to create, maintain and provide services of local interest, and apply their income and manage their income and expenses.

According to FC 88, the list of topics that municipalities can legislate and to exert their political autonomy and self-government is extensive: matters of local interest; apply their income and create and collect their own taxes; complement federal and state legislation when possible; create and delete Districts, observing state legislation; provide, directly or under a concession or permit regime, public services of local interest, including public transportation; maintain, with federal and state technical and financial cooperation, children's and primary school education programs and health care for the population; promote territorial planning through planning and control of the use, subdivision and occupation of urban land and protect the historical-cultural heritage. The Constitution also grants the Municipalities the so-called material powers, such as the implementation of Municipal Guards, with the purpose of protecting municipal goods, services and facilities.

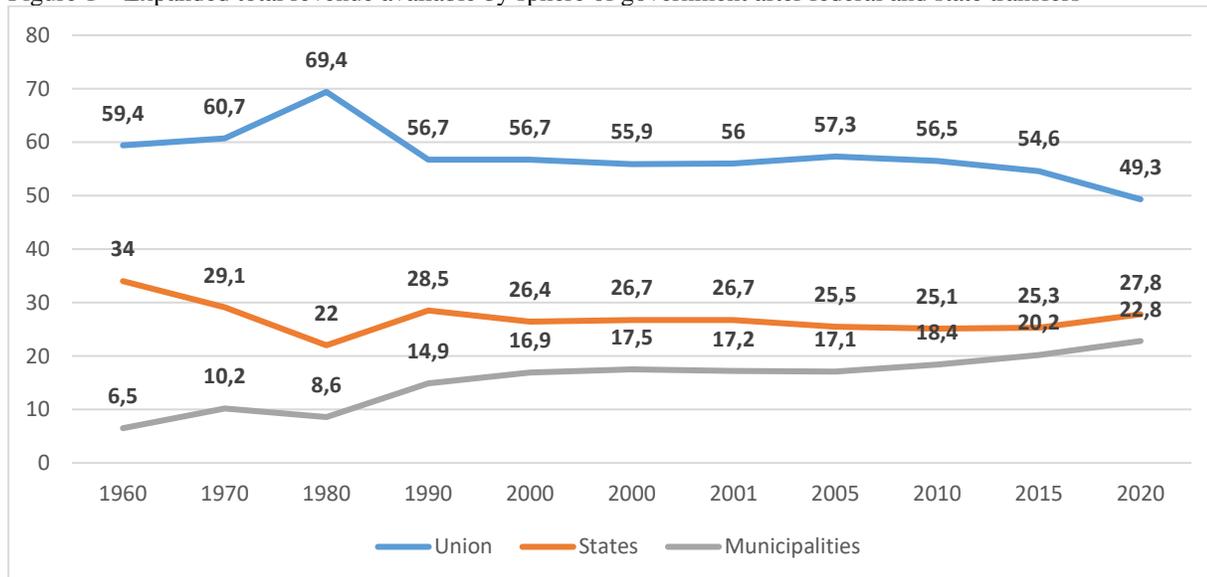
Regarding the administrative responsibilities, these focused on the provision of public services, are responsible for organizing local urban development and local economic planning. Regarding their financial autonomy, enshrined in the CF due to the possibility of generating their own revenue, they cannot create new taxes and, in the case of those applied to services, they still do so under federal rules. In fact, there are few exclusive legislative powers of the municipalities. For instance, municipalities are responsible for legislating about the so-called “local interest” which means they have autonomy to deal with topics related to their own territory. Municipalities can also charge their own fees and licenses.

However, in practice, there are few areas in which states and municipalities can effectively exercise exclusive legislative powers, since the FC defines a wide range of powers for the federal government. This reality is the same for all Brazilian municipalities and there is no difference between whether they belong to a particular state. The rule of symmetry, so dear to federalism in Brazil, here shows its full scope in the national territory (Grin, Segatto, and Abrucio, 2016). For instance, FC mandates that municipalities must approve the Multiannual Plan (PPA), Budget Guidelines (LDO) and Annual Budget (LOA) based on a symmetric rules and calendar. The FC also does not allow that municipalities can approve their own taxes. At the limit, states and municipalities could exercise what, for lack of a better expression, would be configured as a “negative autonomy” since they are not obliged to adhere to federal policies, especially those of social welfare. But this is a virtual impossibility, as they would not be able to assume the costs of implementing actions in health, social assistance and education alone.

5. Fiscal federalism and municipal revenues

The issue of revenue sharing between government spheres obeys constitutional and legal rules that seek to reduce the discretion of rulers based on political and party preferences. The question of expenses is also based on federal rules, although with different parameters when applied to states and municipalities or to the central sphere. The structure of available expanded revenues (see figure 1) shows that, over the course of 60 years, subnational governments, especially municipalities, benefited most from the fiscal decentralization initiated in the 1980s. On the other hand, the federal government, even having recentralized revenues after the 1990s, in relative terms it is the sphere of government that has had the most “losses”. What explains this situation is the definition of constitutional and legal rules that oblige the federal government to transfer resources to states and municipalities and from states to municipalities. This arrangement of fiscal federalism includes both conditional and unconditional transfers (see the next section) that increased subnational revenues, in line with (Afonso, Lukic, and Castro, 2018).

Figure 1 – Expanded total revenue available by sphere of government after federal and state transfers



Source: Almeida (2005) and National Front Mayors (2022).

Regarding the fiscal powers, there is a regime of separation of tax sources by sphere of government (Arreche, 2005). The CF ensures the ability to tax all three levels of government. Some taxes and contributions are exclusive to the sphere that collects them, others are collected by the Union and

shared with states and municipalities, and others are collected by states and shared with municipalities. The CF does not authorize any level of government to create new taxes without amendments to the CF, although there are two exceptions applicable to the Union: in case of war or to finance social security. The rules and rates of some taxes, including state and municipal, are determined by the CF (Souza, 2005).

Historically, taxes collected internally in the national territory were concentrated in the central sphere⁷. That's why about 70% of federal revenue derives from direct taxes such as income. Indirect taxes (on the production or import of goods, for example) and social and social security contributions⁸ predominantly account for the rest of federal revenue.

Municipal taxes correspond to approximately 10% of the country's tax collections and can also be direct (on real estate assets) and indirect (on the consumption of services), with rates that vary significantly between municipalities. Are they:

a) Direct taxes:

- IPTU: Urban Territorial Property Tax. Each municipality defines how much it will charge annually on the reference value of the properties, and periodically updates the so-called Generic Plant of Values, which can differentiate the rates by size or region of the properties in the city's territory.
- ITBI: Tax on the Transfer of Real Estate between Living Persons, which is levied on purchase and sale transactions of urban and rural properties and may consider different rates for financed properties. Each prefecture defines its calculation method.

b) Indirect taxes:

- ISS: Tax on Services, the rates of which are levied on service provision activities. While the ICMS (state) is levied on trade in goods, the ISS (municipal) is levied on the provision of services.

c) Contributions:

- Social Security Contribution: municipal public servants linked to their own Social Security regimes.
- Improvement contributions: they are different from other contributions, as they are defined as taxes. They are collected from the owners of properties benefited by public works which result in real estate appreciation.
- Special contributions: the main example is the Contribution to the Cost of Public Lighting Services, which can be charged along with the electricity bill of households or separately, according to the rules of each municipality.

d) Fees:

- Public conservation and cleaning fee.
- Municipal document issuance fee.
- Ad inspection fee.
- Establishment inspection fee.
- License fee for operation and municipal license.
- Fee for solid waste and health services.

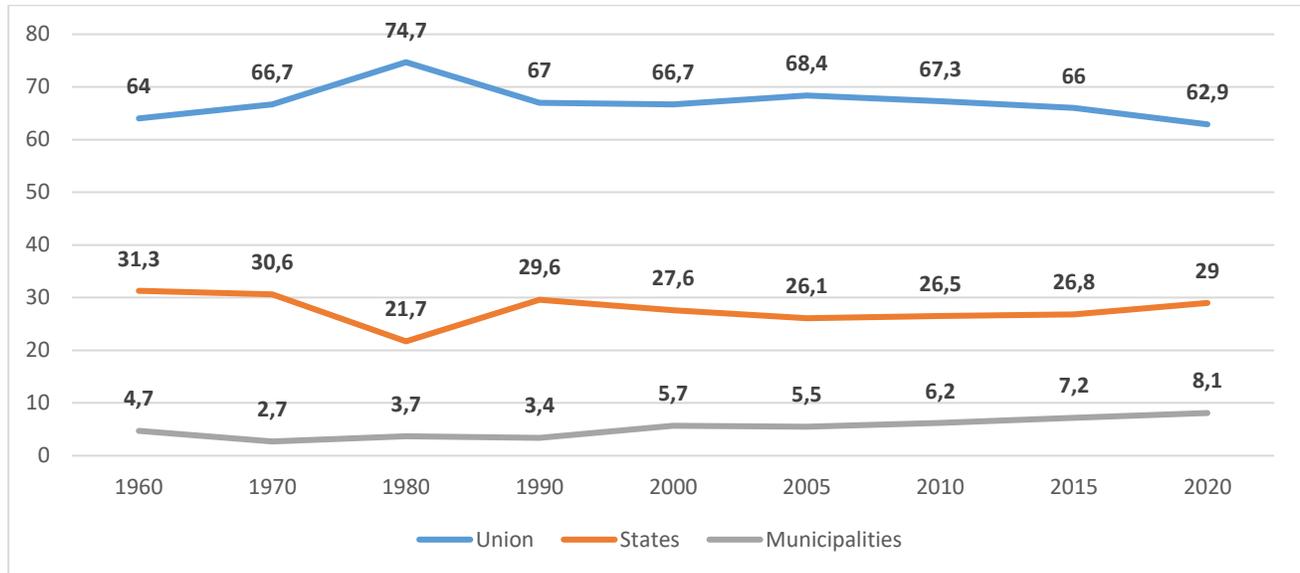
The CF prohibits states and municipalities from instituting and charging taxes other than those already defined, which is yet another characteristic of federative uniformity and symmetry. However, states and municipalities have autonomy to define their own tax rates, except for the ISS, which has minimum and maximum rates defined by federal law. And the constituent units have autonomy to define their rates and contributions.

⁷ The presentation on Brazilian taxes is based on Peres and Godoy (2021).

⁸ In Brazilian tax legislation, contributions differ from taxes, as the federal government is under no obligation to share its collection with states and municipalities. Contributions, except social security, were implemented by the federal government in the 1990s as a way to compensate for the federal government's losses resulting from fiscal decentralization.

The tax division between the spheres of government is structured as follows, so that one can see in figure 2 that municipal taxation is, on average, reduced and that the available revenues of this sphere of government are complemented by intergovernmental transfers. However, municipalities benefited most from intergovernmental transfer arrangements, while the average effect for states is virtually neutral. In a decentralized federalism that expanded the responsibilities of municipalities as the main providers of social welfare policies, these numbers acquire logic. Other factors explain this characteristic, such as the expansion of their own taxes that cities can manage with the autonomy guaranteed by the CF, transfers in education and the intergovernmental lobby of mayors that, in many areas, was successful (Grin, forthcoming).

Figure 2 - Direct collection own-source revenue by sphere of government before federal and state transfers



Source: Afonso, Lukic, and Castro (2018) and National Front Mayors (2022).

Given this reality, it is observed that tax collection is quite high at the central level, although at a lower percentage than the Mexican federation, so that there is greater fiscal centralization at the federal level. On the other hand, the expanded revenue supported by intergovernmental transfer mechanisms increases the available resources, especially for the municipalities that, in a decentralized way, manage them at the local level. It is worth mentioning that in an unequal federation in terms of territorial development, the redistributive role of the federal government (Arretche, 2012; Souza, 2005) is essential, so that the higher share of tax collection centralized in this sphere cannot be considered necessarily negative and unfavorable to subnational entities that, in many cases, do not have the means to increase their own revenues.

6. Unfunded and underfunded mandates

The topic of unfunded and underfunded mandates is another piece to understand the challenges faced by the subnational governments regarding the decentralization process. Brazilian federalism does not present cases of decentralization or delegation of responsibilities of unfunded mandates, but there are situations in fiscal and public policy federalism that can be understood as underfunded mandates.

As for the first topic, tax centralization is a key factor in the underfinancing of subnational governments. While the CF made it possible to increase the participation of states and municipalities in the distribution of tax resources, it also allowed the expansion of federal government resources through social contributions. Since the mid-1990s, the Union managed to withhold some constitutional transfers

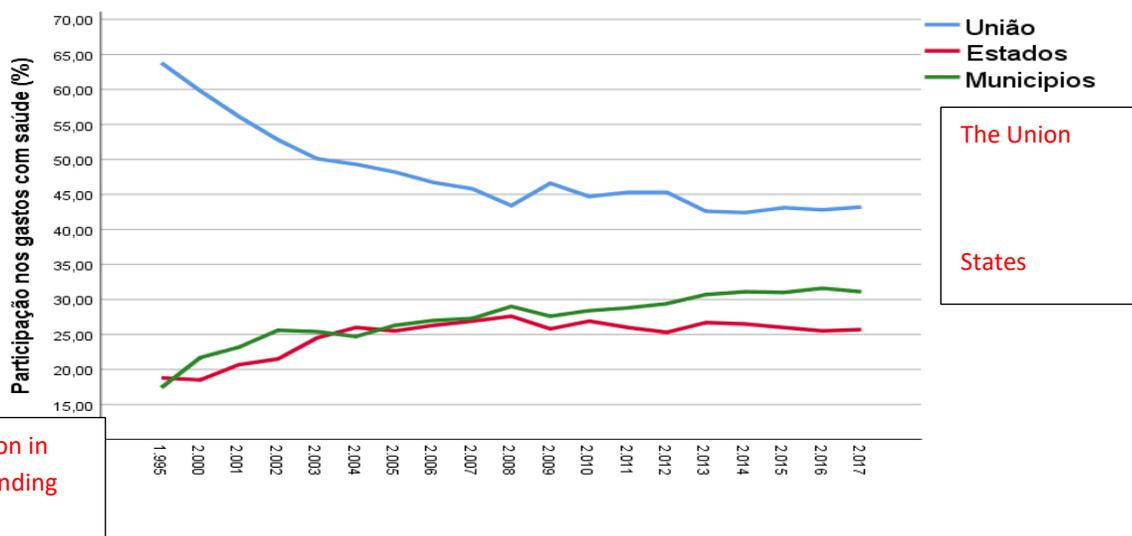
and reduce the spending autonomy of subnational governments (Arretche, 2005). There was a reversal of the original design after 1988 regarding the characteristics of the fiscal federalism and decentralization, given a reading of the central sphere that constituent units had benefited from fiscal decentralization, their autonomy to spend in some areas was reduced.

Since 1994, the federal government has approved constitutional amendments that withdraw fiscal resources from states and municipalities with the justification of supporting financial restructuring and economic stabilization (Souza, 2005). It was also presented as a means to apply its resources in the funding of health, education, social security and other programs of social interest. However, not only was there an increase in revenues through social contributions, but the resources transferred to subnational governments also decreased. Therefore, there was a recentralization of fiscal resources in relation to those previously available to federal entities in the period between 1989 and 1994. With these recentralizing retentions, federal transfers of mandatory constitutional transfers to social security were reduced, especially in health and social assistance.

According to Eaton and Dickovick (2004), there was no broad reversal of the revenue transfer system, but the bases of federal sharing were changed in favor of the Union. Furthermore, the cuts were proposed as temporary measures, necessary for short-term economic stabilization, but were continuously renewed. So, until when could subnational governments sustain their investment levels, especially in the social area, the mainspring of the decentralization process initiated after 1988?

The new recentralizing rules of fiscal federalism affected the ability to finance public policies at the subnational level, but in education and health these issues were more evident. One of the mechanisms used by the federal government to limit subnational governments' spending autonomy was the creation of rules aimed at ensuring the proper use of resources destined for social programs (Almeida, 2005). The greatest example lies in health that reconfigured the way subnational entities should organize spending: states must invest 12% and cities 15% of their taxes (Viana, Lima and Ferreira, 2010). This new rule interfered in fiscal autonomy and increased subnational health expenditures. The fiscal effect of this recentralization was the reduction of federal government spending and the growth of subnational expenditure. The change in the profile of health spending by sphere of government is remarkable, with the inflection point mainly being the period 2000-2004 (see figure 4). The fall in the federal government's participation is notable, which generated an increase in subnational spending.

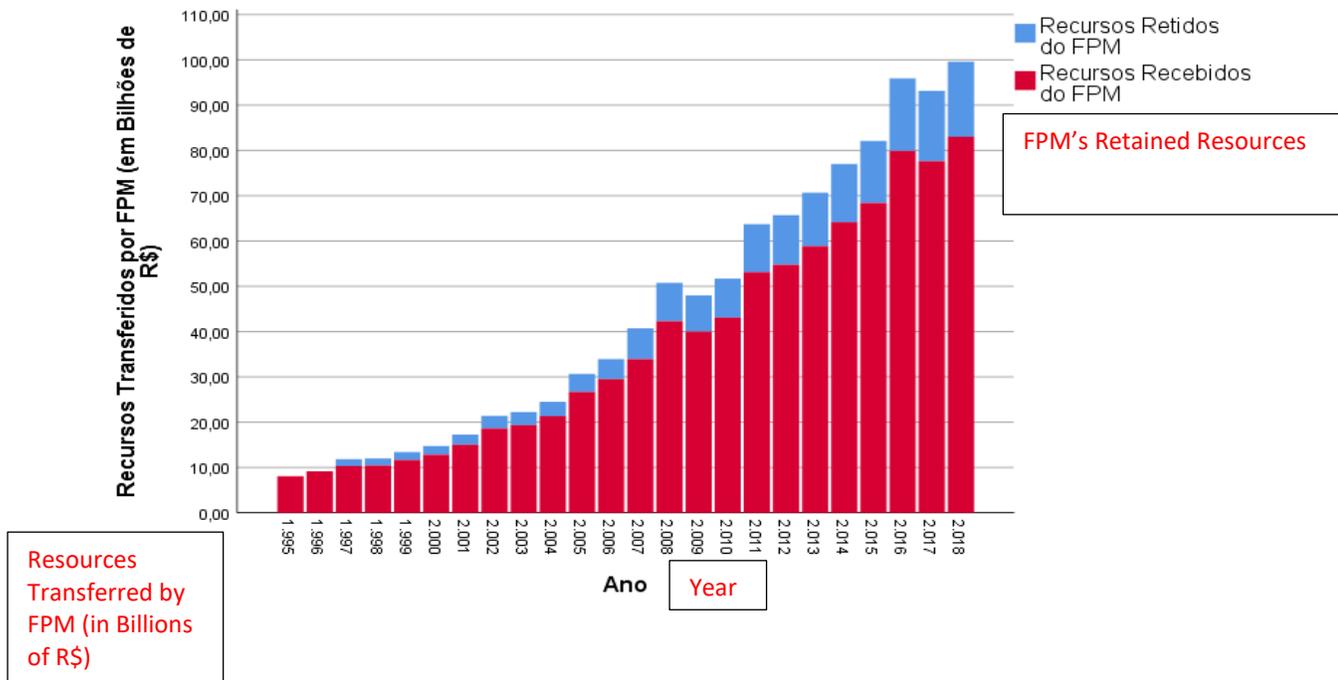
Figure 4 - Participation in health spending by sphere of government



Source: own elaboration, SIOPS data.

In 2006, the FUNDEB increased the retention of the same intergovernmental transfers to 20% and added new taxes. The Fund has been extended to all primary education and not just elementary school. In addition to the constitutional rule to apply 25% of its revenues in the area, new standards were added and recentralized criteria on where and how municipalities should use resources (Arretche, 2012; Pacheco et al, 2016). Graph 1 shows how municipalities gradually became underfunded by the FPM, which could serve as a source for actions in many areas of public policy, due to the federal rule for the formation of FUNDEB resources for the educational area.

Graph 1 - Retained and received resources from the FPM between 1995-2018



Source: own elaboration, data from the National Treasury Sisweb.

In both cases, constitutional amendments approved as an argument to expand investments in health and education ended up generating a process of federal underfunding with different characteristics, but which affected local finances. Based on these examples it is possible to see how the central government has reduced subnational autonomy through new rules obligating them to increase spending of money in two very expensive areas that were previously decentralized without facing these types of stringent rules.

Final remarks

In response to the question of whether the decentralization of public policies from the central sphere to subnational governments is going backwards, this paper sought to gather some empirical evidence to support this reflection. In the three dimensions of analysis considered – political, administrative and fiscal – what was observed was not a reinforcement of subnational autonomy, but rather a reduction of its formal prerogatives (new legal and constitutional rules increased the regulation of the central sphere over states and municipalities) and real competences (subnational governments reduced the scope of issues on which they could decide more autonomously). It could be argued that recentralizing trends are not a reality unique to Brazil (Dickovick and Eaton, 2013). However, what makes the Brazilian case unique is that it is the decentralizing experience that was more guided by the political dimension prior to the fiscal and administrative dimensions (Falleti, 2010). This trajectory, in principle, would indicate a political and institutional design that, because it has expanded subnational

autonomy more broadly, could suffer fewer setbacks than cases such as Argentina and Mexico, where the political dimension has not had the same relevance. However, this has not been the reality in the Brazilian case, at least based on the evidence gathered in this paper, which seeks to argue that decentralization has been facing a trajectory of reversal compared to its initial design if the attributions and responsibilities initially assumed by states and municipalities are considered.

There are many possible explanations for this trajectory of decentralization reversal. Some of these arguments are based on the need to support the poorest subnational governments, expand the quality of life of populations through greater territorial equity, fight the corruption of subnational elites and face the fiscal cost of decentralization (Cravacuore, 2015; 2017; Olmeda and Armesto, 2017). It can also result from fiscal scarcity and inflationary crisis (Gonzalez, 2016), federative disputes (Eaton, 2014), actions of the central level to reduce/reverse the power of subnational entities (Eaton and Dickovick, 2013) or frustration with the performance of decentralized services (Eaton, 2014).

Another issue that deserves closer analysis is the issue of municipal state capacities (Grin and Abrucio, 2018), considering that decentralization was essentially a process of municipalization of public policies. In this case, decentralization progressed out of step with the pace of responsibilities transferred to the local sphere, which over time created a gap between assumed attributions and implementation conditions. Considering the new roles assigned to municipalities by CF 88, and in a context in which the decentralization of powers originating from the Union only increases, the modernization of municipal management assumes importance as a matter of federal cooperation. This is an essential conclusion of the study: almost 30 years after the new municipal status came into force, local state capacities are still significantly lacking in responding to the responsibilities assumed. Esta questão pode não explicar toda a realidade analisada, mas seguramente é um tema relevante, pois descentralização desprovida de capacidades estatais (burocracias qualificadas, instrumentos de gestão alinhados com as demandas da implementação de políticas públicas, recursos de tecnologia da informação, capacidade arrecadatória, para destacar algumas dimensões) esbarra em seus próprios limites, o que contribui também para a sua incompletude (Grin, Demarco and Abrucio, 2021).

In the 1980s, decentralization gained strength in several Latin American countries as a model of democratic governance (Falletti, 2010) and economic reforms. Increasing the political autonomy, administrative responsibilities and fiscal resources of subnational governments aimed to reduce the concentration of power in the national State. Decentralization would expand subnational authority over policy management, qualify democracy and social control over governments (Rodden, 2005; Eaton, 2014). However, in the last 20 years, there has been a recentralizing reversal (Dickovick and Eaton, 2013; Cravacuore, 2015; 2017; Eaton, 2014; Eaton and Dickovick, 2004). The narrative presented in this paper shows that between the initial optimism and the current reality, there are still many questions that make the analysis of decentralization not only incomplete, but also constantly changing. And this reality makes analyzing this process in the Brazilian federation even more challenging.

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Biographical Review

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Abstract

In this paper we analyze the decentralization process in Brazil, which began in the late 1980s. Over the last three and a half decades, municipalities have become the central federative unit for the implementation of public policies, especially those related to social welfare. The Federal Constitution

understood the municipality under two perspectives: a) a democratic principle (core of political life associated with social control and citizen participation (the social democratic matrix); b) a principle of administrative engineering for efficiency in the provision of public services (neoliberal vision that diminishes the role of the national government). Municipalities became responsible for providing basic health care, preschool and primary education, and social assistance, in addition to functions such as urban development and local public transportation. These new responsibilities were accompanied by the constitutional guarantee of political, administrative, and financial autonomy. Demands grew to train their management to respond to their new functions at the local level and in intergovernmental relations. The decentralization of policies generated demands for elections as well as for greater resources and subnational autonomy. An agreement was reached between the central level and subnational governments on the redistribution of power in terms of financial resources and responsibilities in public policies. This process supported the decentralization of authority, powers and resources and emphasized the increase in the efficiency of local governments. However, economic and administrative inequality between municipalities creates difficulties in implementing decentralized public policies. This difference reveals different organizational conditions and capacities. Thus, the paper seeks to analyze the main changes that have occurred in municipal decentralization in Brazil over 35 years.