BRAZIL

Jacob DOLINGER
Luís Roberto BARROSO*

I. OVERVIEW

The lands now corresponding to Brazil were discovered on 22 April 1500 by the Kingdom of Portugal, one of the maritime superpowers at that time. In 1822, after an almost pacific transition, Brazil became independent and assumed the form of a unitary State governed by a constitutional monarchy. The monarchic regime was superseded in 1889 through a military coup that did not encounter any substantial resistance from the Crown or social sectors. Throughout its 67 years of existence, the monarchy fought small revolts in different spots of the large national territory, many of which were inspired by the wish to implement a Federation. Not by chance, the Proclamation of the Republic launched the shift to the federal form of state, which was one of the foundational principles of the first Republican Constitution of 1891.

The 1891 Charter drew its inspiration directly from the United States' federal shape: it attributed express powers to the central authority (the Federal Union), while reserving the remaining powers to states, which held purportedly great autonomy. In reality, however, the Union has always exercised strong control over states, sometimes by means of federal interventions. This centralizing tonic has not changed significantly over time. After the 1891 Constitution, five other Constitutions came into force, all of which maintained the Federation with different degrees of formal autonomy for states. At any rate, Brazil has always observed the centralizing tendency in practical terms, particularly because many Brazilian states are financially dependent on the central power.

Generally speaking, this picture remains valid as to the Constitution presently in force, which was promulgated on October 5, 1988. As we shall see in this report, the central authority retains a large share of regulatory authority on nearly all the most important subject matters. Nevertheless, three introductory remarks should be made. The first concerns the entities which make up the Brazilian Federation. In addition to the central authority and the states (there are now 26), the Brazilian Federation has also a second local level, represented by municipalities (numbering more than 5,000). The municipalities' autonomy is even more limited, as they are subject to both the Federal Constitution and to the constitution of the state where they are located. Furthermore, the vast majority suffer financial difficulties, and rely largely on resources distributed by the Union and the states. Finally, to complete the review of federal entities, there is the Federal District: the City of Brasília. This is the capital of the Republic and the location of the federal branches of government. It is a *sui generic* federal entity halfway between state and municipality, holding prerogatives of both inasmuch as it cannot be subdivided into municipalities (Federal Constitution, art. 32, *caput* and 1st §).

The second remark concerns the manner in which the Federal Constitution gives autonomy to the federal entities and organizes the central authority framework. States are entitled to organize themselves through state constitutions. The municipalities and the Federal District achieve their organization through Organic Laws (*Leis Orgânicas*). In effect, however, the Federal Constitution is very detailed and exercises a strong influence, so that states, the Federal District, and the municipalities do not have too much ground to innovate as far as their political structures are concerned.

Each of the entities has its own legislative and executive branches, whose members are elected by direct vote in the sphere of each jurisdiction *(circunscrição*). The Union, the states, and the Federal District also

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have their own judicial branches, which are mostly formed by judges selected through public contests. In the Courts of Appeal, judges are appointed by the chief executive of the Union or the respective state. In the federal superior courts, the President submits his nominations for approval to the Federal Senate. Self-administration is a recognized prerogative of the federal entities, which organize their own bureaucratic structures in addition to performing acts and executing contracts in their interest.

The third introductory remark is related to the system of allocating powers among the federative entities. The 1988 Constitution distanced itself from the federation model of the United States and became more similar to the German model by setting forth the so-called cooperative federalism. It follows that beyond the subjects that are in an entity's exclusive jurisdiction, the Constitution also establishes areas of joint action in both legislative and political-administrative matters. In the area of concurrent legislative jurisdiction, the Union shall enact norms of general content and states shall deal with more specific aspects. Municipalities may legislate on matters of local interest. In cases of substantive concurrent jurisdiction, the Union, states, and municipalities shall observe the logic of the predominant interest (national, regional or local; respectively). The Constitution also provides for the tax jurisdiction of the three federal spheres. Here, there is no joint action, but part of the revenue collected by the Union shall be delivered to the states, the Federal District, and municipalities in accordance with constitutional standards.

After the many ups and downs that it has experienced, Brazilian federalism is now at a special moment of its history. The (small) decentralization promoted in 1988 has presently – twenty years after the Constitution's approval – created a suitable scenario for new discussions on old ideas, as well as for bills designed to establish a more important role for states and municipalities.

II. THE FEDERAL DISTRIBUTION AND EXERCISE OF LAWMAKING POWER

As mentioned, the legislative jurisdiction of the Union is exclusive in some cases and concurrent in others. The exclusive jurisdiction is provided in article 22 of the Constitution, which includes the following subjects:

i. Civil,[1] commercial, criminal, procedure, electoral, agrarian, maritime, aeronautic, space and labor law;
ii. condemnation (*desapropriação*);
iii. civil and military requisitions, in case of imminent danger and in war;
iv. waters, energy, information technology, telecommunications and radio;
v. postal service;
vi. the monetary and measures system, titles and metals guarantees;
vii. credit policy, exchange, insurance and value transferences;
viii. international and interstate commerce;
ix. national transport policy guidelines;
x. regime of ports, lake, river, maritime, air and aerospace navigation;
xi. traffic and transport;
xii. mines, other mineral resources and metallurgy;
xiii. nationality, citizenship and naturalization;
xiv. indigenous peoples;
xv. emigration and immigration, entrance, extradition and expulsion of foreigners;

[1] "Civil" here does not refer to the classic division between the *common law*, of Anglo-Saxon origin, and the *civil law*, whose origin was based on the slow development and systematization of Roman legal principles, and which developed initially in continental Europe. In Brazilian Law, as in other countries of the Germanic-Roman family, the expression *civil law* also refers to the rules concerning most of the legal relations among private parties, including contracts, liability, family law and succession law. The word *civil* is used in the Constitution and in statutory law in general with this second meaning.

xvi. organization of the national employment system and conditions precedent to the exercise of professions;
xvii. organization of the Judiciary, the Public Prosecutors Office (*Ministério Público*), and the public attorney's office of the Federal District and the territories, as well as their administrative organization;
xviii. statistics, cartographical and geological national systems;
xix. savings accounts system, drawing and guarantee of popular savings;
xx. consortium and lotteries;
xxi. general rules of organization, staff, war material, guarantees, mobilization of the military policemen and military fire departments;
xxii. competence of the federal police and federal traffic police;
xxiii. social security;
xxiv. guidelines and basis of national education;
xxv. public registries;
xxvi. nuclear activities of any kind;
xxvii. general rules for bidding and contracting, in all modalities, for the government itself, government entities (*autarquias*) and government foundations of the Union, states, Federal District, and municipalities and for public corporations and government-controlled companies;
xxviii. territorial defense, aerospace defense, maritime defense, civil defense, and national mobilization;
xxix. commercial publicity.

The Federal Constitution authorizes the Union to delegate to the states legislative jurisdiction to rule on specific aspects concerning the subjects above, in accordance with federal complementary laws (*leis complementares*) to be enacted (for example, Complementary Law number 103/2000 authorizes the states to establish minimum wage for certain professions).

The subjects on which the Union, States, and Federal District may legislate jointly are provided for in article 24 of the Federal Constitution, which includes the following:

(i) tax, finance, prison, economic, and urban law;
(ii) budget;
(iii) commercial registries;
(iv) legal fees (*custas*);
(v) production and consumption;
forests, hunting, fishing, fauna, nature conservancy, defense of the land and natural resources; environment protection and control of pollution;
(vi) protection of the historical, cultural, artistic, tourist and landscape heritage;
responsibility for damages to the environment, to the consumer, to assets and rights of artistic, esthetic, historical, touristic, and landscape interest;
(vii) education; culture, teaching and sports;
(viii) creation, functioning and procedure in minor issues courts (*juizado de pequenas causas*);
(ix) procedural matters
(x) social security, protection and healthcare;
(xi) juridical assistance and public attorneys;
(xii) protection and social integration of disabled persons;
(xiii) protection of children and youths;
(xiv) organization, guarantees, rights and duties of the civil police forces.

In such matters, the Constitution sets forth that the Union shall enact general rules, and leaves to the states the undertaking of complementing federal law by enacting specific rules. In case the Union does not exercise its competence, states are authorized to rule entirely. This is to avoid that the central authority's inertia leaves important matters unregulated which would prevent the states from performing their functions. As soon as the Union finally acts, the occasional general rules enacted by states will go out of force.

It must be stressed that the central authority does not have a preference to rule upon the joint matters listed under Article 24. For those matters, the Constitution sets up a division of work, assigning to the Union the task of enacting general rules. The expression 'general rules' is subject to a broad interpretation, and is understood to include guiding principles and also rulings on issues that by their very nature demand a uniform national regulation. States, in turn, develop the law from the point of those general rules. Article 24 thus reduces state autonomy, but it also limits the federal jurisdiction by preventing the Union from ruling completely on such matters. Nonetheless, in practice, it is very difficult to distinguish general from specific rules. Cases of doubt have been interpreted by the courts in favor of the Union.

As a result of the extensive legislative jurisdiction of the Union, little room is left for the states to legislate. Besides the subjects on which states legislate in cooperation with the Union (article 24), few important issues are within their jurisdiction. Even though article 25 of the Constitution attributes to the state governments the residual powers,[2] nearly all areas that matter most in practice are reserved to central government regulation, as seen above. In addition, the municipalities have their own exclusive area of legislative jurisdiction that concerns matters of local interest. The Constitution also admits that municipal legislation complements state legislation as to issues of predominantly local interest. These two circumstances further reduce the states' legislative autonomy. The most important areas concerning state law are those related to state organization (of the judicial, executive and legislative branches), state taxation, and administrative law (governing public servants and public services).[3]

The previous remarks lead to the conclusion that the Brazilian Constitution does not establish the supremacy of federal law. If the central authority oversteps the limits of its legislative competence, the resulting law will be unconstitutional and, as a consequence, void. As explained above, in areas of concurrent jurisdiction, the Union shall only enact general rules. The enactment of specific rules – invading the states' jurisdiction – violates the allocation of legislative jurisdiction set forth in the Constitution. Obviously, the specific rules enacted by states shall be compatible with the general rules made by the central authority.

Aside from the concurrent legislative jurisdiction, legal doctrine points out standards based on constitutional prerogatives to resolve conflicts between laws of the different federal entities. Accordingly, a federal statute on mining or transportation (areas within the central authority's exclusive jurisdiction) may conflict with state or municipal statutes on the environment. The basic standard for resolving this kind of conflict is to identify the predominant interest (national, regional or local). In addition, specific prerogatives (e.g., regulating transportation) prevail over more generic ones (e.g., the environment). For example, states shall not exercise their authority regarding environmental issues by limiting the emission

[2] Except to create new taxes – this residual power is allocated to the Union (Federal Constitution, article 154).
[3] The legislative jurisdiction over taxes is concurrent. Nonetheless, the Federal Constitution substantially distributes such jurisdiction among the federal entities. Article 155, for example, specifically enumerates those taxes constitutionally attributed to states.

of pollutants from automobiles in a manner that conflicts with the limit set forth by the central government. Furthermore, the exercise of legislative or substantive prerogatives by an entity shall not totally prevent other entities from exercising their own prerogatives (e.g., the states' environmental legislation shall not infringe the federal legislation on mining).

As stated before, the Constitution expressly confers jurisdiction on municipalities: (i) to legislate in matters of local interest; and (ii) to supplement federal and state law (again, to protect the local interest) (Article 30). The local interest concept is also somewhat vague, but the prevalent understanding is that the interest shall be predominantly local, without affecting other municipalities, states or the country as a whole. For example, the Brazilian constitutional court (*Supremo Tribunal Federal, STF)* has consolidated its jurisprudence in the sense that municipalities – and only they – have jurisdiction to set the working hours for commercial enterprises, like drugstores (STF, *DJU 21* set. 2001, AgRg no RE 252.344/SP, Rel. Min. Carlos Velloso).By contrast, municipalities may not regulate the working hours of banks because that would have an impact on the national system for payment of checks (STF, *DJU 3* jul. 1981, RE 80.365/PR, Rel. Min. Antonio Neder).

III. THE MEANS AND METHODS OF LEGAL UNIFICATION

The Constitution itself largely contributes to legal unification in Brazil. Many of its articles are directly applicable to states and municipalities, including articles concerning the essential organization of such entities (i.e., the composition and functioning of their branches of government), as well as a long catalog of fundamental rights (individual, political and social) and a wide set of rules on the organization and work of the Public Administration.

Moreover, the STF acknowledges the existence of the so-called *principle of symmetry*, according to which states, the Federal District, and municipalities shall comply with many rules defined by the Federal Constitution to govern the activities of the central authority. This includes those provisions related to the separation of powers (e.g., states and municipalities shall not create new mechanisms of checks and balances) and also provisions related to the legislative process (e.g., states and municipalities are prevented from making procedural rules differing from those established for the Union by the Federal Constitution) (STF, *DJU* 9 Nov. 2007, ADIn 2873/PI, Rel.ª Min.ª Ellen Gracie).

The greatest driver of unification, however, is the wide area reserved to the Union's exclusive legislative jurisdiction (Article 22). As mentioned above, not only does the Constitution reserve certain matters – e.g., public transportation and telecommunications – to the central government, it also reserves vast fields of law, such as civil, criminal, corporate, procedural, and labor law. That is why federal legislative activity is so important in terms of directly applicable rules.

By contrast, the Federal Constitution restricts the Union from coercing states, the Federal District or municipalities to enact laws. Although the Constitution provides for some mechanisms of redirecting resources from the Union to the states, the Federal District, and municipalities (*e.g.*, part of the revenue obtained from federal income tax), it does not authorize the central authority to condition the allocation of such resources on the [submission or transfer of any legislative prerogatives. Nor does it empower the central authority to withdraw from states, the Federal District, or municipalities those prerogatives on either a permanent or a temporary basis.

In general, the Federal Constitution does not allow the courts to create rules except those regarding their internal organization. Nevertheless, judicial interpretation of broad constitutional provisions has played an important role in the distribution of jurisdiction between the Union and states, usually to favor the Union

or simply to reduce state autonomy (especially with the principle of symmetry). In constitutional interpretation, the STF plays a leading role. In Brazil, as in the United States of America, all judges may apply the Constitution directly, as well as refrain from applying legal rules they deem not to be in accordance with the Constitution. The STF has the last word on such issues and may act through a variety of mechanisms, including by means of an appeal named *recurso extraordinário (extraordinary appeal)*. In 2004, the Constitution was amended to give the STF the power to decline hearing *recursos extraordinários* in cases that do not deal with matters of general interest; that is, in which the issue at stake has no relevance to the constitutional system as a whole. This was an attempt to give the Court some control over its docket by reducing the enormous amount of appeals adjudicated every year. The mechanism is in some way similar to the *writ of certiorari* of the United States Supreme Court and the power not to accept constitutional complaints (*Verfassungsbeschwerden)* of the German Federal Constitutional Court.

Yet concerning the creation of rules by courts, there is a particular situation which deserves special comment. In some cases, the Constitution establishes a right but leaves the exact content or form of that right for the legislative branch to establish by statute. . Where the legislature fails to enact such a statute, thereby making the exercise of the constitutional right impracticable, the Constitution provides for a specific remedy: the writ of injunction (*mandado de injunção*) (Articles 5, LXXI, 102, I, *q*, and 105, I , *h*). Originally, the STF assumed that a decision in a writ of injunction should not create the missing rule, but should limit itself to declaring the legislature's failure to act unconstitutional. In 2007, the Court changed its view, deciding that it should create the applicable rule itself, albeit on a temporary basis, until the legislature acts. The Court did exactly that in the following scenario: the Constitution recognizes workers' general right to strike (Article 9). Another provision sets forth the same right for public servants but determines that the exercise of such right be regulated by a federal statute (Article 37, VII). As that statute had not yet been enacted, the prevailing opinion was that public servants were not authorized to strike. In its decision, the STF determined that while a specific statute had not been enacted, public servants were in fact allowed to strike in accordance with the provisions of the law governing the workers' general right to strike. (STF, *DJU* 6 nov. 2007, MI 670/ES, Rel. Min. Maurício Corrêa).

Legal unification also occurs through the cooperation or coordination of the various federal entities' legislatures or courts. For those matters in which all entities have to act jointly (e.g., environmental protection), the Constitution sets forth that the central authority shall enact legislation to regulate the cooperation between the various legislatures (Federal Constitution, art. 23, sole paragraph). Such law has not been enacted yet. In some areas, however, the federal legislature has created national systems to coordinate joint action of the three federal spheres; these systems also provide for information exchange. An example is the Environment National System (*Sistema Nacional do Meio Ambiente – SISNAMA*) (Federal Statute n. 6.938/81). Similarly, in the field of health, the Federal Constitution itself integrated public services into a single network, the Unified Health System, which is regionalized and hierarchically organized (*Sistema Único de Saúde* – SUS) (Article 198). Usually, those systems are tasked with the creation of normative acts to implement statutes related to the field in which they develop their activities. Consequently, they play an important role in the unification of Brazilian law.

Coordination between state legislatures is rarer. There is only one case of formal coordination between states provided for by the Federal Constitution. The States will coordinate with regard to the states' value-added tax on distribution of goods and services (*imposto estadual sobre a circulação de mercadorias e a prestação dos serviços de comunicação e de transporte interestadual e intermunicipal*), especially concerning exemptions and other tax benefits. This is to avoid a "tax war" that would harm all parties. The coordination is obtained through formal agreements (*convênios*) on the subject executed by states (Federal Constitution, art. 155, II e § 2º, XII, *g*). In other fields, there is spontaneous (informal) coordination. One state or municipality's legislation may inspire enactment of similar legislation by others, assuming the former is worth emulating. For example, there is a great deal of similarity across

state laws on Public-Private Partnerships (PPP), a type of contract that has been practiced in other countries for a long time. Brazil's central government formally introduced this type of contract in 2004 by law providing general rules on the subject.

State judiciaries sometimes analyze jurisprudence from the courts of other states although they are not bound to do so. Generally, the parties themselves inform courts about decisions favorable to their interests as a means of argumentation. This can influence legal unification where the court of one state is persuaded by the reasoning of a court from another state. More important, however, is the existence of certain appeals with the purpose of unifying jurisprudence on the national level. When two or more courts interpret a federal statutory provision differently, the Constitution allows the losing party to file an appeal (*recurso especial)* to the Superior Court of Justice (*Superior Tribunal de Justiça – STJ*), which has the function of harmonizing the interpretation of federal law.

The role of non-state actors in legal unification is insignificant. For instance, there are no mechanisms such as the Restatements compiled in the United States of America. Books by legal authorities contain comments on the codes (such as the civil code, the code of civil procedure, and the penal code), with references to the most important judicial decisions regarding each issue. Such works – some of them well-known and frequently consulted – play an informative role, transmitting knowledge and helping courts to decide in accordance with dominant legal interpretation. It would not be correct, however, to say that they play a significant role in legal unification.

In certain matters, Brazil became a party to internationally uniform laws. This is the case with the Convention providing a Uniform Law for Bills of Exchange and Promissory Notes –Geneva 1930- and the Convention providing a Uniform Law for Checks –Geneva 1931– which were both incorporated into Brazilian Law in 1966. Such initiatives do not have a unifying effect within the Federation, however, as they concern matters in which the Union already has exclusive jurisdiction; the unification effect is thus merely international. Thus, although compliance with international legal obligations is arguably relevant as a matter of Brazilian law, its influence in internal legal unification is practically nonexistent since the vast majority of international norms concern subjects which the Brazilian Constitution reserved to the central authority. The same is true regarding international voluntary coordination. As the vast majority of such projects is related to areas regulated by the central authority, conventions, model statutes, or any other instrument adopted under the auspices of UNCITRAL, UNIDROIT or the Hague Conference on Private International Law play virtually no role in unifying the law in Brazil.

Standards and practices of industry associations and other private entities also are of little importance to unification. Such sources have not significantly influenced lawmaking, and even less legal unification, within the Federation. Despite their general influence, which varies in significance by sector, private entities play but a small role in the political process in general. Again, the large concentration of prerogatives in the central authority naturally reduces the role of unification mechanisms. This also reduces the private sector's interest in promoting unity.

Finally, legal education plays a role in unification. Law schools in Brazil accept students based on their performance on entrance exams, and may accept candidates from anywhere in the country. Although schools usually attract students from the surrounding regions – i.e., from inside the state in which they are located – one does find some students moving to different places to study law. Legal education concentrates on the Constitution and federal law. That is because the federal legislative jurisdiction includes the main issues and legal branches, be it through exclusive jurisdiction (*e.g.*, civil, criminal, procedure, corporate and labor law) or through the enactment of general rules (*e.g.*, tax, financial and largely administrative law).

To practice law in Brazil, one ought to be a member of the Brazilian Bar Association (*Ordem dos Advogados do Brasil – OAB*), a national entity with a branch in each state. Membership is established through admittance to the branch of the state in which the candidate wishes to establish his professional domicile, after being approved by passing a written exam.

The lawyer registered in a certain state branch of the OAB may exercise his or her profession in other states on an occasional basis (up to five lawsuits per year). Beyond this limit, he or she will need a supplementary membership in the branch of those states in which he or she wishes to act regularly. Federal Statute number 8.906/94regulates the matter. However, professionals usually stay where they studied or return to their original state if they attended school somewhere else. Some state capitals are known for attracting students from elsewhere, due to their greater economic development. Rio de Janeiro and especially São Paulo are the main examples. Brasília, which is the federal capital, attracts law firms and professionals because it is the home to the two highest Brazilian Courts, the *Superior Tribunal de Justiça* (STJ) and the *Supremo Tribunal Federal* (STF).

IV. INSTITUTIONAL AND SOCIAL BACKGROUND

The aim of this subchapter is to describe briefly the institutional organization of the federal entities and point out important social aspects that may interfere with legal unification.

Let us begin with the judicial branch. As mentioned before, any judge may refrain from applying statutes he or she deems unconstitutional, so this control is exercised by the entire judicial branch. Nonetheless, the final decision whether a statute is unconstitutional is reserved for the STF, which may make its decision in a number of ways. The Constitution allows the Court to examine in abstract the constitutionality of a specific statute in an action proposed by any of a certain group of authorities or institutions. The Court may also review ordinary judicial decisions finding a statute unconstitutional via the *recurso extraordinário* (extraordinary appeal) as explained above.

Therefore, courts – especially the STF – are regularly called upon to verify that federal legislation is within constitutional limits. For example, the Federal Constitution provides the central authority with jurisdiction to establish general rules on public procurement and administrative contracts (Article 22, XXVII). Assuming these directives are otherwise respected, states and municipalities may enact specific rules that apply to their own administrative bodies. The STF has decided that some provisions of the Federal Statute on Public Biddings and Administrative Contracts (Federal Statute n. 8.666/93) only apply to the central authority, once they go beyond the general rules and invade the jurisdiction of the other federal entities. Such provisions concerned specific limits to the donation of goods by the public sector (STF, *DJU* 11 Nov. 1994, ADInMC 927/RS, Rel. Min. Carlos Velloso).

Beyond constitutional review, however, there is no central court with power to authoritatively interpret component state law. The STF may declare unconstitutional a statute enacted by the Union or the states in a direct action of unconstitutionality (*ação direta de inconstitucionalidade*). It may also undertake, with regards to any statute – federal, state, or municipal – the so-called "interpretation in conformity with the Constitution" (*interpretação conforme a Constituição*), first developed by the German Federal Constitutional Court. By this technique the Court does not declare in the abstract that a rule of law is unconstitutional – the text remains in force – but it forbids certain interpretations of the provision, inasmuch as such interpretations are not in accordance with the Constitution. By thus prescribing a certain interpretation, the Court causes a unifying effect. It is to be stressed, however, that the Court's purpose is not unification. Instead, the Court's judgment represents its understanding that other interpretations violate the constitutional order and therefore must be avoided.

Besides the judicial structure of the central authority, each state has its own judiciary. In all cases – in the state as well as in the federal sphere – there is an appellate court. Also, there are two courts with national general jurisdiction: the STF has the final word on constitutional interpretation, while the STJ has the final word on interpretation of federal law. There are also specific higher courts for the labor, military, and electoral law. It is important to note also that whereas there are courts organized by the Union and by the states, the judicial branch –like the Public Prosecutors Office (*Ministério Público*) – is treated as an institution of national character. The Union and the state branches [just represent a division of labor among these entities with regard to the administrative organization of the courts. This has important consequences: all judicial institutions are subject to common principles defined by the Federal Constitution, and there shall be no arbitrary distinction between federal and state civil servants, especially as to their wages (STF, *DJU* 17 mar. 2006, ADI 3367/DF, Rel. Min. Cezar Peluso; STJ, *DJU* 20 mai. 2002, EREsp 114908/SP, Rel.ª Min.ª Eliana Calmon).

To avoid divergence regarding the interpretation of federal law, the Constitution provides for the *recurso especial* appeal to be filed before the STJ (Article 105, III, c). Thus, if a party shows that a state or federal appellate court interpreted a federal statute in a manner different from another appellate court, it may make use of such appeal. The STJ then decides which interpretation shall prevail. In Brazil, there is no *stare decisis* principle. Consequently nothing prevents a court from applying a different understanding than the one endorsed by the STJ. Nevertheless, procedural law has been going through alterations in order to stimulate the observance of previous judgments, and also to simplify unification through appeals.

Lawsuits and conflicts between the Union, the states, and the Federal District are adjudicated by the STF (Article 102, I, *f*).

As to the executive branch, each federative entity has its own structure. As a general rule, the central authority has its own administrative body that is in charge of applying statutes enacted by the Union. In many cases, however, the Union has legislative jurisdiction – exclusive or concurrent – over matters in which states and municipalities have executive authority. In these cases, local entities apply federal law, exclusively or together with their own legislation, in accordance with the coordination standards previously mentioned. In the field of criminal law, for example, the Union has exclusive legislative jurisdiction (Art. 22, I), but in the majority of cases, states have authority to investigate crimes and judge the accused. Public registries (*e.g.*, the real estate owners' registry) are regulated by federal law (Art. 22, I and XXV), but such registries are almost always run by agents which act under the supervision of the states and are subject to the states' appellate courts' control (Article 236).

The National Congress, which is bicameral, constitutes the legislative branch of the central authority. It consists of the House of Representatives (*Câmara dos Deputados*) – an organ of popular representation – and the Federal Senate. The Federal Senate's main purpose is to represent the states and the Federal District, in isonomic conditions: each elects three senators (Article 46). As a rule, the Senate takes part in all federal lawmaking and additionally has important exclusive prerogatives, many of which are related to the Federation – *e.g.*, establishing limits and conditions on domestic and international credit transactions of the Union, states, Federal District and municipalities (Art. 52, VII). The people of each state elect the three senators through direct voting for a term of 8 years (Federal Constitution, art. 46). The elections occur every 4 years, so that at every election the Senate is partially renewed (elections are for 1/3 and 2/3 of the vacancies, alternately). In practice, since senators are not chosen by the authorities of the states and the Federal District, they are usually more bound to their political parties than to the interests of the entities they are supposed to represent. For that reason, the Senate plays more the role of an Upper House than that of a House of the states.

The three levels of the Federation have their own tax prerogatives (the Federal District has both state and municipal prerogatives). There are different tax species and such classification is important in establishing

the proper jurisdictional apportionment. The *taxas* are fees paid in consideration for administrative activities that directly benefit taxpayers, and may be collected by the entity which renders the activity (Article 145, II). Electrical supply, for example, is a public service of the Union usually executed by delegation to private enterprises. The remuneration for this service is obtained through the *taxa*. All entities may also impose "improvement contributions" (*contribuições de melhoria*) when a public work causes a significant rise in the value of certain private real estate properties; the entity which performs the work will have jurisdiction to levy the contribution. All entities may also require their public servants to make social security contributions (*contribuições previdenciárias*) to finance social security systems for their benefit (Article 149, 1st §).

The main tax species is the *imposto*. The Constitution indicates the situations that justify charging *impostos* (*e.g.*, income, real estate, or rendering a service to third parties), and divides the power to tax among the various entities. The Union may establish and charge taxes over: (a) imports; (b) exports; (c) income and profits; (d) industrial goods; (e) credit, exchange and insurance transactions, or transactions related to securities; (f) rural properties; and (g) large fortunes (Art. 153). States may establish and charge taxes over: (a) *mortis causa* succession and donations of any assets; (b) distribution of goods and services (equivalent to sales tax) and transportation services between states and between municipalities; and (c) automobile ownership (Art. 155). Municipalities may tax: (a) urban properties; (b) *inter vivos* conveyance of real estate or of rights over real estate (except for guarantees, as well as assignment of rights to purchase); and (c) services of any nature not within the states' jurisdiction, as defined in a complementary federal law (Article 156). Only the Union may (a) create new taxes (Article 154, I), and (b) establish extraordinary taxes to finance a war effort (Article 154, II).

There are two more tax species provided for in the Constitution that are within the Union's exclusive jurisdiction: (a) the "mandatory loans" (*empréstimos compulsórios*), which are unusual and are generally charged for regulatory purposes, to discourage a certain activity, or to reduce the quantity of circulating cash. The resources so obtained must be returned within a reasonable period (Article 148). Next, the Union may charge (b) "other contributions" (Article 149): (i) *social contributions*, assessed on employers and employees, which are designed to finance the general social security system (education, health, pensions and social assistance); (ii) *contributions for the intervention in the economic field*, imposed upon private agents acting in strategic economic sectors, such as fuels and lubricants, and which are designed to finance state activities in these areas; (iii) *contributions in the interest of social or economic categories*, assessed on individuals acting in areas or professions particularly regulated, and designed to finance a supervision system. Lawyers, for example, shall pay a yearly contribution to finance the activities of OAB (Brazilian Bar Association).

Finally, municipalities may impose a "contribution" to finance public lighting (*contribuição para o custeio da iluminação pública* – Article 149-A).

It is easy to notice, then, that the Brazilian tax system is rigidly defined in the Constitution; double taxation is not possible. Frequently many different taxes are levied on the same production chain, each of them related to a specific aspect. On a hypothetical production chain, for example, the following taxes could be assessed: value-added tax on distribution of goods and services (assessed by the state), the social contribution on profits (assessed by Union), and income tax (also assessed by the Union). The large quantity of taxes and their rates, which are often implemented on a very progressive scale, make the overall Brazilian burden very high.

Besides establishing the tax prerogatives for each entity, the Constitution provides for mechanisms for transferring resources from the Union to the states, the Federal District, and municipalities; and also from states to municipalities. For example, part of the income tax assessed by the central authority shall be delivered to the other entities. This system is established in Articles 157 and 158 of the Constitution and

the resources may not be withheld due to political disagreements. The Union may only refrain from remitting resources to entities which are debtors and are not performing their duties or which have not made the minimum investments in health, as required by the Constitution (Article 160). There is also an indirect form of sharing revenues. The Constitution sets forth that resources obtained from certain Union taxes will be partially allocated to Participation Funds (*Fundos de Participação*), and these resources shall be shared among the states, the Federal District, and municipalities or invested in less-favored regions (Article 159). The standards of sharing are set forth in federal legislation and aim to promote a social-economic balance among states and municipalities (Article 161, II).

Finally, significant social factors are worth mentioning briefly. Brazilian society is very diverse both ethnically and religiously. Nonetheless, such differences do not engender any kind of sectarian political movements. In the past , in the southern region of the country (the states of Rio Grande do Sul, Paraná and Santa Catarina), which has received many waves of immigrants from European countries (Italians, Germans, Azoreans and others), there were a few separatist movements, mainly during the nineteenth century. Nowadays, however, such movements are no longer significant.

The different ethnic and religious groups are fairly uniformly distributed throughout the national territory without any particular concentration, especially as far as political factors are concerned. The Northeast Region of the country concentrates a higher percentage of African-Brazilians. In some states, like Bahia, this group is the majority of the population. In the south, conversely, European immigrants prevail. Yet, while such concentrations result in large cultural diversity, they do not have a significant political impact.

With regards to natural resources, Brazil is a vast and diverse country. Each of the five regions of the country – northern, northeastern, center-western, southern and southeastern – has its particular advantages. Some areas concentrate strategic resources, such as oil in the continental shelf of the southeast (although there are smaller deposits in other areas). The existence of areas of large biological diversity, specially the Amazon Forest – whose greater part is located in the north, within the Brazilian borders – and the *Pantanal*, situated in the center-west – should be noted. A great part of the northeastern region, however, suffers from arid conditions with land not naturally suitable for agriculture, forcing people in the region to migrate to the shore and to the southeastern capitals in search of jobs. Indeed, the economic and social development of the different states has been very unequal, being higher in the south and southeast of the country. Such differences result in the demographic concentration in these areas due to domestic migration.

The Constitution states that the reduction of regional inequalities is a fundamental objective of the Federative Republic of Brazil (Article 3, III). There are not, however, relevant institutional mechanisms to force the Public Administration to implement such task. A noteworthy exception are the previously mentioned Participation Funds (*Fundos de Participação*), which consist of certain percentages of the central authority's revenue obtained from taxes. Federal law sets forth the standards for apportionment, and determines that 85% of the resources are to be invested in the less-favored regions of the country (northern, northeastern and center-western)while the remaining 15% shall go to the richer states (those situated in the south and the southeast).

V. CONCLUSION

There is a high degree of uniformity of legal rules within the Brazilian federal system. The main reasons for that are: (i) the area reserved to the Union's exclusive legislative jurisdiction (Article 22) is remarkably large and includes nearly all the main branches of law (civil, criminal, corporate, procedure, labor law, etc); and (ii) there are many constitutional provisions which are directly applicable to the Union, the states and the municipalities, including a long list of fundamental rights as well as a wide set of rules on the organization and functioning of the Public Administration, which bind all federative spheres.