

Legislative and Executive branches in the Covid-19 pandemic: the emergence of a critical federative juncture?

Legislativo e Executivo na pandemia de Covid-19: a emergência de uma conjuntura crítica federativa?

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ABSTRACT This paper aims to analyze the role played by The National Congress in formulating policies as a response to the challenges of the Covid-19 pandemic in Brazil. We adopted the theoretical perspective of Historical Neo-institutionalism, particularly the critical juncture concept. We hypothesized that the deliberate coordination void produced by the Federal Executive Power in leading actions to combat the pandemic could boost the Congress legislative formulation activity. This move would expand the possibilities of approving an agenda of projects aligned with state and municipal positions. Such dynamics could drive a critical federative juncture, changing the characteristics of the Brazilian federative model built in the last three decades. We analyzed the regulations approved in the first legislative period of the National Congress (February to July 2020) within the spectrum of the first wave of the pandemic. The results show that Congress obtained greater autonomy in policy formulation vis-à-vis the Executive. This position resulted in the approval of an expressive set of matters in the federative field, characterizing the emergence of a critical juncture, albeit of uncertain sustainability, depending on the behavior of several variables.

KEYWORDS Covid-19. Federalism. Legislative. Organizations.

RESUMO Este artigo tem como objetivo analisar o papel desempenhado pelo Congresso Nacional, e suas relações com o Poder Executivo, na formulação de políticas como resposta aos desafios da pandemia de Covid-19 no Brasil. A análise foi realizada a partir do olhar teórico do Neoinstitucionalismo Histórico, em especial, do conceito de conjuntura crítica. Partiu-se da hipótese de que o vácuo deliberado de coordenação produzido pelo Poder Executivo Federal na condução das ações de combate à pandemia poderia impulsionar a atividade de formulação legislativa do Congresso. Esse movimento ampliaria as possibilidades de aprovação de uma pauta de projetos mais alinhada aos posicionamentos dos estados e municípios. Tal dinâmica poderia impulsionar uma conjuntura crítica federativa, alterando as características do modelo federativo brasileiro construído nas últimas três décadas. Foram analisadas as normativas aprovadas no primeiro período legislativo do Congresso Nacional (fevereiro a julho de 2020), no âmbito da primeira onda da pandemia. Os resultados mostram que o Congresso obteve maior autonomia da formulação de políticas ante o Executivo, posicionando este que resultou na aprovação de um conjunto expressivo de matérias no campo federativo, caracterizando a emergência de uma conjuntura crítica, embora de sustentabilidade ainda incerta, a depender do comportamento de diversas variáveis.

PALAVRAS-CHAVE Covid-19. Federalismo. Poder Legislativo. Instituições.

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The Covid-19 pandemic and the pressures for greater federative coordination

The quick and widespread dissemination of the Covid-19 pandemic resulted in growing demands for the country's ability to build integrated and timely public policies, which necessarily led to expressive demands on the public administration, the several social stakeholders, and the national institutions.

In the institutional field, the agenda to combat Covid-19 has produced two types of pressure on the Brazilian federative framework: 1) it boosted the demand for policy formulation and the implementation of new regulatory mechanisms for intergovernmental relationships; and 2) escalated the demand for institutional mediation in defense of constitutional prerogatives and fiscal and financial resources of the federative spheres, especially common competencies.

Demands of this nature in the health sector have been conducted from the dynamics of integrated and cooperative federalism established in the 1988 Constitution and the Organic Health Laws over the last three decades. In the latter, since then, the formulation of national priority policies relied on the significant performance of the Ministry of Health in partnership with the entities representing state and municipal managers – National Council of Health Secretaries (Conass) and National Council of Municipal Health Secretariats (Conasems), respectively – to conduct decisions to expand the health service network, implement new programs, the health information policy, and recruit and retain professionals¹.

However, these joint construction dynamics were deflated in the first months of the pandemic due to the autocratic and denialist position of President Jair Bolsonaro, creating a deliberate federative void that resulted in a double shift in the functions of policy coordination in Brazil: from the one hand,

governors and mayors spearheaded actions to combat the pandemic in their territories; on the other, Congress expanded its role in formulating policies and securing resources for states and municipalities.

This double shift can modify the recent trajectory of the relationships between powers and the federative spheres. In the last three decades before the pandemic, the Federal Executive branch built significant capacities to influence the legislative agenda in its favor and induce national policy standards before states and municipalities²⁻⁴.

Thus, is it possible that, given the Federal Government's isolation, Congress has achieved greater policymaking autonomy? If so, did this new position represent a greater approximation to the states and municipalities, favoring the approval of projects aligned with their interests and junctural needs? Given this situation, would such changes be profound enough to produce the onset of a critical federative juncture, altering the current Brazilian federalism pattern?

This paper seeks answers to these questions by analyzing the results of a survey of the legislation approved by the National Congress in the first legislative period of 2020 (February to July). The study uses the framework of Historical Neo-institutionalism nested in the research 'New Federalism in Brazil? Tensions and Innovations in the Covid-19 Pandemic', developed by the Center for Strategic Studies of the Oswaldo Cruz Foundation (Fiocruz).

Cooperative federalism, the federal sphere, and the role of Congress

Cooperative federalism in the 1988 Constitution

The 1988 Constitution defined a cooperative federative model, with three autonomous spheres and a broad set of common

competencies, valuing subnational entities as important actors. This configuration aimed to revive the role of states and municipalities in the federation, a space suppressed by the Brazilian military regime, regarding the distribution of competencies and resources.

In policy management, the cooperative nature, with common competencies, has been deepened in health, education, social assistance, environment, and security since the 1990s. The agreement and organization of collective work were institutionalized, involving a broad framework of devices, such as collegiate bodies, agreed management plans, covenants, and intergovernmental transfers.

Thus, in these fields, as defined in articles 23 and 24 of the Constitution⁵, even in the face of the inertia of the Federal Government, subnational entities have a constitutional prerogative of action in management and legislative initiative, which is the case of protecting the health of the population (art. 24, XII). Although these articles have not been regulated since then to define each entity's duties clearly, they were also not suppressed, which guarantees the prerogative of exercising the responsibilities of subnational entities to protect and care for their respective populations.

The federal sphere and the role of Congress

The federal sphere has a highly relevant role in this federalism model since it must establish the general rules that regulate intergovernmental relationships, build the institutional framework to resolve sectoral conflicts and enable negotiations (committees and the like), establish channels for policy formulation (working groups and the like), and implement technical areas to support states and municipalities⁶.

The role of the federal sphere is exercised by the structure of the Executive Power (President of the Republic, Ministries, bodies, and public companies) and the work of Congress (Senate and House of Representatives) and

the Judiciary (Supreme Federal Court – STF).

In general, the definition of national standards prevails in the formulation of policies in federations with an expressive range of common competencies, based on the emphasis given to joint decision-making and achieving a consensus between the federal sphere and subnational entities⁷. In the Brazilian case, the Federal Government had a significant capacity to induce sectoral programs. It was highly successful in approving projects in the Legislative, making it a central actor in defining national standards of public policies in the last three decades.

Thus, levels of agreement and defense of the interests of the state and local spheres are strategic institutional devices as they ensure federative balance when distributing attributions in new policies and conflict over prerogatives of action and allocation of financial resources.

The fundamental role of these bodies is to preserve the original federative pact inscribed in the Constitution and promote adjustments to update it in contexts not initially foreseen. In this sense, Congress (in particular, the Senate) and the STF are responsible for the regulation of rights originating from autonomy and the prerogatives of exercising the powers of each sphere in a federation.

In the case of Congress, through the political representation of Representatives, especially of elected senators, advocating the interests of the federation units in the legislative process is guaranteed when the main provisions on the distribution of powers and tax resources provided for in the Constitution are regulated.

As the Federation's House, the Senate must appreciate all legislative initiatives (bills, proposed amendments to the Constitution, Provisional Measures – MP, and the like) from the House of Representatives and the President of the Republic, which contain provisions that affect the prerogatives of the actions of states and their constituent units and their share of resources in total tax collection.

In the federal sphere, art. 52 of the 1988⁵ Constitution highlights its role in fiscal, financial, and budgetary matters, such as authorizing external financial operations, establishing global limits for the amount of consolidated debt, for external and internal credit operations and the amount of securities debt, periodically evaluating the functionality of the National Tax System in its structure and components, and the performance of the tax administrations of the Federal Government, states, the Federal District (DF), and municipalities.

Standing committees within the House of Representatives are empowered to review and amend federal legislative initiatives of the House, the Senate, and the President of the Republic, which is the case of the Constitution and Justice Committee, which addresses issues such as amendments to the Constitution, especially those related to fundamental rights and guarantees and the organization of the State and the Powers of the Republic.

However, the Brazilian literature on the relationship between the Executive and Legislative Powers shows that the former has had significant success in setting the legislative agenda, approving a significant percentage of proposals of interest to it, which also affect aspects of the balance of the distribution of prerogatives and resources among the federative spheres^{4,8,9}.

The ability to direct the congressional agenda towards the results desired by the Federal Government is attributed to the set of legal and institutional provisions that provide the Executive Power with powers to formulate control decision-making spaces and the direction and rhythm of the legislative dynamics.

Among the recurrent strategic devices to redistribute power in favor of the Executive are the prerogatives of issuing MPs with the force of law, requesting urgent processing of their proposals, and editing articles exclusively on topics such as the organization of

the public administration policy and fiscal and budgetary issues.

Moreover, the Congress internal organizational configuration would favor the Executive's dominance by concentrating power in the direction of the two houses and the party leaderships that control a set of devices to regulate the benches and dictate the rhythm and direction of the work, such as defining the agenda, distributing the command of the main committees, using urgent requests, control over highlights and roll-call votes.

In a nutshell, the ability to create constraints for the cooperation of the benches is expressive when adding the Executive's legislative prerogatives to the centralized Congress operation dynamics.

The central issue addressed in this paper is whether these dynamics are maintained in the reduced coordinating capacity of the Federal Government and its retreating role as national coordinator of policies to combat the Covid-19 pandemic. If not, what implications might this have for Brazilian federalism?

Research methodology

The analyses of this work derive from studies conducted within the scope of the research 'New Federalism in Brazil? Tensions and Innovations in the Covid-19 pandemic'¹⁰, by Fiocruz Center for Strategic Studies, which covers the analysis of the normative production of the three powers of the Republic, the state governors, the media, and statements of the main stakeholders related to the Covid-19 pandemic and its impacts on federative relationships.

Conceptual approach and hypothesis

The analysis of the relationship between the development of the pandemic and the Brazilian federalism's dynamics, especially

within the Unified Health System (SUS), was conducted from the theoretical and conceptual perspective of Historical Neoinstitutionalism¹¹, above all, from the concept of a critical juncture.

Critical junctures can be defined as periods of expected significant changes in the direction of society, a specific institution, or policy, triggered by external political and economic crises or by significant changes in the existing correlation of forces, which is when stakeholders expand their political space and seek to introduce changes in the rules of access and exercise of power, forming a new agreement and projecting their legacy¹².

Thus, critical junctures occur when the influence of economic, political, organizational, and cultural structural factors on the action of political actors is significantly weakened. These junctures provide a more comprehensive range of choices, and the main actors' action acquires a greater capacity to transform the previous course of the public policy¹³.

A critical juncture is characterized by the emergence of equally possible alternative institutional paths, ending when there is the affirmation of one of them as the hegemonic path that will trigger the implementation of institutional mechanisms of a new order to regulate the dynamics of defining the directions of the public policy, the distribution of prerogatives and responsibilities, and the allocation of resources. In this case, a dependent course emerges¹⁴.

The research assumes that the pandemic emergency phases step up the pressure on the stakeholders and can trigger a critical juncture, expanding the spaces for new actors' stances and changing the previous federative dynamics.

The analysis of Congress role in this context assumed the following hypothesis: the federalism of common competencies, associated with the posture of the President of the Republic, who acts against academia,

society, and governors, favors conflict rather than negotiation and seeking consensus. In this context, the Legislative tends to assume a more significant role and autonomy, activating its prerogatives to defend the Brazilian federative model, which expands the possibilities of approving an agenda aligned with the needs and positioning of states and municipalities. These dynamics can trigger the onset of a critical federative juncture.

Data collection, systematization, and analysis

This hypothesis guided the work of data collection, systematization, and analysis carried out, in this paper, mainly through documentary research searching the Congress websites. The research's starting point was the website of the House of Representatives on the proposals approved by this House regarding the Covid-19 pandemic¹⁵. This list includes both own proposals and those prepared by the Senate and the President of the Republic.

According to the website¹⁵, 1,774 proposals related to the Covid-19 pandemic were presented by the House of Representatives and 82 by the President of the Republic in 2020. Most proposals of the House focused on health (309), work, social security, and assistance (303), economy (256), cities and transport (151), education (148), public administration (133), and the consumer (132).

This study included those that completed the entire legislative process cycle and were transformed into a current norm, as ordinary laws, complementary laws, constitutional amendments, and legislative decrees. By December 2020, 66 proposals had already been sanctioned or enacted, besides three approved by the House and Senate awaiting veto analysis.

Their information was entered into a database organized in a Microsoft Excel[®] spreadsheet, with each normative in a row, with around 20 variables entered to

characterize them in the columns to carry out a basic description of each norm (norm type, number, type of original proposal, authorship, object regulated by the text, and author's party) and allow an analysis of its process dynamics (rapporteur, rapporteur's party, proposal presentation date, date of approval by the House of Representatives, date of approval by the Senate, and date of sanction/enactment). All information was retrieved from the bills' process records in the House of Representatives and the Senate^{16,17}.

Finally, each norm was further classified in terms of the possible federative impact of its content and per the following thematic areas, defined in the research:

- Territorial Regulation and Management: involves actions and measures, norms, decrees, or laws that regulate isolation and flexibility, focusing on the organization of services, commerce, and transport.
- Health Policies and Services: covers actions, programs and, especially, public policies and health services.
- Employment, Income, Public Finance, and Management: linked to actions, programs, or public policies to generate employment, guarantee income, fiscal and budgetary rules, and public administration organization.

The 34 regulations approved between February and July 2020 were selected

for this paper, covering the first legislative period of the National Congress, thus, within the first wave of the pandemic.

Their analysis was performed in two stages. In the first, the 34 were separated into two blocks – those originating in Congress and those from the President of the Republic – for which eight selected variables were compared. Fourteen regulations with federative impacts were selected in the second stage to perform a more detailed content analysis. Throughout the next section, some information is also provided on the set of 66 regulations, but only as complementary elements of the analysis.

Results and discussion

Initiative and instruments

As shown in *table 1*, most of the legislation passed in the analyzed period originated in the legislative production of Congress, and only eight (23.5%) of the 34 regulations analyzed were sent by the President of the Republic.

The most used legislative instruments were ordinary bills by Congress (21) and provisional measures (MP) by the Executive Branch (6). We identified a few cases of approved regulations originating from a complementary bill or proposed amendment to the Constitution. Two relevant points about these initial data deserve further investigation.

Table 1. Characteristics of the laws approved by the National Congress regarding the Covid pandemic by authorship origin - Feb. to Jul./2020 - absolute numbers (N=34)

| Authorship origin | House of Representatives and Senate (26) | Executive (8) |
|---|---|---|
| Instrument type | Ordinary bill (21) Proposal for amendment to the Constitution (2) Other (3) | Provisional Measure (6) Outros (2) |
| Month of presentation | 2017/19 (2), Mar./20 (16), Apr./20 (7) and May/20 (1) | 2019 (2), Feb./20 (1), Mar./20 (4) to Apr./20(1) |
| Enactment/sanction period | Feb.-Apr./20 (8) and May-Jul./20 (18) | Feb.-Apr./20 (2) and May-Jul./20 (6) |
| Processing Time (calendar days)* | Minimum = 0 days Maximum = 127 days Average = 64 days | Minimum = 02 days Maximum = 121 days Average = 78.2 days |
| Thematic area | Employment, Income, Finance, etc. (14), Health Policies and Services (7) and Social Regulation/Territorial Management (4) Various (1) | Employment, Income, Finance, etc. (6), Social Regulation/Territorial Management (1) Various (1) |
| Author's party | PT, DEM, PP (3), PSDB, REDE, PL, PSD (2) and CIDADANIA, MDB, NOVO, PCdoB, PROS, PSB, PTB, PV, and President of the House of Representatives (1) | President of the Republic (8) |
| Rapporteur's Party (House of Representatives) | MDB (4), DEM, PDT (3), REPUBLIC, PCdoB, REDE, PSDB (2), PSD, PATRIOTA, SOLIDAR, PL, PP, CIDADANIA, PSL, PV (1) | PP (2), CIDADANIA, DEM, MDB, PCdoB, PV, PSD (1) |
| Direct Federative Im-pacts? | Yes (12), No (14) | Yes (2), No (6) |

Source: Own elaboration based on the database of the research 'New Federalism in Brazil? Tensions and Innovations in the Covid-19 pandemic'.

*Four regulations (2 Provisional Measures and two ordinary bills), presented in 2017 and 2019, were not included in this calculation, in order not to distort the institutions' response times.

The first is about the role played by the Executive Branch in the legislative process during the pandemic. At first glance, the low number of approved regulations authored by the President of the Republic may lead to the conclusion of low government initiative.

MP issuing numbers show just the opposite. Throughout 2020, according to data from the Senate, the Federal Government sent 101 MPs to Congress, thus, a record in the last 20 years¹⁸. The annual mean MP issuance since 2001, when new rules were established for this instrument, was 50.9 MP, and 70 MPs was only exceeded twice before: in 2002, with Fernando Henrique (82 MPs), and 2004, with Lula (73 MPs)¹⁸.

In the period analyzed in this paper, according to data from the House of Representatives¹⁵, 67 MPs were issued with Covid-19 pandemic content. Thus, Bolsonaro government's MP approval rate, in the analyzed period, regarding the pandemic, was 8.9%, which is extremely low, if we consider that, on average, it ranged from 90.4% in the first Lula government to 47.1% in the two years of Bolsonaro's Government.

Thus, what are the reasons for the low approval of MPs in the analyzed period? Four factors can be raised to explain the Federal Government's low success rate: the different positions between Congress and the Government in addressing the pandemic, the

Federal Government's articulation difficulty, content with little support from society, and the Legislative branch focusing on its formulation agenda.

The second point refers to the legislative instruments used and their possible impact on the current legal system, especially federal issues. The general use of ordinary laws indicates that the regulated matters are daily, with rules predefined in the Constitution, not requiring a very expressive regulation. More significant changes, such as those produced by amendments to the Constitution, occurred only in two situations: creating the 'war budget' (EC 106/20) and postponing municipal elections (EC 107/20).

Thus, the analysis of the legislative instruments indicates few possibilities of expressive changes in the Brazilian federative model for the future. However, a more detailed perspective on the norms' content is required because an ordinary law may sometimes contain provisions that open legal precedents, requiring in-depth analysis in other areas, such as the judiciary.

Processing, initiative, and rapporteurship

Congress work on the Covid-19 pandemic began in early February with the analysis and approval of Law No. 13.979/20, which established measures to cope with the public health emergency, among which we highlight those related to social distancing, mask use, tests, workers' protection, and relaxing the public procurement and bidding regimens.

During the first legislative period, Congress discussed and approved an average of 5.6 proposals per month, corresponding to more than one bill per week. Twenty of the 34 regulations approved in the period were presented in March, showing how Congress and the parties reacted quickly, boosting formulation activities. Twenty-four of the 34 initiatives were approved from May to July, and 15 laws were finalized from May to June.

On average, the processing time for proposals formulated in Congress was 64 days, with proposals approved on the same day, such as the House's Resolution N° 14, which established the system of remote deliberation, other that took longer, and other more, such as Ordinary Law N° 14.024/20, on the validity of continuous use prescriptions, which took 127 days. The Executive's processing time for proposals was like Congress. We should remember that the date of the conclusion of the legislative process is the date of sanction/enactment, which includes, in specific cases, the period of analysis and approval by the President of the Republic, which averaged 23 days.

The presentation initiative derived from 15 different parties (25), besides the President of the Republic (8) and the President of the House of Representatives (1). The parties with the most approved proposals were PT, DEM, and PP (3 each); and PSDB, Rede, PL, and PSD (2 each). Among the ten parties with 29 or more Representatives in the House, which total 381 Representatives (out of 512), only PSL and Republicanos projects were not approved. The list of these ten parties and their respective benches is as follows: PSL (53), PT (52), PL (42), PP (41), PSD (35), MDB (34), Republicanos (33), PSDB (32), PSB (30), and DEM (29).

The rapporteurship distribution also included the participation of 15 parties, but with a different proportion, with MDB (4); DEM, PDT (3); Republicanos, PCdoB, Rede, and PSDB (2) were the parties with more projects. In this case, among the ten parties with the most Representatives, only PT and PSB were not rapporteurs for the approved projects.

Thematic areas

Most of the approved regulations – 20 out of 34 – comprise employment and income protection initiatives, tax policy, and public administration, establishing a particular institutional specialization within the national strategy to combat the pandemic.

Employment and income protection and the transfer of resources to specific sectors of society were included through seven approved laws, emphasizing those that established Emergency Aid (2/4/20 and 14/5/2020), the National Program to Support Micro and Small Enterprises (19/5/20), and the Emergency Employment and Income Maintenance Program (7/7/20).

In Public Finance, the two most relevant initiatives were the creation of the Federative Program to Combat the Coronavirus (29/7/20) and the establishment of the so-called ‘War Budget’, with federative impacts analyzed later.

Congress has also passed significant legislation in health policy and services (7) and regulation of social and economic dynamics (5). In the first group, we should highlight those that authorize the use of telemedicine on an emergency basis, provide for social protection measures to prevent the contagion and spread of Covid-19 in indigenous territories, and prioritize from Covid-19 diagnostic tests for health professionals combating the new Coronavirus.

In the second group, it is worth mentioning those that within the pandemic define as essential service the protection of women, older adults, children, or adolescents in situations of violence, provide for the mandatory use of personal protective masks for circulation in public spaces accessible to the public, and establish the ‘Emergency and Transitional Legal Regime’ of legal relationships under Private Law.

Fourteen of the 34 proposals approved in the first legislative period have federative impacts, 12 of which were authored by Congress and two by the President of the Republic. The possible impacts of these regulations on the Brazilian federalism dynamics are analyzed below.

Laws with federative impacts

As shown in *table 2*, the more general rules established in the first weeks of the pandemic – Ordinary Law N° 13.979/20 and Legislative Decree N° 02/20 – define health guidelines for the protection of Brazilian society, such as social distancing, mask use, testing, circulation restrictions, planning based on scientific evidence; and relaxing fiscal rules, the 2020 budget targets, and the purchase of goods and services by the State in the market.

Such guidelines align with the positions defended by state governors since the onset of the pandemic and distance themselves from the denialist discourse of the Federal Government’s core. In both regulations, we highlight the joint responsibility of the three spheres of the federation and the ability of states and municipalities to adopt immediate measures in their respective territories to combat the pandemic.

The same positions are observed in the two constitutional amendments, two complementary laws, and four ordinary laws with federative impacts in 2020, specifically in Public Finance and Public Administration.

Table 2. Content of laws approved by the National Congress regarding the Covid pandemic with federative impacts by thematic area - March to Jul/2020 (N=14)

| Regulations | Approval | Object (Syllabus) | |
|--|--|-------------------|--|
| VARIOUS THEMES | | | |
| Ordinary Law n° 13979 | President of the Republic | 2/6/2020 | Establishes emergency measures to combat the 'coronavirus' and provides for and regulates measures of isolation, quarantine, compulsory determination of submission to medical procedures, and exceptional and temporary restriction of entry and exit from the country. |
| Decreto Legislativo n° 02 | Dep. Orlando Silva (PCdoB/SP) | 4/8/2020 | Recognizes, for the purposes of art. 65 of Complementary Law No. 101, of May 4, 2000, the occurrence of a state of public calamity, pursuant to the request of the President of the Republic sent through Message No. 93, of March 18, 2020. |
| EMPREGO, RENDA, FINANÇAS PÚBLICAS E ADMINISTRAÇÃO PÚBLICA | | | |
| Ordinary Law n° 13983 | President of the Republic | 4/3/2020 | Amends Law No. 13.898, of November 11, 2019, which provides for guidelines for the preparation and implementation of the 2020 Budget Law. The following rules presented stand out: new definitions on fiscal target, new deadline for judicial orders, and the possibility of changing the classifications included or added through amendments. |
| Complementary law n° 172 | Dep. Carmen Zanotto (CIDADANIA-SC) | 4/16/2020 | Authorizes the States, the Federal District, and the Municipalities to transpose and transfer remaining financial balances from previous years, contained in their respective Health Funds, from transfers from the Ministry of Health. |
| Ordinary Law n° 13995 | Sen. José Serra (PSDB-SP) | 5/5/2020 | Enables the transfer of financial aid in the amount of up to two billion reais from the Federal Government to non-profit (philanthropic) hospitals and holy houses, which participate in a complementary way in the Unified Health System (SUS). |
| Constitutional amendment n° 106 | Dep. Rodrigo Maia (DEM-RJ) | 5/7/2020 | Establishes an extraordinary fiscal, financial, and contracting regime to cope with the national public calamity resulting from a pandemic. |
| Complementary law n° 173 | Sen. Antonio Anastasia (PSD/MG) | 5/27/2020 | Establishes the Federative Program to Combat the Sars-CoV-2 Coronavirus (Covid-19), amends Complementary Law No. 101, of May 4, 2000, and makes other provisions. |
| Ordinary Law n° 14017 | Dep. Benedita da Silva (PT- RJ) | 6/30/2020 | Determines to the Federal Government the transfer of three billion reais to the States, the Federal District, and the Municipalities for application in emergency actions to support the cultural sector, including the cost of monthly emergency income for culture workers. |
| Emprego, Renda, Finanças Públicas e Administração Pública | | | |
| Constitutional amendment n° 107 | Sen. Randolfe Rodrigues (Rede-AP) | 7/3/2020 | Establishes the postponement of municipal elections for Mayor, Vice-Mayor and Councilor, scheduled for October 4, 2020, to December 6 of the same year, due to the measures to face the Covid-19 pandemic declared by the WHO. |
| Ordinary Law n° 14029 | Dep. Flávia Arruda (PL-DF) | 7/29/2020 | Provides for the transposition and reprogramming of financial balances contained in the social assistance funds of the States, the Federal District, and the Municipalities, arising from federal transfers. |
| Políticas e Serviços de Saúde | | | |
| Ordinary Law n° 13992 | Dep. Pedro Westphalen (PP-RS) | 4/23/2020 | Suspends for 120 (one hundred and twenty) days, as of March 1 of the current year, the obligation to maintain the quantitative and qualitative goals contracted by health service providers within the Unified Health System (SUS). |
| Ordinary Law n° 14006 | Dep. Luiz Antonio Teixeira Jr. (PP-RJ) | 5/28/2020 | Amends Law No. 13.979, of February 6, 2020, to establish a period of 72 (seventy-two) hours for the National Health Surveillance Agency (Anvisa) to authorize the import and distribution of any materials, medicines, equipment, and supplies in the health area registered by a foreign health authority and authorized for commercial distribution in their respective countries; and takes other measures. |
| Ordinary Law n° 14021 | Dep. Prof. Rosa Neide (PT-MT) | 7/8/2020 | Provides for social protection measures to prevent the contagion and spread of Covid-19 in indigenous territories; creates the Emergency Plan to Combat Covid-19 in Indigenous Territories; stipulates measures to support quilombola communities and other traditional peoples and communities to face Covid-19. |
| Ordinary Law n° 14023 | Dep. Dr. Zacharias Calil (DEM-GO) | 7/ 9/ 2020 | Gives priority to carrying out diagnostic tests for Covid-19 to professionals considered essential for controlling the disease and maintaining public order, such as doctors, nurses, police officers, and funeral directors. |

Source: Own elaboration based on the database of the research 'New Federalism in Brazil? Tensions and Innovations in the Covid-19 pandemic'.

Constitutional Amendment N° 106 establishes the so-called 'War Budget', in which the specific expenses of the pandemic are allocated, besides provisions to relax fiscal, financial, and administrative rules for the federal sphere during the state of public disaster. Although the flexibility is transient and restricted to the Federal Government, expanding the spending capacity of the federal sphere, it opens fiscal space for more transfers to states and municipalities, including the determination of budget amendments by the Legislature.

Constitutional Amendment N° 107 authorized the postponement of the 2020 local elections to November 15th and 29th to guarantee the realization of the democratic election by increasing the time for planning actions for citizen health protection. Online mechanisms to justify non-attendance were also instituted, reducing the presence of voters, and online meetings with parties to avoid crowding.

Complementary Laws N° 172 and 173 have favorable effects for subnational entities, relaxing the use of resources already transferred by the Federal Government and defining new resources to be transferred, besides reducing debt burdens.

The first authorizes states and municipalities to reallocate financial balances from previous years between local policies and expenditure items, within SUS actions and services to use already transferred resources to expand the response capacity of local health systems to the pandemic.

The second created the most relevant initiative of fiscal and financial support to states and municipalities in 2020, establishing the Federative Program to Combat the Coronavirus, consisting of three lines of action: 1) suspending state and municipal debt payments to the Federal Government; 2) restructuring domestic and foreign credit operations of states and municipalities in credit institutions; and 3) transferring financial resources from the Federal Government to the states, Federal District, and municipalities for pandemic coping actions. The amounts of the

Federal Government support defined in the text of Constitutional Amendment No. 173 are R\$60 billion, including transfers (R\$30 billion) and suspended payments (R\$30 billion).

The four remaining ordinary laws in Public Finance and Management are also moving towards relaxing the fiscal and budgetary earmarking of the Federal Government and enabling the transfer of values to subnational entities and their strategic partners. Ordinary Law N° 13.983/20 promotes adjustments to the 2020 Budget Guidelines Law, defines more flexible rules for the Federal Government budget execution in terms of the limits established by the Fiscal Responsibility Law (LRF), and establishes the mandatory parliamentary amendments.

Ordinary Laws N° 13.995/20 and N° 14.017/20 are additional contributions of resources from the Federal Government to subnational entities by establishing, respectively, the transfer of resources to the nonprofit sector that provides services to the SUS and for state and municipalities' applications in actions to support the cultural sector.

Finally, the four regulations approved in health policies, with federative effects, cover initiatives on different topics, with different impacts on the responsibilities of states, Federal District, and municipalities.

Ordinary Law N° 13.992/20 also affects the nonprofit sector, suspending for 120 days, from March 1st, the obligation to achieve quantitative and qualitative goals contracted in the SUS, which allows, even in cases of difficulties in obtaining them, a continuing payment of the production of the Federal Strategic Actions and Compensation Fund (Faec) based on the mean of the last 12 months. It is an income maintenance policy for the sector to ensure greater sustainability of local and regional SUS providers.

In turn, Ordinary Law N° 14.021/20 establishes a specific policy to protect indigenous communities, by defining measures to prevent the contagion and spread of Covid-19, besides creating the Emergency Plan to

Combat Covid-19 in the territories indigenous peoples and establishing support measures for quilombola communities, small-scale fishers, and other traditional peoples and communities. The Federal Government is responsible for coordinating actions in partnership with states and municipalities, which favors the concept of federalism of common competencies, defined in the 1988 Constitution.

Impacts on Brazilian Federalism – The emergence of a critical juncture?

The results of the survey of legislation passed by Congress in the first legislative period of 2020 allow us to answer affirmatively to the first two issues raised in the introduction of this article. Yes, Congress gained more autonomy in formulating policies. This new position was a greater approximation to the state and municipal needs and interests because of the deliberate delegation of the role of the Federal Executive Branch in coordinating national actions to combat the Covid-19 pandemic.

Despite the significant volume of MPs sent by the Federal Government, its weight in the set of legislation approved in the analyzed period was negligible, which is consistent with the constant political clashes observed between the leaders of the two legislative houses and President Jair Bolsonaro, the result of different conceptions on the State's action in the face of the pandemic.

In this case, given the incompatibility of the agendas of the two powers, the conflicting attitude of the President, and the Federal Government's low capacity for political articulation, the Executive's legislative prerogatives and the centralized dynamics of Congress' operation did little good, factors pointed out by the national literature as responsible for governments' high legislative success rates.

The wide range of areas in which Congress

formulated and passed legislation, and the intensity with which it did so, expressed in the high rate of monthly approval of laws, suggests that Congress was guided much more by the agendas of the several societal actors than by the Federal Government's proposals, really seeking the leadership on the national scene.

This leadership also allowed more autonomy to voice the different underlying tendencies, which reflect the plural nature of Brazilian society and can be observed in the wide range of parties and benches that participated in the initiative and the rapporteurship of the proposals.

Furthermore, within this group of stakeholders represented in Congress, the states and municipalities benefited from the approval of an expressive set of support measures, signaling the existence of convergent positions between the leaders of the two houses and the parties and the governors, especially regarding the construction of a national agenda to combat the Covid-19 pandemic.

The action core of the measures approved by Congress with federative impacts was the core of the liberal policy of austerity and reduced spending in the social area by Minister Paulo Guedes, which also aimed at the extinction of small municipalities sustained by a conception of hierarchical and competitive federalism system.

In this sense, five strategies were adopted to increase the volume of resources available to support the action of states and municipalities in the fight against the pandemic: 1) relaxing fiscal targets and spending limits established by the LRF; 2) suspending contractual debt payment obligations with the Federal Government and creditor institutions; 3) directly transferring the resources to states and municipalities to compensate for revenue losses; 4) relaxing the rules for the use of financial resources transferred before the pandemic and not yet spent; and 5) transferring the resources to strategic partners of the SUS, such as the nonprofit hospital sector.

Therefore, the central question is the third

and last one presented in the introduction to the article, that is, are such changes deep and lasting enough to produce a critical federative juncture, altering the current pattern of Brazilian federalism?

The answer is yes, not because of the validity of the regulations that relaxed fiscal rules and increased the volume of resources to states and municipalities, but instead due to the possible chain of events that the set of congressional actions associated with the new role played by governors and mayors can generate.

Most of the fiscal regulations are based on art. 65 of the LRF, which provides the possibility of relaxing goals, limits, and deadlines due to the recognition of a juncture of public disaster by the National Congress. Therefore, the 'new rules' are temporary and reversible.

However, a more autonomous position of Congress vis-à-vis the Executive, associated with society's perception that states and municipalities are overloaded in the fiscal and financial sphere, due to the responsibilities assumed, can produce a consensus on the need to approve a transitional post-pandemic, tax regime, in which part of the 'new rules' is maintained.

In this case, the urgency of implementing a full employment policy to restore income and stimulate the country's economic growth may be a factor that further boosts the role of

governors in driving a regional investment agenda.

Likewise, the Federal Government's delegated role in formulating and inducing policies can generate two permanent trends, which consist in the activation of the role of party benches in this function, in response to their electoral bases and in the leadership of governors and regional development consortia, which are creating regional hubs for formulating and implementing policies, in association with universities and civil society entities.

However, the realization of this chain of events depends on a comprehensive set of factors, such as the Government's change in the 2022 elections, with new positioning, the evolution of the population's perceptions on economic and fiscal issues, the ability of governors to qualify their management structures to exercise a new position in the policy coordination plan. Thus, the critical juncture has emerged, but its sustainability and potential to generate a path of dependence are still questions that await a definitive answer.

Collaborators

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References

1. Fleury S. Democracia e Inovação na Gestão Local da Saúde. Rio de Janeiro: Fiocruz; Centro Brasileiro de Estudos de Saúde; 2014.
2. Abrúcio FL. A coordenação federativa no Brasil: a experiência do período FHC e os desafios do governo Lula. *Rev Sociol Polit.* 2005 [acesso em 2021 mar 15]; 24:41-67. Disponível em: <https://www.scielo.br/j/rsocp/a/7zWs4By9mFRYQpSkSGLSDjb/abstract/?lang=pt>.
3. Ouverney AM, Fleury S. Polarização federativa do SUS nos anos 1990: uma interpretação histórico-institucionalista. *Rev Adm Pública.* 2017 [acesso em 2021 mar 15]; 51(6):1085-1103. Disponível em: <https://www.scielo.br/j/rap/a/8DJ5NZFqrVBr6dS3TTtGMTJ/abstract/?lang=pt>.
4. Arretche M. Democracia, Federalismo e Centralização no Brasil. Rio de Janeiro: FGV; Fiocruz; 2012.
5. Brasil. Constituição da República Federativa do Brasil. Brasília, DF: Senado Federal; 1988.
6. Elazar D. Exploring Federalism. Tuscaloosa: University of Alabama Press; 1987.
7. Broschek J. Historical Institutionalism and the Varieties of Federalism in Germany and Canada. *Journal Federalism.* 2011 [acesso em 2021 mar 15]; 42(4):662-687. Disponível em: <https://academic.oup.com/publius/article-abstract/42/4/662/1859652>.
8. Figueiredo A, Limongi F. Executivo e Legislativo na nova ordem constitucional. Rio de Janeiro: FGV; 1999.
9. Diniz S. Interações entre os poderes executivo e legislativo no processo decisório: avaliando sucesso e fracasso pr. *Dados.* 2005 [acesso em 2021 mar 15]; 48(2):333-369. Disponível em: <https://www.scielo.br/j/dados/a/SymzMgnnK9R8pQLcMvB7jFC/?lang=pt>.
10. Fundação Oswaldo Cruz, Centro de Estudos Estratégicos. Novo Federalismo no Brasil? Tensões e Inovações em Tempos de Covid-19. Projeto de Pesquisa: 2020. Rio de Janeiro: Fiocruz; 2020.
11. Immergut E. The Theoretical Core of the New Institutionalism. *Politics Society.* 1998 [acesso em 2021 mar 15]; 26(1):5-34. Disponível em: <https://journals.sagepub.com/doi/10.1177/0032329298026001002>.
12. Capoccia G, Kelemen D. The Study of Critical Juncture: Theory, Narrative, and Counterfactuals in Historical Institutionalism. *World Politics.* 2007 [acesso em 2021 mar 15]; 59(3):341-369. Disponível em: <https://www.cambridge.org/core/journals/world-politics/article/study-of-critical-junctures-theory-narrative-and-counterfactuals-in-historical-institutionalism/BAAE0860F1F641357C29C9AC72A54758>.
13. Collier R, Collier D. Shaping the political arena: critical junctures, the labor movement and regime dynamics in Latin America. Princeton: Princeton University Press; 1991.
14. Mahoney J. Path Dependence in Historical Sociology. *Theory Society.* 2000 [acesso em 2021 mar 15]; 29(4):507-548. Disponível em: [https://www.researchgate.net/publication/226486834_Path_Dependence_in_Historical_Sociology#:~:text=They%20are%20path%20dependent%3B%20the,properties'%20\(Mahoney%202000\)%20](https://www.researchgate.net/publication/226486834_Path_Dependence_in_Historical_Sociology#:~:text=They%20are%20path%20dependent%3B%20the,properties'%20(Mahoney%202000)%20).
15. Brasil. Câmara dos Deputados. Combate ao Coronavírus. Brasília, DF: Agência Câmara; 2020. [acesso em 2021 jan 10]. Disponível em: <https://www.camara.leg.br/internet/agencia/infograficos-html5/procorona/parlamentares.html>.
16. Brasil. Câmara dos Deputados. Propostas Legislativas. Brasília, DF: Agência Câmara; [2021?]. [acesso em 2021 jan 10]. Disponível em: <https://www.camara.leg.br/busca-portal/proposicoes/pesquisa-simplificada>.

17. Brasil. Senado Federal. Pesquisa de Matérias. Brasília, DF: Agência Senado; [2021?]. [acesso em 2021 jan 10]. Disponível em: <https://www25.senado.leg.br/web/atividade/materias>.
18. Brasil. Senado Federal. Em ano de pandemia, governo envia e 'perde' número recorde de MPs. Brasília, DF: Agência Senado; 2020. [acesso em 2021 jan 10]. Disponível em: <https://www12.senado.leg.br/noticias/materias/2020/12/29/em-ano-de-pandemia-governo-envia-e-perde-numero-recorde-de-mps>.
19. Brasil. Câmara dos Deputados. Governo edita mais medidas provisórias que gestões anteriores, mas menos MPs se convertem em lei. Brasília, DF: Agência Câmara; 2020. [acesso em 2021 jan 10]. Disponível em: <https://www.camara.leg.br/noticias/709849-governo-edita-mais-medidas-provisorias-que-gestoes-antiores-mas-menos-mps-se-convertem-em-lei/>.

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