

# Brazilian Federalism and Symmetry: Constitutional Analysis of Legislative Reproduction.

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**Abstract.** This article analyzes the role of the principle of symmetry in the Brazilian legislative process, discussing its historical and theoretical foundations within the country's federal structure. By reviewing doctrinal debates and judicial interpretations, particularly by the Federal Supreme Court (STF), it evaluates how the application of symmetry has influenced the balance between national unity and the autonomy of subnational entities. The principle, although not explicitly enumerated in the Federal Constitution of 1988, has been constructed by the STF as a requirement for the reproduction of federal institutional standards at the state and municipal levels. This jurisprudential development has significantly impacted the organization of local powers and the legislative architecture of decentralized entities. The study adopts a qualitative and bibliographical methodology, drawing on legal scholarship, constitutional texts, and STF precedents to assess the normative scope and institutional implications of symmetry. The analysis identifies a recurrent tension between the constitutional promise of decentralization and the practical imposition of uniform structures. It is shown that the systematic enforcement of symmetry has often led to the suppression of regional specificities, narrowing the capacity of local governments to legislate according to their realities. Additionally, the lack of clear constitutional guidance on which federal norms are essential for reproduction has generated inconsistencies and conflicts in judicial review. The study argues for a measured application of this principle, highlighting its impact on decentralization, legislative innovation, and the effectiveness of federalism. Propositions are made for a more balanced federative model that accommodates regional diversity and enhances democratic governance. Such moderation is deemed necessary not to dismantle institutional harmony, but rather to reinforce the foundational ideals of autonomy and cooperation that define the Brazilian federative pact.

**Keywords.** Brazilian federalism, symmetry principle, decentralization, legislative process, STF, constitutional law.

## 1. Introduction

The Brazilian Federal Constitution of 1988 [1] established a federative model, enshrining the decentralization and autonomy of its entities—the Union, the states, the Federal District, and the municipalities—under the guiding principle of "diversity within unity." This framework seeks to value regional specificities, enabling each entity to legislate in accordance with its unique attributes. However, the practical context reveals a divergent dynamic. The Federal Supreme Court (STF), in its interpretation of constitutional provisions, has rigorously applied the principle of symmetry, which mandates the replication of federal legislative process norms across the other entities.

This interpretation, in its pursuit of standardizing

institutional mechanisms, particularly in the organization and separation of powers, tends to concentrate power within the Union and constrain the legislative, administrative, and financial autonomy of the states and municipalities. Consequently, this article aims to analyze the theoretical and historical underpinnings of Brazilian federalism, discuss the normative reproduction imposed by the symmetry principle, and examine the repercussions of this practice on the efficacy of the decentralizing model envisioned by the 1988 Constitution. Doctrinal debates concerning symmetrical and asymmetrical federalism, the evolution of derivative constituent power, and the country's legislative architecture will be reviewed, to provide a basis for proposals aimed at restructuring the federative pact.

## 2. Research Methods

This paper adopts a qualitative and bibliographical research methodology, based on the review and analysis of academic literature, judicial precedents, and constitutional texts. Primary sources include decisions of the Brazilian Federal Supreme Court, especially those concerning the principle of symmetry and its application within the federative structure. Secondary sources consist of doctrinal works by prominent Brazilian constitutional scholars such as Bonavides, Tavares, Araújo, and Liziero.

The study prioritizes a theoretical approach, aiming to understand how the STF's interpretation of symmetry has affected the autonomy of subnational entities. It examines the evolution of federalism in Brazil through historical and constitutional perspectives, focusing on legislative organization, judicial interpretation, and the role of bicameralism. By identifying patterns of centralization, the research explores the normative and institutional impact of symmetry on federal relations and proposes alternatives to restore balance in the federative model.

## 3. Institutional and Normative Impact of Symmetry: Results of the Theoretical Analysis

The review of the legal literature and jurisprudence reveals that the STF's systematic application of the principle of symmetry has produced tangible institutional effects. The primary result is the restriction of legislative autonomy at the state and municipal levels, as these entities are compelled to replicate the procedural and organizational structures established at the federal level.

The cases analyzed demonstrate that such judicial interpretations often override the constitutional autonomy granted to federated entities by the 1988 Constitution, which suggests a pattern in which the STF prioritizes institutional uniformity over regional diversity, reinforcing a trend of centralization. This has weakened the capacity of local governments to innovate and tailor public policies to their specific needs.

Furthermore, the literature reviewed emphasizes that the constitutional silence regarding which federal norms must be reproduced has led to inconsistent and sometimes excessive applications of symmetry. The research highlights a need for clearer doctrinal and judicial criteria to guide the interpretation of this principle, especially in contexts where institutional equivalence may not serve the principles of efficiency, democracy, or responsiveness.

## 4. Historical Evolution of Brazilian

## Federalism

Leonam Lizeiro [2] traces the genealogy of federalism in Brazil to the First Republican Constitution of 1891, marking the inception of an appreciation for the autonomy of the states, which were then provinces of the Empire. The initial decades of the Republic witnessed a fluctuation between periods of decentralization and centralization, reflecting power struggles among the various entities and the pursuit of national unity.

Conversely, the Revolution of 1930 inaugurated a regime that centralized power to the detriment of state autonomies, a trend that persisted during the Getúlio Vargas administration. This model severely curtailed the self-organization of state entities by imposing rules that circumscribed their normative latitude.

Under the Military Regime, the Constitution of 1967 and its Amendment No. 1 of 1969 entrenched power within the Union, imposing restrictions that engendered significant political and administrative centralization, under the rubric of "integration federalism". In contrast, the promulgation of the 1988 Constitution represented an endeavour to restore the autonomy of the states and municipalities, fostering decentralization and amplifying the prerogatives of the federated entities. Nevertheless, despite the 1988 constitutional text's aspiration to re-establish equilibrium between unity and diversity, subsequent practice has revealed challenges in the realization of this ideal, notably in the face of judicial interpretations that curtail the autonomy of the entities through the application of the principle of symmetry.

## 5. Theoretical Foundations: Federalism, Autonomy, and Constituent Power

At the core of the federative model, the Federation is composed of various autonomous entities, each possessing competencies and limitations delineated by the Constitution. This system - often encapsulated in the expression "diversity in unity" - empowers the federated entities to exercise inherent powers, such as self-government (electing representatives), self-administration (managing their public services), and self-organization (enacting constitutions or organic laws).

The distinction between federalism and federation, as elucidated by Liziero [3], is crucial to understanding the system. While federalism denotes the organizing principle that guides the division of competencies, federation pertains to the concrete structure that regulates them. In this context, derivative constituent power is naturally circumscribed by original constituent power, as expressed in the 1988 Constitution. Araújo [4] and Lopes Filho [5] emphasize that this circumscription

is indispensable for upholding the constitutional order, but it must not preclude the normative diversity necessary for each entity to address its regional interests.

Doctrine differentiates between symmetrical and asymmetrical models of federalism. In symmetrical federalism, the federal entities exercise identical powers and possess uniform organizational structures. Conversely, asymmetrical federalism acknowledges the disparities among regions and justifies the adoption of differentiated rules. Tavares [6] and Horta [7] contend that in a country of continental dimensions and marked heterogeneity, imposition of a singular model may be inappropriate and even detrimental, underscoring the need to respect the unique attributes of each federative entity.

## 6. Normative Reproduction and the Principle of Symmetry

While the 1988 Constitution does not explicitly stipulate which norms must be replicated by sub-national entities, it establishes in Article 25 that State Constitutions must adhere to the fundamental principles of the Federal Constitution. This provision, however, does not exhaustively enumerate the mandatory rules, thereby creating a normative gap. This normative silence has led the STF to adopt the principle of symmetry as an interpretative tool to mandate the reproduction of provisions from the federal legislative process across the states, the Federal District, and the municipalities.

From this perspective, Lopes Filho [5] posits that the principle of symmetry should be construed as an unwritten rule, effectively identified by the STF, which establishes the obligation to reproduce, across the other federative entities, the fundamental mechanisms that structure the three branches of government within the Union. According to Araújo [4], this imposition serves an essentially hermeneutic function, aimed at preserving the harmony and separation of powers, and must not be employed in a manner that curtails the autonomy of the entities.

In this interpretation, Almeida [8] observes that this vertical imposition of 1988 Constitutional norms reveals a centralizing tendency that contravenes the originally intended decentralizing ethos. Araújo [4] categorizes constitutional norms into four groups: (I) sensitive principles, the violation of which may precipitate federal intervention; (II) norms of institutional preordination; (III) principles of the material Constitution, notably fundamental rights; and (IV) extensible principles, which apply to both the Union and subnational entities. This classification illustrates the inherent complexity of normative reproduction and underscores the need for modulation in the application of the principle of symmetry.

## 7. Case Law and the Application of the Principle of Symmetry

In reality, STF has played a pivotal role in shaping the Brazilian federative pact, employing the principle of symmetry to justify the mandatory reproduction of rules from the federal legislative process. Landmark decisions, such as those rendered in ADIs 572 [9] and 637 [10], presided over by Ministers Eros Grau and Sepúlveda Pertence, respectively, exemplify this inclination. According to Minister Peluso [11], in 2009, "in resolving analogous cases, the Court frequently invokes the principle or rule of symmetry, which is a judge-made construct aimed at guaranteeing homogeneity in the normative discipline of the separation, independence, and harmony of powers, concerning aspects deemed substantial".

This interpretation, however, has been subject to criticism. Tavares [6] argues that the excessive application of the principle of symmetry may diminish or even eliminate the autonomy of the federal entities, transforming the federal state into a "merely decentralized unitary state." Liziero [2] emphasizes that the normative uniformity imposed by the STF disregards the profound regional inequalities, asserting that centralization stifles the preferences of entities with less numerical representation, thereby compromising the representativeness and efficacy of local public administration.

The STF employs procedural mechanisms, such as the Claim and the Extraordinary Appeal, to reinforce the binding nature of symmetry. However, Lopes Filho [5] and Araújo [4] contend that this imposition should be modulated, such that normative reproduction occurs only when strictly necessary to guarantee the separation of powers, thus preserving the autonomy of the states and the Federal District.

## 8. The Role of Bicameralism and the Legislative Structure in Centralization

Brazil's legislative structure offers another perspective on the phenomenon of centralization. At the federal level, the legislative branch is bicameral, comprising the Chamber of Deputies and the Federal Senate - a structure that represents the confluence of diverse regional wills and the protection of the interests of the states. This bicameral model is perceived as a formal manifestation of federalism, as it seeks to balance the representation of federal entities.

However, the majority of states and all municipalities adopt a unicameral legislative system, which accentuates the disparity between the federal level and the other levels. Almeida [8] observes that Article 22 of the Federal Constitution confers upon

the Union legislative powers that, in practice, are not decentralized, contributing to a concentration of normative power within the National Congress. This hypertrophy of powers at the federal level undermines the legislative capacity of decentralized entities, impeding the creation of innovative public policies tailored to local specificities.

The STF's interpretation, which mandates that states adopt the same legislative procedural model as the Union in the name of symmetry, reinforces this centralization. The requirement of a uniform standard precludes the adaptation of legislative procedures to regional realities, thereby diminishing the role of legislative assemblies and municipal councils in the law-making process.

## **9. Implications for Public Management and the Effectiveness of Federalism**

Centralization resulting from the application of the principle of symmetry has profound implications for public management and the effectiveness of the federative model. Abrucio [12] and Moraes [13] indicate that the attempt to impose a uniform standard, disregarding regional particularities, impairs the ability of federated entities to implement public policies tailored to their socio-economic and cultural conditions. This normative standardization curtails the innovation and flexibility necessary for states and municipalities to respond effectively to local demands.

Furthermore, the concentration of competencies within the Union—exacerbated by the STF's centralizing interpretation—fosters an environment of legal uncertainty, as sub-national entities are compelled to adhere to procedural models that do not always align with their realities. Liziero [2] emphasizes that this dynamic contributes to the perpetuation of regional inequalities while attenuating federalism as an instrument of equilibrium and the promotion of democratic participation.

The judicial review is also affected. Decisions such as ADI 1060-MC [14] and ADI 486 [15] demonstrate that, by imposing the reproduction of federal rules, STF intervenes in the capacity of local legislators to innovate and adapt rules to their specific exigencies. This interference, while justified by the need to preserve the separation of powers, limits the full exercise of derivative constituent power, rendering the federal model less responsive to regional diversities.

## **10. Challenges and Proposals for a Balanced Federalism**

The tension between the decentralizing federalism envisaged by the 1988 Constitution and the centralization fostered by the application of the

principle of symmetry constitutes one of the principal challenges of the Brazilian model. On the one hand, the concept of "diversity within unity" entails that each federal entity maintains the autonomy to legislate and administer, respecting its specificities. On the other hand, the imposition of uniform rules - justified by the STF as a means of guaranteeing harmony among the branches of government - has, in practice, constrained this autonomy and contributed to a concentration of powers within the Union.

Authors such as Bonavides [16] argue that inclusion of regions in the 1988 Constitution and the concept of a "federalism of the regions" could serve as instruments to mitigate disparities among entities, promoting a more equitable distribution of competencies. However, practice reveals that original constituent power and the centralizing interpretation of the Court have contributed to the persistence of a federal model that, in essence, resembles a decentralized unitary system.

A proposal for balanced federalism, therefore, lies in modulating the application of the principle of symmetry. Such modulation would entail that the reproduction of norms from the federal legislative process occurs only when indispensable to preserve the separation of powers, thereby allowing sub-national entities to retain the flexibility necessary to address local demands. Lopes Filho [5] and Araújo [4] argue that this modulated approach would enable the reconciliation of the need for institutional harmony with the imperative of autonomy, precluding the transformation of the federal state into a "merely decentralized unitary state" [6]

Another important dimension concerns the legislative structure. The disparity between federal bicameralism and the unicameralism of state and municipal legislatures necessitates a reflection on the distribution of powers. A reassessment of legislative attributions, to permit greater participation and autonomy for decentralized entities, could contribute to a more effective equilibrium within the federative pact. This proposal is supported by the notion that federalism should not be a mere formal arrangement, but a dynamic instrument for promoting diversity and innovation in public administration.

Finally, the discourse on Brazilian federalism must incorporate a perspective that transcends mere normative reproduction and addresses the necessity of governance that respects regional differences. The decentralized model must be re-evaluated considering the specificities of each entity, without sacrificing the balance between national unity and local autonomy. This restructuring would inevitably involve a revision of jurisprudential interpretations which, by rigidly imposing the principle of symmetry, ultimately compromises the efficacy of federalism.

## **11. Conclusion**

The analysis developed throughout this article demonstrates that, although the Constitution of 1988 envisioned a federative model grounded in decentralization and autonomy, the practice has been marked by a growing centralization of power within the Union, driven by the STF's interpretation of the principle of symmetry. This interpretation, by mandating the reproduction of norms from the federal legislative process across sub-national entities, curtails the capacity of states and municipalities to innovate and formulate public policies tailored to their specific realities.

Brazil's legislative structure, with its bicameralism at the federal level and unicameralism in the decentralized entities, accentuates this disparity and reinforces the concentration of competencies within the Union. This configuration, coupled with the rigid imposition of the principle of symmetry, compromises not only the autonomy of the entities but also the efficacy of federalism as an instrument for promoting diversity and regional justice.

Considering this scenario, reconsideration of the application of the principle of symmetry is imperative. It is necessary to modulate its utilization, such that normative reproduction occurs only when indispensable to preserve the separation of powers, without impeding local autonomy. Only then can Brazilian federalism be reconfigured into a genuinely decentralized system, capable of addressing regional inequalities and fostering more effective public administration adapted to the country's complexity.

## 12. Final Considerations

In summary, the central challenge confronting Brazilian federalism lies in reconciling national unity with regional diversity. Although the 1988 Constitution established a decentralizing framework, STF's interpretative practice, through the principle of symmetry, has contributed to the centralization of power within the Union. This tendency not only compromises the autonomy of the federated entities, but also impedes the formulation of innovative public policies tailored to local needs.

The proposal advocated in this article underscores the need for a critical reassessment of the normative and jurisdictional mechanisms that underpin the federative pact. By modulating the application of symmetry and revising the distribution of legislative competencies—including a consideration of the unique attributes of a bicameral versus a unicameral system—Brazil can progress towards a more balanced and representative federative model.

Such restructuring is essential if federalism is to transition from, in practice, a centralized system to a genuine instrument for promoting autonomy, democratic participation, and regional justice. The perpetuation of the current model, absent the necessary adaptations, risks perpetuating

inequalities and compromising the state's efficacy in promoting collective well-being. Consequently, a rethinking of Brazilian federalism and a recalibration of the application of the principle of symmetry are fundamental steps towards constructing a federative pact that fully addresses the demands of a country as diverse as Brazil.

## 13. References

- [1] Brasil. *Constituição da República Federativa do Brasil de 1988*. Presidente da República, Brasília; 2016.
- [2] Liziero L. *Was there federalism in the Brazilian Empire? A case of contrast between federal state and federalism in the 19th century*. Int J Law Public Adm. 2017;2(2):41–47.
- [3] Liziero L. *Federalismo e sua aplicação no Brasil: desafios e perspectivas*. Rev Bras Dir Constitucional. Brasília: Instituto Brasileiro de Direito Constitucional; 2015.
- [4] Araújo MLC. *Jurisdição constitucional e federação: o princípio da simetria na jurisprudência do STF*. Elsevier, Rio de Janeiro; 2009. 129 p.
- [5] Lopes Filho JM. *Competências federativas na Constituição e nos precedentes do STF*. 2ª ed. Juspodivm, Salvador; 2019. 218 p.
- [6] Tavares AR. *Curso de direito constitucional*. 9ª ed., rev. e atual. Saraiva, São Paulo; 2011. 1124 p.
- [7] Horta RM. *Organização constitucional do federalismo*. Rev Bras Estud Polít. 1985;60:5–25.
- [8] Almeida FDM. *A constituição do Estado Federal e das unidades federadas*. Rev Inf Legis. 1987 jul/set;24(95):171–182.
- [9] Supremo Tribunal Federal. *Ação Direta de Inconstitucionalidade n. 572*. Rel. Min. Eros Grau, j. 28-6-2006, P, DJ de 9-2-2007.
- [10] Supremo Tribunal Federal. *Ação Direta de Inconstitucionalidade n. 637*. Rel. Min. Sepúlveda Pertence, j. 25-8-2004, P, DJ de 1º-10-2004.
- [11] Supremo Tribunal Federal. *Ação Direta de Inconstitucionalidade n. 4.298 MC/TO*. Relator:

Min. Cezar Peluso. Diário da Justiça Eletrônico.  
2009 nov. 27.

[12] Abrucio FL. *Federalismo no Brasil: questões e desafios*. Fundação Konrad Adenauer, São Paulo; 2022.

[13] Moraes R. *Tipologias do federalismo no Brasil*. Editora Jurídica Nacional, Belo Horizonte; 2020.

[14] Supremo Tribunal Federal. *Ação Direta de Inconstitucionalidade n. 1060-MC* (Rel. Min. Carlos Velloso, j. 1994).

[15] Supremo Tribunal Federal. *Ação Direta de Inconstitucionalidade n. 486* (Rel. Min. Celso de Mello, j. 1997).

[16] Bonavides P. *Curso de direito constitucional*. 25ª ed., atual. Malheiros, São Paulo; 2010. 359 p.