

THE RULE OF LAW IN BRAZILIAN STATES' LEGISLATION: EVIDENCES FROM BRAZILIAN SUPREME COURT

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ABSTRACT

The institutional design in Brazil authorizes all States of the Federation and the Federal District to elaborate legislation in pre-defined themes selected in the Federal Constitution. State legislators must obey such limits and respect constitutional norms in rule making process to preserve a desirable rule of law environment. This paper aims on the analysis of Supreme Court's decisions in state legislation judicial review in order to identify the cases where constitutional violations can be found in relevant issues, as taxing law, administrative law or basic rights, pointing out the quality of Brazilian States' law and testing a set of hypothesis related to the production of unconstitutional norms.

Kew-words: states – quality – legislation

INTRODUCTION

Judicial review is a political phenomenon – largely studied by political scientists – that happens in most countries in the globe. This paper shows how Brazilian states's legislation has been attacked via Brazilian Supreme Court and wich part of Brazilian Constitution has been violated. Moreover: wich Brazilian state had more prosecutions against its legislation accepted or partially accepted by Supreme Court. In order to achieve this, we assembled all the 4243 ADI (*Ação Direta de Inconstitucionalidade*) proposed on Brazilian Supreme Court into a data bank, measuring the quality of states's legislation. We've tried to answer the question: If you were are an investor, **from legal quality strict point of view**, wich Brazilian state would you choose?

This paper introduces the judicial review, through the centralized via of judicial control over the constitutionality of norms (*Ação Direta de Inconstitucionalidade*) as an important variable to measure the quality of Brazilian State's Legislation, pointing where more or less constitutional violations are present and the respective issues in each cases.

1 Federalism and Legislative Competence: The Brazilian Constitutional Design

Brazil has a vertical federalism, where the central government, through Federal Constitution, sets central rules of law making, playing a holding together rule. As a form of government, many states or provinces get together into one single nation, with no autonomy loss, where the power is shared by Federal and States/Province Government. But Brazil presents a special singularity. Its Constitution has given the *status* of federal constituent member to the cities, establishing three levels of federal members.

Halberstam (WHITTINGTON, KELEMEN and CALDEIRA, 2008) shows that vertical federalism systems protect state government interests, but generate some inefficiencies, “by creating a ‘joint decision trap’, vertical federalism frequently favors the status quo and provides incentives for overspending¹”. So, in any event, vertical federalism protects constituents states interests more robustly against central government encroachment than does horizontal system, where a great competition among different levels is present.

Jonattan Rodden (RODDEN, 2005), shows that federalism is not an unchanged institutional design, but a changeable one, always seeking for institutional improvement. We can verify that the process of non-fusion powers, does not necessarily implies a non-reciprocal interference condition, establishing a setting of complex institutional designs of checks and balances to guarantee an equilibrium of powers between States and the Union. It is important to say, that Brazilian federalism is a model based upon US federation settling, which has a horizontal federalism, with more legislative autonomy to their federalist constituents (this is explained by the US federalist papers: Jay, Hamilton and Madison).

In United States, the Federation was formed by the unification of the colonies, playing a coming together rule. In Brazil, it was quite the opposite: the entire country was the Brazilian Empire. As the Republic was founded, the central power split the country in states, which were once divided in provinces given to Portugal’s aristocracy. So the power was shared by a

¹ For more see Scharpf, 1988)

centrifugal set of competences. But the adoption of federalism by the Brazilian State was not capable to guarantee a strong State autonomy. Since its origins, the influence of centrifugal power sharing has reflected, during the History, in moments of advances and retreats, not only concerning public policies, but also to the construction of the rule of law.

From 1937 Constitution to 1988 Constitution, there was a pendulum movement concerning states autonomy and power centralization.

Figure 1: Brazilian Federalism Chronology²

Intervals	Historical Moments	Dispute Tendency (States vs. Union)	Federalism/Democracy type
1822-1889	Brazilian empire	Centralization	Nonexistent
1889-1930	Old Republic (States oligarchy hegemony)	Decentralization	Robust/non democratic
1930-1945	Getúlio Vargas Era	Centralization	Nonexistent/Dictatorship
1945-1964	Democratization	Decentralization	Moderated/Decmoracy
1964-1984	Military Regime	Centralization	Weak/Dictatorship
1984-1988	Democratic Transition	Decentralization	Moderated/Democracy
1988-1994	Democratic Consolidation	Decentralization	Robust/Democracy
1994-2001	Real Economic Plan Era	Centralization	Robust/Democracy

Elaborated by André Regis³. Translated by the authors.

Note that 1994 to 2001 was a time of centralization because of institutional reforms to guarantee the balance of power between States and the Union, selling states bank and narrowing the states' indebt capacity by the Fiscal Responsibility Law⁴ (REGIS, 2008).

The 1988 Constitution consolidation sought a strong balance of powers between Central Government and Local ones, avoiding any kind of depreciation and thus preventing the hierarchy between the three levels of powers⁵, including the cities.

² Illustrative scheme, without scientific rigor concerning the methodology.

³ FIGUEIREDO, Carlos Maurício, NÓBREGA, Marcos (Orgs.). *Administração Pública. São Paulo: Revista dos Tribunais*, 2002. p. 83.

⁴ For more see REGIS, André. *O Novo Federalismo Brasileiro. Rio de Janeiro: Forense*, 2008.

⁵ SOUZA, Adalberto Pimentel Diniz de. *A mecânica do federalismo. Revista de Informação Legislativa. Brasília a. 42 n. 165 jan./mar. 2005. p.172.*

In fact, the pursuit of harmonic balance between powers and the federative constituents must not be faced as a simple normative construction, but as something feasible, which is able to generate a multiple effect in benefit of all.

The division of competences between Members of the Federation is fundamental, but must follow these rules: It is forbidden to have an Union supremacy above the other constituents (vertical) and a member above the others (horizontal); a balanced competence distribution; the Union has the prerogative to establish general laws in issues of general interests, which is previously enumerated precisely and clearly on Constitution's text⁶. This might fortify the union of all members in a way to ensure security, democracy and economic goals, strengthening the Central Power.

In Brazil four types of members integrate the Federation: Federal Union, Federal District, States and Cities. We have to enlighten that there is hierarchy between federal, states/federal district and cities' Law, Meaning that each federation member has distinct competence on their respective limits. Thereby, 1988's Federal Constitution established administrative and legislative competences as follow:

Figure 2: Legislative Competence

Legislative Competence Distribution	Union	Private Competences (art. 22)
		Delegation Possibility (art. 22, § u)
		Contestants Competence (Union+States+FederalDistrict+Cities) (art. 24)
	States	Remaining Competence (art. 25, § #1)
		Delegate Competence (art. 22, § u)
		Contestants Competence (Union+States+FederalDistrict+Cities) (art. 24)
	Federal District	Reserved Competence (art. 32, § #1)
	Cities	Exclusive Competence (art. 30, I)
		Supplementary Competence (art. 30, II)

Font: Brazilian Federal Constitution. Elaborated by the Authors

⁶ DALLARI, Dalmo de Abreu. *O Estado Federal*. São Paulo: Ática, 1986.p. 19.

Figure 3: Administrative (material) Competence Distribution

Administrative Competence	Exclusive	Enumerated Powers	Union
			Cities
		Reserved Powers	States
	Common	Cumulative/Parallel	Union, States, Federal District, Cities

Font: Brazilian Federal Constitution. Elaborated by the Authors

The next figure has the widest range of the issues where the federal union can legislate. It is so wide because Brazilian's Constitution is very analytical. According to the main public law principles', what is not authorized by the Constitution, cannot be done. So everything the federal members need to exist, must be written on Constitution.

Figure 4: Exclusive Administrative and Private Legislative*

Union	
Exclusive Administrative	Private Legislation
International Issues	Civil Law
Federal Administration Issues	Commercial, Criminal, Electoral Law
Post Service, Telecommunications	Process Law
Social Security	Amerindian Population
Economy	Constitutional Law
Mineral	Seaports and Airports
Coin Circulation	Traffic and Transportation
Aviation	Nationality and political rights
Electric Power Management	Food issues

*Font: Brazilian Federal Constitution Rule. Figure elaborated by the authors.

Therefore, within federalist system fixed by Brazilian Constitution, there is a set of rigid division of competences, whether overpast, results in States's unconstitutional norms and acts. Such dynamics is studied on this paper as of the Brazilian Supreme Court decision analysis, on their judicial review prerogative.

2 The Brazilian Model of Judicial Review

Literature asserts that modern origins of judicial review, the most powerful of courts' instruments, is based on the renowned American case *Marbury vs. Madison*, judged by the U.S. Supreme Court, in 1803, during Chief of Justice Marshall term (EPSTEIN & WALKER, 2007). In brief lines, these were the facts at that time: The U.S. President is Adam, and with John Marshall (Secretary of State), was a member of the Federalist Party. With the new congress elected, the president-elect was Jefferson, months away from occupying the role.. Marshall, who was Secretary of State until the eve of Jefferson's duty taking, was appointed and approved by the Senate as U.S. Supreme Court Chief of Justice – a federalist way to remain in power, despite of electoral results – appointing its party members to Judiciary positions.

Marshall, who should deliver the appointing documents to the Judiciary positions made by the former president, did not accomplish that mission: Willian Marbury – whom was appointed as a Justice of the Peace in Washington (DC), didn't received the title which would officially put him in office because when Jefferson took office, he obstructed James Madison (Secretary of State) from delivering the document to Marbury, pleading illegality on his appointment. So Marbury and three others which nominations was reverted by Madison, impetrated Writ of Mandamus directly at U.S. Supreme Court, a prerogative of all federal offices, conferred by Section 13 of 1789 Judiciary Act.

After two years in standby, the Chief of Justice Marshall decided to put the controversy on trial, analyzing it on two aspects: 1. concerning the mandamus object, Marbury had the right to take office as Justice of Peace, as by not delivering the nomination document, Madison, under Jefferson's order, could have acted illegally; 2. However, the Court did not emit the nomination order, because it had declared unconstitutional the 1789 Judiciary Act (the mandamus fundament), because it has set the Supreme Court competence in situations not predicted by the Constitution. And so Marshall denied the mandamus, claiming incompetence (EPSTEIN & WALKER, 2007, p.68-75). Since then the U.S. Supreme Court has created a precedent that became mandatory to the Court and other Tribunals: Do not apply non-constitutional law when it is against the Constitutional.

Before this famous case, the Judiciary did not act on Legislative Branch, neither

Executive Branch. The fact gained considerable dimensions as soon as the stare decisis⁷ system was applied: all judiciary organisms should be compulsorily connected to the precedent, consolidating on the hands of judges of constitutional control power – *the power of judicial review* – which gave to Judiciary, in a definitive way, the faculty to declare invalid the Congress Acts, likewise acts and orders of the Executive Branch, when incompatible with constitutional rules. After this, other precedents have had amplified the magistrate actuation space, allowing the judicial review of state unconstitutional law (MURPHY *et al.*, 2002, p. 45-46).

On American inspired judicial review systems, based on common law tradition, the issues are discussed in many judiciary levels until they arrive at the higher tribunal: Supreme Court, where, if the institutional admissibility requisites are filled (i.e. writ of certiorari and the rule of four), the question will be, at last, finally decided. But, in countries where the judicial tradition is civil law, each country has one single Constitutional Court, which has the monopoly of constitutional interpretation: when the litigations involving constitutional issues are before inferior level courts, these have to send the process directly to the Supreme Court to decide about the issue; in other situations, political actors legitimate by the Constitution, on an abstract way, independently if a concrete case exists, they can provoke the Constitutional Court to say its decision about an inferior norm constitutionality (MURPHY *et al.*, 2002, p. 47).

Inspired on Hans Kelsen (Pure Theory of Law), the judicial review focused in abstract, is prosecuted by special processual proceedings, because the Constitution is the top of Kelsen's hierarchy pyramid of norms, not accepting a lower norm against the "Major Law". The concentrated judicial review was created in 1920 on Austria, where the Constitutional Court was created: a part of Judiciary branch which function was to perform the abstract concentrate control of norms, as soon as the union of French revolutionary ideas about judicial review and kelsenian hierarchy of norms took place (CAPPELLETTI, 1971, p.46-47).

In Brazil, the judicial review system performed by Judiciary is known as shared: judicial review is practiced both by diffuse⁸ and concentrate ways because it is possible to obtain decisions from the Supreme Court (*Supremo Tribunal Federal*) by appeals or by specific process

⁷ In common law, the doctrine under which courts adhere to precedent on questions of law in order to ensure certainty, consistency, and stability in the administration of justice. Since no court decision can have universal application, the courts, in practice, must often decide that a previous decision does not apply to a particular case even though the facts and issues appear to be closely similar. A strict application of stare decisis may lead to rigidity and to legal hairsplitting, whereas too much flexibility may result in uncertainty. Font: Encyclopaedia Britannica Inc.

⁸ In Brazil, each Judge can say what is constitutional or not, but the effects are restricted to the litigating parts.

instruments, whose utilization (to direct Supreme Court provocation) is restricted by the Federal Constitution to a few relevant political agents, as the President, Political Parties (with national representation at Congress) and the General Prosecutor (TAYLOR, 2008).

The 1988's Brazilian federal Constitution, beyond solidifying the basis of judicial review that already exists, foresees a series of instruments to provoke the concentrated constitutional review: *Ação Direta de Inconstitucionalidade*⁹ (ADI); *Arguição de Descumprimento de Preceito Fundamental*; *Ação Declaratória de Constitucionalidade* and *Mandado de Injunção*. Among these instruments, the most used is *Ação Direta de Inconstitucionalidade*, proposed more than four thousand and two hundred times, in the 20 years of Federal Constitutional existence, embracing issues of great relevance included in state and federal legislation (TAYLOR, 2008; WERNECK VIANNA *et al.*, 1999).

In Brazil, the Constitution has limited the legitimated to propose an ADI (*Ação Direta de Inconstitucionalidade*) to nine agents: The President of Republic, The Senate's Manager Desk, The Representatives House's Manager Desk, The States'¹⁰ Legislative House's Manager Desk, State or Federal District Governor, Republic's Prosecutor General, Attorneys Order's Federal Council, Political Party with representation at National Congress (Brazilian parliament) and syndicate confederation or class labor entity in national ambit. The Brazilian Supreme Court can review any law or normative act from any public officer in state or federal ambit

The Judiciary in Brazil has played the important role of enforcer of the Constitution, assuring that the other branches of government will not overstep their boundaries. There have been a number of high-profile cases in which the supreme court ruled against unconstitutional norms in federal or state level of government (INTER-AMERICAN DEVELOPMENT BANK, 2006, p.173).

3 Descriptive Statistical Evidences from Brazilian Supreme Court

In a universe of 4243 Supreme Court's decisions in *Ação Direta de Inconstitucionalidade* (ADI), presented during the first 20 years of Federal Constitutional term, this research took a sample of 2615 decisions that represent the totality of hypothesis of state law submitted to

⁹ Directly Unconstitutional Process

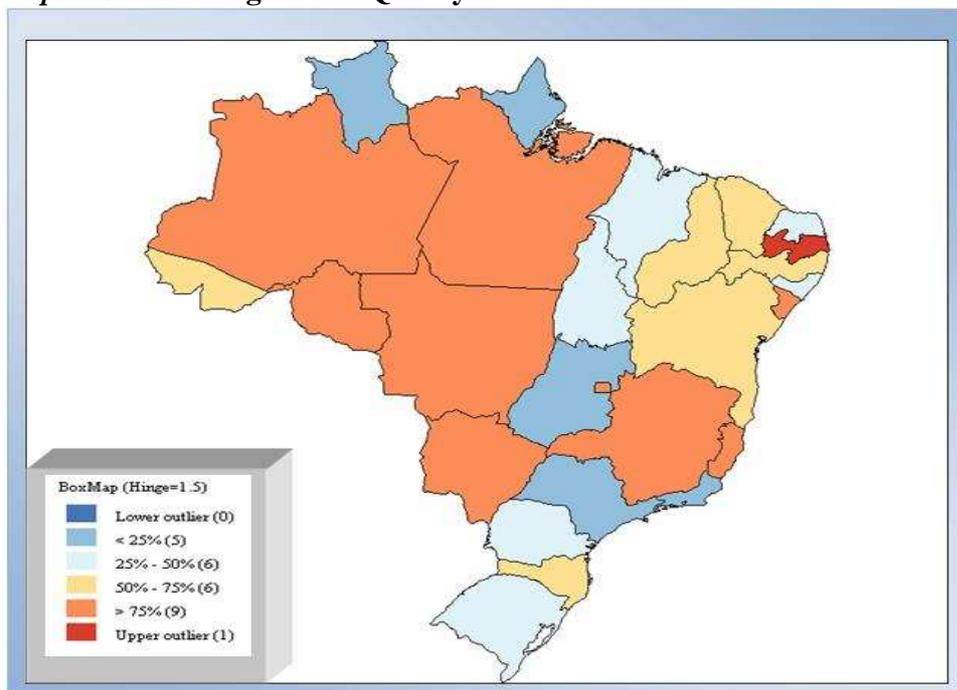
¹⁰ Includes the Federal District (like U.S. District of Columbia), called *Distrito Federal*

judicial review. The set of cases in which the Court considered unconstitutional the Brazilian States' legislation were found among that.

This data was submitted to descriptive statistical analysis with the scope to identify clusters of Brazilian States, divided by level of low-quality legislation, and testing a set of hypothesis related to the production of unconstitutional norms

The map below represents the geospatial dispersion of the variable **States' Legislation Quality Index** about standard deviation. As can be observed, there is an outlier: State of *Paraíba* (43,5). It means that, 45,5% of all judicial actions proposed on Brazilian Supreme Court against *Paraíba's* legislation was accepted or partially accepted. Besides, the data suggests spatial dependence of observations. In fact, the concept is based in what Waldo Tabler called by "the geography first Law". According to him: "everything is similar, but closer things are more similar than farther ones". On this meaning, the spatial correlation phenomenon can be understood as a situation in which closer observations on space have similar values (attributes correlation), in a way that the primary goal of spatial analysis is to measure this association.

Map 1: States's Legislation Quality Index¹¹



Source: Brazilian Supreme Court. Map elaborated by the Authors¹²

¹¹ The spatial dependence technique format is the spatial correlation. As isn't this paper aim to explore this relationship, the presented analysis on maps is limited to detect outliers. Whom interest in get deepen knowledge on this kind of technique, see Ansenlin (1998).

Table 1: Descriptive Statistics

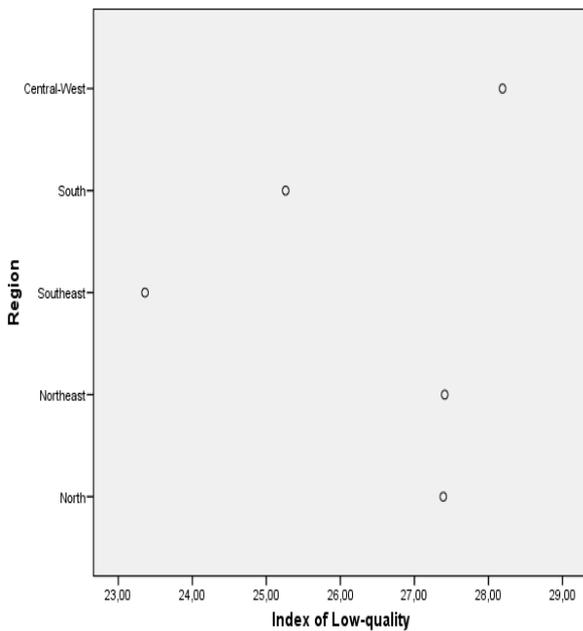
	N	Minimum	Maximum	Mean	Std. Deviation	Variance
Index Index of Low-quality States's Legislation	27	19,2	43,5	26,907	4,9947	24,947
Valid N (listwise)	27					

On figure 5, we measured the percentage of legislation which was stroke down by the Brazilian Supreme Court. On the graphic, the State of *Paraíba* have had 45% of all ADI proposed against its legislation accepted by *Supremo Tribunal Federal*. The State of *São Paulo*, the most rich of the Federation had only about 20%. So the *São Paulo* index of low-quality legislation is better than *Paraíba*'s. So, if an investor wants to invest in Brazil, from the legislative quality bias, he should invest in *São Paulo*, and forget *Paraíba*.

[Figure 5 about here]

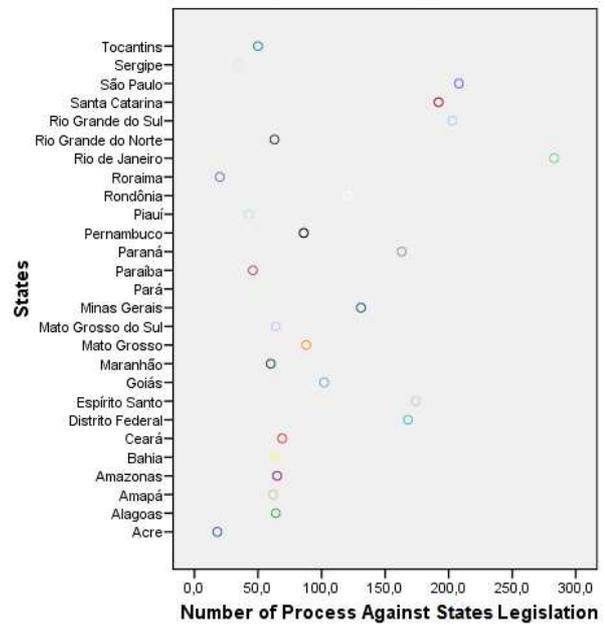
On figures 6 and 7, we used geopolitical regions as criteria. MiddleWest has the worst legislation quality, close to Northeast and North. The difference is that Northeast and North are Brazilian's poorer regions.

Figure 6: Low-quality Index of Region's Legislation



Font: Brazilian Supreme Court. Elaborated by the Authors

Figure 7: Number of Process Against States Legislation



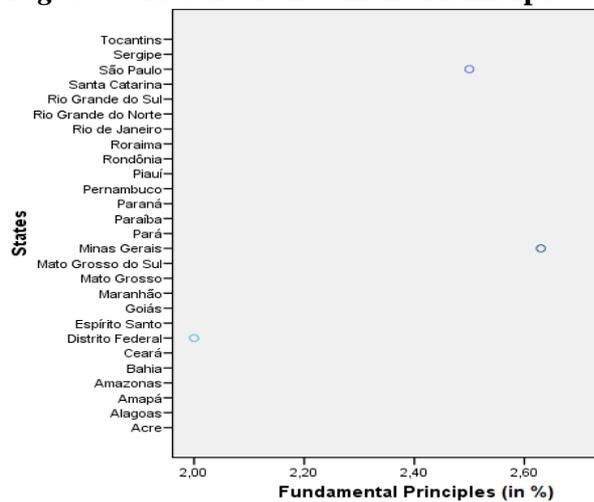
Font: Brazilian Supreme Court. Elaborated by the Authors

¹² We are grateful to our fellow Dalson for his support on geospatial analysis.

On the figures 8 to 17, we have separated the Brazilian Supreme Court decisions which have accepted or accepted in part the ADI process's pleas, showing per Constitutional parts (titles), how many the states have violated the Brazilian Federal Constitution.

These cases collected into the sample can be organized considering the portion of Brazilian Constitution (Title) violated by the states's legislation and its correspondent branch in legal classification: *Title 1 – Fundamental Principles* – philosophical basis of Brazilian Rule of Law; *Title 2 – Fundamental Rights and Guarantees* – civil rights, social rights, nationality and political rights; *Title 3 – State Organization* – administrative law; *Title 4 – Branches Organization* – legislative and administrative competence of the three branches of the State and its respective institutional design; *Title 5 – State Defense and Democratic Institutions* – public security, Armed Forces and the Department of Defense; *Title 6 – Taxing and Public Budget* – taxing law, budget and public expenditures; *Title 7 – Economic and Financial Order* – economic and financial regulatory, urban law, land policy and regulation; *Title 8 – Social Order* – social security, social assistance, education, culture, sports, science and technology, environmental law; *Title 9 General Constitutional Provisions*; *Title 10 – Transitory Constitutional Provisions*.

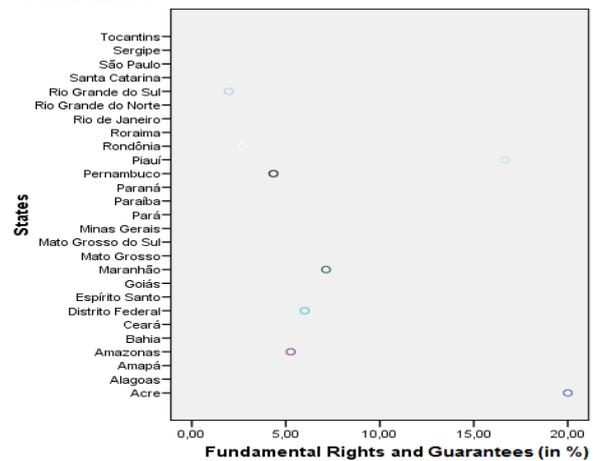
Figure 8: Title I – Fundamental Principles



Font: Brazilian Supreme Court. Elaborated by the Authors

Figure 8 shows only *Distrito Federal* (2%), *São Paulo*(2,5%) and *Minas Gerais* (2,63%) as the violators of fundamental principles.

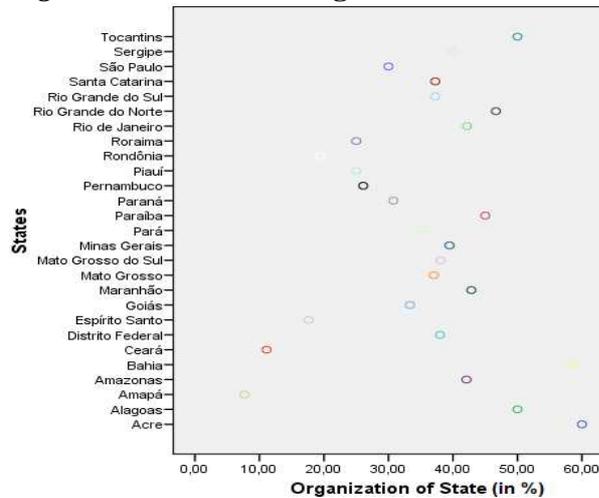
Figure 9: Title II – Fundamental Rights and Guarantees



Font: Brazilian Supreme Court. Elaborated by the Authors

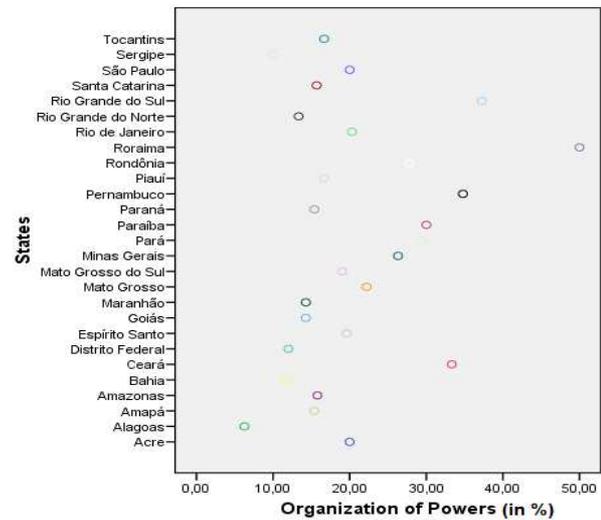
This figure shows *Acre* as the greatest fundamental rights violator with exactly 20%, following by *Piauí* with 16,66%

Figure 10: Title III – Organization of State



Font: Brazilian Supreme Court. Elaborated by the Authors

Figure 11: Title IV – Organization of Powers

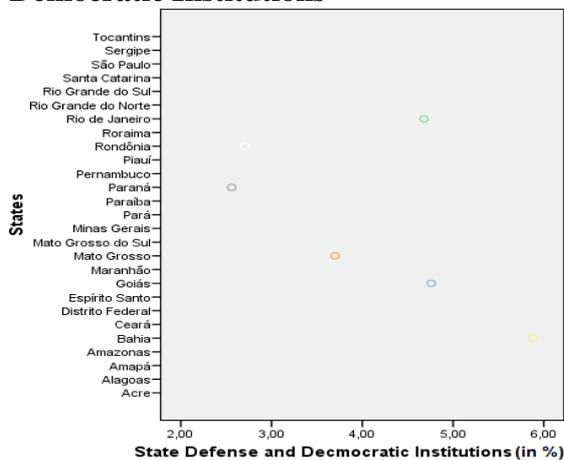


Font: Brazilian Supreme Court. Elaborated by the Authors

Title III and IV are the most violated Brazilian Constitution's titles. On this figure *Acre*, *Tocantins* and *Rio Grande do Norte* are the greatest violators with 60%, 50% and 50% respectively.

On this analysis *Roraima* is the greatest violator of organization of powers with 50% the accepted ADI by the Supreme Court. Not so far are *Rio Grande do Sul* and *Pernambuco* with 37,52% and 34,78% respectively.

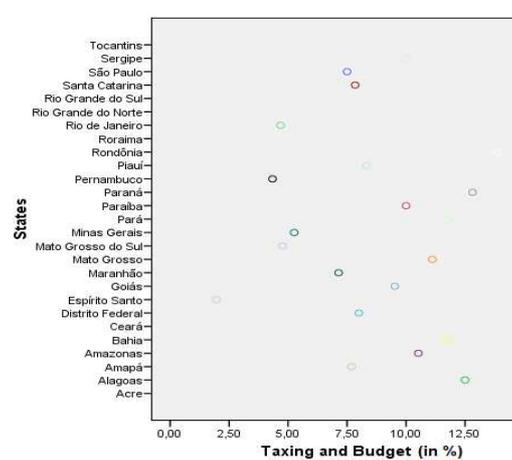
Figure 12: Title V – State Defense and Democratic Institutions



Font: Brazilian Supreme Court. Elaborated by the Authors

The figure above shows *Bahia*, *Goiás* and *Rio de Janeiro* as the three greatest violators with 5,88%, 4,76% and 4,68% respectively

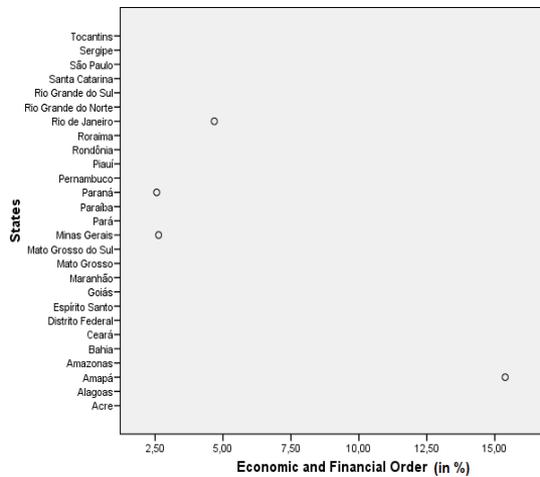
Figure 13: Title VI: Taxing and Budget



Font: Brazilian Supreme Court. Elaborated by the Authors

On this case *Rondônia*, *Paraná*, *Alagoas*, *Bahia* and *Ceará* are the Five greatest violators of taxing and budget constitutional norms with 13,88%, 12,82%, 12,5%, 11,76% and 11,76% each.

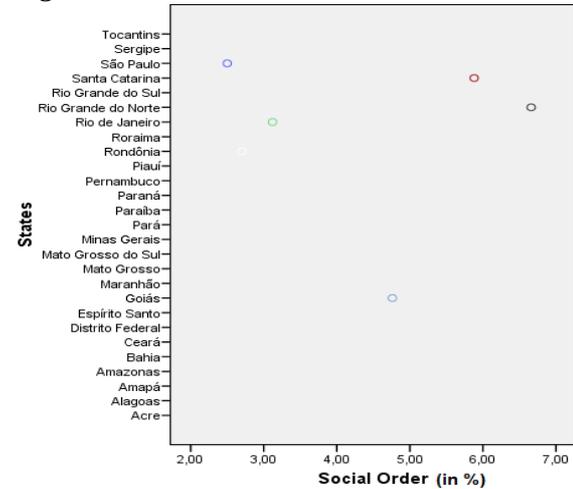
Figure 14: Title VII – Economic and Financial Order



Font: Brazilian Supreme Court. Elaborated by the Authors

Only four states have had violated this part constitution: *Amapá* (15,38%), *Rio de Janeiro* (4,68%), *Minas Gerais* (2,63%) and *Paraná* (2,56%).

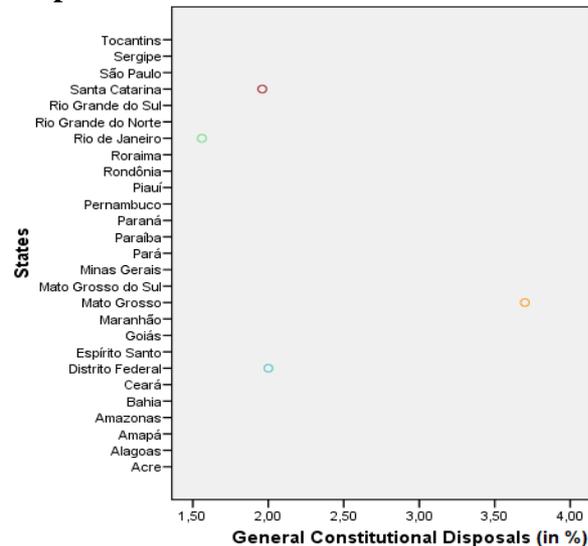
Figure 15: Title VIII – Social Order



Font: Brazilian Supreme Court. Elaborated by the Authors

On this figure we find *Rio Grande do Norte*, *Santa Catarina* and *Goiás* as the three biggest violators of Social Order constitutional norms, with 6,66%, 5,88% and 4,76% respectively

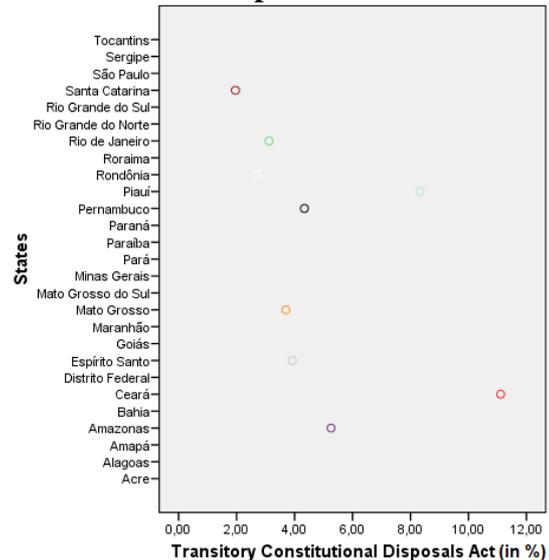
Figure 16: Title IX – General Constitutional Disposals



Font: Brazilian Supreme Court. Elaborated by the Authors

On this figure *Mato Grosso* (3,7%) appears as the biggest violator, followed by *Distrito Federal* (2%), *Rio de Janeiro* and *Santa Catarina* with 1,96% each.

Figure 17: Title X – Transitory Constitutional Disposals Act



Font: Brazilian Supreme Court. Elaborated by the Authors

On this chart, *Ceará* is the major violator of title X, with 11,11%. It's followed by *Piauí* (8,33%), *Amazonas* (5,26%) and *Pernambuco* (4,34%)

Conclusions

The institutional design in Brazil's federal regime authorizes all States of the Federation and the Federal District to produce legislation in pre-defined themes selected in the Federal Constitution. State legislators must obey such limits and respect constitutional norms in rule making process to preserve a desirable *rule of law* environment, where there is not fundamental rights violations and there is stability in legal framework, although the presence of judicial review's mechanisms available. The Brazilian Supreme Court has played as a Constitution enforcer, ensuring that any kind of normative act or Law will be removed from legal system. Otherwise, the Supreme Court shows how in a federative system, with central sets of rules, none State or the own Union can legislate against the Federal Constitution.

From the perspective of an investor, a desirable *rule of law* is characterized as a legal framework where property rights are respected, laws are clearly known, respected and stable, and there is an independent Judiciary to enforce such norms (KLEINFELD, 2006, p.33-34). As seen, this framework may not overstep constitutional boundaries in legislative competence or violate constitutional guarantees if there is a will to maintain stability and to promote a clear comprehension of legal prescriptions, because it can be reversed by judicial review at any time.

This paper focused on the analysis of Supreme Court's decisions in state legislation judicial review during the first 20 years of Democratic Constitution, in order to identify the *cases* where constitutional violations in relevant issues can be found, such as tax law, administrative law or basic rights, pointing out the quality of Brazilian States' legislation. In a preliminary state of art, this research could identify a ranking among Brazilian States, showing a geographical distribution of unconstitutional norms revised by the Brazilian Supreme Court.

From this point of view, social researchers, legal professors and investors could now find the judicial review as a new variable to be used in the effort to understand the quality of Brazilian legislative production, especially State laws, and as a first step to search how and why some state legislators produce more unconstitutional norms than other states.

References:

- ABRAHAM, Henry J (1998). **The judicial process**. Oxford: Oxford University Press.
- AGRA, Walber de Moura. **Curso de direito constitucional**. Rio de Janeiro: Forense, 2006.
- BONAVIDES, Paulo (2004). Jurisdição Constitucional e Legitimidade (algumas observações sobre o Brasil). **Estudos Avançados**, 18 (51.)
- CAPPELLETTI, Mauro (1971). **Judicial Review in the Contemporary World**. Indianapolis, Kansas City, New York: Bobbs-Merril Co.
- CARVALHO, Ernani Rodrigues de (2004). Em busca da judicialização da política no Brasil: apontamentos para uma nova abordagem. **Revista de Sociologia Política**, n.23, nov.
- COASE, Ronald H (1988). **The Firm. The Market. The Law**. Chicago: University of Chicago Press.
- DALLARI, Dalmo de Abreu. **O Estado Federal**. São Paulo: Ática, 1986.
- EPSTEIN, Lee; WALKER, Thomas G (2007). **Constitutional Law for a Changing America: Institutional Powers and Constraints**. Washington DC: CQ Press.
- FIGUEIREDO, Carlos Maurício, NÓBREGA, Marcos (Orgs.). **Administração Pública**. São Paulo: Revista dos Tribunais, 2002. p. 83.
- GADELHA, Gustavo de Paiva. *Federalismo brasileiro: a retórica à realidade*. **Revista do Tribunal Regional do Trabalho 13ª Região**. João Pessoa. V.15, nº.1, 2007.
- GRASSO, Marlene Savóia. O sistema Federativo. **Revista dos Tribunais, Cadernos de Direito Constitucional e Ciência Política**, São Paulo, n. 3, 1993.
- HELMKE, Gretchen (2002). **Enduring Uncertainty: Court-Executive relations in Argentina During the 1990s and Beyond**. In: LEVITSKY, Steven; MURILLO, Maria Victoria (ed.) *Argentine Democracy: The Politics of Institutional weakness*. University Park, Pennsylvania: The Pennsylvania University Press.
- INTER-AMERICAN DEVELOPMENT BANK (2006). **The politics of policies. Economic and Social Progress in Latin America**. Washington DC: Inter-American Development Bank.
- JUCÁ, Francisco Pedro. *Reflexões sobre o federalismo brasileiro*. **Cadernos de Direito Constitucional e Ciência Política**. São Paulo. Ano 5, nº. 2, out-dez. 1997.

- KLEINFELD, R. (2006). Competing definitions of the rule of law. In: T. CAROTHERS (ed.), **Promoting the Rule of Law Abroad: in search of knowledge**. Washington DC, Carnegie Endowment for International Peace.
- MADISON, James. *Os artigos Federalistas, 1787-1788*, Trad. Maria Luiza Borges, Ed. Nova Fronteira, Rio de Janeiro, RJ, 1993.
- MURPHY, Walter; PRITCHETT, C. Herman; EPSTEIN, Lee (2002). **Courts, Judges & Politics: an introduction to the judicial process**. New York: McGraw-Hill.
- PEPPE, Atilio Machado et alli. *Reflexões sobre a federação brasileira*. *Revista de Administração Pública*, vol 31. n ° 4. jul./ago. 1997.
- RANIERI, Nina. *Sobre o Federalismo e o Estado Federal*. *Revista dos Tribunais, Cadernos de Direito Constitucional e Ciência Política*, São Paulo, n. 9, p. 87-98, 1994.
- RODDEN, Jonathan. Federalismo e descentralização em perspectiva comparada: sobre significados e medidas. *Revista Sociologia e Política.*, Curitiba, n. 24, 2005.
- SCHARPF, F. W. **The joint-decision trap: lessons from German federalism and European integration**. Public Administration, 1998.
- SILVA, José Afonso da. *Curso de direito constitucional positivo*. 22. ed. rev. e atual. nos termos da Reforma Cons. São Paulo: Malheiros, 2003.
- SOUZA, Adalberto Pimentel Diniz de. *A mecânica do federalismo*. *Revista de Informação Legislativa*. Brasília a. 42 n. 165 jan./mar. 2005.
- TAYLOR, Matthew (2008). **Judging policy: Courts and Policy Reform in Democratic Brazil**. Stanford: Stanford University Press.
- TAYLOR, Matthew M (2005). Citizens against the state: the riddle of high impact, low functionality courts in Brazil. **Brazilian Journal of Political Economy**, vol.25, n.4 (100), October-December.
- WERNECK VIANNA, Luiz; CARVALHO, Maria Alice Rezende; MELO, Manuel Palácios Cunha; BURGOS, Marcelo Baumam. (1999). **A Judicialização da Política e das Relações Sociais no Brasil**. Rio de Janeiro: Revan.
- WHITTINGTON, KELEMEN and CALDEIRA (2008). **The Oxford Handbook or Law and Politics**. Oxford University Pres.

Figure 5: Index of Low-quality States's Legislation



Table 2: Ranking of Low-quality States's Legislation/Issue

Ranking	State		Legislation Rules About:
1	Paraíba	45% 30% 10% 15%	Organization of State Organization of Powers Taxing and Budget missing
2	Mato Grosso do Sul	38,09% 19,04% 4,76% 4,76% 33,33%	Organization of State Organization of Powers Taxing and Budget Social Order missing
3	Pará	35,29 % 29,41 11,76% 28,57%	Organization of State Organization of Powers Taxing and Budget Missing
4	Mato Grosso	37,03% 22,2% 3,7% 11,11% 3,7% 3,7% 18,51%	Organization of State Organization of Powers State Defense and Democratic Institutions Taxing and Budget General Constitutional Disposals Transitory Constitutional Disposals Act missing
5	Rondônia	2,7% 19,44% 27,77%	Fundamental Rights and Guarantees Organization of State Organization of Powers

6		13,88%	Taxing and Budget
		2,7%	State Defense and Democratic Institutions
		2,7%	Social Order
		2,7%	Transitory Constitutional Disposals Act
		27,77%	missing
7	Distrito Federal	2%	Fundamental Principals
		6%	Fundamental Rights and Guarantees
		38%	Organization of State
		12%	Organization of Powers
		8%	Taxing and Budget
		2%	General Constitutional Disposals
		32%	missing
7	Sergipe	40%	Organization of State
		10%	Organization of Powers
		10%	Taxing and Budget
		40%	missing
8	Espírito Santo	17,64%	Organization of State
		19,6%	Organization of Powers
		1,96%	Taxing and Budget
		3,92%	Transitory Constitutional Disposals Act
		56,86%	missing
9	Amazonas	5,26%	Fundamental Rights and Guarantees
		42,10%	Organization of State
		15,78%	Organization of Powers
		10,52%	Taxing and Budget
		5,26%	Transitory Constitutional Disposals Act
10	Minas Gerais	21,05%	missing
		2,63%	Fundamental Principles
		39,47%	Organization of State
		26,31%	Organization of Powers
		5,26%	Taxing and Budget
11	Piauí	2,63%	Economic and Financial Order
		23,68%	missing
		16,66%	Fundamental Rights and Guarantees
		25%	Organization of State
		16,66%	Organization of Powers
12	Acre	8,33%	Taxing and Budget
		8,33%	Transitory Constitutional Disposals Act
		25%	missing
		20%	Fundamental Rights and Guarantees
		60%	Organization of State
13	Pernambuco	20%	Organization of Powers
		0%	missing
		4,34%	Fundamental Rights and Guarantees
		26,08%	Organization of State
		34,78%	Organization of Powers
14	Bahia	4,34%	Taxing and Budget
		4,34%	Transitory Constitutional Disposals Act
		26,08%	missing
		58,82%	Organization of State
		11,76%	Organization of Powers
15	Santa Catarina	5,88%	State Defense and Democratic Institutions
		11,76%	Taxing and Budget
		11,76%	Missing
		37,25%	Organization of State
		15,68%	Organization of Powers
		7,84%	Taxing and Budget
16	Ceará	5,88%	Social Order
		1,96%	General Constitutional Disposals
		1,96%	Transitory Constitutional Disposals Act
		29,41%	missing
		11,11%	Organization of State

17	Rio Grande do Sul	33,33%	Organization of Powers
		16,66%	Taxing and Budget
		11,11%	Transitory Constitutional Disposals Act
		27,77%	missing
18	Alagoas	1,96%	Fundamental Rights and Guarantees
		37,25%	Organization of State
		37,25%	Organization of Powers
		23,52%	missing
19	Tocantins	50%	Organization of State
		6,25%	Organization of Powers
		12,5%	Taxing and Budget
		31,25%	Missing
20	Paraná	50%	Organization of State
		16,66%	Organization of Powers
		33,33%	missing
		30,76%	Organization of State
21	Rio Grande do Norte	15,38%	Organization of Powers
		2,56%	State Defense and Democratic Institutions
		12,82%	Taxing and Budget
		2,56%	Economic and Financial Order
22	Maranhão	35,89%	missing
		46,66%	Organization of State
		13,33%	Organization of Powers
		6,66%	Social Order
23	Rio de Janeiro	33,33%	missing
		7,14%	Fundamental Rights and Guarantees
		42,85%	Organization of State
		14,28%	Organization of Powers
24	Amapá	7,14%	Taxing and Budget
		28,57%	missing
		42,18%	Organization of State
		20,31%	Organization of Powers
26	Goiás	4,68%	State Defense and Democratic Institutions
		4,68%	Taxing and Budget
		4,68%	Economic and Financial Order
		3,12%	Social Order
26	Roraima	1,56%	General Constitutional Disposals
		3,12%	Transitory Constitutional Disposals Act
		15,62%	missing
		7,69%	Organization of State
27	São Paulo	15,38%	Organization of Powers
		7,69%	Taxing and Budget
		15,38%	Economic and Financial Order
		53,84%	missing
26	Goiás	33,33%	Organization of State
		14,28%	Organization of Powers
		4,76%	State Defense and Democratic Institutions
		9,52%	Taxing and Budget
26	Goiás	4,76%	Social Order
		33,33%	missing
		25%	Organization of State
		50%	Organization of Powers
27	São Paulo	25%	missing
		2,5%	Fundamental Principles
		30%	Organization of State
		20%	Organization of Powers
27	São Paulo	7,5%	Taxing and Budget
		2,5%	Social Order
		37,5%	missing

Font: Brazilian Supreme Court. Elaborated by the Authors
missing: Information not available at Brazilian Supreme Court website

Table 3: States and Constitution Violated Titles.

State	Constitutional Violated Title									
	Title I	Title II	Title III	Title IV	Title V	Title VI	Title VII	Title VIII	Title IX	Title X
<i>Acre</i>		<i>x</i>	<i>x</i>	<i>x</i>						
<i>Alagoas</i>			<i>x</i>	<i>x</i>		<i>x</i>				
<i>Amapá</i>			<i>x</i>	<i>x</i>		<i>x</i>	<i>x</i>			
<i>Amazonas</i>		<i>x</i>	<i>x</i>	<i>x</i>		<i>x</i>				<i>x</i>
<i>Bahia</i>			<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>				
<i>Ceará</i>			<i>x</i>	<i>x</i>						<i>x</i>
<i>Distrito Federal</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>		<i>x</i>			<i>x</i>	
<i>Espírito Santo</i>			<i>x</i>	<i>x</i>		<i>x</i>				<i>x</i>
<i>Goiás</i>			<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>		<i>x</i>		
<i>Maranhão</i>		<i>x</i>	<i>x</i>	<i>x</i>		<i>x</i>				
<i>Mato Grosso</i>			<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>			<i>x</i>	<i>x</i>
<i>Mato Grosso do Sul</i>			<i>x</i>	<i>x</i>		<i>x</i>				
<i>Minas Gerais</i>	<i>x</i>		<i>x</i>	<i>x</i>		<i>x</i>	<i>x</i>			
<i>Pará</i>			<i>x</i>	<i>x</i>		<i>x</i>				
<i>Paraíba</i>			<i>x</i>	<i>x</i>		<i>x</i>				
<i>Paraná</i>			<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>			
<i>Pernambuco</i>		<i>x</i>	<i>x</i>	<i>x</i>		<i>x</i>				<i>x</i>
<i>Piauí</i>		<i>x</i>	<i>x</i>	<i>x</i>		<i>x</i>				<i>x</i>
<i>Rio de Janeiro</i>			<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>
<i>Rondônia</i>		<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>				<i>x</i>
<i>Roraima</i>			<i>x</i>	<i>x</i>						
<i>Rio Grande do Norte</i>			<i>x</i>	<i>x</i>				<i>x</i>		
<i>Rio Grande do Sul</i>		<i>x</i>	<i>x</i>	<i>x</i>						
<i>Santa Catarina</i>			<i>x</i>	<i>x</i>		<i>x</i>		<i>x</i>	<i>x</i>	<i>x</i>
<i>São Paulo</i>	<i>x</i>		<i>x</i>	<i>x</i>		<i>x</i>		<i>x</i>		
<i>Sergipe</i>			<i>x</i>	<i>x</i>		<i>x</i>				
<i>Tocantins</i>			<i>x</i>	<i>x</i>						