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Imitation or coercion? State constitutions and federative centralization in Brazil

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The Brazilian states' constitutions emulate the Federal Constitution, mimicking its structure and reproducing its norms word for word. Vertical diffusion of constitutional norms prevails over horizontal diffusion of norms, that is, states are more influenced by the federal constitution than they are by each other. In part, this top-down diffusion occurs through imitation, but it is also determined by coercion, reinforced by judicial decisions. Originality in Brazilian state constitutionalism owes more to the different ways of emulating the Federal Constitution than to the creation of its own norms, making state constitutionalism additional evidence of the centralism of this federation, at least in regard to the production of legal standards. This article analyzes this phenomenon by quantitatively comparing the state and federal constitutional texts and assessing the historical conditions of their drafting.

Keywords: constitutional diffusion; state constitutionalism; federalism; decentralization; intergovernmental relations.

Imitação ou coerção? Constituições estaduais e centralização federativa no Brasil

As constituições estaduais brasileiras emulam a Carta Federal, mimetizando sua estrutura e reproduzindo literalmente suas normas. A difusão vertical de normas constitucionais prevalece sobre a horizontal, ou seja, os estados são mais influenciados pela Constituição Federal do que influenciam uns aos outros. Em parte, essa difusão *top-down* ocorre por imitação, mas é também determinada por coerção, reforçada por decisões judiciais. A originalidade no constitucionalismo estadual brasileiro surge mais em diferentes maneiras de emular a Constituição Federal do que pela criação de normas próprias, fazendo do constitucionalismo estadual mais uma evidência do centralismo dessa federação, ao menos no que concerne à produção de normas jurídicas. O artigo analisa tal fenômeno comparando quantitativamente os textos constitucionais estaduais e federal e avaliando as condições históricas de sua elaboração.

Palavras-chave: difusão constitucional; constitucionalismo estadual; federalismo; descentralização; relações intergovernamentais.

¿Imitación o coerción? Constituciones estatales y centralización federativa en Brasil

Las constituciones estatales brasileñas emulan la Carta Federal, copiando su estructura y reproduciendo literalmente sus normas. La difusión vertical de las normas constitucionales prevalece sobre la horizontal, es decir, los estados están más influenciados por la Constitución Federal de lo que se influyen mutuamente. En parte, esta difusión de arriba hacia abajo ocurre por imitación, pero también está determinada por la coerción, reforzada por decisiones judiciales. La originalidad en el constitucionalismo estatal brasileño surge más en diferentes formas de emular la Constitución Federal que mediante la creación de sus propias normas, haciendo del constitucionalismo estatal una prueba adicional del centralismo de esta federación, al menos en lo que se refiere a la producción de normas jurídicas. El artículo analiza este fenómeno comparando cuantitativamente los textos constitucionales estatales y federales y evaluando las condiciones históricas de su elaboración.

Palabras-clave: difusión constitucional; constitucionalismo estatal; federalismo; descentralización; relaciones intergubernamentales.

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1. INTRODUCTION

Federations are a privileged space for the diffusion of policies and institutions, hence for the study of such processes. Belonging to a set of geographically proximate political entities, interlinked by diverse affinities, institutional bonds, and intergovernmental relations, creates the opportunity for experiences to be emulated between the federal government and the subnational units, as well as between and among these, in (top-down and bottom-up) vertical and horizontal movements. The way such diffusion takes place in federations, however, will vary as a function of the type of federalism in effect.

Studies focusing on the diffusion of policies, practices, and institutions in a federative context are especially abundant in and about the United States, but there are also works comprising other federations, addressing for example the diffusion of policies between Union and states, (Karch, 2006), between states or cantons (Gilardi and Füglister, 2008), or between states and municipalities or counties (Shipan and Volden, 2008).

In and about Brazil, pioneering policy diffusion studies have dedicated to the dissemination of well-succeeded international participatory policies (Oliveira, 2016, 2017) and, foremost, to the national diffusion of municipal-level social and participatory policies,[1] themes about which there is a greater number of works and researchers (Coêlho, 2012; Coêlho, Cavalcante, and Turgeon, 2016; Spada, 2014; Sugiyama, 2007, 2011; Wampler, 2008). According to Porto de Oliveira and Faria (2017), the field of diffusion studies in Brazil is still in an embryonic stage; we have only identified thirteen articles published in Brazil addressing public policy diffusion, while only four were dedicated to 'intra-federative' research.

As a nascent field in Brazil that is mostly focused on municipal policies, diffusion studies are still lacking that take a closer look at the state level of government and, above all, that consider not only social and participatory policies introduced at the municipal level, but also the *diffusion of constitutional or legal norms* that will guide the making of other policies and the very government dynamic as a whole.

Particularly as concerns the diffusion of constitutional norms, the literature is even scarcer. One of the only recent studies directly addressing the theme Elkins (2010) considers it in an international context — diffusion of constitutional norms among countries — rather than in a federation. The literature on state constitutionalism, in turn, does not encompass diffusion theories. Bridging this gap is the aim of this article, interlinking three thus far separate fields: (1) studies on diffusion; (2) federalism, and (3) constitutionalism — highlighting a theme unexplored by the three fields, namely state constitutionalism.

2. TYPES OF FEDERATION AND CONSTITUTIONAL DIFFUSION

A certain view regarding federal polities defines them as "characteristically non-centralized; that is, the powers of government within them are diffused among many centers, whose existence and authority are guaranteed by the general constitution, rather than being concentrated in a single center"

[1] The authors identified three key programs in Brazilian diffusion research. They are the Participatory Budget (PB), the School Allowance Program (SAP), and the Family Healthcare Program (FHP).

(Elazar, 1987:34). From this point of view one would expect in a federation, rather than hierarchy, a *horizontal* division of competences between federated entities. However, horizontality itself concerns a particular type of federation — a "horizontal" federal system (Halberstam, 2008:145), in which each government has "the ability to formulate, execute, and adjudicate its own policies." Not all federations, however, are horizontal systems, as assumed by Elazar in his definition.

Many federal systems are "vertical" and in them "the central government frequently needs the constituent governments to transpose central government policies into more specific constituent state laws, administer central government policies, and adjudicate central government law" (Halberstam, 2008:145). In them there is less competition between entities and a process of greater integration — not necessarily of cooperation. It is expected that subnational governments will emulate central government policies and norms, so that state constitutions (SCs) will, to some extent, mirror the federal constitution.

In fact, in a centralized and vertical model of federalism as is the Brazilian federation, at least since the concentration promoted during the Vargas Era as of 1930, state constitutions tend to mimic the federal constitution. Even though the Charters of the 26 states and the Federal District do not merely repeat the federal Charter, some SCs are quite similar to the country's Supreme Law, hence somewhat similar to each other (though not all copy the federal text in the same way). It is worth noting that the SCs were all drafted within a year after the promulgation of the Federal Constitution (FC), as set forth by the FC and in keeping with its principles.[2] That is precisely why state Charters are expected to be inspired by the Federal Charter, whose norms are vertically diffused much more by *coercion* and *imitation* than by *learning* or *competition* between states, in the terms proposed by Shipan and Volden (2008:841-843).

These authors have noticed four mechanisms of policy diffusion: *learning, economic competition, imitation,* and *coercion*. The first of them, *learning*, stems from an assessment of the policy, its context, and its outcomes by the governmental entity adopting it, considering the previous experience of other entities, with the policy per se mattering more than the actors having adopted it earlier. It is exactly the opposite of *imitation,* where a given policy is enshrined precisely because a given actor adopted it earlier; and as it is understood that this actor should be emulated, its initiatives are mimicked, without much critical regard to their specific merits.

Economic competition, instead, is a diffusion mechanism whereby the adoption of a given policy by a government arises from its concern with externalities stemming from the same policy's adoption by other entities. This way, adopting it would be a way to, by competing with the others, protect oneself. For instance, if other states offer a tax incentive to companies and my state does not, it will probably be penalized with loss of investments; therefore, I offer the same incentive to compete with them.

Lastly, *coercion* is a diffusion mechanism whereby the adoption of policies by a governmental entity is compelled by other entities. At the international level, economic sanctions are a frequent coercion tool; domestically, one possible form is to condition the transference of resources by a higher sphere of government to lower spheres upon the adoption of a certain policy — as is done by Brazil with regard to public healthcare system *Sistema Único de Saúde*. It is also possible to legally compel

[2] Federal Constitution, Temporary Constitutional Provisions Act:
"Article 11. Each Legislative Assembly endowed with constituent powers, shall draft the State Constitution within one year as from the promulgation of the Federal Constitution, with due regard for the principles of the latter.
Sole paragraph. After the promulgation of the State Constitution, it shall be incumbent upon the City Council, within six months, to vote the respective Organic Law, […] with due regard for the provisions of the Federal and State Constitutions."

governments to adopt certain policies and norms by establishing a legal framework at the higher level that will constrain or even determine the norms to be adopted by the lower levels. This is the case of Brazilian federal constitutionalism, whereby the federal Charter sets, on the basis of a top-down relation, what states and municipalities are to do with their own constitutional and legal norms.

The mechanisms identified by Shipan and Volden, our reference for this discussion, are not unanimously acknowledged as forms of diffusion by the literature — which, as a matter of fact, varies widely in this regard. Elkins and Simmons (2005), for example, only consider *adaptation* (which includes *economic competition*) and *learning* (which would include *imitation*, construed as low-cost learning) as diffusion mechanisms. *Coercion*, however, is considered by them as a form of *coordination*, a policy dissemination category unlike diffusion that would also include *cooperation*. The differentiation is founded on the assumption that diffusion would only take place in a situation of *uncoordinated interdependence* between actors adopting practices or policies. The authors do not justify the reason for this limiting distinction, as they only state that diffusion is not driven (at least at the international level) by any "collaboration, imposition, or otherwise programmed effort" (Elkins and Simmons, 2005:38) by the actors involved. This premise makes little heuristic sense, especially in a federation, where coordinated forms of relationship — whereby policies and practices are not only "disseminated", but are also "diffused"— are intrinsic to the members' interdependence. This is why we find Shipan and Volden's mechanisms more adequate.

The vertical and top-down character of Brazilian federalism does not entail the impossibility of some variation and innovation — particularly in the scope of the drafting and implementation of centrally determined public policies by the states (Machado, 2014). In the case of state-level legislative initiatives, however, these are often the cause of legal challenges that tend to reinforce the vertical and centralizing trend, since the states' legislative competences have been quite limited by the 1988 Constitution. According to the federal Charter, while it is incumbent upon the Union to legislate on 29 different themes and upon the municipalities to legislate on local interest matters, the states can only legislate on specific matters incumbent upon the Union if so determined by a *federal* supplementary law (Article 22, Sole Paragraph); on 26 other issues, the Union and the states legislate concurrently — but, in case of conflict, the federal legislation prevails (Article 24, Paragraph 4). The only specific Brazilian state legislative competence provided for by the 1988 Charter is that of establishing metropolitan regions (Article 25, Paragraph 3).

As in this article we deal specifically with centralization as the ability to produce legal (among which are constitutional) norms, constitutional mimicry is construed as a centralization indicator thereof, ratifying the centralism of the Brazilian federation as already observed by other scholars in other fields (Almeida, 2005; Arretche, 2009, 2012, 2013; Machado, 2014). Celina Souza (2005:111) notes that:

> […] rules on the competences, resources, and public policies of subnational entities are detailed chapters of the Constitution, leaving little room for maneuver for specific initiatives [...]. The states end up almost as managing entities of the Federal Law […] most of the state constitutions are a mere repetition of federal commandments. The few attempts at creating rules not explicitly mandated by the federal Constitution, though not prohibited, were ruled unconstitutional by the STF [Federal Supreme Court].

This contrasts with the American model, antipodal to the Brazilian and the main reference for the literature on state constitutionalism (Tarr and Porter, 1987; Dinan, 2006; Kahn, 1993; Kincaid, 1988; May, 1987), where a few state constitutions are quite different from other state constitutions and from the national Constitution (Lutz, 1994), so much so that in the debate on state-level constitutional reforms the issue often arises as perhaps state charters should move closer to the national model (Tarr, 1998; 2001)[3] — a misguided conception to some (Hammons, 1999), since more prolix state constitutions, thus distinct from the lean Madisonian model, would be more enduring; and if endurance is a good indicator of constitutional text adequacy, it would be advisable to adopt texts designed to last — long and detailed, fit to express more inclusive agreements (Elkins, Ginsburg and Melton, 2009).

The summary character of the U.S. Constitution, however, obliterates that *American constitutionalism* is not comprised of the national Charter alone, but also of it in conjunction with the state charters. As contended by Kincaid (1988:13):

> Although the term "American Constitution" is often used synonymously with "Constitution of the United States", the operational American constitution consists of the federal Constitution and the 50 state constitutions. Together, these 51 documents comprise a complex system of constitutional rule for a republic of republics.

This indicates why the American federal Charter, though short and hard to amend, is so enduring, contradicting the expectations of Elkins, Ginsburg, and Melton (2009) that shorter texts show less propensity to endure. The text's incompleteness (Lutz, 1988) and the rigidity making its amending hard are compensated by the state constitutions' complementarity and flexibility. Thereby, characteristics favoring endurance, such as length, adaptability, and inclusiveness, stem from the whole, rather than from the national text considered in isolation. It is this whole — mainly on account of the state charters — that comprises the various issues, modifies itself over time, and includes distinct interests, as it adjusts to regional peculiarities. Over and beyond the texts, American constitutionalism as a whole is completed in the states in keeping with court interpretations (Kahn, 1993:1148). Thus, constitutional modernization does not only result from novel interpretations by the Supreme Court of federal constitutional provisions and principles, but also from innovative interpretations provided by state courts of principles of the constitutional system as a whole, thus not restricted to the unique character of each particular state experience (Kahn, 1993:1152-1156; Elazar, 1982).

These features of the American model, however, place it at the end of a continuum that has Brazil at the other end. Showing greater similarity with the Brazilian case is the German case of a more detailed federal Constitution and vertical federalism (Halberstam, 2008). The *Länder* constitutions were approved in at least three different waves (Gunlicks, 1998; Lorenz and Reutter, 2012). The first one took place just after the country's defeat in World War II, between 1946 and 1947, under the occupation of the allied forces. The regions under French and American control approved their constitutions even before the drafting of the Fundamental Law (therefore, without drawing inspiration from it). The second wave took place in the British-controlled regions, which had to await the promulgation of the federal Constitution, in 1949. Drafted under the influence of different countries, following

[3] Tarr (1998:730) is one of the rare cases in the literature on subnational constitutionalism to make direct reference to diffusion studies for understanding the phenomenon of constitutional emulation within a federation. And even so, just in passing.

different procedures, and under the aegis of their own regional characteristics (indeed, five *Länder* were artificially designed by the allies, not necessarily keeping any relation with historically established territories) and different timings, the constitutions that emerged from the two first waves allowed for considerable diversity. Considering only their size, the second-wave constitutions have, on average, half the length of those of the first wave (Lorenz and Reutter, 2012:152).

The third wave took place nearly half a century later, in the early 1990s, with a new charter in Schleswig-Holstein, West Germany, which served as inspiration for the new constitutions of the Länder in the eastern part of the country, gave rise to longer constitutions than those of the second wave, (Lorenz and Reutter, 2012:52) and incorporated more details and issues, such as social rights and the states' aspirations. They prompted reviews of the constitutions arising from the two first waves that, this time, incorporated features of the Charter (including its amendments), were influenced by national party politics, and had to adjust to decisions by the Federal Constitutional Court (Gunlicks, 1998:110-112). This way, though initially the Länder constitutions were different from each other and from the Charter, over time they emulated features from other state constitutions *and* from federal constitutionalism, thus not merely supplementing the latter, in a process of diffusion both vertical and horizontal.

In Brazil, constitutional mimicry is likely to prompt amending that is directly influenced by any modification in the country's Constitution, in terms both of pace and content, because SCs were shaped to a good extent in the image and likeness of the federal Charter as constitutionally mandated. After all, if the Brazilian Charter conditions the states' charters, changes at one level should prompt adaptations at the other level. As to the pace, one would expect state amending to move in tandem with federal amending, addressing correlated matters, mostly constitutionalized policies, as these are more likely to become amendments. This, however, only occurs partially, as verified by Absher-Bellon (2015) in a study on state charters.

Souza (2005) shows that Brazil's centralized federalism prompts legal challenges of state constitutional provisions absent in the federal Charter. Hence, innovations introduced by state constitutional policymakers are scrutinized by the STF, on the basis of federal control of the constitutionality of state constitutional norms. Part of the state amendment process, therefore, is expected to be prompted by a declaration of the unconstitutionality of state provisions by the Supreme Court. Moreover, expectation is that decisions by state courts on the constitutionality of state laws and of amendments to the state charter *vis-à-vis* the federal Constitution will prompt some response from state legislatures by way of corrective constitutional amendments and legal changes. If that does occur, centralism will be further reinforced, with the diffusion of federal normativity to the state level – in part the making of the STF, in part triggered by state court rulings. Fabiana Oliveira (2016:117) analyzed all the Direct Actions of Unconstitutionality [ADI, from the Portuguese acronym] for the years 1988 through 2014. According to the author, out of "total ADIs reviewed over the period, 61% originate in states, 28% at the federal level, 9% in the Judiciary (administrative decisions and resolutions), and 2% in other spheres, including municipalities, Public Prosecution, and professional boards." These figures show that reining in the legal production of the states has been the main target of concentrated control of constitutionality in Brazil. These figures are close to those found by Canello (2016:114).

There is much scholarly debate on the role of national courts in political centralization in federations, particularly concerning subnational constitutions (Williams and Tarr, 2004:7-11). According to Halberstam (2008:147), many bring into question the ability of central courts as arbiters in federative conflicts, basically for two reasons: firstly, "the central government's role" as creator, funder,

and appointer of the national judiciary would make the latter "a natural ally of the central government in controlling the states". Moreover, as "the central judiciary is generally charged with interpreting central government laws", it would acquire "a structural bias in favor of an expansive interpretation of central government law". Yet, at least with regard to the American experience, Halberstam sees a Supreme Court role that is more balanced and oscillating, suggesting a more independent role than that expected by those who hypothesize constitutional centralization by judicial means. The United States, however, is a horizontal federation, as noted by Halberstam himself; in vertical federations, as the German and the Brazilian, we should expect otherwise.

Even though the hypothesis of a constitutional centralization by judicial means has not been tested in this article, it will as we further our research. We found that the main petitioners of Direct Actions of Unconstitutionality challenging state constitutional norms are state governors. Judicial decisions prompted by governors were instrumental in aligning state constitution provisions to the federal Constitution. With that, and despite their status as state-level actors, governors, challenging constitutional matters with their state legislatures, have produced a dynamic that has ultimately strengthened constitutional centralism. This finding is consistent with that provided by Oliveira (2016:125), who notes that governors are "the champions of norms broadening civil service prerogatives […], as also common are initiatives, *triggered by the state constitutions*, challenging promotions to the civil service and transformation of public offices" (our italics). Canello (2016) also identifies this phenomenon. In view of the scope of this article, we will not develop this discussion any further here. Here we present a survey that precedes such study, an overall assessment of Brazilian state constitutionalism. Our goal is to identify the main characteristics of state charters and the level of similarity their texts exhibit in relation to one another, as well as between state charter texts and the federal Constitution text, assessing the direction of constitutional diffusion — whether more vertical or horizontal.

On one hand, this inquiry will make it possible to assess not only how much state constitutional texts derive logically from the federal Charter, but also how much they repeat it word for word — or almost. This is important because, in a preliminary assessment, one would not expect much need for the federal judiciary (the STF, in this case) to make decisions designed to reshape subnational constitutional law in keeping with the national law, since the pure and simple repetition of the text — by imitation — would suffice to produce normative effects, without any need for judiciary coercion. However true, this entails a second-order problem.

The state constitutions repeat federal Constitution norms not only by imitation, but also by coercion. State constitutions emulate two types of norms of the federal Charter: "imitation norms" and "reproduction norms" (Leoncy, 2007:118). While the former are those the state constitutional delegate voluntarily copies from the federal text, the latter are included because they are "federal norms of mandatory absorption" (Justice Octávio Galloti, RCL 370, in Leoncy, 2007:118). Given their "mandatory absorption" nature, the state constitutional delegate would have no decision making power over them, being left only with the task of incorporating that which is contained in the national text into the subnational text. Depending on the number and importance of these federal norms of compulsory absorption, we obtain a measure of the level of constitutional centralization existing in the federation and of how much the diffusion of constitutional norms in the Brazilian federation is prompted by coercion.[4]

[4] There are also "*normas de extensão proibida*" [prohibited extension norms], which the state constitution cannot copy from the federal Constitution (Leoncy, 2007:132) because they comprise Union-only jurisdiction.

It is no trivial task, however, to distinguish compulsory absorption norms from imitation norms. The federal Constitution does not make that clear and even legal scholars are vague when approaching the theme (Leoncy, 2007; Ferraz, 2014; Horta, 1985). According to Ferraz (2014:17), "the reproduction of constitutional norms of mandatory compliance in the state constitution imposes itself — even though there is no specific rule thereto — because, though not transcribed, these norms are valid for the State as a whole." And, in the absence of a specific rule, determining what a mandatory-reproduction norm is becomes incumbent upon the Judiciary — notably, the STF, which rules (usually on a case-by-case basis) on what shall or shall not be repeated by state constitutions. Therefore, the drafting of state charters, plus establishing what should be incorporated or not, resulted either from the mere emulation of the federal constitutional text or from judicial decisions that steadily built a doctrine about what the country's total constitution should be. In the case of emulation, the hurdle faced by state constitutional delegates as concerns their being sure about what should be repeated or not prompts them to take the federal text as the basis for the drafting of the state constitution, in a mechanism of sheer imitation in which the federal constitutional delegate's "argument of authority" prevails over the intentions and decision making autonomy of the state constitutional delegates. In an interview for this article, the rapporteur of the Constitution of the State of São Paulo, Roberto Purini, who stated not knowing the distinction between imitation and mandatory absorption norms, confirmed that the "starting point" of the state constitution was the federal Charter and that "more than 90% [of it] is mandatory absorption". In fact, the São Paulo State Legislative Assembly, which would draft the charter, organized a "Pro-Constituent Delegate Group" to follow the procedures at the federal level, so as to be able to replicate at the state level what they had learned. Interview on March 21, 2017, Bauru (SP).

Lastly, the centralized character of the Brazilian federation does not stem solely from an abstract model of constitution. It stems from successive political choices made throughout the history of the nation, founded in the perception that Brazil is regionally unequal, that it is incumbent upon the central government and its institutions to correct such asymmetry. This way, centralization becomes an instrument for coordination and cooperation between levels of government, favoring socially, economically, administratively, and politically underprivileged states, by offering them a common base to face their problems. In a federation with states and municipalities as unequal as the Brazilian, the provision of this common base by the central government paradoxically stems, rather than from demands by weaker entities, from the sheer imposition of the center (Abrucio, 2005; Segatto and Abrucio, 2016). Yet, the cooperative nature of Brazilian federalism was founded on the predominance of the Union, whose financial assistance is critical to allow subnational governments to implement policies, especially social policies, as pointed out by Machado, indicating a typical situation of coercive diffusion by means of policy funding:

> Lacking public revenues to invest in social policies, those [subnational] governments could become the victims themselves of the decision making paralysis that would arise should they use their veto power as a strategic resource to halt the development of federal programs. In the present days of Brazilian federalism, states and municipalities seem to gain more from behaving as supporting actors of the Union, seeking at best adjustments and amendments to the [Union's] initiatives rather than their nullification proper. [Machado, 2014:348; author's boldface]

In this regard, however, it is worth noting that Brazilian centralism and coercive diffusion of norms and policies manifest themselves in two different ways. On one hand, states (and even municipalities)

replicate, at the regional and local levels, constitutionally-mandated federal institutional forms (government branches, public administration, and law), reproducing at a smaller scale the very same characteristics of the federal government — what Couto and Arantes (2008) define as *polity*. On the other, both in the constitutional and subconstitutional frameworks, states and municipalities replicate *policy*, regionally and locally introducing public policies formulated and legislated at the federal level (Arretche, 2009), and implemented by subnational entities — albeit with some variation (Lotta, Gonçalves and Bitelman, 2014; Soares and Cunha, 2016). We may thus speak both of *policy* diffusion, in the sense ascribed by the literature on policy diffusion to the idea, and *polity* diffusion, in the sense proposed by Couto and Arantes. One would assume that, at the federal level, the establishment of such matters would be scrutinized by the states too, since they are discussed in the Federal Senate, theoretically the "house of the states". The assumption, however, is not supported in practice because "the Senate is a house that operates in partisan terms" (Arretche, 2013:54), thus prevailing over the state rationale when reviewing decisions made in the Chamber of Deputies, whose power is equivalent to that of the Federal Senate when it comes to support lent to governments in the context of coalition presidentialism. This has been widely demonstrated in studies on the Federal Senate, such as in Ricci (2008), Neiva (2011), and Neiva and Soares (2013).

In the next section, we present the methodology we used. In the following one, we conduct a comparison, identifying the extent to which state constitutional texts replicate the federal Constitution or are similar to each other, and observing the direction of the constitutional diffusion of norms — whether more vertical or horizontal. In the last section, we present our conclusions.

3. THE BRAZILIAN STATE CONSTITUTIONS AND THE 1988 FEDERAL CHARTER

The analysis in this section relied on gathering, systematizing, and analyzing the texts of 25 Brazilian state constitutions, plus that of the Federal District charter. The constitution of Acre was left out because the original text was not available during data collection. The texts compiled are those originally published in the official gazettes; preambles were not considered, as they are not exactly norms.[5]

A first problem whenever one analyzes constitutional texts concerns their length, as they can be measured by different methods, each one with its own peculiarities. There are two main approaches: a *textual* approach and a *structural* approach. In the first approach, constitutions are measured according to characteristics valid for any kind of text (not specifically constitutions), such as character count, number of lines (Lorenz, 2005), paragraphs (Anckar and Karvonen, 2002), and the often adopted, number of words (Berkowitz and Clay, 2005; Ginsburg, 2010; Lutz, 1994; Negretto, 2012; Tsebelis and Nardi, 2014; Voigt, 2009).

Conversely, structural approaches consider the content and logical organization of a given constitution, construed as a structured set of legal norms; they count norms, not text features. The most common forms are measuring the scope (Elkins, Ginsburg and Melton, 2009) and the number of articles (Montenegro, 1995) or constitutional provisions (Arantes and Couto, 2009; Couto and Arantes, 2002, 2008).

The number of words measures quite objectively the variable size, since the count is purely textual and is not subject to constitutional delegate preferences regarding themes and normative groupings.

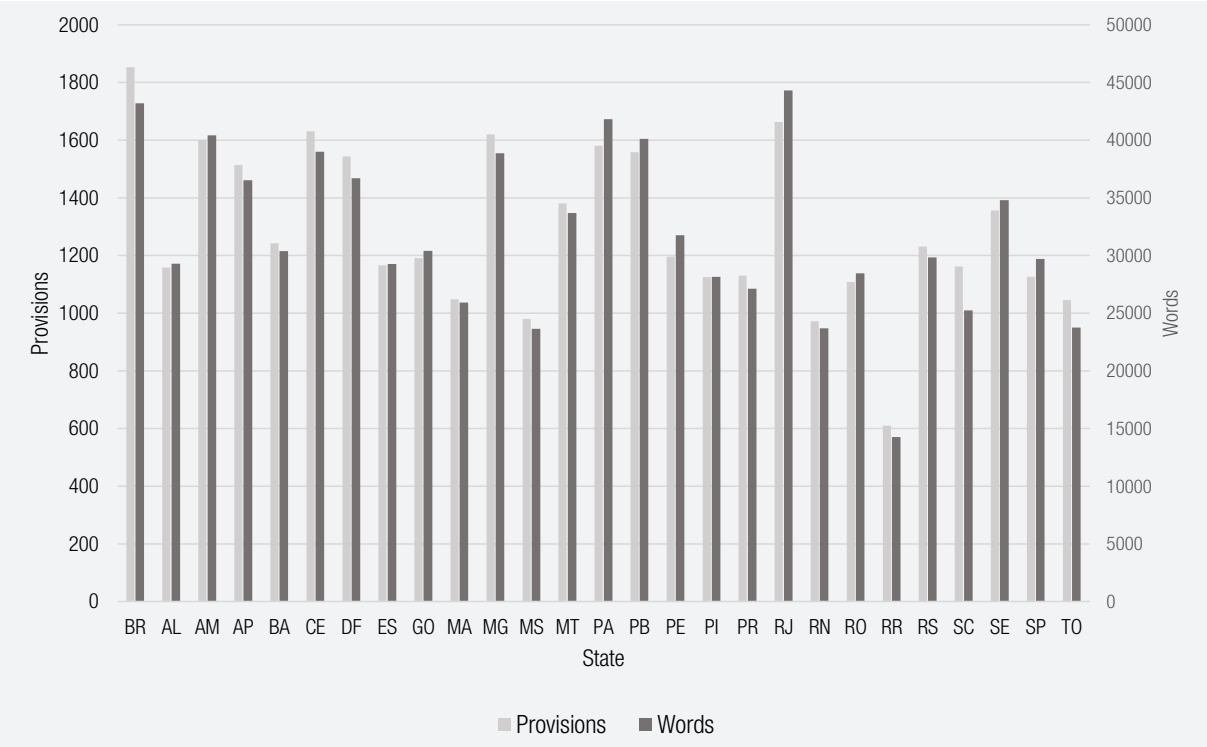
[5] STF ruling on ADI 2076 established that the preamble to a constitution "does not contain a legal norm", because "it is not situated in the scope of the Law, but in the realm of politics, reflecting the constitutional delegate's ideological position". In this ADI, the *Partido Social Liberal* (PSL) party argued that the mention to "protection of God" in the preamble to the 1988 Federal Constitution was "a normative act of a supreme basic principle with programmatic content and mandatory absorption by the States."

Still, there are linguistic problems, as any given two words have the same weight, regardless of their length or meaning. Despite these limitations, number of words is a very useful indicator, even when seeking to identify politically substantive issues, because it makes it possible to *indirectly* capture contents of the constitution (Hammons, 1999; Lutz, 1994; Tsebelis and Nardi, 2014), constituting a proxy for the number of subjects addressed. That is, long constitutions tend to have more constitutionalized issues and more constitutional provisions.

On the other hand, the measure based on the number of provisions is focused on units that are fully meaningful legal norms, substantively relevant for a political analysis. Moreover, as the text is a set of legal norms that reflect political choices, the mere word count becomes an impossible methodological step: identifying and classifying the number *and* the *nature* of the legal matters enshrined in the constitution (Couto and Arantes 2008, 2009).

In this article, the textual approach proved not only to be sufficient, but also useful for a comparison of constitutional texts that would render it possible to establish the direction of constitutional norm diffusion. Graph 1 and table 1 summarize the descriptive statistics.

GRAPH 1 NUMBER OF PROVISIONS AND WORDS IN STATE CONSTITUTIONS



Source: Elaborated by the authors based on the MCA dataset on state constitutions.[6]

[6] Constitutional texts dataset organized in accordance with the Methodology for Constitutional Analysis (MCA) proposed by Cláudio G. Couto and Rogério B. Arantes.

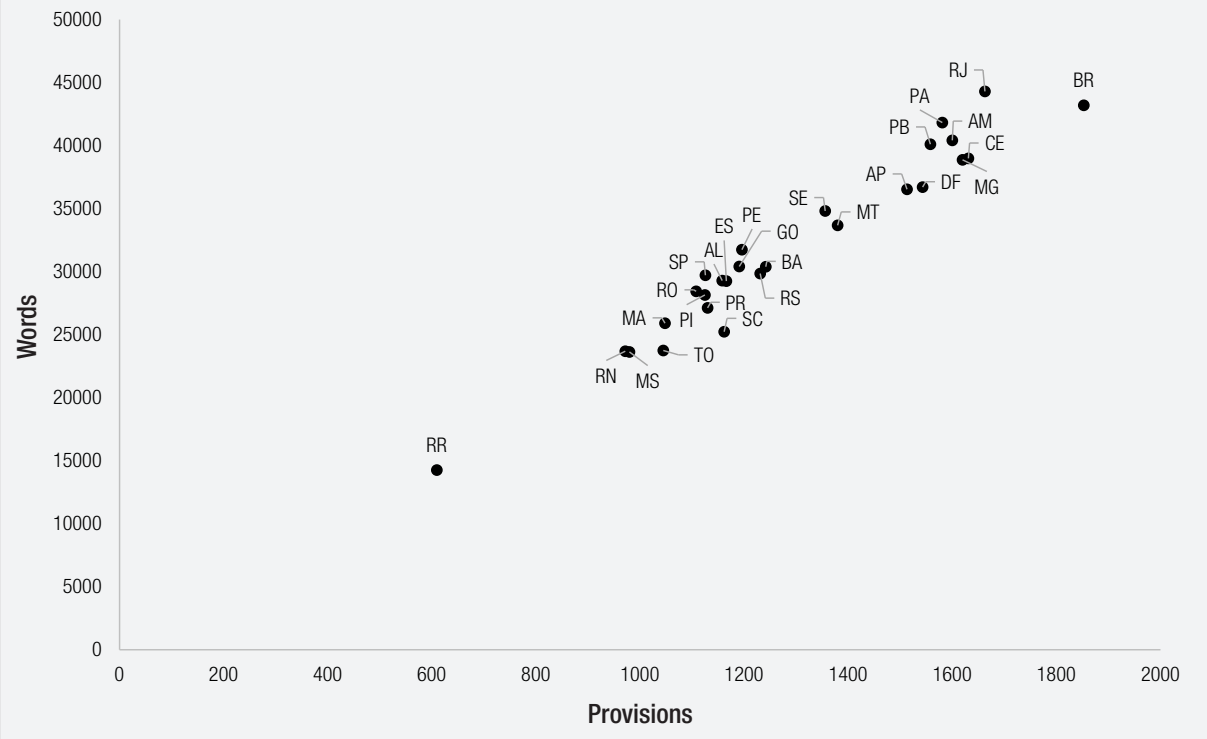
TABLE 1 BASIC DESCRIPTION OF CONSTITUTIONAL LENGTH

Unit	Mean	Standard Deviation	Coefficient of Variation	Maximum	Minimum
Words	31,423.54	6,826.25	21.72%	44,301	14,251
Provisions	1,266.73	255.23	20.15%	1,663	610

Source: Elaborated by the authors based on the MCA dataset on state constitutions.

As expected, both ways of measuring the length of state constitutions yield similar results, because there is no linguistic variation across Brazilian states and constitutional delegates. We have also observed a nearly perfect linear relation between the two measures (graph 2): a Pearson correlation coefficient of 0.976 and Spearman's ρ of 0.962.[7]

GRAPH 2 DISPERSION OF WORDS AND PROVISIONS



Source: Elaborated by the authors based on the MCA dataset on state constitutions.

[7] The exact significance levels are 5.8 x 10^{-18} and 1.53 x 10^{-15} Pearson and Spearman correlation, respectively.

Given the proximity between the two measures, we do not expect significant differences between them for *given types of analysis*. The remark is important because, even though the measures are *statistically* close, *qualitatively* they are quite distinct. Therefore, word count proves to be methodologically adequate for a comparison of the length of constitutions, in addition to being a much simpler procedure.

The reading of the constitutional texts makes it possible to immediately identify a similarity not only between state constitutions, but also between these and the federal Charter, especially in terms of the structure of titles and chapters. This proximity is expected due to the division of competences and the principle of symmetry, and because state constitutions were written after the federal Constitution, in keeping with the federal Constitution itself. More than closeness, we find word for word repetitions, both of federal Charter provisions and of passages of other state constitutions.

As a formal definition characterizing thematic groupings as Title, Chapter, or Section is not available, their establishment and nomenclature is at the discretion of constitutional delegates. Though similar, the structure found in state constitutions does not allow direct comparisons of the larger groupings, which vary widely. Such variation comprises distinct themes, names, and levels; that which in a given constitution is a section, in another one is a title, or vice versa.[8] In terms of their singularity, we have identified about 150 Titles, 400 Chapters, and 600 Sections in the constitutions.

There are cases, however, of great similarity. For example, when comparing excerpts of the constitutions establishing the Legislative Process, one finds texts that are not only close from the point of view of their content, but also of their formal structure. The most common form was:

> Article A — The legal process comprises the preparation of:
> I — amendments to the Constitution;
> II — supplementary laws;
> III — ordinary laws;
> IV — delegated laws;
> V — legislative decrees;
> VI — resolutions.
> Article B — The Constitution may be amended on the proposal of:
> I — at least one-third of the members of the Legislative Assembly;
> II — the State Governor;
> III — more than [...] Municipal Chambers in the State;
> [...]

Although the numbers of the articles analyzed change, they follow the same sequence in all of the constitutions, and even the order of items and paragraphs does not differ much. Besides the similarity in the order and formal structure, the drafting is similar. And even when they are not identical, they make use of synonyms or the mere inversion of discursive order. The heading in Article A is identical

[8] For example, the Constitution of Ceará contains "Title VIII — Cultural, Social, and Economic Responsibilities", which in turn contains "Chapter X — Urban Policy" and Chapter XI — Agricultural and Land Policy". In the Constitution of Tocantins we find "Title XII — Agricultural, Land, and Agrarian Reform Policy".

for the 26 constitutions analyzed, as well as its three first items. Article B follows the same pattern, yet there are very few cases in which the rules for approving constitutional amendments differ. It is the same organization used in articles 59 and 60 of the federal Charter, with only a transposition of "federal" to "state" (of President of the Republic to Governor), in a clear case of mandatory absorption of norms and, therefore, of coercive diffusion.

Another example of this mimicry regards constitutional norms establishing the number of city council members. In the federal Constitution, Article 29 sets forth that the number of members in the city councils shall be proportional to the population of the municipality. Let us compare the constitutions of five states: Alagoas, Amapá, Amazonas, Paraíba, and Rio de Janeiro. Alagoas (Article 18) made a perfect copy of the federal text; the constitutions of Amazonas (Article 122) and Rio de Janeiro (Article 346) established that the number of council members should follow the rule set forth by the federal Constitution; as for the constitutions of Amapá (Article 27) and Paraíba (Article 10), we have identified innovations, that is, norms that establish rules that are different from those provided for in the federal Constitution, but similar in logic (number of council members proportional to number of inhabitants). In observing amendments to the state constitutions, one finds that in 1999 Amapá replaced a previously established rule for one that was even more different than the federal Constitution and, in 2006, a new modification revoked previous texts, determining that the number of city council members would be that provided for by the federal Constitution. In 2009 the federal Constitution itself was amended, in response to a decision by the STF on the matter; and if originally there were only three population ranges for establishing the number of council members, after that there were 24. Finally, in 2012 Rio de Janeiro amended its charter, copying the new federal Charter word for word.

We have identified five distinct behaviors. The Constitution of Alagoas first adopted a rule that was identical to the federal rule; yet, after the federal constitution was amended, Alagoas made no amendment to its own constitution. In Amazonas the state charter only established that federal provisions be complied with, while in Rio de Janeiro, a text originally similar to that of Amazonas, was amended to include a copy, word for word, of the new federal text as amended in 2009. In the case of the innovators, Amapá and Paraíba, the former, after another attempt at innovation, simply started adopting the provisions set forth in the federal Constitution; while the latter made no constitutional change in that regard, remaining in disagreement with the federal text, which hence ended up a dead letter.

This state variability also reflects the way divisions are discretionarily set in each state, with no change in the legal framework. To account for that, we reduced the diversity of constitutional summaries to a comparable standard model, eliminating writing peculiarities that simply conceal similarities. Accordingly, we renamed and regrouped the state constitutions' articles, thoroughly seeking content equivalences. The result was an organization of all the constitutional texts according to the following standardized dataset of Titles:

1. Fundamental Principles, Rights, and Guarantees.
2. The State.
3. Organization of the State.
4. Public Security.

5. Taxation and Budget.
6. Economic Order.
7. Social Order.
8. General Constitutional Provisions.
9. Temporary Constitutional Provisions Act.

The complete classification was in Titles, Chapters, and Sections; however, since Titles are more comprehensive and in a smaller number, we concentrated our analysis on this grouping level. To compare the state charters with the federal Charter, we used the same criterion relied on to recode it.

Given the constitutional charters' grouping diversity, the recoding did not use a single constitution as a model; nor did we deduce the model from the federal Constitution, not only because we were focused on comparing state charters, but also because had we deduced it from the federal Charter, we would have biased the comparison, as the state constitutions would have to fit the ready-made federal Charter model. And as we set out to compare vertical and horizontal constitutional norm diffusion, such bias would be undesirable. Thus, inductively we put together articles and themes present in the state constitutions in equivalent groupings.

We listed all the groupings found in the state constitutions and identified common names for each level, eliminating writing differences (verb tenses, direct/inverted order, singular/plural, synonyms)[9] and adopting a common nomenclature; we isolated the groupings, subsections, and titles that were actually distinct and most frequent. With such division, we came up with a model that, on one side, included the most frequent groupings and divisions in state constitutions and, on the other, one-only or less usual groupings, organizing a general model with nine titles, twenty-five chapters, and thirty-five sections.

Applying the standardization to the federal Constitution, we observed an equivalence between the state constitutions' induced model and the division by Titles in the original federal Constitution. That is, out of the federal Constitution's ten Titles, nine were equivalent to the standardized titles. There were two differences: (1) aggregation, because in the case of the state constitutions "Fundamental Principles, Rights, and Guarantees" were under a single Title; (2) terminology, because, while the federal Constitution has the Title "The Defense of the State and of the Democratic Institutions", in the state standardization this became "The Public Security", which is a chapter of the same federal Constitution Title. Therefore, the standardization process provided more evidence of similarities between the state charters and the federal Charter, indicating moreover that, as regards formal structure, Brazilian state constitutionalism does emulate federal constitutionalism, with slight variations.

4. MEASURING THE SIMILARITIES

In order to assess the degree of similarity between the constitutional texts analyzed in this article, we adopted a *textual* approach-based classification that factors out a more detailed qualitative study, as well as cross-references to the federal Constitution, as done in other studies (Couto and Arantes, 2003,

[9] For example, there is no difference between "Taxing and Budget" and "Taxes and Budgets".

2008; Arantes and Couto, 2009). In order to do so, in comparing constitutional texts, we resorted to a text analysis software program, WCopyFind, an open source program developed to identify plagiarism, whose application, however, has been expanded on account of its versatility.[10]

The program compares two documents with one another to determine similar passages. There are three comparison parameters that can be adjusted by the user: (1) maximum number of words in a phrase, (2) minimum percentage of matching words in a phrase, and (3) maximum number of non-matches, or imperfections, allowed. Once the maximum word string length of phrases to be compared is set, two phrases will be considered identical if they contain a minimum percentage of matches and a maximum number of non-matches. Let us examine the following example, whose sentences were considered matches by the program:

1. A Deputy or Senator shall lose his office if he violates any of the prohibitions established in the preceding article.
2. A State Deputy shall lose his office if he violates any of the prohibitions established in the preceding article.

The first excerpt belongs to the federal Charter, while the second is from the Constitution of Alagoas. The first one contains 16 words; the second, 15. Despite two different words in these sentences, the software program, once the parameters were adjusted,[11] identified these sentences as equivalent. This makes sense because both provisions address the same topic, one of them only having been adapted to the state context by changing two words.

After reproducing this algorithm to the totality of documents, the software program identified phrase matches, whether perfect matches or allowing for some variation, depending on the parameter chosen. In the constitutions studied, we analyzed 351 pairs of documents, compared each constitution with the other 26 (25 state constitutions plus the federal Charter), and obtained a similarity indicator between texts as compared two by two. It is worth stressing that the direction of the comparison does matter. That is, the similarity between Constitution X and Constitution Y is distinct from the similarity between Constitution Y and Constitution X, due to the asymmetry generated by the direction of the comparison, such that the 351 pairs result in 702 paired text analysis observations. The reasons for that are twofold.

The first one is the parameters used to measure similarity. We have used two: (i) *absolute word count* in matching portions of text and (ii) the *percentage of matching words* in a text. For the absolute count, we computed the absolute number of words in equivalent expressions for each charter, so that in the example above we obtained an equivalent phrase with 16 words in the first constitution and 15 in the second. In computing the percentage of matching words, given that two constitutions will differ in length, the same phrase will have distinct weights in each of them.

The second reason stems from the *imperfections*. In the example above, as noted, the first sentence has 16 words, while its equivalent only has 15; if we count every word in the sentences (including the

[10] Software available at: <http://plagiarism.bloomfieldmedia.com/wordpress/software/wcopyfind/>. Accessed on: 20 July. 2016.
[11] In this case, parameter (3) was adjusted to allow two non-matching words.

non-coinciding terms — the *imperfections*), these two different values will be computed. However, if we exclude the imperfections in the sentences (two in the first, and one in the second), we will have equivalent phrases with 14 words each — that is, we will always find identical values for equivalent phrases in the texts compared.

Table 2 presents coincidence levels across constitutions when we control for the federative level. Two variables can be identified, separated into three categories. These variables are *absolute equivalence* and *relative equivalence*. While the first one identifies the number of words found in similar sentences, the second one consists of the ratio between the number of words and the full length of a given constitutional text.

TABLE 2 EQUIVALENCES BETWEEN CONSTITUTIONAL TEXTS

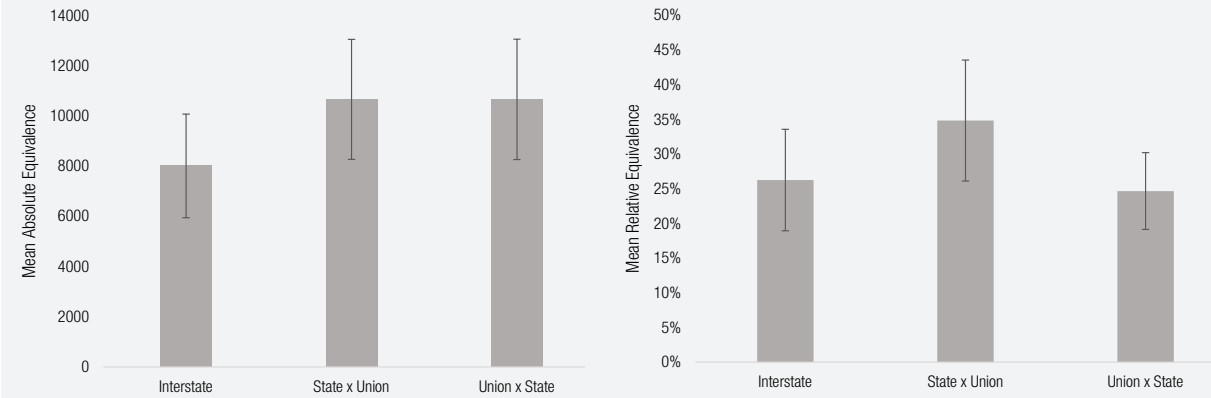
Statistics	Relative equivalence			Absolute equivalence		
	Interstate	Union × States	States × Union	Interstate	Union × States	States × Union
Mean	26.24%	24.66%	34.81%	8,003.2	10,650.9	10,653.5
Standard Deviation	7.33%	5.54%	8.72%	2,060.3	2,394.1	2,388.6
Coefficient of variation	27.91%	22.48%	25.05%	25.74%	22.48%	22.42%
Minimum	8.73%	11.08%	20.48%	2,865	4,786	4,866
Maximum	48.54%	33.74%	58.74%	14,264	14,576	14,554

Source: Elaborated by the authors based on the MCA dataset on state constitutions.

The first column provides a comparison between the 26 state constitutions, adding up to 650 observations; the second and the third compare (in two opposite directions) state constitutions and the federal Charter, 26 observations for each one. If Union × States shows a coincidence ratio of 24.66%, this means that, *on average*, 24.66% of phrases making up the federal text can be found in equivalent passages in the state constitutions. In contrast, state constitutions have, on average, 34.81% of their words in the federal Constitution. This difference occurs because equivalence is proportional to the size of the destination text. In other words, the intersection between the federal Charter and the state charters occupies a greater portion of the latter than of the former.

Another key point is that state constitutions often show less similarity when compared with each other than when compared with the federal Constitution, indicating that state charters mimic significantly the federal Charter (albeit not equally) without, however, emulating one another. This smaller horizontal than vertical similarity occurs both in relative and absolute terms (graph 3).

GRAPH 3 MEAN EQUIVALENCE BETWEEN FEDERATIVE ENTITIES

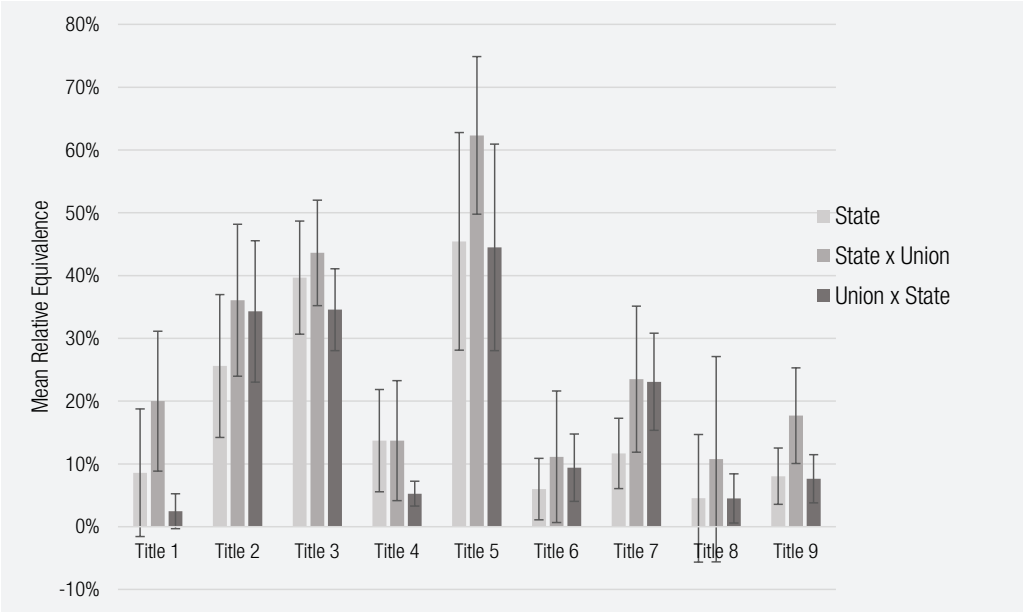


Source: Elaborated by the authors based on the MCA dataset on state constitutions.

Unlike *absolute equivalence*, *relative equivalence* differs sharply as regards comparison, due to the disparity in size between the texts being compared. For example, the Rio de Janeiro and the Rio Grande do Norte state constitutions are equal in terms of absolute number of equivalent words when compared with the federal Constitution (14,554 and 13,909 words, respectively); however, due to the significantly bigger length of the Rio de Janeiro charter, these words account for a smaller fraction of its text, 32.85%, as opposed to 58.74% of the Rio Grande do Norte charter.

In order to better identify and classify similarity across constitutional texts, we have also considered the themes. Building on the state constitution standardization, we were able to identify and outline how similarities are distributed into different subjects.

GRAPH 4 EQUIVALENCE BETWEEN FEDERATIVE ENTITIES BY TITLE



Source: Elaborated by the authors based on the MCA dataset on state constitutions.

When we compared the texts by Title, we identified that the equivalence is not evenly distributed. In graph 4, we can see that "Title 1 — Fundamental Rights and Guarantees" and "Title 4 — Public Security" are those exhibiting the lowest similarity between state constitutions and the federal Constitution. This is to be expected because Title 4 of the federal Constitution addresses State Defense, which, at the state level, is just Public Security. Similarly, the difference as concerns Title 1 is also expected, as this Title is focused on more basic issues regarding citizen rights, clearly not belonging to state competences. That is, in these themes, the different competences of the distinct spheres of government determined the contrast.

It is in "Title 5 — Taxation and budget" that the states exhibit, on average, the greatest similarity with the federal Constitution, followed by "Title 3 — The Organization of the State" and "Title 2 — The State". This proximity between the Titles pointed out indicates that the state constitutions emulate the federal Charter as regards these themes, notably Taxes and Budget, with the Union leaving no room for state self-organization. There is, however, some variation – as regards this theme the highest similarity between a state constitution and the federal Charter is that of the Constitution of Piauí, with an equivalence of 83.84% (2,641 words), while the lowest, Roraima's, exhibits a 37.29% equivalence, or 279 words.

Limiting the comparison to the state constitutions alone, the result is similar: Titles with the highest average equivalence are titles 5, 3, and 2 (Taxing and Budget, the Organization of the Powers, and of the State). However, the similarity is smaller than when the state constitution is compared with the federal Constitution and the equivalence pattern is not constant: some themes are addressed equally, while others show no similarity. That is, although the *state constitutions emulate the federal Constitution, they don't do that in the same way; state constitutional diversity rests on how differently the federal Charter is mimicked.*

There is considerable horizontal similarity between titles 2 and 3, thus revealing something recurrent in state constitutions:[12] organizing the state-level executive, legislative, and judiciary branches, as well as those *of their municipalities*, in a similar way. While the organization of state powers is in Title 3, the organization of the municipalities is in Title 2.

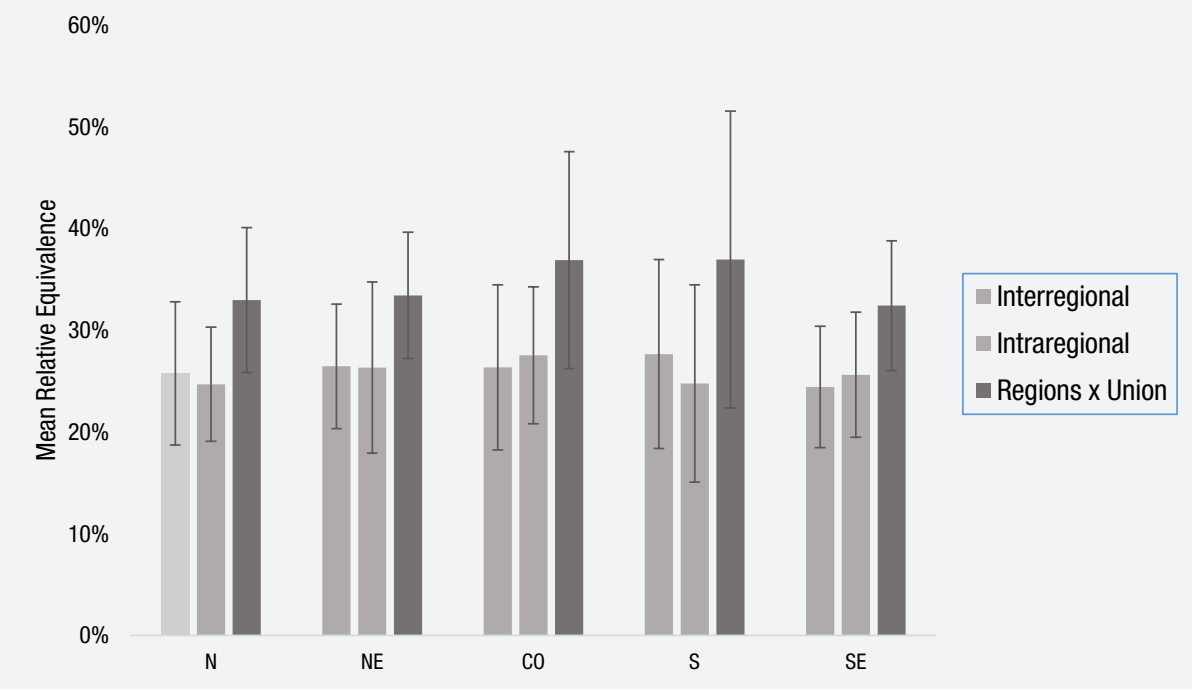
For every theme, the similarity level was always the highest between state constitutions and the federal constitution than between one another, with the only exception being Title 4 (Public Security), in which there is a perfect match, as becomes clear if we compare the first and second bars of each title in graph 4. However, if the diffusion of constitutional norms is stronger vertically — and top-down — than horizontally, the way vertical emulation occurs varies horizontally, as indicated in the graph by the smaller size of the third columns for all titles, if compared with the second columns. Reiterating, state constitutions copy the federal Constitution unequally.

Lastly, we tested the hypothesis that a regional factor may yield similarity between constitutions due to sociocultural proximity, a hypothesis in line with the scholarly literature on state constitutionalism (Kincaid, 1988; Williams and Tarr, 2004) and policy diffusion in federations (Daley and Garand, 2005;

[12] To illustrate this point, we have two sentences. The first one is taken from Title 3 of the Constitution of Pará and the second one from Title 2 of the Constitution of Mato Grosso.
"A *Governor* that takes another post shall lose his office [...] as provided by Article 38, I, IV, and V of the Federal Constitution."
"A *Mayor* that takes another post shall lose his office [...] as provided by Article 38, I, IV, and V of the Federal Constitution."

Berry and Berry, 1999), which converge in this regard, expecting similarities within relatively homogeneous regions. We conducted three comparisons: intraregional,[13] interregional, and regional-federal. We found that, in the Brazilian case, regional belongingness is irrelevant for the similarity between constitutional texts intraregionally, interregionally, or relatively to the federal Constitution. As can be seen in graph 5, all regions are more similar to the Union than to each other, or internally. By replicating the analysis separately by title, the result is identical. By suggestion of a reviewer, we have compared the possibly most important states with the others (the 5 richest and the 5 most populated). Though slightly less similar to the Union than the others, the difference was not so significant: absolute equivalence with the Union of 9,880 words among the most important states, as compared with 10,654 words for the whole set (relative equivalence of 29.7% and 34.8%). The higher relative than absolute difference indicates that these states have, on average, longer constitutions. This finding ratifies the other findings in this article, confirming that Brazil is a federation where norm diffusion occurs more vertically, and top-down, than horizontally, even in spite of shared regional characteristics by member states.

GRAPH 5 MEAN EQUIVALENCE BETWEEN REGIONS



Source: Elaborated by the authors based on the MCA dataset on state constitutions.

[13] Intraregional analysis is less accurate than interregional analysis given the reduced number of observations.

5. CONCLUSION

The Brazilian state constitutions resemble more the federal Constitution than each other, demonstrating that the constitutional diversity of Brazilian federalism stems more from differences between states than between them and the federal government. This indicates the downward vertical orientation of constitutional norm diffusion in Brazilian federalism, ratifying the normative centralism of our federation. In a more horizontal system, one would expect horizontal diffusion of state constitutional norms by imitation, learning, or competition (Shipan and Volden, 2008). Or, according to Tarr and Porter (1987:9), "Horizontal federalism refers to the process of interaction and emulation among the states whereby policies developed in one state affect the development of policies in other states". In a more horizontal system, subnational entities' equivalence of competences would lead to a greater convergence between states rather than with the Union.

Surely, the simultaneous drafting of state constitutions within a year of the promulgation of the federal Constitution, as determined by the federal Constitution and in keeping with its principles, prompted the common reference model to actually be the federal Charter, and not the charters of the other states, not only making horizontal emulation difficult, but also unlikely — the more so because diffusion by learning tends to occur over time (Shipan and Volden, 2008:851-852; Mitchell and Stewart, 2014). It is, however, possible that a subsequent state amending process may yield some horizontal emulation — a hypothesis to be tested in another phase of this inquiry. Another hypothesis to be tested (and on the opposite direction) is whether, by STF adjudication of state constitutions, vertical standardization of that which initially was, to some extent, horizontally diverse is achieved, as suggested by Canello (2016) when analyzing the role of the Attorney General of the Republic in controlling the constitutionality of state norms.

We should not, however, dissociate the drafting calendar of state constitutions from the country's federal constitutional model, itself quite centralized and verticalized, and a driver of coercive diffusion of constitutional and legal norms. Under this framework, a distinct drafting of the federal Charter is not to be expected that would not, besides temporally preceding state constitutions, also precede them legally and politically. Such model not only opposes American horizontal federalism — in that state constitutions historically preceded the federal drafting and, even after their redrafting, preserved their own characteristics. Even in the German case, of vertical federalism, there was more room for constitutional innovation by state governments. At least two of the German state constitutional waves took place after great disruptions: the first one, after World War II; the third, after the fall of the Berlin Wall. In both, state charters broke away with the past, whereas the Brazilian state constitutions represented the implementation at the regional level of that which had been centrally established. Lorenz and Reutter (2012:155) show that the German state charters stimulate innovation of national constitutional policy, introducing a bottom-up dynamic in federal constitutionalism — like constitutional innovation laboratories, enabling a diffusion in the opposite direction of that verified in Brazil. Although the Brazilian model is closer to the German than to the American model, it is much more centralized than the former, in considering not only the constitutional-making timing, but also the federative-constitutional arrangement, whereby state charters had to mandatorily absorb many of the Charter's provisions — characterizing a diffusion of norms by way of coercion, more effective in top-down vertical diffusion, as shown by Shipan and Volden (2008:853).

This model is not only reflected in the inhibiting of particular state initiatives in the legislative arena, by STF decisions, but also in the drafting of state constitutions on account of the little room

allowed to the states for their own constitutionalism, distinct from that nationally set forth. This is neither, as in the American case, state constitutionalism that supplements the Union's constitutional order, making up a whole constitutional body, nor, as in the German case, a space for innovation and reciprocal emulation. One of the few (and partial) exceptions to that is Rio Grande do Sul, with its autonomist tradition (Oliven, 1989), whose charter resembles the federal Charter even less than that of the Federal District – a peculiar entity for its unique place in the federation, a hybrid of state and municipality, and also the capital of the country.

The significant centralism of the Brazilian constitutional model precedes, both politically and legally, an analogous tendency in other spheres — unsurprisingly as they are regulated by constitutional norms, as noted by Arretche (2009), who identifies, as early as in the original text of the 1988 Constitution, the normative conditions that would dictate the centralization begun in the 1990s: centrally established social policies; fiscal and tax norms laid down by the Union establishing state and municipal obligations; restrictions (even if, for years, inefficient) on tax competition between states ("fiscal war"); and lack of subnational unit autonomous legislative competence on various matters.[14] That is why, in contrast with the position held by Cavalcante (2011), to whom mimicry and normative isomorphism best describe the cases of decentralization in Latin America, we consider that, in the Brazilian case, coercive isomorphism provides the best explanation for the process: the hierarchically superior entity (the Union) restrictively determined the content of the subnational entities' constitutions.

It is worth underscoring, however, that some room for state autonomy takes place at the subconstitutional level. This is not so much in terms of long-range legislative innovations, but mostly in terms of the drafting and implementation by the state of policies whose broad guidelines are established centrally (Arretche, 2009, 2012, 2013; Lotta, Gonçalves and Bitelman, 2014). This autonomy is made evident in the various outcomes yielded by state-implemented policies in fields such as healthcare and education, regardless of the effects of state development inequalities and wealth. That is, the option by state rulers for diverse alternatives in implementing public policies yields some diversity not only of actions, but also of results.

Any discussion of the characteristics of Brazilian federalism and of policy and institutional diffusion must consider this often overlooked aspect of the institutional order: normative emulation through constitutional coercion. Greater attention to this aspect will prompt analytical breakthroughs for research focusing not only on constitutionalism, federalism, and intergovernmental relations, but especially on *federal diffusion of norms and public policies*. It is worth viewing these two dimensions jointly, as the legal and constitutional norms diffused lay the foundations on which many state-developed public policies are erected. Thus, by determining the coercive diffusion of constitutional norms that were identical to its own among the states (rather than just norms consistent with its precepts), the 1988 Charter tied beforehand the design of member states to that of the Union, significantly limiting the space for regional and local autonomy, hence for effective self-government.

14 According to Arretche (2009:404), "back in 1988, the Union was authorized to legislate on *all* strategic policies, *even if these were to be implemented by the subnational governments*". Italics by the author herself.

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