

# Institutional innovation and participatory democracy: mapping on legislation regarding the implementation of Programs of Goals in Brazilian cities

## Murilo Gaspardo

Universidade Estadual Paulista “Júlio de Mesquita Filho” (Unesp) / Faculdade de Ciências Humanas e Sociais (FCHS), Departamento de Direito Público  
Franca — SP / Brazil

## Mauro Ferreira

Universidade Estadual Paulista “Júlio de Mesquita Filho” (Unesp) / Faculdade de Ciências Humanas e Sociais (FCHS), Programa de Pós-graduação em Planejamento e Análise de Políticas Públicas  
Franca — São Paulo / Brazil

The purpose of this article is to investigate the institutional innovation represented by the implementation of Programs of Goals in Brazilian cities through amendments in legislation, focusing on its contribution to the social control of public policies. The article presents a mapping on legislation based on the theory of participatory democracy. After a theoretical reflection about the limits of representative democracy and the search for institutional innovations in participatory democracy, the article presents a historical-legislative overview about the Goals’ Program and a comparative analysis of the normative texts that instituted it in Brazilian cities. As main results, in addition to a mapping that indicates the state of the art of the subject, we have the formulation of relevant hypotheses for the execution of legislative evaluation and development of proposals to improve the legal-institutional design of the object of investigation.

**Keywords:** social control; participatory democracy; institutional innovation; Goals’ Program.

## Inovação institucional e democracia participativa: mapeamento legislativo da Emenda do Programa de Metas

Este artigo investiga a inovação institucional da Emenda do Programa de Metas no que se refere à sua contribuição para o controle social das políticas públicas. Desenvolve um mapeamento legislativo tendo como referencial a teoria da democracia participativa. Após uma reflexão teórica sobre os limites da democracia representativa e a busca de inovações institucionais no campo da democracia participativa, o trabalho apresenta um panorama histórico-legislativo sobre o Programa de Metas e uma análise comparativa dos textos normativos que o instituíram. Como principais resultados, além de um mapeamento que indica o estado da arte da matéria, tem-se a formulação de hipóteses relevantes para realização de avaliação legislativa e desenvolvimento de propostas de aperfeiçoamento do desenho jurídico-institucional do objeto da investigação.

**Palavras-chave:** controle social; democracia participativa; inovação institucional; programa de metas.

## Innovación institucional y democracia participativa: mapeo legislativo de la Enmienda del Programa de Metas

Este trabajo investiga la innovación institucional de la Enmienda de lo Programa de Metas con respecto a su contribución al control social de las políticas públicas. Desarrolla un mapeo legislativo tomando como referencia la teoría de la democracia participativa. Después de una reflexión teórica sobre los límites de la democracia representativa y la búsqueda de innovaciones institucionales en el campo de la democracia participativa, la obra presenta un panorama histórico-legislativo de lo Programa de Metas y un análisis comparativo de los textos normativos que han instituido. Como resultados principales, además de una asignación que indica el estado de la arte de la materia, tiene la formulación de hipótesis pertinentes para la realización de la evaluación legislativa y el desarrollo de propuestas para mejorar el marco legal e institucional del objeto la investigación.

**Palabras clave:** control social; democracia participativa; innovación institucional; programa de metas.

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## 1. INTRODUCTION

Currently on the agenda of academic and political debates is the deficit on legitimacy and effectiveness of representative institutions, which manifests not only in semi peripheral states, like Brazil, but also in mature democracies in Europe and in the United States. Explanations for this can be found in endogenous subjects — such as *patrimonialism*, corruption, *clientelism* etc. (Benevides, 2009:729-730) — as well as external ones — notably, the impacts of globalization on the state's sovereignty and, thus, on its democratic institutions, with the institutions built for managing global governance being unable to adequately respond to this context (Held, 2007).

The limits of the predominant liberal-representative model for democracy are being exposed for a long time by the theory of participatory democracy, which emphasize the adoption of procedures and the construction of a political culture that allows a more intense manifestation by the popular sovereignty. Opposed to the liberal-representative model, participatory democracy does not possess a basic juridical-institutional framework for the accomplishment of its principles, like the mandate, the electoral systems and the political parties. Instead, there are different experiences in institutional innovation, such as the public policies' council and the participatory budget, which, usually, are not a result of academic formulations or political agents, but are created by the civil society.

In this sense, in 2008 the Amendment to the Organic Law of the Goals' Program was approved, by initiative of sectors of the civil society of São Paulo. It established the obligation for the mayors to present a program of goals based on the proposals that they defended during their electoral campaigns which, associated to a set of complementary institutes, aimed at qualifying the electoral debate, contributing to the planning practices in public administration, and strengthening the social control of public policies. The initiative had great repercussions, resulting in the approval of similar projects in several Brazilian and South American cities, and the presentation of Amendment Projects to the Federal Constitution, with the purpose of implementing the project in the three spheres of the Federation.

In the present study, we developed a legislative mapping<sup>1</sup> of the Goals' Program Amendment and investigated the contribution of this institutional innovation for the social control of public policies, especially regarding the complementary relation between representative and participatory democracy. Considering that it is a subject that lacks systematic juridical-institutional studies, the legislative mapping seems to be key to broaden this field of investigation for future comparative empirical research and case studies.

In addition to the theoretical review, we applied the document analysis technique to analyze the collected data. First collected all the amendments available at the "Our São Paulo Network" (OSPN) and similar movements. Next, we searched for the amendments that were mentioned but were not available at the OSPN in the websites of the City Halls and City Councils of São Paulo. Finally, we searched in Google using the keyword "Goals' Program Amendment" in order to verify if there was any town not included in the OSPN's website.

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<sup>1</sup> The legislative mapping is a research technique of theoretical nature which consists in the "survey of national normative acts in effect on the subject; legislation's history; survey of normative proposals currently being evaluated in Congress; institutional history of legal practices" (Hortal, Almeida and Chilvarquer, 2014:169).

To organize the collected data, we created a table in which each line of the first column was filled with the text of each of the normative dispositions of the São Paulo's Amendment. The lines of the other columns were filled with the similar/respective devices of the other Brazilian towns. The contents of all texts were compared, in order to identify similarities and differences between each other and between the whole chosen paradigm.<sup>2</sup>

As main results, besides the development of a map that indicates the subject's *state of the art*, we formulate relevant hypothesis for the accomplishment of the legislative evaluation and the development of proposals to improve the juridical-institutional design of the subject investigated

## 2. FROM THE REPRESENTATIVE DEMOCRACY'S LIMITS TO THE SEARCH FOR INSTITUTIONAL INNOVATIONS IN THE FIELD OF PARTICIPATORY DEMOCRACY

After World War II, it became hegemonic in the West the elitist liberal-representative democratic model, which was built from the critics to the so-called republican democratic tradition, whose pioneer was Max Weber (2006). Under the influence of Weber, Schumpeter (1984) deepened the understanding of democracy as a competitive method of leaders' selection (political elites), which opposes to the classic doctrine of participation in the political life in order to achieve the common good, mitigating it to the rules of the electoral game (Held, 1987:131-177).

However, contrary to what the authors of the democratic theory's hegemonic field suggest, its perspective is not only descriptive, but also normative: they consider the north-American and English systems as the ideal ones, try to show that the only alternative would be totalitarianism and, based on this criteria, they evaluate every system that exists or could exist. Besides that, the hegemonic theory built itself from the myth of a homogeneous "classic democratic theory", as well as a misinterpretation of authors such as Rousseau and Stuart Mill (Pateman, 1992:26-33).

In spite of the predominance of the liberal-representative model, it has been facing a severe crisis. Chevallier (2009:183-201, 223-224), for example, deals with the problem within a context of social transformations he named "post-modernism", having as a feature the "political bond's weakening", characterized by the crisis of representation and participation. The first, measured by the "erosion of the credit of trust of representatives", presents three fundamental causes: a) the inability of representatives to respond to citizen's expectations; b) their negative image due to corruption and other ethical deviations; and c) the implementation of procedures that manipulate public opinion. Differently, the second manifests through the decrease of engagement in elections and traditional institutions of mediation between the political and social spheres, such as labor unions and political parties. Moreover, such crisis has as substrate the progressive disappearance of collective values due to several factors, such as the "fragmentation of the national identity", the "civic crisis" and the "increase in corporatism". According to the author, this implies an "adaptation process" of the liberal democratic model, including the recognition of the importance of the deliberative and participative models.

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<sup>2</sup> We have also collected complementary documents along the websites of the House of Representatives and the Justice Court of São Paulo State.

In Brazil, the democratization process that has been institutionalized by the 1988's Federal Constitution and has been happening for three decades, was not able to erase a history characterized by practices of *clientelism* and *patrimonialism*, along with other forms of appropriation of the public space by the private interest, inequality and social exclusion — ultimately, with a very limited citizenship.

Analyzing this phenomena from the 1988's National Constitutional Convention, Nobre (2013) coined the concept of "*pemedebismo*", which designates a "political culture" marked by obstructions to any attempts of structural reforms and contrary to people's direct interference, because it could threaten historically hegemonic interests.

There are two lines of debate, both in the political and academic spheres, in the search for answers to this crisis of the Brazilian liberal-representative model. One focus on "political reform" (or partisan and electoral reform) within the milestones of representative democracy. The other focus on the development of institutional innovations that might complement the representative system in the field of "participatory democracy", aiming at deepening the perspectives opened by the 1988's Federal Constitution itself.

The idea of a participatory democracy originally manifested itself in the movements of the "New Left" in the 1960s, spreading to the working class due to the growing dissatisfaction with the social structure and dominant political practices (Macpherson, 1978:97).

The dissatisfaction is due to the hegemony of a type of "low-intensity" democracy, which faces the paradox of having expanded through the world at the same time of "a huge degeneration of the democratic practices" (Santos and Avritzer, 2002:42-49). It was seen both the limits to the election of ruling elites in order to legitimize the use of power and the expression of social diversity, as well as the limits of centralized bureaucracy to process multiple information and mediate complex conflicts that permeate the formulation and execution of public policies.

Thus, it was noticed that the formal acknowledgment of equal rights, main feature of the liberal perspective, although relevant, it is not sufficient to guarantee their exercise if there are not objective conditions to do so, compromising the effectiveness of political participation. The State, in turn, would be a reproducer of these inequalities, and the elections would be insufficient to generate democratic legitimacy and accountability of the political leaders. Thus, there is a demand for the democratization of the state and the society (including the factories). With that in mind, the theorists of participatory democracy support the combination of the representative system with organizations of direct democracy (Bonavides, 2009; Comparato, 2006:636, ss.; Silva, 2001:130-147), especially in the local political level and in decisions of the work sphere (Held, 1987:229-237).

Therefore, the participatory democracy will always be articulated with the representative one (Benevides, 2009:727, 1991). Also because, as Macpherson (1978:99-101) points out, "someone must phrase the matters" to be decided, and the administration's and society's complexity does not allow the reduction of the answers to "yes" or "no", notably in matters of economic or social policies.

The combination between these two democratic models may occur in two ways: through co-existence or through complementarity. There is co-existence when representative democracy and participatory democracy cohabit in different levels (the first one in national level and the second one in local level), without any form of integration between the decisive process in which act the elected

representatives and the jurisdictions open to popular participation. The complementarity, in turn, “implies a deeper articulation between representative democracy and participatory democracy”, which “assume the acknowledgment by the government that the participatory procedures, the public forms of government’s monitoring and the public deliberation process may replace part of the representation and deliberation process” (Santos and Avritzer, 2002:75-76).

This complementary relationship is present in the participatory budget, innovation on the field of political and economic democracy introduced for the first time in Porto Alegre, in 1989 (Campnell, Marquetti and Silva, 2009), which expanded through Latin America, Europe, Asia, Africa, North America and Oceania. Its main characteristic is the deliberation on the pattern of the application of scant financial resources that composes the public budget with the participation of non-elected actors. Other important features in its characterization are regularity (an occasional activity is not enough), the prediction of specific deliberative structures, and mechanisms of government accountability on the application of public resources according to citizens’ decision (Sintomer et al., 2012:2-4).

As well as the participatory budget, the “Goals’ Program” Amendment is an institutional innovation in the local sphere, within the field of participatory democracy, which resulted from social mobilizations and, from a local experience, expanded through Brazil and other countries. As showed in the last section, the comparison between these two experiences conveys important lessons.

From the theoretical references and experiments on participatory democracy, we can consider four categories to analyze the juridical-institutional structure of the “Goals’ Program” Amendment: (a) claims of participatory spaces expanded to the plurality of social actors in equal conditions, specially for those historically excluded (Santos e Avritzer, 2002); (b) deliberative character of participation: the inclusion of new actors to vote in alternatives that they did not developed is not enough, meaning that public debate, reasoning and learning should be encouraged (Habermas, 1997:137); (c) plurality of institutional designs, because electing representatives is not the only way to participate in political decisions. Regarding institutional architecture, participatory democracy may be of high- or low-intensity. It is low-intensity when is limited to the decision-making moment. It is high-intensity when, before the decision, there is the elaboration of an agenda and, after the decision, its monitoring<sup>3</sup> (Campnell, Marquetti and Silva, 2009:5-7); (d) educational role, since participation qualifies citizens to participate, to acknowledge collective matters and to increase one’s capacity to judge (Pateman, 1992:35-63).

The “Goals’ Program” is in a context of several participatory democracy experiences occurring since the 1988’s Federal Constitution promulgation, such as the participatory budget, the conferences,

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<sup>3</sup> In this sense, Pateman (1992:94-98) differentiate between three types of participation: (1) “pseudo-participation” (the actors can discuss problems and question proposals, but do not effectively join the decisions); (2) “partial participation” (the actors can influence the decision, but not make it, because the final decision power is held with the administrators); and (3) “full participation” (“each isolated member of a deliberative body has equal power to determine the final results of the decisions”).

the councils, the hearings and the public consultation, which contribute to the improvement of the social control of public policies.<sup>4</sup>

We highlight that these institutional innovations were not a result of academic elaboration, neither were ‘gifts’ from elected representatives. They are a result of the effort of social movements, such as the “Popular Movement for Health”, the “Sanitarian Movement” and the “Movement for Urban Reform” (Avritzer, 2016:119).

The social control of public policies has become one of the main flags of several social movements that originated in Brazil and in Latin America which “work to oblige the rulers to keep their campaign promises”, focusing on governmental accountability and the consideration of public interest (Fiabane, 2011:12, 39, 45-54). It is not only about supervising and evaluating Public Administration, but also about participating in the decisions and monitoring its implementation, stimulating the exercise of an active citizenship and disseminating information, in order to reduce the existing asymmetry regarding elected representatives, bureaucrats and the citizens.

Decreasing the asymmetry of information is one of the main contributions of the “Goals’ Program” for democracy and social control of public policies. However, as Arato (2002:99) ponders, “no institutional model can assure that the social actors actually organize themselves, participate in public discussion and get involved with politics”.

We end this session with the delimitation of the perception of public policy<sup>5</sup> adopted. We follow the definition of Bucci (2006:39), who defines it as

government action programs that results from a process or a set of processes legally regulated — electoral process, planning process, government process, administrative process, judicial process — aiming at coordinating the means available to the State and private activities, for the execution of socially relevant and politically determined goals. Ideally, public policy must focus on executing the defined goals and expressing the selection of priorities, the reservation of the necessary means to achieve it, and the period of time when the goals’ achievement is expected.

The adoption of the idea of processuality to analyze public policy comes from the acknowledgment of the society as a field of conflicts and the State’s role in the mediation of such conflicts. Since the State’s decision “imply choices and, therefore, the existence of both considered and neglected interests”, the process allows the institutionalization of conflicts (Bucci, 2013:117). It is necessary, therefore, to analyze if the “Goals’ Program” is an institutional innovation that contributes to the democratization of the elaboration, execution and monitoring processes of public policies.

In summary, having as the normative assumption the participatory democracy model, and the hypothesis of favoring the complementarity relationship between representative and participatory

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<sup>4</sup> On the other side, it is important to note that several studies also demonstrated that the tools of participatory democracy presents flaws and limits, such as the capture by the government or the market, corruption, analysis deficiencies and coordination flaws (Perez, 2006:172-176).

<sup>5</sup> “The adjective ‘public’, side by side with the noun ‘policy’, must indicate both the receiver as much as the authors of the policy”, in a way that its public character has in the attribute of the participation of all interested in its formulation process a requirement of legitimacy and efficiency of the government action (Bucci, 2002:269).

institutions in the social control of public policies, the content analysis of the “Goals’ Program” Amendment must consider four variables: (a) do they create conditions for the inclusion of historically excluded actors in the decision-making processes?; (b) do they contribute so that the political participation takes over a deliberative character?; (c) do they present an innovative juridical-institutional design which favors a high-intensity participation?; (d) do they consider the pedagogic aspect of political participation?

### 3. HISTORIC-LEGISLATIVE LANDSCAPE OF THE “GOALS’ PROGRAM” AMENDMENT

#### 3.1 THE CIVIL SOCIETY’S INITIATIVE, THE APPROVAL OF THE CITY CONSTITUTION’S AMENDMENT AND THE FIRST TWO SÃO PAULO’S “GOALS’ PROGRAM”

São Paulo’s pioneer approval of the “Goals’ Program” City Constitution Amendment, in 2008, was a result of an initiative led by the Our São Paulo Movement (OSPM), which later was named Our São Paulo Network (OSPN).<sup>6</sup>

As narrates Pereira (2015:2), in the end of 2006 several civil society’s leaderships, invited by Oded Grajew (general coordinator of OSPN’s Executive-Secretary), gathered to meditate about the challenges of politics and the “existing potentialities in Brazilian society to unleash a process capable of constituting another political culture”. One of the diagnosis highlighted was the supremacy of the electoral marketing and the funding of campaigns over government programs, which revealed themselves as fragile, inconsistent and deprived of clear goals, indicators, as well as budget predictions adequate to its execution. Besides making the government programs not so useful to differentiate candidacies, it creates barriers for accountability, objective evaluations and social control of the elected management.

It was in this context that a set of organizations, businessmen and civil society leaders decided, in May 15<sup>th</sup> 2007, to constitute the OSPM, with a non-partisan and inter-religious nature, with the mission of mobilizing several social segments in order to build a political, social and economic force. OSPM was created with the purpose of, together with public and private institutions, elaborate and commit to an agenda and a set of goals, articulate actions and proposals directed to a just and sustainable society (Pereira, 2015:3).

The first step taken was to create the “Citizens’ Observatory”, which gathers “official technical indicators for quality of life” and “population’s perception indicators, such as the City’s Well-Being Indicators of Reference (CWBIR), surveyed in partnership with Ibope in two annual researches”. The adoption of these tools, whose data are widely publicized, allows for an objective analysis of public policies’ results, as well as the evaluation of compatibility between the budget execution and the priorities appointed by the population, by the planning tools and by the official indicators. Besides that, the OSPM started to conduct educational and mobilization campaigns and to publish indicators, and

<sup>6</sup> See OSPN’s website. Available at: <[www.nossasaopaulo.org.br/programa-de-metas](http://www.nossasaopaulo.org.br/programa-de-metas)>. Accessed on: Jan. 6th 2015. For a description of OSPN’s appearance and development, see Fiabane (2011:87 and fol.).

established work groups for monitoring public policies, budget execution and City Council's action. In this process, OSPM also came to know the experience of the program “*Bogotá Como Vamos*”,<sup>7</sup> that “inspired the development of the methodology that articulates technical indicators with those of perception” (Pereira, 2015:3).

An OSPM's key action was getting the approval by São Paulo's City Council (with 54 favorable votes out of 55, being the 55<sup>o</sup> being absent), in February 19th 2008, of the “Goals' Program” São Paulo's City Constitution Amendment (CCA nº 30/2008), which instituted the “responsibility to elaborate and implement the ‘Goals' Program’ by the Executive Power”. It was intended to achieve, among other goals, the following: (1) promote the planning practice in Public Administration, with the establishment of goals and performance indicators; (2) value the programs presented during the electoral campaigns, such as effective management commitments and qualification of the electoral debate; (3) establish an “effective tool of social control”.<sup>8</sup>

Former Mayor Gilberto Kassab presented the first “Goals' Program”, for the 2009-12 Management, denominated “Agenda 2012”, with 223 goals.<sup>9</sup> The Mayor Fernando Haddad (Management 2013-16) presented his “Goals' Program” in March 2013 with 123 goals.<sup>10</sup> After its presentation, 35 public hearings were held, one general in the City Hall, three thematic and the remaining in each of the Regional Administrations.

In a study conducted by Fiabane (2011:124, 145), some of the positive results observed with the adoption of the Program Amendment were: “appropriation of the language and means of the public machine by civil society's organizations”; the articulation of quite different actors as community and religious leaders, left-wing activists and businessmen around goals and from a common language; and the opening of “new channels and new languages in the promotion of governmental accountability”.

### 3.2 THE AMENDMENT OF THE “GOALS' PROGRAM” IN OTHER BRAZILIAN AND SOUTH AMERICAN MUNICIPALITIES

According to a survey conducted by the OSPN, after São Paulo, another 46 Brazilian municipalities approved in their City Constitution the “Goals' Program” Amendment. As can be seen in figure 1, 20 municipalities are located in the state of São Paulo, and the remaining 27 are distributed by different states of the federation.<sup>11</sup>

<sup>7</sup> For a report of Bogotá's experience, see Fiabane (2011:88-90).

<sup>8</sup> Available at: <<http://camaramunicipalsp.qaplweb.com.br/cgi-bin/wxis.bin/iah/scripts/?IsisScript=iah.xis&lang=pt&format=detalhado.pft&base=proje&form=A&nextAction=search&indexSearch=^nTw^ITodos%20os%20campos&exprSearch=P=PLO82007>>. Accessed on: Jan. 6th 2015. See Fiabane (2011:117).

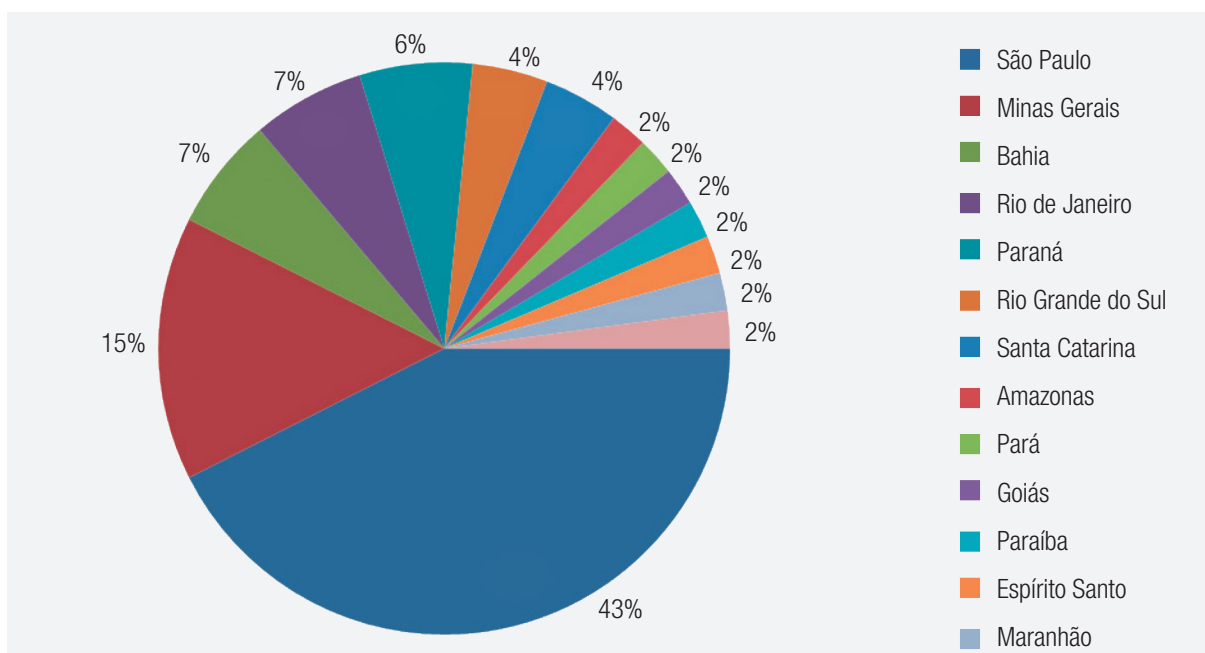
<sup>9</sup> Available at: <[www.nossasaopaulo.org.br/portal/arquivos/programasdemetas/lei-plano-de-metas-sao-paulo.pdf](http://www.nossasaopaulo.org.br/portal/arquivos/programasdemetas/lei-plano-de-metas-sao-paulo.pdf)>. Accessed on: Jan. 8th 2015.

<sup>10</sup> Available at: <[www.nossasaopaulo.org.br/portal/arquivos/programasdemetas/plano-de-metas-sao-paulo-2013-2016.pdf](http://www.nossasaopaulo.org.br/portal/arquivos/programasdemetas/plano-de-metas-sao-paulo-2013-2016.pdf)>. Accessed on: Jan. 8th 2015.

<sup>11</sup> Data available in OSPN's website: <[www.nossasaopaulo.org.br/programa-de-metas/cidades](http://www.nossasaopaulo.org.br/programa-de-metas/cidades)>. Accessed on: Aug. 8th 2016.



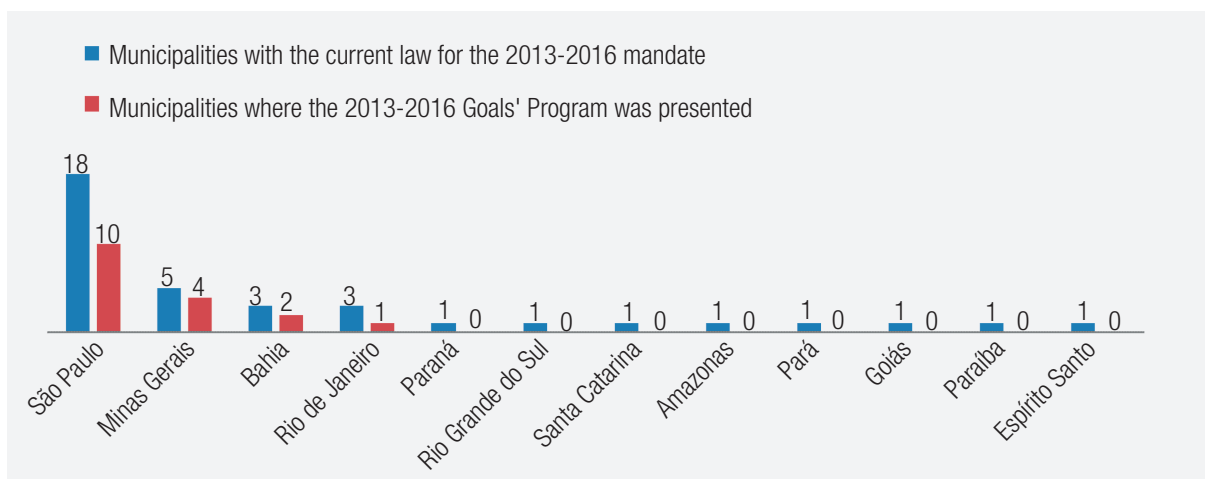
**GRAPHIC 1 PERCENTAGE DISTRIBUTION OF AMENDMENTS BY BRAZILIAN STATE**



Source: Elaborated by the authors.

Among these towns, 17 presented the “Goals’ Program” for the 2013-16 management, as shown in Graphic 2.<sup>12</sup>

**GRAPHIC 2 PRESENTATION OF THE 2013-16 “GOALS’ PROGRAM” BY STATE**



Source: Elaborated by the authors

\* It hasn't been considered for this analysis the Amendments approved after December 31st 2012 in order to avoid distortions in the conclusions, because, generally, they predict their application for the next legislative periods.

<sup>12</sup> See Our São Paulo Network. Target Program for the 2013–2016 Administration. Available at: <[www.nossasaopaulo.org.br/portal/arquivos/programasdemetas/plano-de-metas-sao-paulo-2013-2016.pdf](http://www.nossasaopaulo.org.br/portal/arquivos/programasdemetas/plano-de-metas-sao-paulo-2013-2016.pdf)>. Accessed on: Aug. 10th 2016.

Concomitant to this process of approval of several amendments to the Cities Constitutions, and based on the São Paulo's experience, similar movements to the OSPN appeared in several municipalities, such as Piracicaba (SP), without formal approval of the pertinent legislation.

In addition to Brazil, six other South American cities approved the Amendment of the "Goals' Program": Córdoba, Mendoza, Maipú and San Martín de los Andes (Argentina), Asunción (Paraguay) and Trujillo (Peru). There are similar movements to the OSPN in Córdoba (*Red Ciudadana Nuestra Córdoba*),<sup>13</sup> Mendonza (*Nuestra Mendonza*)<sup>14</sup> e San Martín de los Andes (*Red Ciudadana San Martín de los Andes Cómo Vamos*).<sup>15</sup> Finally, it was based on these experiences that the Red Latinoamericana por Ciudades y Territorios Justos, Democráticos y Sustentables<sup>16</sup> (RLACTJDS) was created, formed by initiatives and movements from more than 60 cities in 10 Latin American countries, with the purpose of promoting "*prácticas descentralizadas y compartiendo conocimientos para la construcción de mejores espacios urbanos en Latinoamérica*". Among its actions are the monitoring of indicators of quality of life and the promotion of citizen participation, which includes exchange of experiences, debates, and actions related to the "Goals' Program".

As the emergence of participatory democracy experiments occurs in the context of the dispute between the neoliberal (hegemonic) globalization process and insurgent movements that structure the "alternative globalization" (or "counter-hegemonic"), the experiences previously reported seem very relevant. These experiences promote the articulation between the local and the global (after all, the task of resisting oppression takes place much more in the local daily practice than in the great events with international repercussions), which strengthens local movements when integrate them in Transnational networks, enabling a "reciprocal and continuous learning" (Santos, 2002a:13, 22-23, 73-74).

### **3.3 THE FEDERAL CONSTITUTION PROJECT OF AMENDMENT THAT ESTABLISHES THE OBLIGATION TO PREPARE THE "GOALS' PROGRAM" FOR MAYORS, GOVERNORS AND THE PRESIDENT OF THE REPUBLIC**

The repercussion of the approval and application of the "Goals' Program" Cities Constitution Amendments resulted in a Constitutional Amendment Proposal (CAP nº 10/2011), which aimed at amending "Articles 28, 29 and 84 of the Brazilian Federal Constitution to institute the obligation of elaboration and fulfillment of the "Goals' Program" by the city, state and federal executive power, based on the proposals of the election campaign".<sup>17</sup> The project, called "CAP of Electoral Responsibility" is justified by the fact that, contrary to current practice, programs presented during election campaigns should be able to effectively guide the management of the elect. In addition, it would be an efficient democratic management tool, which will help the transparency of the current government, providing an opportunity for voters to know the goals and indicators of the various areas of public administration.

A similar proposal (CAP nº 10/2011)<sup>18</sup> was presented afterwards and added to the first. On October 26th, 2011, the House of the Representatives' Commission for Constitution, Justice and Citizenship

<sup>13</sup> Available at: <[www.nuestracordoba.org.ar/](http://www.nuestracordoba.org.ar/)>. Accessed on: Jan. 7<sup>th</sup> 2015.

<sup>14</sup> Available at: <[www.nuestramendoza.org.ar/](http://www.nuestramendoza.org.ar/)>. Accessed on: Jan. 7<sup>th</sup> 2015.

<sup>15</sup> Available at: <[www.sanmartincomovamos.com.ar/](http://www.sanmartincomovamos.com.ar/)>. Accessed on: Jan. 7<sup>th</sup> 2015.

<sup>16</sup> Available at: <<http://redciudades.net/>>. Accessed on: Aug. 8<sup>th</sup> 2016.

<sup>17</sup> Available at: <[www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=497549](http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=497549)>. Accessed on: Aug. 10<sup>th</sup> 2016.

<sup>18</sup> Available at: <[www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=512217](http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=512217)>. Accessed on: Aug. 10<sup>th</sup> 2016.

approved the opinion of the rapporteur, who was in favor of the constitutionality of both proposals. On December 13th, 2011, by special act of the Presidency, a Special Committee was created to analyze them, which also approved the opinion of the rapporteur in favor of the two amendments, with Substitute, on September 4th, 2013. Until August 10th, 2016, the proposal was awaiting consideration by the Plenary of the House of Representatives.

### **3.4 THE DIRECT ACTIONS OF UNCONSTITUTIONALITY PROPOSED AGAINST THE AMENDMENTS TO THE ORGANIC LAWS THAT INSTITUTED THE “GOALS’ PROGRAM”**

Four direct actions of unconstitutionality against the “Goals’ Program”<sup>19</sup> were proposed, all in the São Paulo’s Justice Court. The actions were judged by its Special Chamber, the first being on June 5th, 2009 and the last on March 5th, 2013,<sup>20</sup> All actions had the mayor as author, General Attorney’s manifestations for its favorable judgment, and unanimous favorable judgment.

In short, the arguments used to support the decisions that judged the Amendments to the “Goals’ Program” as unconstitutional were the following:<sup>21</sup> a) violation of the principle of separation of Powers, harming provisions pertinent to the matter of the State Constitution,<sup>22</sup> because “it imposes, unduly, an internal control over the administrative functions of the Executive”, so that the City Council interferes “in an activity that falls within the discretionary sphere of the administrator”, which is “subject to criteria of opportunity and convenience”; “Establish relationship of hierarchy and subordination” with the Executive Branch; “It is the exclusive responsibility of the Chief Executive to initiate laws dealing with matters relating to administrative management that involve planning and execution of government acts”; b) creation of public expenditure without indication of available resources;<sup>23</sup> c) creation of ineligibility,<sup>24</sup> which is a matter whose discipline is exclusive to the Federal Constitution and Federal Complementary Act.<sup>25</sup>

## **4. COMPARATIVE ANALYSIS OF THE TEXTS OF THE CITIES CONSTITUTIONS AMENDMENTS THAT INSTITUTED THE “GOALS’ PROGRAM”**

The São Paulo City Constitution “Goals’ Program” Amendment initially determines (Art. 69-A, *caput*), that the mayor, elected or re-elected, should present, up to 90 days after being invested, a ‘Goals’ Program’ of his management”. The same rule articulates that the program must contain the priorities over the “strategic actions, the indicators and the quantitative goals for each of the Public Adminis-

<sup>19</sup> In most cases, they adopted the form of City Constitution Amendments, but in some, as in Taubaté, the Ordinary Law.

<sup>20</sup> The actions were presented against the Cities Constitutions Amendments of the following cities: Ilha Bela (SP) (DAU nº 0226883-88.2009.8.26.0000); Mauá (SP) (DAU nº 0268677-21.2011.8.26.0000); Taubaté (SP) (DAU nº 0230668-53.2012.8.26.0000); Tietê (SP) (DAU nº 0111940-19.2013.8.26.0000).

<sup>21</sup> See, for example: São Paulo’s Justice Court. Direct Action of Unconstitutionality nº 0230668-53.2012.8.26.0000; São Paulo’s Justice Court. Direct Action of Unconstitutionality nº 0111940-19.2013.8.26.0000.

<sup>22</sup> São Paulo’s State Constitution, arts. 5º e 47.

<sup>23</sup> Which, according to the Sentences, violates art. 25 of São Paulo’s Constitution.

<sup>24</sup> Argument applied only to the norm that predicted the ineligibility as consequence of the unjustified non-execution of the “Target Program”; in this case, the one from Taubaté.

<sup>25</sup> Complementary Act 64/1990.

tration sectors, regional administrations and the town's districts". These priorities must observe, at least, the routes presented in the mayor's electoral campaign "and the goals, routes, strategic actions and other rules in the Strategic Directive Plan's law". Here it is, thus, the core of the Amendment: the bonding of the mayor to a management based on goals and indicators elaborated from his electoral program and the Strategic Directive Plan.

The paragraphs which compose Art. 69-A of São Paulo's City Constitution (CC/SP) establish a set of principles guided by the goal to favor public management social control. The first is publicity: §1 determines that the "Goals' Program' will be widely publicized, through electronic means, through printed media, radio and television media, and published in the City's Official Diary" in the next day to the stipulated one for its presentation. The knowledge of the government's objective goals by the population is the first requirement for the exercise of social control.

The second principle is the participatory democracy — the knowledge about the "Goals' Program" is fundamental, but insufficient, because a passive posture from the population is not enough; they must have the possibility to debate it, criticize it and offer suggestions. Therefore, §2 states that "the Executive Power will promote, in thirty days after the ending of the deadline referred by this article, the public debate on the 'Goals' Program' through general public hearings, thematic and regional, including the Regional Administrations".

The third principle is the rendering of accounts, which allows the verification of the achievement of goals and the critical evaluation of the management's performance by the population and by the City Council. This principle reveals itself in the obligatoriness for the Mayor to semi-annually publicize "the performance indicators related to the execution of several 'Goals' Program' items" (§3) and, in the end of each year, the "Goals' Program' written report on its execution", through all the means predicted for the Program's disclosure (§6).

Since the city's reality and even the public administration are dynamic, it is predicted the possibility for the mayor to make "programmatic changes in the 'Goals' Program'", which must respect the Strategic Directive Plan's Law, as well as be justified by hand and widely publicized (Art. 69-A, §4).

Besides that, §5 from Art. 69-A of the CC/SP presents a set of criteria that must be respected in the elaboration and fixation of performance indicators. Although too general, a determination of its content is added to the formal demanding of the "Goals' Program" presentation.<sup>26</sup>

Finally, §9 and §10 added to art. 137 of the CC/SP determine that the "Goals' Program" and the Strategic Directive Plan's priorities and strategic actions must be incorporated, respectively, to the budget acts and to the bill that aim at the institution of the pluriannual budget plan act.<sup>27</sup>

From these seven structural elements of São Paulo's "Goals' Program" Amendment, it is possible to make a comparative analysis on the set of similar norms approved in other towns. Among the 47 towns listed in OSPN's website, it was not possible to find the normative texts in four of them. Analyzing the normative texts of the remaining 43, it is evidenced that:

<sup>26</sup> Accordingly to what was established in the referred dispositive, the "Target Program" must contemplate, for example, the promotion of a ambientally, socially and economically sustainable development, and social inclusion, with reduction of social and regional inequalities.

<sup>27</sup> The Pluriannual Plan is a budget act approved on the first year of each legislative period, which establishes the goals and the investment priorities for the four following years.

- a) all have the determination that the mayor, elected or re-elected, presents a program with the strategic actions, indicators and goals of his management, in deadlines which vary from a minimum of 90 (31 towns) and a maximum of 180 days (with Limeira's exception, which predicts the presentation along with the Pluriannual Budget Plan);
- b) only two towns do not predict the duty to assure the wider publicity of the "Goals' Program" and the means that should be used to do so;
- c) only three Amendments do not predict the realization of public hearings, the remaining ones (93%) assure the "Goals' Program" debate through public hearings that must occur up to 30 days after the end of the deadline for its presentation, and six also contemplate the realization of debates in the quarters and seven in the districts;
- d) 95,3% (41 of the 43 analyzed) predict the duty of the rendering of accounts on the fulfillment of the goals through the official media and press, and 74,4% also determined the disclosure through electronic means. However, only five Amendments fixate a deadline for disclosure in the latter. Besides that, regarding the presentation of the periodic reports, it has been verified that in 30 towns (69,8%) it is predicted for them to occur semi-annually, in six (13,9%) annually and in one every 120 days;
- e) the possibility of justified alterations and duly publicized in the presented "Program" is not included in only three towns, being predicted in the other 40 which data was collected; besides that, in one town there is also the prediction of alterations through an annual review;
- f) 40 Amendments present a set of material criteria, which must guide the elaboration and fixation of the performance indicators, and only three do not predict it;
- g) 32 Amendments (74,4%) determine the incorporation of the priorities and strategic actions predicted in the "Goals' Program" in the budget acts and in the pluriannual budget plan act, while 11 (25,6%) do not.

It is observed that, with little fluctuation, the normative texts are very similar, following São Paulo's model. The Substitutive to the Federal Constitution's Amendment Projects, which waits for voting in the House of the Representatives, also presents the same elements, with small adjustments deriving from its application to the three federation spheres.

This verification, added to the information that the "Goals' Program" presents different degrees of success in the achievement of its goals, could lead to the conclusion that the variable to be considered in a legislative evaluation should be exclusively the articulation and mobilization of the society around the proposal, that is, factors external to the Law. Indeed, as we have already highlighted, no institutional model, by itself, is capable of assuring that the society organizes itself and participates in the political processes. A hypothesis to be investigated is if the lack of the project's adaptation to the peculiarities of each location could explain, at least partially, the non-fulfillment of the intended goals.

Considering the variables which we have listed as fundamental to the evaluation of a participatory democracy institute, and confronting them with the normative text of the "Goals' Program" Amendment, it should be noted that, initially, it potentially favors the complementarity relationship between representative and participatory democracy. This is because the direct participation tools intertwine both with the elections (by associating the "Goals' Program" with the presented program during the electoral campaign and creating a new accountability tool — the evaluation of the targets' fulfillment), and with the processes of public policies' formation, usually conducted exclusively by

the elected representatives and the bureaucracy. This relation of complementarity tends to expand with the possibility of the Constitutional Amendment approval — which establishes the “Goals’ Program” obligatoriness in all levels of the Federation — because, with that, the institute will no longer be restricted to the local sphere.

The prediction of holding public hearings to discuss the “Goals’ Program” also opens the possibility for the inclusion of historically excluded actors on the political-decision-making process, but it will depend on the way in which they will be effectively conducted. This possibility to discuss goals and the increase of citizen’s access to procedures and information that support the decisions on the public policies contribute for the political participation to assume a deliberative character, valuing argumentation and not only restricted to the act of deciding, and the reduction of the asymmetry of information regarding the elected representatives, bureaucracy and the citizens.

The access to technical information expressed in a more concrete and comprehensive way for the population also has a relevant pedagogic meaning. Such variable is essential to be considered in the institutional experiences when one has the participatory model as reference.

Conversely, different from what occurs in the Participatory Budget, for example, the “Goals’ Program” Amendment do not predict any kind of replacement of decision making by the elected representatives (especially the head of the Executive Power) by the citizen’s direct actions. In addition, citizens act exclusively in a consultative way (when they participate in public hearings to discuss the “Goals’ Program”) and in the monitoring of goals’ achievement, which could characterize it as a low-intensity participatory experience, or even what Pateman (1992) defines as “pseudoparticipation”. Thus, a certain amount of boldness and institutional creativity is necessary in this scope so that the institute can assume a high intensity participatory character, effectively contributing to the improvement of the social control of public policies.

Another important element to be explored is the absence of juridical consequences for the non achievement of the goals established by the Mayor him/herself, which limits the efficacy of the “Goals’ Program” Amendment. However, a different alternative could lead to an exacerbation of the already intense process of “judicialization of politics” with the transfer of control over the exercise of executive mandates from the political to the judicial. This would hardly represent a breakthrough in terms of improving democracy. Thus, there are indications that the prospects for broadening the effectiveness of the Goal Program Amendment should be pursued in the field of social control.

## 5. CONCLUSION

There is a social demand for the improvement of democracy as advocated by the participatory model. However, this requires a great capacity for institutional innovation, which, especially on the initiative of civil society movements, has been occurring with experiences such as the Participatory Budget and the Amendment of the “Goals’ Program”, object of this study.

The information obtained during this research initially indicates the success of social actors, who strived for the approval of the Amendments of the “Goals’ Program”, such as the dissemination of the project by several municipalities, the process of Proposed Constitutional Amendment to nationalize it, and the presentation of two “Goals’ Program” in São Paulo with the monitoring of the OSPN. Yet, there are also reasons to question the success of the project, such as: (a) lack of presentation of the “Goals’ Program” in many municipalities in which the amendment was approved, without any legal,

social or political consequence; (b) presentation of general goals and lack of public control in other municipalities; (c) proceeding judgment of all the four direct actions of unconstitutionality filed against the Amendment by the São Paulo State's Court of Justice.

The legislative mapping developed on the "Goals' Program" Amendment indicates that it is a legal-institutional innovation that makes an important contribution to the improvement of democracy, based on the logic of the participatory model and its complementarity with the representative. On the other hand, as highlighted especially in the last section, it presents limitations and demands improvement of its legal-institutional design.

Nevertheless, more precise conclusions require an empirical research of legislative evaluation, that must be developed in four related and successive steps: a) verification of formal and b) material compliance of the Amendments; c) explanations about their compliance or noncompliance (to different degrees) and possible unexpected effects, by comparing different municipalities; d) prescription of possible proposals for legislative changes that may contribute to the expansion of the success of the Goals' Program Amendment, especially for the deepening of democracy in its participatory perspective.

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### **Murilo Gaspardo**

Holds a doctorate in state law from the Faculty of Law of the University of São Paulo (USP). He is an assistant professor at the Faculty of Humanities and Social Sciences (FCHS) at the São Paulo State University “Júlio de Mesquita Filho” (Unesp) — Campus Franca, São Paulo. E-mail: murilogaspardo@franca.unesp.br.

### **Mauro Ferreira**

Holds a doctorate in architecture and urbanism from the São Carlos School of Engineering of the University of São Paulo (USP). He is a volunteer professor of the Post-Degree Program (Professional Masters) in Planning and Analysis of Public Policies at the Faculty of Humanities and Social Sciences (FCHS) at the São Paulo State University “Júlio de Mesquita Filho” (Unesp) — Campus Franca, São Paulo. E-mail: mauroferreira52@yahoo.com.br.

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