

Acknowledging Imperfection: The Reforms of the 1988 Brazilian Constitution.

Souza Celina Maria.

Cita:

Souza Celina Maria (2010). *Acknowledging Imperfection: The Reforms of the 1988 Brazilian Constitution*. V Congreso Latinoamericano de Ciencia Política. Asociación Latinoamericana de Ciencia Política, Buenos Aires.

Dirección estable: <https://www.aacademica.org/000-036/539>

Acknowledging Imperfection: The Reforms of the 1988 Brazilian Constitution

Preliminary Version

Celina Souza
Research Fellow at the Centre for Human Resources (CRH), Federal
University of Bahia, Brazil
celina@ufba.br

Prepared for delivery at the V Congreso Latinoamericano de Ciencia Política
July 28 – 30, 2010
Buenos Aires, Argentina

Acknowledging Imperfection: The Reforms of the 1988 Brazilian Constitution

Celina Souza

Researcher at the Centre for Human Resources, Federal University of Bahia, Brazil

Abstract

Why do institutions change and why, how and in which subjects did change occur in the 1988 Constitution? Explain institutional change is acknowledged as a complex theoretical and empirical task. Furthermore, constitutions are long-lasting institutions (rules). The Brazilian Constitution of 1988 and its 62 amendments in 20 years provide the opportunity to analyze why and in which directions changes have occurred. The article presents two hypotheses. The first – institutional – is that the rules governing constitutional amendments reflect the uncertainties of that “critical juncture” about issues such as economic model, fiscal policies and social policies. The second is related to the causes of change, meaning that the constitutionalization of several issues was followed by changes in the political and economic contexts, allowing for the re-design of several constitutional mandates. The article concludes that the Brazilian constitution makers “untied the hands” of future legislators and of Presidents by facilitating changes in issues which could not been decided at that “critical juncture”.

Resumo

Por que mudam as instituições e por que, como e em que matérias ocorreram mudanças na Constituição de 1988? Explicar mudanças institucionais tem sido reconhecido como uma das tarefas empírica e teórica mais complexas. Ademais, constituições são instituições (regras) desenhadas para serem duradouras. A Constituição brasileira de 1988 e suas 62 emendas em 20 anos oferecem ao pesquisador a oportunidade de analisar por que e em que direções ocorreram mudanças. O trabalho testa duas hipóteses. A primeira - institucional - assume que as regras de “emendamento” da Constituição de 1988 refletem as incertezas dos constituintes naquele “momento crítico” sobre temas como modelo econômico, políticas fiscais e políticas sociais. A segunda hipótese remete à causalidade das mudanças, ou seja, a constitucionalização de inúmeras matérias foi seguida de mudanças no contexto macroeconômico e político, permitindo o redesenho de vários mandamentos constitucionais. O trabalho conclui que, ao desenharem uma constituição que refletia a agenda política do país na fase da redemocratização, os constituintes brasileiros “desataram as mãos” dos futuros parlamentares e do Executivo, facilitando as regras sobre mudanças constitucionais e permitindo que alterações e adaptações fossem feitas em questões que não foram passíveis de negociação naquele “momento crítico”.

Introduction

Why do institutions change and why, how and in which subjects did change occur in the Brazilian 1988 Constitution? Explaining institutional change is acknowledged as one of the most complexes empirical and theoretical tasks. Furthermore, constitutions are institutions (rules) drawn to be durable, stable and less suitable to constant revisions. The Brazilian democratic constitution of 1988 and its 62 amendments in 20 years provides a rare opportunity for analysing why and in which directions so many changes have been approved since its enactment.

This article addresses the questions above by combining the contributions of the literature on institutional change with those of a theory of constitutional amendment. Empirically, political science analyses of Brazil's constitutional reforms are still scarce.¹ Furthermore, political science scholarship in Brazil has paid little attention to the drawing of the Brazilian 1988 Constitution.² Nevertheless, this scholarly gap is now been filled because of the celebration of the Constitution's 20 years, hence attracting the attention of researchers from different disciplinary angles.³

Although this article does not compare the revisions of the 1988 Constitution with those of other countries, even if some references are made, the analysis of Brazil's constitutional reforms does not imply a case for its peculiarity. Nevertheless, these reforms pose a paradox. A constitutional assembly was called into being to design new constitutional rules guiding the reinstate of democracy. Constitutional rules affecting the renewed democratic system proven to have been successful and relatively stable and by several accounts democracy has not only be restored but it has been consolidated in a short period of time. Why, then, such a young and successful document has been amended so many times?

The article focuses on two sets of drives of change: one institutional and one contextual. Institutionally, the rules of the 1988 Constitution reflected the uncertainties of that critical juncture about topics such as the macroeconomic model, fiscal policies and social policies. These uncertainties had two major consequences: (a) the requirements for constitutional amendments are relatively easy to fulfil and (b) constitution makers increased the exclusive capacity of the Union to legislate, thus delegating future legislators and presidents decisions on policy preferences as well on whether or not and when to put into force social rights introduced by the constitution. The contextual drive is that the constitutionalisation of several issues (tax system, earmarking of governments' revenue, social rights and property rights) was followed by changes in the macroeconomic and in the political contexts. These changes allowed for the redesign of the tax model and of the property rights model adopted by the framers as well as to turn certain constitutionalised social rights into policies and actions. The wave of constitutional reforms began during President Fernando Henrique Cardoso's first term. During his two terms and also under the presidency of Luiz Inácio Lula da Silva, 52 out of 56 constitutional amendments were approved.

The article argues that the 1988 Constitution was the outcome of a political milieu aiming at making credible and to legitimate the new democratic regime given that the constitution was called into being while the political transition to democracy was still

¹ There are exceptions such as Melo (2002; 2005; 2007) and Souza (2005) and as far as I know the only systematic research on amendments to the 1988 Constitution by political scientists is by Cláudio Couto and Rogério Arantes, who have developed a method of constitutional analysis for explaining the reforms of the Brazilian constitution. See Couto and Arantes (2003; 2006) and Arantes and Couto (2008).

² Exceptions are Baaklini (1992), Fleischer (1990), Martinez (1996), Rosenn (1990), Souza (1997) and more recently Reich (2007).

³ Stimulated by the 20th anniversary of the 1988 Constitution, Brazilian political and social scientists have began to analyse the constitution-making process or the results of constitutional mandates affecting the political system or specific policies, in particular social policies. See, for instance, Oliven, Ridenti and Brandão (2008), Limongi (2008), Pilatti (2008) and Praça and Diniz (2008). Hence, Brazilian political scientists have finally brought the "constitution back in" as a focus of political studies.

incomplete.⁴ Because of this goal, the framers made three options which later affected the wave of constitutional amendments. The first was to make the rule of constitutional amendment relatively easy to fulfil. The second was the increase in the number of issues in which the Union (federal executive and legislature) has the exclusive capacity to legislate. The third is the increase in the number of issues which became part of the constitution i.e. a great deal of public policies and of governmental functions became constitutionalised. These decisions, coupled with changes in the macroeconomic and political contexts of the 1990s made the 1988 Constitution the most amended Brazilian constitution to this day and one that registers one of the highest amendment rates in the world. However, the reformist wave did not affect the entire constitution and not by chance out of the 62 amendments only two (the length of the term of the president and re-election for the executive of the three levels of government) changed the initial rules governing the political system whereas rules affecting policies (fiscal and social) went into an opposite direction, i.e. they lack constitutional stability. This is explained by the framers' objective on the new constitution's main priority: to legitimize and to make democracy credible. Other issues (social and fiscal policies and property rights) lacked consensus and were bounded by uncertainties. Amendments enacted after 1992 became the way for changing the course of these policies. However, and differently from the low number of amendments changing the political system, out of the 27 amendments changing the course of policies, more than half of them (59%) are dated, either partially or totally.

To answer the article's questions and to support its claims the following features of the 1988 Constitution are analysed: amendment rate, difficulty index for changing the constitution, year of the approval of the amendment, amendments initiated by presidents, amendments initiated by the legislature, number of words of the original constitution, number of words added by amendments and issues which became constitutionalised. Because the political and the macroeconomic contexts underwent deep changes soon after the enactment of the 1988 Constitution and because these changes, as argued, created the incentives for several amendments, they are also discussed. As not all of these features are possible to be quantified, the challenge of this work is analytical, i.e. to identify and explain the principal factors and causes of constitutional reforms.

The objective of the article is to bring to the fore more detailed information and analysis of a case of intensive constitutional reform in order to allow for future comparison but mainly to fill a gap in the literature on how and why a relatively young constitution underwent so many changes after the consolidation of the country's democratic regime. Given this objective, the article does not discuss the political conflicts brought about by the reform proposals, the importance or otherwise of veto points of the political system and nor it assesses the political and economic consequences of constitutional reforms.

The article is divided into three parts. Part 1 maps the contributions of the theoretical literature on institutional and constitutional changes. In Part 2 62 amendments (56 constitutional amendments and six revision amendments) promulgated between 1992

⁴ While the constitution was been drafted, the country remained ruled by procedures introduced by the military regime and only state governors were elected by popular poll but not the president and not all the mayors.

and December 2008 are analysed according to the features mentioned above.⁵ In the last Part, the article presents some conclusions.

Why institutions change?

Many argue that explaining institutional change is the most difficult task in political institutional analysis (e.g. Rothstein, 1998: 153) and that institutional approaches lack a general theory for explaining the creation or change of institutions (e.g. Przeworski, 2004; Rothstein, 1998). This does not mean, however, that institutional change is ignored by theories, in particular those of institutional design.⁶ Among others, Goodin (1998: 24-25), inspired by previous work by Jon Elster (1983), developed a typology for explaining institutional change. He argues that institutions may change for three different reasons – accident, evolution and intention. First, change might occur by accident, or as a matter of contingency. Second, change might be a matter of evolution, meaning that the institutions that better suit certain stages of social development do survive through the operation of some selection mechanisms, usually competitive in nature, because they are “better fitted” to their environment than those that did not. Third, change might be a product of intentional intervention of goal-seeking agents, either isolated individuals or organized groups.

Goodin’s typology is applied in this article for discussing the main reasons for Brazil’s wave of constitutional amendments and to sustain the argument that evolutionary reasons are better suited for explaining changes in the 1988 Constitution rather than the intentionality of individual actors, as some have argued.

Why do constitutions change?

Theoretical and operational issues about constitutional changes are not trivial and they imply in normative questions (what is the ideal extent of change?) as well as in empirical questions (what produce change; what the government’s capacity to implement constitutional mandates is?). These questions raise tensions of several types, including between rules for change versus rules for the protection of universal democratic principles.⁷

The literature discussing whether constitutions should be flexible or rigid as in relation to change presents differing conclusions. On the one hand, there are those who advocate rigidity based on arguments from the public choice approach: constitutions must be difficult to change to prevent the executive from capricious decisions and to perpetuate incumbents in office as much as to prevent sudden changes which might affect the interests of economic agents (Buchanan and Tullock, 1962; North and Weingast, 1993; Riker, 1982). On the other hand, those in favour of flexible rules for reviews argue that

⁵ Detailed information on amendments, including their congressional trajectory, debates, changes, etc, were collected at the House of Representatives’ database available at <http://www2.camara.gov.br/legislacao/pesquisa.html>. Information about Brazilian constitutions and the content of the final format of the amendments were collected at www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao.htm.

⁶ A review of the literature on institutional and social change is beyond the objective of this work. For a throughout review, see, for instance, Goodin (1998) and for a rational choice and political economy approaches, see, for instance, Knight and Sened (1995).

⁷ For this discussion in the light of the concept of credible commitments in constitutional design, see Falaschetti and Miller (2001) and in the light of the constitutional political economy literature, see, among others, Mueller (1999; 2006).

changes are inevitable, among other reasons to adjust the constitution to new circumstances; to counteract the limitation of human knowledge; to remedy unintended consequences; to remove injustices; to adjust to the demands of future generations, etc.⁸ Because of these reasons, every written constitution sets the method for its very own change. This is because if constitutions are credible commitments made during the foundation or the re-foundation of a nation or of a political regime, these commitments do not preclude imperfections and in the words of Ferejohn (1997: 529) constitutional compromise (or commitments) do not remove imperfections but “it is often a matter of finding practical and imperfect accommodations to situations of political conflict”

Despite the lack of consensus on whether a constitution should be rigid or flexible as regards its review, every constitution determines which commitments or compromises are excluded from changes by ways of non-violent political conflict.⁹

In general constitutions can be modified by four methods: (a) amendment; (b) periodical review of the entire constitution; (c) judicial interpretation; and (d) legislative revision. Constitutional changes may be the result of judicial decisions or they may require exclusive legislative decision or the combination of this method with the approval of the electorate.¹⁰ Does the adoption of one of these methods make a difference? The question is important to investigate whether the rules decided by the framers for constitutional revisions make any difference in the probability of altering the constitution.

These different methods were tested by Lutz (1994) who argues that each implies in less or more changes as well as indicates the view of the framers about the constitution, i.e. whether the constitution is a body of rights and principles or if it also regulates issues of ordinary majority or legislation. Lutz (1994: 357-8) developed a series of propositions for the development a theory of constitutional amendment which he applied to the US state constitutions and to the constitutions of 32 countries. Lutz’s propositions which are applicable to the Brazilian case are summarised as follows:

1. The easier the amendment process, the higher the amendment rate.
2. The more words a constitution has, the higher the amendment rate.
3. The higher the amendment rate, (a) the less likely that the constitution is being viewed as a higher law, (b) the less likely that a distinction is being drawn between constitutional matters and ordinary legislation, (c) the more likely the constitution is being viewed as a code, and (d) the more likely that the formal amendment process is dominated by the legislature.

⁸ As shown by Ferejohn (1997: 502) political analyses on constitutional change oscillate between a Jeffersonian view that rules for constitutional amendments should be relatively easy, whereas those following the Madisonian conception of constitutional politics sees stability as a precondition for justice and republican government, hence the importance of separating constitutional from ordinary law. Concurring with the former view are authors such as Goodin (1998) and Offe (1998).

⁹ In the 1988 Constitution are excluded from constitutional changes the federal structure of the state; popular, direct, secret and universal vote; the separation of powers; and individual rights and guarantees. In the 1967-69 constitution, which ruled the military regime, the only unchangeable commitment was the federal structure and in the constitution of 1946, which restored the democratic regime after Vargas’ civilian coup, changes were not allowed in the federal structure and in the republican form of government.

¹⁰ Sometimes rules governing constitutional amendments are broken. Ackerman (1998) provides a masterful account of three occasions upon which the US Constitution underwent a massive transformation under dubious legality.

Lutz's argument is that when the framers of a constitution choose one method for amendment over another and when they choose a given constitutional "model" (a document which defines principles, rules and rights versus one which also regulates public policies, i.e. define governmental functions) these choices are a prediction of what will happen with the constitution.

While the literature on constitutional change focuses on the role of rules for amendments (quorum, type of the legislative process, initiation and approval requirements), the length and the content of the constitution as the most important variables for the prediction of constitutional change, other factors are also of importance. This is particular so in recently redemocratised countries and in those which have rewritten their constitutions as part of their political agenda of the return of a democratic regime. This is the case of Brazil and of Eastern European countries, the latter analyzed by Roberts (2008). One of these variables is the number of parties represented in the legislature under the assumption that the existence of few parties facilitates the achievement of qualified majorities required for an amendment approval. Another factor, although less discussed in the literature, is the change of context. Even if the latter is mentioned in the literature, they are seldom analyzed in detail. Number of parties in the legislature and the size of their members in Congress will not be analysed here because, since redemocratisation, Brazil has had a great number of parties represented in the legislature and none has ever achieved a qualified majority. Nevertheless, this has not prevented the 1988 Constitution from being modified at a rate of more than three amendments a year. The change of context/conjuncture will be analysed below.¹¹

The 1988 Constitution and its reform

Since its adoption, on 5 October 1988, the reform of the constitution has been in the agenda of the federal government, business sectors and multilateral organizations. The framers' decision to make the revision of the 1988 Constitution relatively easy as compared to other countries, to constitutionalise several policies and governmental functions coupled with changes in the politico-economic contexts made the 1988 Constitution the most amended Brazilian constitution, registering, so far, the highest amendment rate as compared to previous constitutions.¹²

Table 1. Constitutional amendments by constitution

Year of enactment	End	Time length (years)	Number of amendments	Amendment rate
1891	1930	40	1	.025
1934	1937	3	1	.333
1937	1945	8	21	2.625
1946	1967	21	27	1.285
1967	1969	2	0	-
1969	1988	19	26	1.368
1988	20	62(*)	3.1

¹¹ Ferejohn (1997) calls our attention for the importance of historical contexts in the analysis about constitutional design because only they can explain why constitutions all over the world are increasingly incorporating clauses more likely to be dealt with by ordinary legislation. For an analysis of these contexts in each of Brazil's seven constitutions, see, among others, Souza (1997; 2001).

¹² Amendment rate is an index proposed by Lutz (1994) and it is the result of the division of the total number of amendments by the constitution's age in years.

Note: (*) 56 constitutional amendments and six revision amendments.

Source: Author's own calculation based on the Brazilian constitutions and their amendments available at www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao.htm.

The 1988 constitution makers opted for two methods for its review: legislative revision and amendments.¹³ The former, which was determined by the very own constitution to occur in 1994, allowed for the revision of the entire constitution but only six changes were approved despite the easier method of absolute majority in two rounds of roll-call voting in which both the Senate and the House were in unicameral sessions. The second method – amendments – requires a qualified majority: three-thirds in two roll-calls voting in which the House and the Senate votes separately. Through the latter method, 56 amendments have been approved between 1992 and 2008.¹⁴

The 1988 framers have also decided to follow the trend of previous Brazilian constitutions of constitutionalising public policies and governmental functions but this trend was broadened, including by increasing the number of articles related to social issues as well as detailing the tax system at length. As several authors have shown, there is an increasing trend for issues that would be a matter of ordinary legislation to become constitutionalised. The difference whether a subject is regulated by a constitution or by a law is important because once constitutionalised, it becomes subjected to special rules as much as it opens the way for the judiciary to become an important political and policy actor in countries which adopt judicial review.¹⁵ What may be to a certain extent a Brazilian peculiarity is the degree of details that the 1988 Constitution dedicates to policy provisions and to the distribution of governmental functions among the three levels of government of the federation.

It is highly acknowledged the emergence of a trend in which “few of the world’s constitutions actually seem to be systems of higher order or regulative rules that stand apart from ordinary legislation” (Ferejohn, 1997: 505). Either by constitution interpretation or by design, policy-making power (and policy preferences) within a nation has been emerging gradually through time through a process of constitutional or quasi-constitutional negotiation between regional and central governments, as pointed out by Congleton, Kyriacou and Bacaria (2003: 169). However, and as it will be shown later, policy-making power has gradually been incorporated into Brazil’s several constitutions but this has not been a process of negotiation between regional and federal government but rather of decisions taken by constitution makers themselves.

¹³ By Lutz’s (1994) model, constitutions which require ratifications by the states or popular referendums are less amended. Ferejohn (1997: 523), however, using Lutz’s difficulty index found that there is no evidence that a ratification requirement has any significant impact on amendment rates but rather that the key variable for explaining amendment rates is legislative complexity – the requirement of special majorities or separate majorities in different legislative sessions or bicameralism.

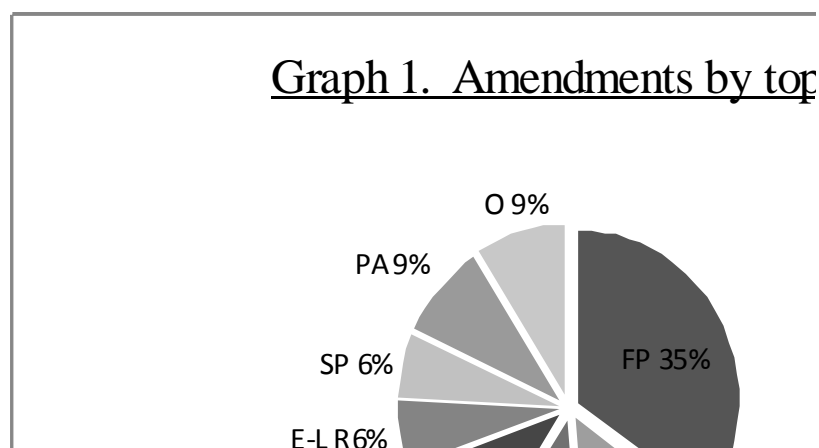
¹⁴ In 1993, a plebiscite was called, following a constitutional provision, for the electorate to decide on the form of government (republic or constitutional monarchy) and the system of government (parliamentary or presidential). As the electorate decided for keeping what the framers had decided, i.e. the republic and the presidential system, no constitutional amendment resulted from the plebiscite.

¹⁵ There is no consensus about the optimal division between what should be in a constitution or in an ordinary law, particularly among constitutionalists and fiscal economists. For a discussion about what is being called the judicialisation of politics and the role of federal courts in Brazil, see Taylor (2006; 2008).

Brazilian framers introduced an innovation: the inclusion of a chapter on social rights, not written in previous constitutions.¹⁶ However, this is not a Brazilian peculiarity given that, as shown by Hirschl (2004: 125-6), social rights now feature in a large number of national constitutions as positive, second generation social and economic rights.

As a result of the above mentioned decisions, there was an expansion of governmental functions, in particular those of the federal government. However, and as pointed out by Lijphart (1999), detailed constitutions are likely to be adopted in consensus democracies and they also tend to be a feature of several federal countries.

Graph 1 presents an overall view of all constitutional and revision amendments grouped by main objectives.



FP – Fiscal policy
 PR – Property rights
 PES – Politico-electoral system
 JLL – Judiciary, legislature and legislation
 E-LR – Executive-legislative relation
 SP – Social policy
 PA – Public administration
 O – Others

Note: Some amendments regulate more than one topic; hence the number of amendments in the graph exceeds 62.

Source: Author's own calculation based on information available at www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao.htm.

Graph 1 displays the unequivocal prevalence of fiscal issues in the reform agenda. However, if the initial fiscal reforms focused on restricting governmental spending and on increasing federal revenue as a way to tackle Brazil's long-lasting inflation, later, when monetary stabilisation was successful, amendments not only recomposed subnational revenues, but increased them, in particular those to local governments. Nevertheless, a significant part of the increase in subnational revenues was earmarked to the provision of health care and fundamental education. It is important to remember that both health care and education have become social rights and in this sense the

¹⁶ Social rights listed in the constitution are: education, health, work, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute. Later, a constitutional amendment added the right to housing.

earmarking of revenues of all levels of government determined by constitutional amendments of 1996, 2000 and 2006 were the way of transforming constitutionalised social rights into policies and actions. It is also important to note the incidence of amendments changing property rights, meaning the breakdown of state monopolies on activities such as oil and mineral resources as well as allowing foreign capital to invest in those activities and in the financial-banking system. These changes aimed less to reduce public spending and more to decrease the role of the public sector in the economy and the opening up of the economy to private investors, both domestic and foreign, as part of the policy of inserting Brazil into the paradigm of globalization.

The two sets of drives of constitutional reforms mentioned above are discussed in the following subsections. They first present the rate and the index of difficulty for approving amendments. Following that the subsections analyse the amendments according to: (1) the years the amendments were enacted; (2) amendments approved in the course of different presidencies; (3) initiative of the amendments; (4) number of words of the constitution and number of words added by amendments; and (5) level of constitutionalisation of public policies and of governmental functions. Because the political and the macroeconomic contexts underwent deep changes soon after the enactment of the 1988 Constitution and because these changes, as argued, created the incentives for several amendments, they are also discussed.

Amendment rate

The 1988 Constitution registers a high amendment rate vis-à-vis previous constitutions as well as the constitutions of other countries, the latter measured by Lutz (1994), Melo (2007) and Roberts (2008). Whereas the amendment rate of the Brazilian 1988 Constitution reaches 3.1 amendments a year, the average rate of the 32 countries found by Lutz (1994) was 2.54 and of the US state constitutions was 1.23. The average for several Eastern European countries was 0.39 (Roberts, 2008).¹⁷

Amendment rate, however, although an important indicator, says little about the significance of the amendments. Furthermore, amendment rates also present time limits given that it is the result of the division of the number of amendments by the age of the constitution, hence changing every year. Amendment rate, although an important indicator that the original constitution presents few obstacles for change, is complemented by the difficulty index for changing the constitution. By this indicator, the 1988 Constitution is relatively easy to amend because it requires a low majority, as compared to other countries – three-fifth -, although it also requires two rounds of roll-calls voting in both the House and the Senate. If one applies Lutz's (1994) method for the difficulty index, a task undertook by Melo (2007), the 1988 Constitution registers a difficulty index of 1.25, even lower than that of the 1967-69 Brazilian constitution enacted by the military regime (1.55). The decrease in the index is explained by the decrease in the majority necessary for amendment approval, from three-thirds in the military constitution to three-fifths in the current constitution. Among 32 countries listed by Lutz (1994), Brazil's current constitution would be placed in 5th place in the ranking of difficulty index. The lowest difficulty indexes found by Lutz (1994: 369)

¹⁷ Roberts (2008) also analyzed the number of constitutional articles changed – added, altered, or deleted – per year. The constitutions analysed have 143 articles on average. However, he points out that the number of articles changed is not a perfect measure of significance – some articles are longer or shorter than others and in some cases, such as in Romania, only one amendment changed almost half of the articles of the constitution.

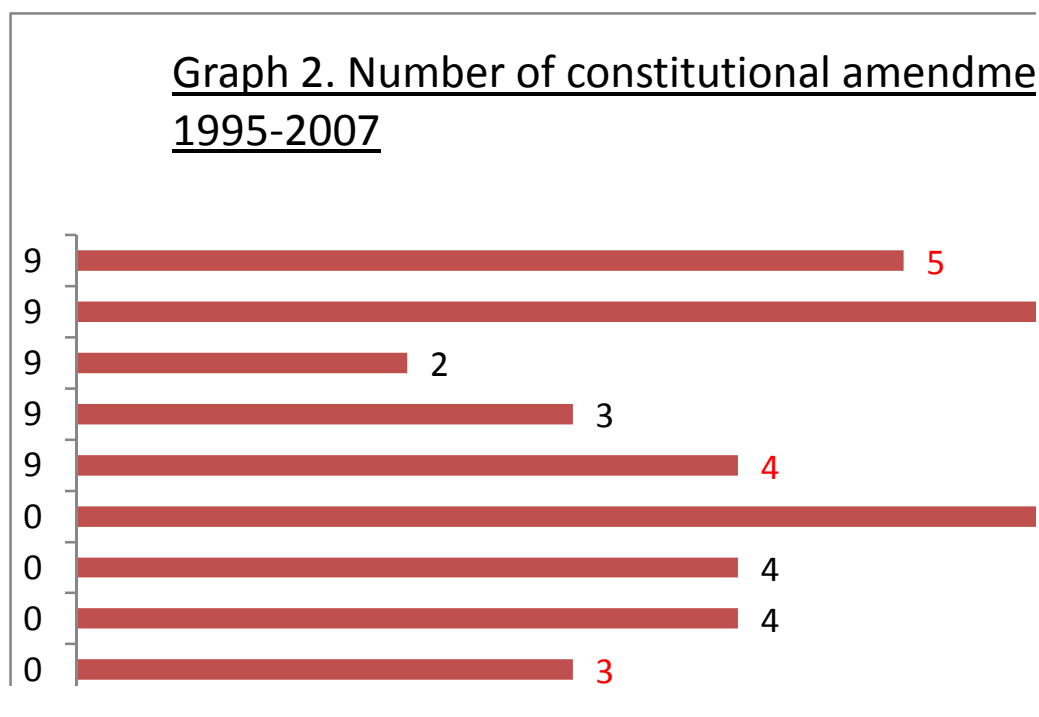
were those of New Zealand (0.50), Papua New Guinea (0.77) and Austria and Portugal, both with 0.80. The highest difficulty indexes were found in the US (5.10), Switzerland (4.75) and Australia (4.65).¹⁸ In comparison to other Latin American countries, the Brazilian index of difficulty ranks in the third lowest place (Melo, 2007).

Amendment rules of the Brazilian 1988 Constitution do confirm the premise that the easier the method for constitutional reviews the higher the amendment rate. But it also confirms Ferejohn's (1997) assertion that the least complex the legislative process of amendment is, the easier it is to remedy what political actors identify as imperfections or gaps in the original constitution. I would also add that the easier the method the easier to adjust constitutional mandates to new macroeconomic and political milieus.

Year of amendments

The year of the enactment of an amendment shows that the highest number of reforms occurred between 1995 and 2002, when the country was governed by President Fernando Henrique Cardoso although in 2003, in President Luís Inácio Lula da Silva's first year in office, a major tax reform was approved, altering 20 articles.

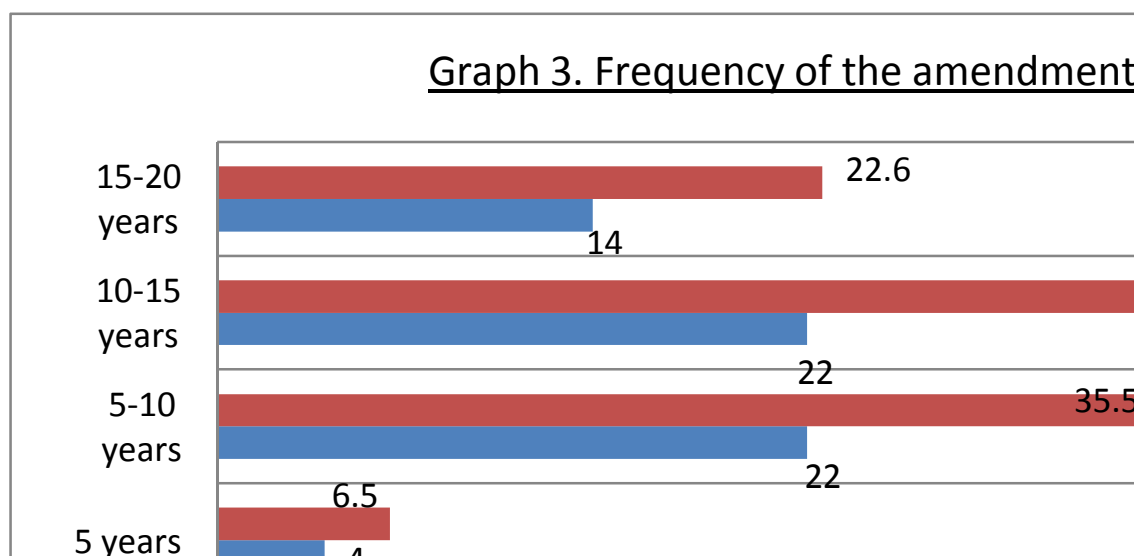
Although the Brazilian system of constitutional reform is characterized by the formal dominance of the legislature, Graph 2 shows that presidents take advantage of their electoral victory by bargaining with Congress the adjustment of the country to new circumstances in the first two years of their terms.



¹⁸ Because Lutz's article was published in 1994, amendment rates are now outdated as well as many other features of the constitutions he analysed. As examples: the Brazilian constitution in Lutz's sample is that of the military regime, the Venezuelan constitution, listed among those with high difficulty index (4.75) was completely changed (Melo, 2007) and the Swiss constitution was reviewed in 1999, although it did not significantly alter the Swiss system but it was rather "a way to modernize the document and clarify the jumble of its 155 previous revisions" throughout its 125 years of existence (Schmitt, 2005: 350).

Source: Author's own calculation based on information available at www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao.htm

Information in Graph 3 attempts to investigate the existence or not of a timing trend by displaying the percentage and the number of amendments approved since the enactment of the constitution. It shows that constitutional reforms started in 1992 taking momentum between five and 15 years after the adoption of the constitution, and decreasing thereafter. One can thus assert that the amendments followed a timing pattern taking advantage of the consolidation of the political regime and of macroeconomic stabilisation to introduce a new social and macroeconomic agenda. This is because in the first five years there were still no favourable and credible conditions for changes and in the last five years the reform agenda is almost fulfilled.¹⁹ Lack of political and macroeconomic conditions are also responsible for the low number of revision amendments issued in 1994 despite its easier rules.



Source: Author's own calculation based on information available at www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao.htm

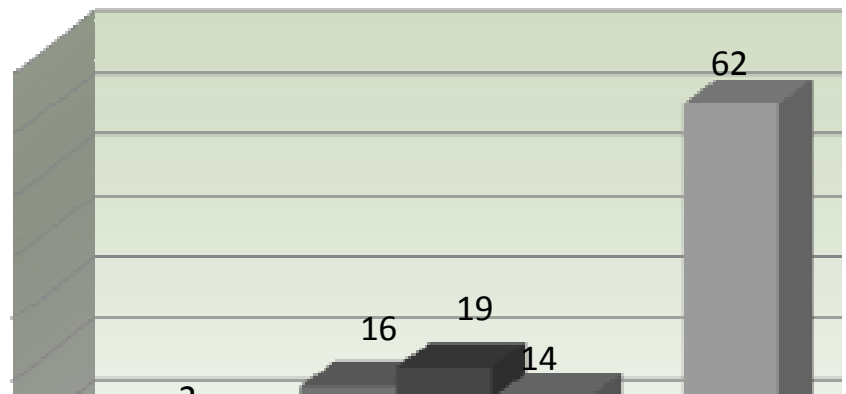
Amendments by presidents

Amendments by president investigates whether there are differences in the presidents' reforming agenda and discusses two contradictory views on the causes of change: whether the prevailing cause was a response to changes in the political-economic contexts (model of evolution as described above) or a result of the intentional intervention of an isolated individual, that is to say, the president (leadership model).

Graph 4 shows that since 1995 Brazilian presidents have endorsed policy agendas which required constitutional change, even if many of them were destined only to renew other amendments previously approved. This was the case of several amendments which have only confirmed or enlarged rules applicable to the fiscal system and to social policies. This is because, as mentioned above, out of the 27 amendments changing the course of policies, more than half of them (59%) were, or still are, dated, either partially or totally.

¹⁹ This view is not consensual among Brazilian political analysts. Melo (2008: 253) and Arantes and Couto (2008:60) credit the current decrease in amendments to the greater difficulty faced by Lula vis-à-vis Cardoso to form a majority coalition in Congress.

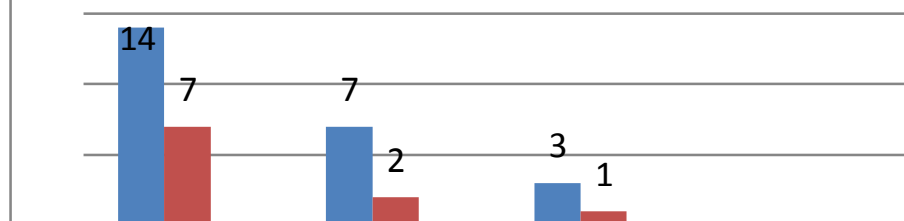
Graph 4. Amendments by president, 1992-2008



Source: Author's own calculation based on information available at www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao.htm

Graph 5 displays amendments approved in the course of Brazil's two presidents who have governed their entire terms since the promulgation of the 1988 Constitution – Cardoso and Lula – by main topics: property rights, fiscal and social policies. For both presidents the fiscal agenda proven to have had the highest priority, even if under Cardoso there were more amendments on fiscal issues as a consequence of the stabilisation plan launched in 1994. Fiscal amendments of Cardoso's first term redesigned a large part of the fiscal system, mainly the tax system, and became the bases for further amendments on the same topic, which have mainly extended the date of the rule to be in force and, in some cases, deepened previous changes. Reforms in the model of property rights, mostly the opening up of the economy to private investors and the breakdown of state monopolies, have also received high priority under Cardoso although under Lula two amendments on the subject were approved, including one allowing foreign capital into the domestic financial system.

Graph 5. Amendments approved during Cardoso and Lula term



Source: Author's own calculation based on information available at www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao.htm

Constitutional reforms destined to implement constitutionalised social rights were also approved more under Cardoso's term rather than Lula's, even though the latter has increased resources for education through an amendment approved in 2006. Furthermore, the main social program under Lula, the *Bolsa Família*, a conditional cash

transfer program, is mostly financed by a federal fund approved in 2000 but through the initiative of one senator and initially against Cardoso's will.

If constitutional rules play an important role in the approval of amendments, they alone do not explain why reforms followed one path rather than others. This is why it is important to incorporate into the analysis not only the role of context but also the causes for institutional change. In the case of constitutional amendments, they seem to be more a result of the evolutionary cause mentioned above because clauses subjected to changes were those "better fitted" to their environment than others. This is because they addressed the demands of a new macroeconomic and political contexts which were different from those by the time the constitution was been written. Some analysts, however, tend to claim the prevalence of other causes. This is the case of those analysing changes in public policies in Brazil. For instance, Samuels and Mainwaring (2004) and Stepan (2000) credit these changes to Cardoso's leadership capacity, i.e. as a product of intentional intervention of an isolated individual. According to these authors, Cardoso was able to turn round the constraints imposed by Brazil's political system, i.e. presidential system, open list proportional representation, and federalism, which they see as veto points of reforms and of weakening government capability. Kugelman's (2001) explanation focuses on the return of a tradition of strong presidents, and Faletti (2008), focusing on reforms of the health care system, combines two causes: goal-seekers professionals (sanitary doctors) and their slowly penetration in the state apparatus, which dated back to the early years of the military regime. The argument in favour of Cardoso's leadership and of his personal characteristics seems, today, at least incomplete. If leaders can, sometimes, exert an extraordinary force over political processes, changes also have occurred during Lula's term, who has very different personal characteristics and type of leadership from Cardoso. Furthermore, of 14 amendments reforming fiscal policies during Cardoso's term, five of them only extended the time period of some measures. This is not to say that the reform agenda is over but rather that amendments under Cardoso have addressed the demands for a reviewed macroeconomic model, for a tight fiscal control policy and for the implementation of some social rights. Furthermore, if personal characteristics of leaders can, sometimes, be important, they do not preclude the importance of the rules and of the context in a complex and redemocratised country like Brazil.

Initiation requirements

The 1988 Constitution adopted a hybrid model for the capacity to initiate amendments: it can be amended by action from one-third of the members of the House or the Senate, by the president and by more than half of the state legislatures. The latter have not proposed any action so far.

Senators and representatives together proposed around 60% of the amendments. Although amendments are subjected to legislative supremacy, meaning that they can only be approved by Congress, the 1988 Constitution allows for the action of three political actors and institutions, different from previous constitutions in which only two had initiation capacity.²⁰ More political actors with initiation capability contributes to increase the probability of amendments and to decrease the index of difficulty.

²⁰ In the 1967-69 Constitution, the president and Congress members had initiation capability and in the Constitution of 1946, only the legislature - Congress members and state legislatures. The latter were allowed to propose amendments only during the first two years after the constitution's adoption.

However, and as shown later, although federal legislators have formally proposed more constitutional amendments than presidents, in most cases they acted on behalf of the government and accordingly to the government's agenda, with a few exceptions.

Table 3. Constitutional amendments by initiation action

Initiative	No. of amendments	%
President	21	37,5
Senate	10	17,8
House of Representatives	23	41,1
Without information	2	3,6
Total	56	100,0

Source: Author's own calculation based on information available at <http://www2.camara.gov.br/legislacao/pesquisa.html>.

The higher participation of legislators in the proposition of amendments does not mean that they did not have the support of the president. Many amendments had indeed being drawn in the Executive, which delegated its initiation to a parliamentarian of its governing coalition. Others resulted from the adaption of a previous proposal by a parliamentarian. A very few proposals, however, were initiated by parliamentarians alone. Although this happened with only five out of 56 constitutional amendments, it shows that that occasionally the legislature is capable of approving its own agenda.²¹

Table 4 shows that in Cardoso's first term initiatives by the president were twice higher than those by parliamentarians but in his second term parliamentarians led the number of initiatives.

Table 4. Proposed constitutional amendments by initiative and by presidents

President/Term	No. of Approved Amendments Initiated by the President	No. of Approved Amendments Initiated by the Legislature	Total
Collor (até 10/92)	-	2	2
Franco (10/92-1994)	-	2	2
Cardoso (1995-1998)	11	5	16
Cardoso (1999-2002)	5	12	17
Lula (2003-2006)	3	11	14
Lula (2007-...)	2	1	3
Without information			2
Total	21	33	56

Note: Revision amendments adopted in 1994 are not included because only parliamentarians were entitled to initiate a proposal.

Source: Author's own calculation based on information available at <http://www2.camara.gov.br/legislacao/pesquisa.html>.

²¹ Two amendments limited the president's prerogative to issue *Medidas Provisórias*, a type of presidential decree that enters into force immediately but it has to be later approved by Congress; one amendment constituting a fund for poverty alleviation was initiated by a Senate leader and it was first objected by president Cardoso and his economic team but it was later reviewed to adjust to the Executive's demands; and two amendments, one defining the guidelines of a national plan for culture and the other including housing as a social right, were also initiated by parliamentarians without the initial support of the executive.

Every reform of Cardoso's agenda to control inflation and to decrease public spending (social security system, civil servants, public administration, tax system, earmarking of subnational revenue and the reduction of federal constitutional transfers to subnational governments and to sectorial activities), as well as those changing the original scheme of property rights were introduced by him, with the exception of the time extension and the rates of a provisional tax on checks. The same happened during Lula's terms, with the exception of a second reform changing the social security system, which was drawn in the Executive and handed over to the party's leader in the Senate to initiate.

Number of words

The number of words of a constitution is used as a proxy for the degree of constitutionalisation. When adopted, the 1988 Constitution had 49,680 words in Portuguese. With amendments, the length of the constitution was extended to 64,982 words, a 13% increase. Most of the increase, however, was added to the chapter entitled Provisional Constitutional Provisions, which aims at regulating the transition between different constitutional rules.

The 1988 Constitution is longer than Brazil's previous constitutions: the 1967-69 Constitution had 38,905 words and the 1946, 22,395. Whereas for the number of articles, originally it had 315 articles, 70 of which in the chapter of Provisional Constitutional Provisions. With amendments, the number of articles grew to 345, 95 of which in the chapter of Provisional Constitutional Provisions. These figures show that constitutional reforms are seen by political actors more as temporary than permanent or at least as a test for a more definite change of rules. It is important to stress that out of the amendments and articles added the most was inserted provisionally, in the Chapter of Provisional Constitution Provisions and most of them dealt with fiscal issues.

Figures above show the tendency of Brazilian constitution makers to constitutionalise policies and governmental functions in different historical and political momentums. This is a strong indicator of the view of Brazilian constitution makers of all times that constitutions should not only regulate principles and rights but also to become a code. The 1988 Constitution furthered this view and so did its amendments, in particular those regulating the fiscal system and social policies.

Constitutionalization

Together with the number of words, another way of predicting what is going to happen with a constitution is its content, meaning the constitutionalisation or not of issues more likely to be the object of ordinary legislation, i.e. legislation requiring a simple majority, or even merely administrative acts. Constitutionalisation of policies and governmental functions, however, is not uncommon in countries which have been recently redemocratised or rewritten their constitutions.²²

In the case of the 1988 Constitution, the increase in constitutionalisation has followed the path of Brazilian previous constitutions. The first decision to constitutionalise policies occurred in the 1934 Constitution which, by the influence of the Weimar Constitution, regulated several economic activities, collective and individual rights,

²² For descriptions and analyses of the constitutional characteristics of federal countries, see Kincaid e Tarr (2005).

including about family, workers' rights and public servants. The novelty of the 1988 Constitution was that it increased the constitutionalisation of public policies, in particular through amendments regulating the policies of health care and fundamental education. It has also increased the number of issues under the exclusive jurisdiction of the Union to initiate legislation, from 21 items in the 1967-69 constitution, to 29.

The length of the 1988 Constitution and its degree of constitutionalisation was seen by several analysts as inaccurate, improper and driving the country to gloomy scenarios. Sartori (1994: 199), for instance, wrote that the Brazilian Constitution of 1988 "is a *novela* of the size of a telephone directory"... "It is a constitution packed not only with trivial details but also with quasi-suicidal provisions and unaffordable promises". As we shall see later, neither its size nor its provisions became a constraint and many of what Sartori saw as unaffordable promises and quasi-suicidal provisions ended up being implemented.²³ This was made possible by the easiness of the amendment requirements and by the changes in the political and macroeconomic contexts.

Changes in context and conjuncture

As shown above, amendments promoting changes in the rules applied to the fiscal system and to property rights were the highest in number but they were also important in substance because they have launched a new fiscal and macroeconomic model. Why so much effort was directed towards these changes? I argue that this was a result of changes in the political and in the macroeconomic contexts. This means that rules for amendments alone, although important by creating incentives for changing constitutional rules, but also a conjunction of other factors, mainly the consensus that Brazil was experiencing a new political and macroeconomic context, played an important role in the constitutional reforms of the 1990s. The changing context was both domestic and international. In the international front, the globalization paradigm was in full swing and there was a consensus that Brazil had to change its policies to become a global player. Identified as the most important change was the opening up the economy to the private capital, both domestic and foreign, the decrease in the role of the developmental state and the breakdown of state monopolies, all of each requiring constitutional reform. These changes were preceded by several amendments and ordinary laws which had succeeded in controlling decades of high inflation. Amendments were issued to decrease federal earmarked constitutional transfers and laws were passed to determine spending ceilings for the three levels of government and for the legislature and the judiciary. Other amendments followed, either maintaining or broadening restrictions on governmental spending. As a result, inflation was controlled and there was a national consensus that the renewal of these amendments, most of them under the chapter of provisional provisions, was crucial for freeing Brazil from its inflationary past. Following monetary stabilisation and the changes in property rights, there was political and financial room for transforming two social rights – health care and fundamental education – into effective policies. This is because for several years Brazil was under pressure from international and multilateral organisations to improve social indicators. The popularity of UNDP's Human Development Index, as shown in UNDP (2006) in the country also played a role by showing Brazilians how the country's

²³ In a footnote Sartori (1994) explains his strong adjectives and pessimist scenario with the example of the country's financial impossibility to provide universal health care and to implement the new social security system, both assured by the constitution.

social indicators were much behind its Latin American neighbours and other economically worse-off countries of the world.

The deep reforms mentioned above can be credited to changes in the macroeconomic and political contexts, the former both internationally and domestically. Macroeconomic factors created the conditions for the adoption of a model of property rights closer to the globalisation agenda: the opening up of the Brazilian economy to private capital, the decrease in the role played by the government in the economy, etc, all intended to make Brazil a global player. Coupled with these external factors, initial changes have been kept and even broadened given the consensus among political elites of the importance of the sustainability of monetary control. Later, and as a result of inflation control, political elites found favourable conditions to implement certain constitutionalised social rights. This shows that not only rules on amendments matter, as pointed out by the literature on constitutional amendment and on institutional change, but changes in the context and conjuncture, i.e. exogenous factors, also explain constitutional reforms in Brazil.²⁴

As argued elsewhere (Souza, 1997; 2001; 2005) 1988 constitution makers focused their efforts in setting up rules destined to legitimize the renewed democratic regime whereas rules governing macroeconomic and social issues reflected the uncertainties of that critical juncture. Changing these rules, however, became central to Brazil in the early 1990s. Amendments enacted thereafter were crucial for adapting Brazil to the changes in the domestic and international contexts. Because rules to amend the constitution are relatively easy to fulfil, it became possible to make these deep adjustments.

Concluding Remarks

This article analysed amendments to the 1988 Brazilian Constitution in the light of two drives – (1) constitutional rules and content of the constitution which allows predictions about constitutional change and (2) causes of changes.

Institutional and non-institutional factors explain the high incidence of constitutional amendments in Brazil: amendment requirements relatively easy to accomplish; size of the constitution; the agenda of constitution makers focused in restoring and legitimizing the new political system; advent of a new agenda demanding changes in property rights and fiscal control; monetary stability which allowed for the implementation of certain social rights.

The article concludes that the 1988 Constitution was the result of a political environment noticeable for the objective of making credible commitments towards the inauguration of the new democratic system since it was drawn before the end of the political transition. Not by chance of 62 amendments only two have changed the original rules governing the political system, whereas rules governing fiscal and social policies took an opposite direction. This is because these policies were still surrounded by uncertainties hence blocking negotiations and bargains. Amendments enacted since the 1990s have drawn new policies and a new macroeconomic model as well as implemented constitutional mandates governing social policies, i.e. decentralisation, participation of interest groups, and universal coverage which, although adopted by the Constitution were not negotiated at that time on how they were to be implemented.

²⁴ Roberts (2008) also points out to the importance of the dynamics of the political transition and of international pressures in constitutional reforms in Eastern Europe, more than rules.

Different from what happened with rules governing the democratic and the political systems, several policies implemented by constitutional amendments have a feature seldom noticed by analysts: they are dated. This means that they require new constitutional amendments and the return to Congress for their continuity or advancements.²⁵ In that sense, the legislature had not delegated to the executive the timing and the content of certain public policies neither the executive proposed this delegation, making the rules governing policies to periodically return to the national debate and to political bargaining.

Nonetheless, the high amendment rate of 1988 Brazilian Constitution vis-à-vis other countries have not supported the fears of the literature mentioned above. Firstly, changing the rules of the game has not brought up uncertainties to economic agents. On the contrary, changing property rights has opened more opportunities for investors, both domestic and international. Secondly, constitutional changes did not necessary led to the strengthening of the executive and to the prorogation of presidents' terms indefinitely, which, as the literature claims, would harm democratic values and social and collective rights. In the case of Brazil, the amendment allowing re-election for executive offices was limited to one more term and has not prevented party changes at all levels of government. Moreover, individual and collective rights have not been harmed but it was through constitutional amendments that certain social rights were implemented. Thirdly, the size and content of the Brazilian Constitution, mainly the constitutionalisation of policies and rights, did not block the government's capacity to govern. Not only this has not happened but constitutional changes allowed Brazil to implement a new political, social and macroeconomic agenda addressing domestic and international demands.

The article concludes that by drawing a constitution which reflected the political agenda brought up by redemocratisation, Brazilian constitution makers untied the hands of future parliamentarians and of the executive by authorizing them to make changes and adaptations on issues which could not be negotiated at that critical juncture.

²⁵ In several articles authored by researchers Claudio Couto and Rogério Arantes they propose a different argument: each president has to amend the constitution to implement his or her government program and policies.

References

- Ackerman, B. (1998) *We the People 2: Transformations*. Cambridge, Mass.: Belknap Press.
- Arantes, Rogério and Couto, Cláudio (2008) "A Constituição sem fim". In: Praça, S. e Diniz, S.(orgs.) *Vinte anos de Constituição*. São Paulo: Paulus, pp. 31-60.
- Baaklini, A. (1992) *The Brazilian Legislature and Political System*. Westport and London: Greenwood Press.
- Buchanan, James M. e Tullock, Gordon (1962) *The calculus of consent: logical foundations of constitutional democracy*. Ann Arbor: University of Michigan Press.
- Congleton, Roger D., Kyriacou, Andreas e Bacaria, Jordi (2003) "A theory of menu federalism: Decentralization by political agreement" *Constitutional Political Economy* 14 (3), pp. 1043-4062
- Couto, Cláudio G. and Arantes, Rogério B. (2003) Constitución o políticas públicas? Una evaluación de los años FHC. In: Palermo, V. (comp.) *Política brasileña contemporánea: De Collor a Lula en años de transformación*. Buenos Aires: Siglo XXI de Argentina.
- Couto, Cláudio G. and Arantes, Rogério B. (2006) "Constituição, governo e democracia no Brasil" *Revista Brasileira de Ciências Sociais* 21(61), pp. 41-62.
- Elster, Jon. (1983), *Explaining Technical Change*. Cambridge, Cambridge University Press.
- Falleti, Tulia (forthcoming) "Infiltrating the State: The evolution of health care reforms in Brazil, 1964-1988".
- Ferejohn, John (1997) "The politics of imperfection: the amendment of constitutions". *Law and Social Inquiry* 22: 501-531.
- Gomes, Sandra (2006) "O impacto das regras de organização do processo legislativo no comportamento dos parlamentares: um estudo de caso da Assembléia Nacional Constituinte (1987-1988)". *Dados* 49 (1), pp.193-224.
- Goodin, Robert (ed.) (1998) *The theory of institutional design*. Cambridge: Cambridge University Press.
- Hirschl, Ran (2004) *Towards juristocracy: the origins and consequences of new constitutionalism*. Cambridge, Mass e London: Harvard University Press.
- Kincaid, John e Tarr, Alan (eds.) (2005) *Constitutional origins, structure, and change in federal countries*. Montreal: McGill.
- Knight, Jack and Sened, Itai (1995) *Explaining social institutions*. Ann Arbor: The University of Michigan Press.
- Kugelmas, Eduardo. (2001), "A evolução recente do regime federativo no Brasil", in W. Hofmeister e J. M. Brasiliense Carneiro (orgs.), *Federalismo na Alemanha e no Brasil*, São Paulo, Konrad Adenauer.
- Lijphart, Arend (1999) *Patterns of democracy: government forms and performance in thirty-six countries*. New Haven: Yale University Press.
- Lutz, Donald S. (1994) Toward a theory of constitutional amendment. *American Political Science Review* 88 (2): 355-370.
- Martinez-Lara, J. (1996). Building democracy in Brazil: The politics of constitutional change, 1985–1995. Oxford: St. Martins' Press
- Melo, Marcus A. (2002) *Reformas constitucionais no Brasil: instituições políticas e processo decisório*. Rio de Janeiro: Revan.

- Melo, Marcus A. (2005) O sucesso inesperado das reformas de segunda geração: federalismo, reformas constitucionais e política social, *Dados* 48 (4): 845-889.
- Melo, Marcus André (2007) “Hiper-constitucionalização e qualidade da democracia: mitos e realidade”, in Melo, Carlos Ranulfo e Alcántara Aaez, M. (orgs.), *A Democracia Brasileira: Balanço e Perspectivas para o Século 21*. Belo Horizonte: Editora UFMG, pp 237-267.
- Persson, Torsten and Tabellini, Guido (2007) “Book review The Economic Effects of Constitutions”, *Constitutional Political Economy* 18, pp. 63–68
- Mueller, Dennis C. (1999) *On Amending Constitutions*. Boston: Kluwer Academic Publishers.
- North, Douglass (1990) *Institutions, institutional change and economic performance*. Cambridge: Cambridge University Press.
- North, Douglass C. e Weingast, Barry (1989) “Constitutions and commitment: The evolution of institutions governing public choice in 17th century England.” *Journal of Economic History* 49, pp. 803-832.
- Oliven, Ruben G., Ridenti, Marcelo and Brandão, Gildo Marçal (orgs.) (2008) *A Constituição de 1988 na vida brasileira*. São Paulo: ANPOCS.
- Offe, Claus (1998) “Designing institutions in East European countries”, in R. Goodin (ed.) *The theory of institutional design*. Cambridge: Cambridge University Press, pp. 199-226.
- Pilatti, Adriano (2008) *A Constituinte de 1987-1988: Progressistas, conservadores, ordem econômica e regras do jogo*. Rio de Janeiro: Editora PUC Rio e Lumen Juris.
- Praça, Sérgio and Diniz, Simone (orgs.) (2008) *Vinte anos de Constituição*. São Paulo: Paulus.
- Reich, Gary (2007) “Constitutional coordination in unstable party system: the Brazilian constitution of 1988”, *Constitutional Political Economy* 18, pp.177–197
- Riker, William (1982) *Liberalism against populism*. Prospect Heights, IL: Waveland Press.
- Roberts, Andrew (forthcoming) “The politics of constitutional amendment in Eastern Europe” *Constitutional Political Economy* (no prelo).
- Rothstein, Bo (1998) “Political institutions: an overview”, in Goodin, R. e Klingemann (eds.) *A new handbook of political science*. Oxford: Oxford University Press, pp. 133-166.
- Sadek, Maria Tereza A. (2008) "Poder Judiciário: Conservação e mudanças", in Praça, S. e Diniz, S.(orgs.) *Vinte anos de Constituição*. São Paulo: Paulus, pp. 61-76.
- Samuels, David J. and Mainwaring, Scott (2004) “Strong federalism, constraints on the central government, and economic reform in Brazil”, in E. Gibson (ed.) *Federalism and democracy in Latin America*. Baltimore: The Johns Hopkins University Press, pp. 85-130.
- Sartori, Giovanni (1994) *Comparative constitutional engineering: an inquiry into structures, incentives and outcomes*. London: Macmillan.
- Souza, Celina (1997) *Constitutional engineering in Brazil: the politics of federalism and decentralization*. London: Macmillan; New York: St. Martin’s Press.
- Souza, Celina (2001) “Federalismo e descentralização na Constituição de 1988: Processo decisório, conflitos e alianças. *Dados – Revista de Ciências Sociais* 44 (3), pp. 513-560.
- Souza, Celina (2002) “Brazil: The prospects of a center-constraining federation in a fragmented polity”, *Publius: The Journal of Federalism* 32 (2), pp. 23-48.

- Souza, Celina (2005) “Federalismo, desenho constitucional e instituições federativas no Brasil pós-1988”, *Revista de Sociologia e Política* 24, pp. 105-121.
- Stepan, Alfred (2000) “Brazil's decentralized federalism: Bringing government closer to the citizens?” *Daedalus* 129 (2), pp. 145-169.
- | Taylor, Matthew (2006) “Veto and Voice in the Courts: Policy Implications of Institutional Design in the Brazilian Judiciary”, *Comparative Politics* April, pp. 337-355
- Valente, William *et al.* (2001) *Cases and materials on state and local government law*. St. Paul: West Group.
- Werneck Vianna (org.) (2002) *A democracia e os três poderes no Brasil*. Belo Horizonte: Editora da UFMG.