CONSTITUTIONAL STRUCTURE OF THE BRAZILIAN STATE

Murillo Gutier

§ 1 | STRUCTURAL ANALYSIS OF THE STATE - Fundamental categories of state organization

The study of the organization of the State has as its object the manner in which **political power** is distributed within a nation. This is a preliminary question to any constitutional analysis, since it defines the basic architecture upon which all other political and legal institutions rest. Understanding this structure is a condition for critically examining any contemporary institutional arrangement (Cf. Gutier, 2026; Novelino, 2021; Fernandes, 2020).

To avoid common conceptual confusions in the study of the topic, it is indispensable to distinguish four categories that, although interconnected, answer different questions. The **form of State** inquires into the territorial distribution of power (centralized or decentralized). The **form of government**

investigates the relationship between rulers and the ruled, contrasting *Republic* and *Monarchy*. The **system of government** addresses the relationship among the constituted Powers, opposing *presidentialism* and *parliamentarism*. Finally, the **political regime** examines the bond between the people and decision-making processes, distinguishing democracy from autocracy (Cf. Gutier, 2026; Masson, 2022).

When this method is applied, Brazil can be described simultaneously as a federated State (form of State), Republic (form of government), presidential (system of government), and democratic (political regime). The United Kingdom, in turn, combines a unitary State, Monarchy, parliamentarism, and democracy. The combination of these four variables defines the **constitutional identity** of each nation and reveals that such categories are independent, although they mutually influence one another (Cf. Gutier, 2026; Nery-Abboud, 2019).

1.1. Form of State: the territorial distribution of power

1.1.1. General overview of the forms of State

In the Modern and Contemporary State, two major forms of territorial organization predominate: the **Federated State** (referred to as "Federative" by the Brazilian Constitution) and the **Unitary State**. Some scholars, such as *Juan Ferrando Badia*, identify a third modality, the **Regional State**, with Spain and Italy as examples. Most, however, regard the Regional State as a mere variation of the unitary model, marked by more intense decentralization but failing to reach the degree of autonomy proper to federalism (Cf. Gutier, 2026; Masson, 2021).

In the **Unitary State**, power is concentrated in a single decision-making center, with no formal division of competences among autonomous territorial entities. France, Portugal, Monaco, and the Republic of San Marino illustrate this model, in which all relevant decisions emanate from the central government. In the **Federation**, on the other hand, political power is divided between a central government and regional entities endowed with constitutional autonomy. Brazil and the United States (after the Constitution of 1787) are paradigmatic examples of this arrangement (Cf. Gutier, 2026; Masson, 2021).

The **Confederation**, in turn, is a union of States that preserve their **sovereignty**, bound together by treaties that allow dissolution. The Confederate States of America during the Civil War (1861-1865) are a classic historical example, as are the United States themselves before the Philadelphia Convention, when the *Articles of Confederation* (1781-1787) were still in force. In the **Regional State** (Italy) and in the **Autonomic State** (Spain), there is administrative and legislative decentralization, but not full political decentralization, since the regions are neither sovereign nor federated entities (Cf. Gutier, 2026; Masson, 2021).

The choice of one form or another reflects specific historical, social, and geographical needs. There is no universally superior model: each arrangement presents advantages and costs, and must be evaluated in light of national goals and the political tradition of the people adopting it (Cf. Gutier, 2026).

1.1.2. Federated State

The term **federation** derives from the Latin *foedus*, meaning pact, alliance, or bond. Historically, the model emerged at the end of the 18th century, when the U.S. Constitution of 1787 converted the former Confederation into a Federation. The Philadelphia framers sought, simultaneously, to ensure government efficiency over a vast territory and to preserve the republican ideals of the 1776 American

Revolution. The Federation was thus born as a compromise solution between centralization and autonomy (Cf. Gutier, 2026; Streck-Morais, 2014).

This model promotes the **decentralization of political power**, with rigid distribution of competences between the Union and regional entities. In the Brazilian case, Municipalities are also included. As Nery-Abboud teaches, the Federal State features two poles endowed with political capacity: the central unity, created by the federative pact, and the partial units, which retain significant autonomy, though they do not hold sovereignty. All federated entities are autonomous and hierarchically equivalent within the system (Cf. Gutier, 2026; Nery-Abboud, 2019).

In a Federation, a single State is constituted under a **rigid Constitution**, with sovereignty centralized in the Union. Federated entities have autonomy, with constitutionally defined competences, their own revenues, and representation in the national Legislative Branch. The federative bond is **indissoluble**, prohibiting any right to secession. The American Civil War (1861-1865) is an eloquent historical example: the attempt at secession by the Southern States was rejected by the Union, consolidating the principle of indissolubility (Cf. Gutier, 2026; Streck-Morais, 2014).

Scholarship identifies two main models of federalism. In **Classical Federalism** (or dual), competences are rigid and clearly delineated. In **Cooperative Federalism**, the entities mutually participate in state management, acting under concurrent and common competences. The Brazilian Constitution of 1988 adopted predominantly the cooperative model, although it preserves elements of classical federalism (Cf. Gutier, 2026; Fernandes, 2020).

In Brazil, the Federation was introduced with the **Proclamation of the Republic** in 1889, and consolidated by the Constitution of 1891. The model was temporarily replaced by the unitary State during the *Estado Novo* (Constitution of 1937), restored under the 1946 Constitution, and maintained by the 1988 Constitution, although with strong centralization of competences in the Union. Federalism is adopted, in addition to Brazil, by countries such as the United States, Germany, Russia, Canada, Argentina, Mexico, and Australia (Cf. Gutier, 2026; Masson, 2021).

1.1.3. Confederation

The **Confederation** is distinguished from the Federation by preserving the **sovereignty** of its member entities. Although both forms are based on territorial pacts, the Confederation is composed of sovereign States, whereas the Federation is a single sovereign State formed by entities that have renounced their sovereignty in favor of the Union. This difference, though it may seem subtle, has profound legal consequences (Cf. Gutier, 2026; Streck-Morais, 2014).

The Confederation is established by **international law**, by means of a treaty called a *confederation pact*, which confirms and preserves the territorial sovereignty of member States. The Federal State, in turn, is governed by **internal law**, based on a National Constitution that suppresses partial sovereignties to establish a central power. In Federal States, the member units retain autonomy but not sovereignty, and may only self-organize within constitutional limits (Cf. Gutier, 2026; Streck-Morais, 2014).

The preservation of sovereignty in Confederations gives rise to two relevant legal effects: decisions by confederal bodies do not automatically bind member States, depending on internal approval according to each one's constitutional process; and confederate States may freely withdraw from the pact at any time, exercising the **right of secession** (Cf. Gutier, 2026; Streck-Morais, 2014).

Historically, Confederations had as central goals common defense and the promotion of collective interests (commercial, financial, cultural). The **Helvetic Confederation** (1291-1848) preceded the formation of the Swiss Federal State, beginning with the union of three cantons to facilitate trade and maintain peace. The **New England Confederation** (1643) brought together British colonies in North America for defense against external threats. The **American Confederation** (1781-1787), governed by the *Articles of Confederation*, proved unable to meet the demands of the thirteen recently independent colonies, paving the way for the Federal State under the 1787 Constitution (Cf. Gutier, 2026; Ranieri, 2020).

In the contemporary era, two experiences of confederative approximation stand out. The British ***Commonwealth*** brings together sovereign States that were once part of the British Empire, maintaining common bodies such as the Crown and the Conference of Heads of Government, with full right of secession. The **European Union** configures a new modality: created by international treaties, it shares elements of national sovereignty in specific areas, such as a common currency (Eurozone), foreign policy, and security, approaching a hybrid suprastructure between confederation and federation (Cf. Gutier, 2026; Ranieri, 2020).

1.1.4. Unitary State

The **Unitary State** is the oldest model, originally adopted by absolutist European States. It is characterized by political and administrative centralization, with no formal division of powers among territorial entities. However, transportation and communication limitations in the 15th and 16th centuries made some degree of deconcentration inevitable, even in the most rigid models, giving rise to variations such as the deconcentrated and decentralized unitary State (Cf. Gutier, 2026; Ranieri, 2020).

The distinctive feature of the Unitary State is the absence of autonomous collectivities endowed with their own competences. The legal system is unitary, and administrative and legislative decisions are concentrated in the central power. Local authorities act as executors of orders from the national summit, without political autonomy. Strategies of **deconcentration** (internal delegation of functions) and **decentralization** (limited transfer of duties) may attenuate centralization, but do not grant political independence to local entities (Cf. Gutier, 2026; Del Negri, 2021).

As advantages, this model offers legal and administrative unity, reinforcement of state authority, national unity, rationalized bureaucracy, and governmental impartiality. As disadvantages, it presents overload of the central power, absence of local self-government, difficulty in adapting to regional peculiarities, and potential authoritarianism. The essential difference compared to the Federated State lies in **autonomy**: in the Federated State, constitutionally guaranteed; in the Unitary State, only administrative and subordinate (Cf. Gutier, 2026; Del Negri, 2021).

1.1.4.1. Simple Unitary State

This is the original model, marked by **total centralization**, both administrative and political. There is no territorial division for administrative purposes: all decisions emanate directly from the central government. This format is impracticable in large territories and survives only in microstates, such as Monaco and the Republic of San Marino, where the small geographical dimension renders any deconcentration unnecessary (Cf. Gutier, 2026; Del Negri, 2021).

1.1.4.2. Deconcentrated Unitary State

Emerging in the 16th century, this model preserves political centralization but allows **administrative deconcentration**: the territory is divided into regions, departments, or municipalities, which have representatives of the central government with merely administrative functions, without political autonomy. France and Portugal, in distinct phases of their history, illustrate this arrangement, although both have been moving toward more decentralized models (Cf. Gutier, 2026; Del Negri, 2021).

1.1.4.3. Decentralized Unitary State

Emerging in the 20th century, this model broadens administrative deconcentration without fragmenting the **national Legislative Branch**. The Executive decentralizes some functions to territorial subdivisions (regions, departments, communes), but the Legislative and Judicial branches remain centralized. In contemporary France, for example, there are several territorial subdivisions, all subject to national legislation passed by the National Assembly in Paris; the Judiciary is unitary, although distributed throughout the territory (Cf. Gutier, 2026; Del Negri, 2021).

1.1.5. Regional State

A hybrid form that emerged after the Second World War, especially in Italy (Constitution of 1947), the **Regional State** occupies an intermediate position between the decentralized unitary State and federalism. It allows for both administrative **and** legislative decentralization, authorizing the Regions to draft their own Statutes, within the limits of national legislation. The Judiciary remains centralized, with judges dispersed throughout the territory. This model represents, in institutional evolution, an intermediate step toward more advanced forms of territorial autonomy without sacrificing national unity (Cf. Gutier, 2026; Del Negri, 2021).

1.2. Forms of Government

Contemporary forms of government are reduced to two: **Republic** and **Monarchy**. The first derives from the Latin expression *res publica* ("public matter" or "matter belonging to all"); the second, from the Greek terms *mono* (one) and *arcos* (power), designating the concentration of power in a single person, the monarch or king (Cf. Gutier, 2026; Masson, 2021).

1.2.1. Republic

The **Republic**, derived from *res publica*, is the form of government in which rulers exercise power on behalf of the people, through elective, temporary mandates subject to **political accountability**. It is distinguished from the Monarchy precisely by these three elements: while in the former, leaders are chosen by the people, with a fixed mandate and the duty to render accounts, in the latter, power is concentrated in an unelected, lifelong, and, as a rule, inviolable ruler. The Constitution of the Empire of Brazil of 1824 illustrates this distinction by stating, in Article 99, that "the person of the Emperor is inviolable and sacred: he is not subject to any liability whatsoever" (Cf. Gutier, 2026; Carrazza, 2013; Martins, 2024).

The republican essence is tied to **formal equality**, **popular participation**, and **alternation in power**. Hence its proximity to democracy, since it presupposes popular legitimacy and rules ensuring accountability of officeholders. As *Dallari* teaches, the Republic incorporates three essential notes: temporariness (mandates with a predetermined duration), elective character (prohibition of hereditary succession), and responsibility (duty to render accounts to the people or representative bodies) (Cf. Gutier, 2026; Carrazza, 2022; Martins, 2024).

Doctrinally, the republican regime is structured on four pillars: **formal equality**, preventing hereditary privileges; **elective character**, founding political power on elections; **transitoriness**, guaranteeing alternation; and **political responsibility**, enabling the removal of rulers through mechanisms such as *impeachment* or *recall*. These instruments reinforce democratic commitment and bring greater stability to the system (Cf. Gutier, 2026).

In Brazil, the Republic was adopted in **1889**, with the Proclamation that ended the Empire, and reaffirmed by the people in the **1993** plebiscite, provided for in the Transitory Constitutional Provisions Act. From that sovereign decision onward, the republican option was consolidated as a choice of the original constituent power. In the American continent, with the exception of Canada, all countries adopt the Republic, the majority being presidential. The United States, since 1787, constitute the historical paradigm of the republican presidential model (Cf. Gutier, 2026; Silva, 2020).

1.2.1.1. The Republic as an implicit unamendable clause

Although Article 60, § 4 of the 1988 Federal Constitution does not expressly include the republican form among the unamendable clauses, the majority of scholarship and the **Federal Supreme Court (STF)** recognize it as an **implicit unamendable clause**. This understanding is based on the fact that the Constitution enshrined the Republic as the form of government and made its eventual modification conditional on a popular plebiscite, held in 1993, the result of which reaffirmed the republican option (Cf. Gutier, 2026; Silva, 2020).

José Afonso da Silva, who initially diverged, came to argue in later editions of his work that, once the plebiscitary moment was overcome, the foundations of the immutability of the republican form were reestablished. For the author, the Republic became, in practice, an untouchable clause, not by mere implicit limitation, but by structural and teleological imposition of the constitutional text (Cf. Gutier, 2026; Silva, 2020).

In the same vein, *Gilmar Ferreira Mendes* argues that the **periodicity of mandates** - a consequence of periodic voting, which is itself an express unamendable clause - precludes any institution of lifetime or hereditary positions, as would be the case in a Monarchy. He further invokes the popular sovereignty manifested in the 1993 plebiscite as an element consolidating the Republic as an immutable choice of the original constituent power (Cf. Gutier, 2026; Cavalcanti Filho-Mendes, 2024).

The **STF** has expressly ruled on the matter. In a writ of mandamus filed by parliamentarians against a proposed constitutional amendment of a monarchist nature, the Court held unconstitutional the very processing of an amendment that violates unamendable clauses, even implicit ones, prohibiting the procedure of proposals attacking the structural elements of the Constitution, among which the republican form of government is implicitly included (Cf. Gutier, 2026; Streck-Morais, 2014).

1.2.2. Monarchy

The **Monarchy** is characterized by the concentration of power in the monarch, who governs for as long as he or she lives or is able to do so. Three notes distinguish it: **political irresponsibility** (the monarch cannot be removed for ethical or political reasons, being immune to *impeachment* or crimes of responsibility); **hereditariness** (transmission of power through blood ties, from ascendants to descendants); and **lifelong tenure** (a mandate with no term, extending throughout life) (Cf. Gutier, 2026; Martins, 2024).

Contemporary European monarchies, such as the United Kingdom, Belgium, Denmark, Spain, and Sweden, are all **constitutional and parliamentary**. The monarch exercises predominantly symbolic functions as head of State, while government is conducted by a cabinet led by a Prime Minister. By contrast, absolutist monarchies still survive in some countries in Asia and Africa, such as Saudi Arabia, where royal power remains concentrated and lightly controlled by representative institutions (Cf. Gutier, 2026; Martins, 2024).

1.3. Systems of Government

The **system of government** consists in the form of **horizontal** distribution of political power, that is, the way in which the constituted Powers - especially Executive and Legislative - relate to one another. The two major variants are **presidentialism** and **parliamentarism** (Cf. Gutier, 2026; Masson, 2021).

1.3.1. Presidentialism

Unlike parliamentarism, which developed gradually in England, **presidentialism** has a precise place and date of origin: the **United States**, with the Constitution of 1787. The model emerged from the need to combine popular sovereignty with mechanisms for limiting power, avoiding the concentration of authority typical of monarchical absolutism. The traumatic experience under the British crown and the influence of *Montesquieu's* ideas led to the conception of a system grounded in rigid separation of Powers and *checks and balances* (Cf. Gutier, 2026; Masson, 2021).

In this model, the President of the Republic accumulates the functions of **head of State** and **head of government**, being responsible for international representation and for the conduct of internal, economic, social, and administrative policy. The Executive leadership is unipersonal: although advised by freely appointed and dismissed ministers, the President concentrates the definition of governmental guidelines, deriving legitimacy from popular election (Cf. Gutier, 2026; Masson, 2021).

The rule is **direct election**, with the exception of the U.S. model, which adopts the indirect system through the *Electoral College*. This arrangement produced, in 2000 and 2016, paradoxical results: candidates with more popular votes were defeated by opponents with a greater number of delegates, as occurred in George W. Bush's victory over Al Gore and Donald Trump's over Hillary Clinton. Direct election legitimizes presidential authority autonomously vis-à-vis Parliament (Cf. Gutier, 2026; Masson, 2021).

An essential characteristic is the **fixed mandate**, aimed at preventing perpetuation in power. In the United States, although the original Constitution provided no limit on reelection, *Franklin D. Roosevelt's* four consecutive terms (1932-1945) led to the approval of the **22nd Constitutional Amendment** in 1951, setting a cap of two terms. In Brazil, the 1988 Constitution allows one immediate reelection for President, Governor, and Mayor, according to the wording of Constitutional Amendment No. 16/1997 (Cf. Gutier, 2026; Fernandes, 2022).

The system also grants the President **veto power** over bills passed by the Legislature, integrating him or her into the legislative process. In some countries, the President also holds the power of legislative initiative, reinforcing the role in policy formulation. However, unlike parliamentarism, Congress cannot remove the President through ordinary political judgment; there is no vote of no confidence or motion of censure: accountability occurs only in cases of crimes of responsibility, through *impeachment* (Cf. Gutier, 2026; Fernandes, 2022).

In Brazil, *impeachment* was triggered in the cases of **Fernando Collor de Mello** (1992) and **Dilma Rousseff** (2016), both resulting in removal. This mechanism is legally complex and politically traumatic. Likewise, the President cannot dissolve Parliament, revealing the rigidity of the separation of Powers in presidentialism. As *Canotilho* observes, in the model, "the government is irresponsible and parliament, indissoluble" (Cf. Gutier, 2026).

Critics of presidentialism sometimes describe it as a "**dictatorship for a fixed term**", due to the absence of daily political accountability before Parliament. Defenders, however, highlight the clarity of authority and decision-making agility, attributed to unity of command and the institutional stability provided by the fixed mandate, although they acknowledge that this rigidity can generate serious impasses in contexts of conflict between Powers (Cf. Gutier, 2026).

1.3.1.1. Coalition presidentialism: the Brazilian peculiarity

Presidentialism was adopted in Brazil with the **Proclamation of the Republic** in 1889, as an attempt to transplant the U.S. model. However, the national political context, marked by an authoritarian tradition and fragile institutions, gave rise to a hybrid and unique model. From the 1988 Constitution onward, the so-called "**coalition presidentialism**" was consolidated, an expression coined by *Sérgio Abranches* to designate the President's need to form parliamentary majorities through pragmatic alliances, frequently based on the distribution of positions and resources (Cf. Gutier, 2026; Fernandes, 2022).

This dynamic generates a relationship of interdependence between Executive and Legislative, in which the President constantly negotiates with Parliament to advance his agenda. The negotiations involve the release of budgetary amendments and the occupation of strategic positions in public administration, which weakens institutional controls and favors clientelistic practices. Added to this is the frequent use of **provisional measures** - an instrument typical of parliamentary systems - without immediate mechanisms for political censure, intensifying tensions between Powers (Cf. Gutier, 2026; Fernandes, 2022).

1.3.2. Parliamentarism

Parliamentarism is the main European system of government and developed in its most consolidated form in England. Although there is disagreement over the exact timeframe of its emergence, it is certain that its geographical origin lies in medieval England, even if consolidation occurred only in the late 19th century. Some authors locate its beginning in the Assembly of 1258, others in the Great Council of 1295, convened by *Edward I*, and still others in the meeting led by *Simon de Montfort* in 1265 (Cf. Gutier, 2026; Masson, 2022).

Regardless of the date, parliamentarism developed gradually, with deep roots in the strengthening of opposition to monarchical absolutism, culminating in the **Glorious Revolution** (1688-1689) and the ***Bill of Rights*** of 1689, which established the supremacy of Parliament over the Crown. This parliamentary supremacy became the cornerstone of the system, profoundly marking its institutional identity (Cf. Gutier, 2026; Masson, 2022).

The system is characterized by two essential notes: the **separation between the functions of head of State and head of government** and the **interdependence between the Legislative and Executive Branches**. The head of State, whether monarch or president, symbolically represents the State and remains aloof from political disputes. The head of government, generally the Prime Minister,

effectively exercises executive functions and is the main political agent of the system (Cf. Gutier, 2026; Fernandes, 2022).

The institutional formation of parliamentarism had important landmarks. In 1295, *Edward I* formalized the meetings of Parliament, and in 1332 the bicameral model was established, with a House of Lords and a House of Commons. The system was particularly strengthened in the 18th century, after the death of Queen Anne in 1714, with the ascent of *George I* and *George II*, who, not mastering English, gradually transferred political conduct to the Cabinet. The figure of the Prime Minister gained definitive contours with *Robert Walpole*, considered the first to perform that function in a systematic way (Cf. Gutier, 2026; Masson, 2022).

Beginning in 1782, the House of Commons came to directly influence the choice of the Prime Minister, consolidating the democratic and representative character of the system. The **vote of no confidence** then developed, an instrument by which Parliament may remove the government that loses the support of the majority. In the 19th century, the requirement crystallized that the Prime Minister belong to the majority party or coalition, reinforcing the reciprocal control between Powers (Cf. Gutier, 2026; Masson, 2022).

The main features of parliamentarism are: duality between head of State and head of government; political responsibility of the cabinet, which may be removed by a vote of no confidence (in Germany, *constructive no confidence* applies, requiring prior designation of a successor); reciprocal control between Executive and Legislative, with the possibility of dissolving Parliament; professionalization of the state bureaucracy; and political flexibility combined with administrative stability (Cf. Gutier, 2026; Fernandes, 2022).

If parliamentarism develops under a Monarchy, one speaks of **monarchical parliamentarism** (United Kingdom, Spain, Belgium); if under a Republic, of **republican parliamentarism** (Germany, Italy, Portugal). The Prime Minister is chosen by Parliament, has no fixed mandate, and remains in office as long as he or she retains majority support. The loss of such support entails the removal of the cabinet through a **motion of no confidence**, an instrument that confers political agility on the system (Cf. Gutier, 2026; Fernandes, 2022).

1.4. Political Regime

The **political regime** addresses the relationship between the people and the processes of power, contrasting the **democratic** regime with the **autocratic** or **dictatorial**. As *Luís Roberto Barroso* teaches, the construction of the democratic constitutional State in the 20th century involved in-depth debates on the formal and substantive dimensions of the concepts of **Rule of Law** and **democracy** (Cf. Gutier, 2026; Barroso, 2020).

The **Rule of Law** presupposes that the State is governed and structured by Law, establishing a legal order whose norms must be observed by state organs and private parties alike. This principle is expressed in the idea of **legality**. However, a purely formal view may even encompass authoritarian regimes that possess their own legal system. Hence the importance of the substantive conception, reinforced by the Anglo-Saxon concept of ***rule of law***, which unites legality, **legitimacy**, and **justice** of the legal order (Cf. Gutier, 2026; Barroso, 2020).

Democracy, in turn, encompasses two dimensions. In its **formal** face, it implies majority government and respect for public liberties (expression, association, locomotion), guaranteed mainly by state abstention. **Material democracy**, essential to the democratic constitutional State, goes

beyond the majority rule, guiding government toward the benefit of all, including racial, cultural, and religious minorities, women, and economically disadvantaged populations (Cf. Gutier, 2026; Barroso, 2020).

To realize this substantive democracy, the State is required not only to respect individual rights, but to promote **social rights** that ensure minimums of material equality. Without this providing dimension, there is no dignified life or real freedom. This challenge constitutes a continuing project of democratic constitutionalism, which seeks to balance popular sovereignty and fundamental rights in an environment of justice, pluralism, and diversity (Cf. Gutier, 2026; Barroso, 2020).

1.4.1. In-depth analysis: Habermas's three models of democracy

In "Three Normative Models of Democracy," *Jürgen Habermas* compares three distinct models: the liberal, the republican, and the proceduralist. Each rests on different presuppositions about the nature of the political process and the role of the citizen. Understanding these matrices offers a valuable analytical lens for assessing the quality of contemporary democratic regimes (Cf. Gutier, 2026; Habermas, 1995; Calçado, 2023).

1.4.1.1. Liberal Model

In this model, the democratic process is conceived as a mechanism for **aggregating individual preferences** and programming the government according to the interests of society. The State is seen as an administrative apparatus aimed at protecting individual rights and ensuring the functioning of the market. Citizens are viewed as autonomous individuals seeking to maximize their own interests, and politics is the arena where such conflicting interests are negotiated (Cf. Gutier, 2026; Habermas, 1995).

1.4.1.2. Republican Model

The republican model emphasizes the **active participation** of citizens in political life and the construction of a community founded on deliberation and consensus. Politics is viewed as a process of self-government, in which citizens, acting together, define the direction of society. The State is the institutional expression of the popular will, and citizens are called upon to debate and define the common goals of the collectivity (Cf. Gutier, 2026; Habermas, 1995).

1.4.1.3. Proceduralist Model

Habermas proposes the proceduralist model as an **overcoming** of the shortcomings of the previous models. Democracy must be understood as a discursive process, in which citizens, through argumentation and deliberation, seek mutual understanding on political issues. The State ensures the conditions for this discursive process, and citizens are called upon to influence decisions through the force of the better argument (Cf. Gutier, 2026; Habermas, 1995).

1.4.1.4. The Brazilian case

Brazil combines, with nuances, the three models. It adopts representative democracy with regular elections and freedom of expression (liberal aspect). The 1988 Constitution enshrines social rights and provides for popular participation in municipal councils and national conferences (republican aspect). The mechanisms of social control, transparency, and access to information (Access to Information Law - Law No. 12,527/2011) reflect the proceduralist aspect. Challenges, however, persist: social inequality, corruption, and fragility of the public sphere (Cf. Gutier, 2026; Barroso, 2020).

- **Logic of the Structural Analysis of the State**

Understanding the state structure requires the precise distinction between four categories that, although interconnected, have different natures and functions. The **form of State** answers the question of **how** political power is distributed territorially, opting for centralization (Unitary State), constitutional decentralization (Federated State), or precarious union of sovereign entities (Confederation). Each choice defines the degree of autonomy of regional entities and the rigidity of the distribution of competences.

The **form of government** establishes **who governs and how power is legitimized**: whether by popular will, with temporariness and accountability (Republic), or by hereditary succession, with lifelong tenure and political irresponsibility (Monarchy). The **system of government** governs the **horizontal** relationship between Executive and Legislative: in presidentialism, there is rigid separation, fixed mandates, and mutual independence; in parliamentarism, there is interdependence, political responsibility of the government, and the possibility of parliamentary dissolution.

The **political regime** reveals the **quality** of the relationship between people and power, indicating whether there is effective democratic participation or authoritarian concentration. Democracy may be merely formal (electoral procedures and public liberties) or material (substantive inclusion, social rights, real equality). This dimension permeates the others: a State may be federated and republican, but antidemocratic in practice, as occurred in Brazil under the 1937 Constitution and the military regime of 1964-1985.

The systemic logic lies in the **complementarity and conceptual independence** of these four categories. Brazil may be simultaneously federated, republican, presidential, and democratic; the United Kingdom may be unitary, monarchical, parliamentary, and democratic. Each element answers a specific question, and the combination among them defines the constitutional identity of each nation. Mastering these distinctions is indispensable to avoid conceptual confusion and to critically analyze political institutions.

- **Synoptic Table: Structural Analysis of the State**

Topic	Explanation of the Institute
Form of State	Addresses the territorial (vertical) distribution of political power. It has three main variants: (a) Unitary State, with total centralization; (b) Federated State, with constitutional decentralization and entity autonomy; (c) Confederation, with precarious union of sovereign States by treaty, admitting secession.
Unitary State	Original model in which power is concentrated in a single center. It has variations: (i) simple (total centralization); (ii) deconcentrated (allows administrative delegation); (iii) decentralized (transfers executive functions, with Legislative and Judicial remaining centralized). Examples: France, Portugal, Monaco.
Federated State	Form emerging in the U.S. in 1787, from the term *foedus* (pact). Characterized by: decentralization of power, rigid Constitution, autonomy of entities, indissolubility of the bond, representation in the national Legislative Branch,

	constitutional distribution of competences. Examples: U.S., Brazil, Germany, Canada.
Confederation	Union by international treaty among sovereign States, which preserve sovereignty and admit secession. Decisions of confederal bodies do not automatically bind member States. Historical examples: Helvetic Confederation (1291-1848); U.S. (1781-1787); Confederation of the Southern States (1861-1865).
Regional State	Hybrid form between unitary and federated. Regions have their own Statutes and administrative and legislative autonomy, but the Judiciary and sovereignty remain centralized. Emerged in Italy (Constitution of 1947).
Form of Government	Addresses the relationship between rulers and ruled. Two models exist: (a) Republic, with elective, temporary, and responsible government; (b) Monarchy, with hereditary, lifelong, and irresponsible power.
Republic	Elective, temporary, and responsible form of government, based on *res publica*. Pillars: formal equality, elective character, transitoriness, political responsibility. In Brazil, it is an implicit unamendable clause, recognized by the STF.
Monarchy	Form of government characterized by hereditariness, lifelong tenure, and political irresponsibility of the monarch. May be absolute (Saudi Arabia) or constitutional/parliamentary (United Kingdom, Spain, Belgium, Sweden).
System of Government	Addresses the horizontal distribution of power among the constituted Powers, especially Executive and Legislative. Two models: presidentialism and parliamentarism.
Presidentialism	Originated in the U.S. in 1787. President accumulates head of State and head of government, with fixed mandate, popular election, *checks and balances*, veto power, accountability only by *impeachment*. In Brazil, coalition presidentialism is adopted.
Parliamentarism	Originated in England, consolidated in the 19th century. Separates head of State and head of government, with interdependence between Executive and Legislative, vote of no confidence, possibility of dissolving Parliament. May be monarchical (United Kingdom) or republican (Germany).
Political Regime	Addresses the relationship between the people and power. Two main models: democratic (effective participation, alternation, liberties) and autocratic (concentration, absence of controls). Democracy may be formal (procedures) or material (substantive inclusion).
Models of Democracy (Habermas)	(a) Liberal: aggregation of individual preferences; (b) Republican: civic participation and deliberation; (c) Proceduralist: discursive deliberation as a source of legitimacy. Brazil combines the three models.

§ 2 | THE FEDERATIVE REPUBLIC OF BRAZIL

The Federative Republic of Brazil adopts the **Federal State** as form of State, the **Republic** as form of government, **presidentialism** as system of government, and **democracy** as political regime. This fourfold institutional choice, enshrined in the 1988 Constitution, defines contemporary Brazilian constitutional identity and guides the entire national legal system (Cf. Gutier, 2026; Masson, 2022; Fernandes, 2022).

2.1. The Federal State: concept and foundations

The **Federal State** is a form of organization characterized by the **geographical distribution** of political power according to territory. The classic definition of federalism points to it as "**unity in plurality**", an expression that synthesizes its most striking note: decentralization of the exercise of power, which gives rise to federated entities endowed with autonomy. The Federation is born from the idea of pact, alliance, or union among entities that do not hold individual sovereignty, being part of a whole (Cf. Gutier, 2026; Masson, 2022).

As *Ricardo Lewandowski* teaches, federalism "is a form of state organization that secures its members the enjoyment of the advantages of unity while preserving the benefits of diversity." *Nathalia Masson* complements: the Federation promises the best of both worlds, maintaining regional autonomy and national integration, being a constitutional gathering of autonomous political entities bound by **indissolubility** (Cf. Gutier, 2026; Masson, 2022).

2.1.1. Federalism and Confederation: essential distinctions

Federalism balances **national unity** and **regional autonomy**, forming autonomous political entities united indissolubly under a single Constitution. There is no right to secession: the entities cannot unilaterally abandon the Federation, and separatist movements are countered by federal or state intervention (Articles 34 and 35 of the 1988 Constitution). The fundamental difference compared to Confederation thus lies in three planes: the source of the bond (internal Constitution versus international treaty), sovereignty (suppressed in federated entities versus preserved in confederate ones), and the possibility of secession (prohibited in the Federation versus admitted in the Confederation) (Cf. Gutier, 2026; Fernandes, 2022).

2.2. Features of Federalism

Brazilian federalism is structured on a set of distinctive features that confer identity on the model and ensure its harmonious functioning. Let us examine each one.

2.2.1. Indissolubility of the federative pact

In the Federation, the bond among entities is **permanent and indissoluble**, preventing any unilateral separation. Unlike the Confederation, where member States may freely withdraw, in the Federation there is no **right of secession**. Separatist movements are unconstitutional and may be countered by **federal intervention** (Article 34, I, of the 1988 Constitution). Masson cites a curious example: the Federation of Ethiopia has a constitutional clause that would allow secession, never invoked, which confirms the general rule of indissolubility. In the U.S., the secessionist attempt of the Southern States in 1861 was rejected by the Union in the Civil War, consolidating the principle (Cf. Gutier, 2026; Masson, 2022).

2.2.2. Political decentralization

The Federation presupposes two simultaneous legal orders: one central and one partial. Federative entities hold autonomy to legislate and administer within their constitutional competences, ensuring coexistence between national unity and regional diversity. This model allows each entity to exercise its own functions, addressing local peculiarities without compromising the cohesion of the whole (Cf. Gutier, 2026; Fernandes, 2022).

2.2.3. Autonomy of federative entities

Federative entities are autonomous, and this autonomy is manifested in three capacities: **self-organization** (drafting their own fundamental norm - State Constitution or Municipal Organic Law); **self-government** (electing their own rulers); and **self-administration** (managing administrative and tax interests). The 1988 Constitution granted this triple capacity to the Union, States, Municipalities, and the Federal District, with **Brazil being the only country in the world to recognize Municipalities as federative entities** (Article 18 of the 1988 Constitution) (Cf. Gutier, 2026; Masson, 2022).

2.2.4. Rigid Constitution with unalterable core

The federative model requires a **rigid Constitution**, unalterable by ordinary legislative mechanisms. In Brazil, federalism is an **unamendable clause** (Article 60, § 4, I, of the 1988 Constitution), inaccessible even by constitutional amendment. This rigidity ensures that the pact cannot be undone by momentary will of the central government or of any federated entity, preserving the institutional stability necessary to the very existence of the Federal State (Cf. Gutier, 2026; Fernandes, 2022).

2.2.5. Equal representation of federative entities

The Federation ensures political representation at the national level for federative entities. In Brazil, this role falls to the **Federal Senate**, in which each State and the Federal District have the same number of representatives (three senators), regardless of population (Article 46 of the 1988 Constitution). This equality prevents more populous States from suppressing the voice of less populous ones, balancing the demographic representation of the Chamber of Deputies (Cf. Gutier, 2026; Masson, 2022).

2.2.6. Financial autonomy of federative entities

Political autonomy becomes fiction without **financial autonomy**. For this reason, the Constitution establishes proper revenue sources for each entity, preventing subordination to the central government and ensuring resources for the exercise of competences. Financial autonomy is, therefore, a prerequisite for the effectiveness of federalism, although in Brazilian practice strong concentration of resources persists in the Union, a phenomenon that weakens States and, above all, Municipalities (Cf. Gutier, 2026; Fernandes, 2022).

2.2.7. Judicial body for federative conflicts

The multiplicity of spheres of power generates conflicts of competence. To arbitrate these disputes, an **apex body** of the Judicial Branch is indispensable. In Brazil, this function is performed by the **Federal Supreme Court (STF)** (Article 102, I, "f", of the 1988 Constitution). At different moments, the STF has sometimes reinforced federal centralization, declaring unconstitutional intrusive state norms, and at other times, during the Covid-19 pandemic, has flexibilized this view, recognizing greater

autonomy for States and Municipalities to legislate on public health (Cf. Gutier, 2026; Masson, 2022; Fernandes, 2022).

2.2.8. Bicameralism in the federal Legislature

In Federations, the federal Legislative Branch is always **bicameral**, ensuring representation both of the population and of the federative entities. In Brazil, the **Chamber of Deputies** represents the people (in proportion to the population), while the **Federal Senate** represents the States and the Federal District (on equal terms). Municipalities, although federative entities, have no representation in the Senate, a peculiarity of Brazilian federalism (Cf. Gutier, 2026; Cavalcanti Filho-Mendes, 2024).

João Trindade Cavalcanti Filho and *Gilmar Mendes* clarify that Brazilian bicameralism is **equal**: the two Houses have equivalent functions, consolidating the Federation by allowing equitable participation of the States in the legislative process. Differently, in Germany, the *Bundesrat* participates only in specific themes; in Brazil, the Senate has full legislative attributions, with its approval being necessary for bills to become law (Cf. Gutier, 2026; Cavalcanti Filho-Mendes, 2024).

It is worth noting that the bicameral structure does not derive exclusively from the federative model: the Brazilian Senate had existed since the Empire, when the country was a Unitary State. The presence of the "Upper House" is linked not only to the representation of States, but also to the democratic function of **review of legislative decisions**, as a rule, originating in the Chamber of Deputies (Cf. Gutier, 2026; Cavalcanti Filho-Mendes, 2024).

2.3. Classifications of Federalism

Federalism admits several classifications, depending on the criterion adopted by the doctrine. Understanding these classifications is fundamental to properly locate the Brazilian model in the comparative landscape.

2.3.1. As to formation or origin

By **formation**, federalism by **aggregation** (centripetal) is distinguished, in which sovereign States join to form a Federal State (U.S., Germany, Switzerland), from federalism by **segregation** (centrifugal), in which a unitary State decentralizes to create federated entities (Brazil, Belgium, Austria). In the U.S., thirteen independent colonies joined in 1787, renouncing sovereignty to constitute a central government; in Brazil, conversely, a centralized unitary State (the Empire) decentralized, in 1889, creating federated States from the former Provinces (Cf. Gutier, 2026; Fernandes, 2022).

2.3.2. As to the current concentration of power

By **current concentration of power**, federations are classified as **centripetal** (power concentrated in the central government, with little entity autonomy), **centrifugal** (greater decentralization and strengthening of regional governments), or **balanced** (equitable distribution). Although Brazil had a centrifugal formation, its current structure is **centripetal**: the Union holds the largest share of competences and attributions. The U.S., in turn, a federation by aggregation, maintains a centrifugal structure, with States having broad autonomy, being able to legislate on the death penalty, driving age, and divorce rules (Cf. Gutier, 2026; Fernandes, 2022).

This difference makes U.S. States true "experimental laboratories" of public policies, as in the famous phrase of Justice *Louis Brandeis*: in *New State Ice Co. v. Liebmann* (1932), he stated that "*a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and*

economic experiments without risk to the rest of the country". In Brazil, the symmetry imposed by the Union reduces this flexibility (Cf. Gutier, 2026; Del Negri, 2021).

2.3.3. As to the distribution of competences

By **distribution of competences**, federalism is **dual** (rigid separation typical of the classic model, with each entity acting independently) or **cooperative** (concurrent and coordinated action, adopted by social States). The 1988 Constitution adopted predominantly the cooperative model, with common competences (Article 23) and concurrent competences (Article 24), although it preserves exclusive and private competences (Cf. Gutier, 2026; Fernandes, 2022).

2.3.4. As to the equation of inequalities

By the **equation of inequalities**, **symmetrical** federalism (equality among entities in the division of competences and revenues, as in the U.S.) is distinguished from **asymmetric** federalism (recognition of regional inequalities, with differentiated policies, as in Canada in relation to Quebec). In Brazil, there is doctrinal divergence: some authors argue that Brazilian federalism is asymmetric, given the existence of funds and tax incentives for less developed regions; the majority view, however, sustains the symmetric character, with fragments of asymmetry intended to mitigate inequalities (Cf. Gutier, 2026; Fernandes, 2022).

2.4. Brazilian Federalism

2.4.1. Historical evolution of Brazilian federalism

Brazilian federalism arose from a **centrifugal origin** (segregation), characterized by a movement from center to periphery. Differently, U.S. federalism of 1787 has a **centripetal** origin (aggregation), from periphery to center. This distinction is crucial: we started from a centralized unitary State that gave up part of its power to create autonomous entities, resulting in highly centralized federalism, with excessive concentration of competences in the Union (Cf. Gutier, 2026; Fernandes, 2022).

The first Brazilian Constitution, of 1824, adopted a centralized **Unitary State**, a model maintained until the Proclamation of the Republic in 1889. Decree No. 1, of November 15, 1889, transformed the Provinces into federated States, but it was the **Constitution of 1891** that formally instituted federalism, inspired by the U.S. model. The difference, however, is structural: in the U.S., sovereign States gave up their autonomy to form a central government; in Brazil, the unitary State transferred powers to federated entities, explaining its historically centralizing character (Cf. Gutier, 2026; Fernandes, 2022; Del Negri, 2021).

2.4.2. Federalism in the 1988 Constitution

Brazilian federalism went through several phases: the **1934 Constitution** introduced cooperative federalism, replacing the previous dual model, with the emergence of concurrent competences. The **1937 Constitution** ("Polish") adopted nominal federalism, with authoritarian centralization. The **1946 Constitution** restored cooperative federalism, without full realization. The **1967-69 Constitution**, authoritarian, returned to nominal federalism (Cf. Gutier, 2026; Fernandes, 2022).

The **1988 Constitution** structured cooperative federalism, with enumerated exclusive competences and sharing in common and concurrent competences. A relevant innovation is **double-tier federalism**, with the Union and States at the first tier and Municipalities at the second (some

authors speak of three tiers). The autonomous entities include the Union, States, Municipalities, and the Federal District, all in hierarchical equality (Cf. Gutier, 2026; Fernandes, 2022).

It is essential to correct a common misconception: the **Union is not sovereign**. The sovereign entity is the **Federative Republic of Brazil** (Federal State). The Union, like the other entities, is merely autonomous. This distinction derives from the interpretation of Articles 1 and 18 of the 1988 Constitution: Article 1 establishes that the Federative Republic of Brazil is formed by the indissoluble union of the States, Municipalities, and the Federal District; Article 18 defines that the political-administrative organization comprises the Union, States, Federal District, and Municipalities, all autonomous. The Constitution belongs to the Federative Republic, not to the Union (Cf. Gutier, 2026; Masson, 2022).

The confusion between the Union and the Federative Republic stems from two reasons: the territory is the same, and the Union exercises the prerogatives of the Republic, representing it externally (Article 21, I, of the 1988 Constitution, assigns to the Union the maintenance of relations with foreign States). However, the Union is a legal entity of **internal public law**, whereas the Federative Republic is a legal entity of **international public law**. The Republic signs treaties; the Union executes them internally (Cf. Gutier, 2026; Masson, 2022).

Regarding conflicts of legislative competence, there is **no hierarchy** among federal, state, and municipal laws. Predominance depends on the constitutional distribution of competences. The **STF** has consolidated this understanding in several rulings, such as in **ADI 4,582/DF** (Rapporteur Justice Marco Aurélio, decided on September 28, 2011), in which it restricted Federal Law No. 10,887/2004 to Union civil servants, recognizing concurrent competence to legislate on social security, with federal regulation being limited to general rules (Cf. Gutier, 2026; Fernandes, 2022).

2.4.3. Autonomy of federative entities: triple capacity

Autonomy is defined as the capacity to develop activities within limits previously established by the sovereign entity. It is materialized in three interdependent capacities: self-organization, self-government, and self-administration.

2.4.3.1. Self-organization

The **Union** self-organizes by the Federal Constitution and federal legislation. The **States** self-organize by State Constitutions and state legislation (Article 25 of the 1988 Constitution). **Municipalities** do so by Organic Laws and municipal legislation (Article 29). The **Federal District** organizes itself by an Organic Law and district legislation (Article 32). Each subnational fundamental norm must observe the principles established by the Federal Constitution, under penalty of invalidation by constitutional review (Cf. Gutier, 2026; Peña de Moraes, 2024).

2.4.3.2. Self-government

The **Union** has three independent and harmonious Powers: Legislative, Executive, and Judicial (Article 2 of the 1988 Constitution). The **member States** have a Legislative Assembly (Article 27), an Executive Power with Governor and Vice-Governor (Article 28), and a state Judicial Power (Article 125). **Municipalities** have an Executive Power (Mayor and Vice) and a Legislative Power (City Council), as per Article 29, with composition altered by Constitutional Amendment No. 58/2009 (Cf. Gutier, 2026; Peña de Moraes, 2024).

Important observation: municipal self-government is limited to Executive and Legislative, without its own Judiciary. Some authors try, for this reason, to disqualify the Municipality as a federative entity, but such a view is incorrect: the provision of judicial services is ensured by the Federal or State Judicial systems. Likewise, the lack of representation in the Senate does not compromise municipal autonomy, since granting senatorial seats to more than 5,500 Brazilian Municipalities would render the federal Legislature unworkable (Cf. Gutier, 2026; Peña de Moraes, 2024).

The **Federal District** presents peculiarities: it has an Executive (Governor) and a Legislative (Legislative Chamber), but its Judiciary is organized and maintained by the Union, as are the Public Prosecutor's Office of the Federal District, the civil police, the military police, and the military fire brigade. Until 2012, the Public Defender's Office of the Federal District belonged to the Union; **Constitutional Amendment No. 69/2012** determined that the principles of state Public Defender's Offices would apply to it, granting it autonomy (Cf. Gutier, 2026; Peña de Moraes, 2024).

2.4.3.3. Self-administration

Self-administration gives practicality to self-organization and self-government, consisting in the exercise of legislative, administrative, and tax competences. **Competences** are legally attributed faculties to entities for decision-making. Without the effective exercise of these competences, the other dimensions of autonomy become mere formalities. The central study of the organization of the Brazilian State involves the distribution of competences, with particular focus on legislative and administrative ones (Cf. Gutier, 2026; Del Negri, 2021).

2.4.4. Federal and state intervention

The Constitution provides for **federal intervention** in the States (Article 34) and **state intervention** in Municipalities (Article 35) in exceptional cases, such as maintenance of national integrity, repulsion of foreign invasion, guarantee of the free exercise of the Powers, reorganization of state finances, and observance of sensitive constitutional principles. A recent example was the **2018 federal intervention** in Rio de Janeiro, in which the federal government assumed state public security through Decree No. 9,288/2018, a controversial and widely debated measure (Cf. Gutier, 2026; Del Negri, 2021).

2.4.5. The Municipality in Brazilian federalism

The 1988 Constitution innovated by granting Municipalities the status of federative entity. There is, however, doctrinal debate. **In favor**: *Quadros de Magalhães* and *Cármen Lúcia* defend full constitutional autonomy, with their own legislative capacity (Article 29 of the 1988 Constitution). **Against**: *José Afonso da Silva* and *José Nilo de Castro* hold that Municipalities are not true federative entities, since they lack representation in the Senate and depend financially on the Union. Despite the criticisms, Brazil is one of the few countries that include Municipalities in the federative structure; in the U.S. and Germany, Municipalities are mere subdivisions of the States (Cf. Gutier, 2026; Silva, 2020; Del Negri, 2021).

2.4.6. Centralization versus autonomy

Historically, Brazilian federalism oscillates between centralization and decentralization. Despite the decentralization proposed by the 1988 Constitution, strong concentration of power persists in the Union, especially financial: States and Municipalities depend on federal transfers, reducing practical

autonomy. The contemporary challenge is to deepen subnational financial and legislative autonomy without compromising national coordination (Cf. Gutier, 2026; Fernandes, 2022).

2.5. Techniques of Distribution of Competences

The distribution of competences in the Federal State aims to define the action of each entity, ensuring balance between autonomy and national coordination. The 1988 Constitution adopts two main models: **horizontal** and **vertical** (Cf. Gutier, 2026; Fernandes, 2022; Melgaré, 2018).

2.5.1. Horizontal distribution

The **horizontal distribution** is characterized by **rigid and watertight** allocation, with each entity having its own attributions, without sharing. It originates in dual or classic federalism and may be structured in three ways: (i) exhaustive enumeration of the competences of each entity; (ii) definition of the Union's competences, leaving the non-enumerated ones to the States; or (iii) definition of the States' competences, attributing the remaining ones to the Union (Cf. Gutier, 2026; Fernandes, 2022; Melgaré, 2018).

The technique dates back to the U.S. Constitution of 1787, which established enumerated competences for the Union and **remaining** competences for the States. In Brazil, horizontal distribution was introduced by the Constitution of 1891, inspired by the U.S. model. The 1988 Constitution maintained the technique but included Municipalities as federative entities, assigning them enumerated competences (Article 30). Thus, in Brazil, the Union and Municipalities have enumerated competences; the States, remaining competences (Cf. Gutier, 2026; Melgaré, 2018).

2.5.2. Vertical distribution

The **vertical distribution** allows joint or concurrent action by two or more entities on the same matter, with a normative hierarchy. It arose in the **Weimar Constitution** (Germany, 1919) and was introduced in Brazil by the 1934 Constitution. It is associated with cooperative federalism, in which entities collaborate to achieve common objectives. It may be **cumulative** (with no previously defined limits - not adopted in Brazil) or **non-cumulative** (with limits, the model adopted by the 1988 Constitution) (Cf. Gutier, 2026; Fernandes, 2022; Melgaré, 2018).

In the Brazilian non-cumulative model, the **Union establishes general rules** and the States and Federal District **supplement** them, adapting them to regional peculiarities (Article 24 of the 1988 Constitution). This arrangement seeks national uniformity without undermining subnational autonomy to adapt to specific realities (Cf. Gutier, 2026; Melgaré, 2018).

2.5.3. Administrative (material) competences

The **administrative competences** refer to the power to act, to execute activities, to provide public services. They define "who does what" in the Federation. They are divided into **exclusive** and **common**.

The **exclusive administrative competences** belong to a single entity, without sharing. The Union has those enumerated in Article 21 (issue currency, declare war and peace, maintain international relations, operate telecommunications and nuclear services). Municipalities have those enumerated in Article 30 (public services of local interest, municipal public transportation). The States have those **reserved** by Article 25, § 1 (whatever is not prohibited or assigned to another entity) (Cf. Gutier, 2026; Fernandes, 2022).

The **common administrative competences** are exercised simultaneously by all entities (Article 23 of the 1988 Constitution): caring for public health and welfare, protecting the environment, promoting housing programs, combating poverty, preserving forests, fauna, and flora. This is federative cooperation to meet fundamental needs. Joint action must be coordinated by complementary law (sole paragraph of Article 23) (Cf. Gutier, 2026; Fernandes, 2022).

2.5.4. Legislative competences

The **legislative competences** refer to the power to make laws, with a more complex distribution.

The **exclusive legislative competence of the Union** (Article 22 of the 1988 Constitution) defines matters over which only the Union may legislate: civil, commercial, criminal, procedural, electoral, agrarian, maritime, aeronautical, space, and labor law; nationality, citizenship, and naturalization; foreign trade, among others. It is **delegable**: the sole paragraph allows the Union to authorize, by complementary law, the States to legislate on specific issues of these matters (Cf. Gutier, 2026; Fernandes, 2022).

The **concurrent competence** (Article 24 of the 1988 Constitution) establishes matters over which the Union, States, and Federal District may legislate, with a vertical division: the Union issues **general rules**; the States supplement them with **specific rules**. They include tax, financial, penitentiary, and economic law; production and consumption; environment; education, culture, and sports. **Progressive supplementation**: in the absence of federal law, the States exercise full competence (Article 24, § 3); upon enactment of federal law, the state law has its effectiveness suspended insofar as it contradicts the federal rule (Article 24, § 4) (Cf. Gutier, 2026; Fernandes, 2022).

The **remaining competence of the States** (Article 25, § 1) grants the States residual power: whatever was not prohibited by the Constitution or attributed to another entity. The **exclusive competence of Municipalities** (Article 30, I) addresses matters of **local interest**, a legally indeterminate concept interpreted as matters predominantly of interest to the municipal community (local commerce, opening hours, code of municipal ordinances) (Cf. Gutier, 2026; Fernandes, 2022).

The **supplementary competence of Municipalities** (Article 30, II) allows them to supplement federal and state legislation where applicable, adapting rules to local peculiarities. The **reserved competence of the Federal District** (Article 32, § 1) accumulates state and municipal legislative competences, a peculiarity arising from the constitutional prohibition of dividing the Federal District into Municipalities (Cf. Gutier, 2026; Fernandes, 2022).

The predominant logic is the **predominance of interest**: to the Union, national interest; to the States, regional interest; to Municipalities, local interest. This principle is not absolute, since there are matters that simultaneously interest the three levels, justifying common and concurrent competences. The **STF** acts as arbiter of the Federation, interpreting the Constitution to delimit the scope of competences (Article 102, I, "f", of the 1988 Constitution) (Cf. Gutier, 2026; Fernandes, 2022).

- **Logic of the Federative Republic of Brazil**

Understanding Brazilian federalism requires recognizing that its structure results from a peculiar historical process, marked by permanent tension between **centralization** and **autonomy**. The logic of the system is structured on an apparent contradiction that constitutes its essence: this is a Federation born from the disaggregation of a unitary State, and not from the aggregation of sovereign States, which explains the historical tendency to concentrate power in the Union.

The **centrifugal origin** of Brazilian federalism determined that the Union retain a significant portion of competences, transferring to the States and, later, to Municipalities only what was necessary to characterize autonomy. The practical consequence manifests itself in the excessive centralization of legislative, administrative, and financial competences in the Union, a phenomenon that persists even after the 1988 redemocratization.

The distinction between **sovereignty** and **autonomy** is an essential theoretical premise. A common doctrinal misconception attributes sovereignty to the Union, when the sovereign entity is the Federative Republic of Brazil. The Union, like the States, Municipalities, and Federal District, is merely an autonomous entity. The Constitution belongs to the Federative Republic, not to the Union; the former is a person of international public law, the latter only of internal public law.

Double-tier federalism represents a structural innovation of the Brazilian model: at the first tier, Union and States; at the second, Municipalities. This singular structure reflects the choice of the 1988 constituent power to strengthen local government, a unique feature in comparative law. The **autonomy** of the entities is manifested in the triple capacity of self-organization, self-government, and self-administration, with these dimensions being interdependent: without financial autonomy, political autonomy becomes legal fiction.

The **distribution of competences** combines horizontal and vertical techniques. The horizontal establishes exclusive and enumerated competences; the vertical (non-cumulative) allows concurrent action, with the Union issuing general rules and the States supplementing them. Competences are classified into administrative (material) and legislative, and are divided into exclusive, common, private, concurrent, reserved, and supplementary. The principle of **predominance of interest** (national, regional, local) guides the resolution of conflicts.

The final logic of Brazilian federalism lies in the permanent search for balance among potentially conflicting values: unity and diversity, centralization and autonomy, formal equality and differentiated treatment, cooperation and competition. The system is not a static structure, but a dynamic process of accommodating regional and national interests. Understanding this logic is essential to identify contemporary challenges, especially the excessive concentration of power and resources in the Union.

- **Synoptic Table: Federative Republic of Brazil and Brazilian Federalism**

Topic	Explanation of the Institute
Federal State	Form of organization characterized by the geographical distribution of political power according to territory. Classic definition: "unity in plurality". Pact among autonomous entities, indissolubly bound under a single Constitution.
Indissolubility of the pact	The bond among the entities is permanent, with no right to secession. Separatist movements are unconstitutional and may be countered by federal intervention (Article 34, I, of the 1988 Constitution).
Political decentralization	Coexistence of two legal orders (central and partial), with federative entities holding autonomy to legislate and administer in matters of constitutional competence.

Triple capacity (autonomy)	(a) Self-organization: draft their own fundamental norm; (b) Self-government: elect their own rulers; (c) Self-administration: exercise administrative, legislative, and tax competences.
Rigid Constitution with untouchable core	The federative form is an unamendable clause (Article 60, § 4, I, of the 1988 Constitution), unalterable by constitutional amendment. Preserves the pact against circumstantial majorities.
Equal representation in the Senate	Each State and the Federal District have the same number of senators (three), regardless of population (Article 46 of the 1988 Constitution), balancing the demographic representation of the Chamber of Deputies.
Financial autonomy	Each entity has its own sources of revenue, avoiding subordination to the central government. Prerequisite for the effectiveness of political autonomy.
STF as federative arbiter	The STF is responsible for judging conflicts between the Union and States, the Union and the Federal District, or between these (Article 102, I, "f", of the 1988 Constitution). Guardian of the constitutional distribution of competences.
Equal bicameralism	The Chamber of Deputies represents the people; the Senate represents the States and the Federal District. The two Houses have equivalent functions in legislative production.
Brazilian federalism	Origin by segregation (centrifugal), currently centripetal structure, cooperative model, predominantly symmetrical with fragments of asymmetry. Recognizes the Municipality as a federative entity, a unique feature in comparative law.
Double-tier federalism	First tier: Union and States. Second tier: Municipalities. The Federal District accumulates state and municipal competences. Innovation of the 1988 Constitution.
Sovereignty x autonomy	The Federative Republic of Brazil is sovereign (a person of international public law); Union, States, Federal District, and Municipalities are only autonomous (persons of internal public law).
Horizontal distribution	Rigid and watertight allocation of competences, with each entity having its own attributions. Inspired by the U.S. Constitution of 1787. In Brazil, the Union and Municipalities have enumerated competences; States have remaining competences.
Vertical distribution (non-cumulative)	Concurrent action, with the Union issuing general rules and the States supplementing them. Origin in the 1919 Weimar Constitution. Adopted in Article 24 of the 1988 Constitution.
Exclusive administrative competence	Belongs to a single entity. Union (Article 21), Municipalities (Article 30), States (reserved powers, Article 25, § 1).

Common administrative competence	Exercised by all entities (Article 23): health, environment, housing, fight against poverty, forest preservation. Cooperation coordinated by complementary law.
Exclusive legislative competence of the Union	Matters enumerated in Article 22 (civil, commercial, criminal, procedural law, etc.). Delegable to the States by complementary law (sole paragraph).
Concurrent legislative competence	The Union issues general rules; the States and the Federal District supplement them (Article 24). Application of progressive supplementation (§§ 3 and 4).
Reserved competence of the States	Residual powers (Article 25, § 1): whatever was not prohibited by the Constitution or conferred upon another entity.
Exclusive competence of Municipalities	Matters of local interest (Article 30, I) and supplementation of federal and state legislation where applicable (Article 30, II).
Reserved competence of the Federal District	The Federal District accumulates state and municipal legislative competences (Article 32, § 1), due to the prohibition of its division into Municipalities.
Federal and state intervention	Exceptional mechanism to preserve the Federation (Articles 34 and 35 of the 1988 Constitution). Recent example: federal intervention in Rio de Janeiro in 2018 (Decree No. 9,288/2018) on public security.
Predominance of interest	Guiding criterion for the distribution of competences: national (Union), regional (States), local (Municipalities).

§ 3 | SYSTEMATIZATION OF THE CONSTITUTIONAL ARTICLES ON THE ORGANIZATION OF THE STATE

The Brazilian Federal Constitution of 1988 dedicates Articles 18 through 36 to the regulation of the **political-administrative organization** of the Federative Republic of Brazil. These provisions translate, into the normative plane, the theoretical concepts of federalism previously examined: they identify the entities that compose the Federation, set forth common prohibitions, distribute powers, organize States, Municipalities, the Federal District, and Territories, and ultimately regulate the exceptional mechanism of federative intervention (Cf. Gutier, 2026; Fernandes, 2022).

A systematic reading of this set of provisions reveals a coherent architecture, in which each article operates as a piece of the federative machinery. Reading them in isolation leads to interpretive misconceptions; analyzing them jointly allows one to perceive the **structural logic** of the Brazilian federative pact, its operational dynamics, and the mechanisms designed to balance national unity and regional autonomy (Cf. Gutier, 2026; Masson, 2022).

3.1. Political-Administrative Organization (Article 18)

3.1.1. The composition of the Federation

Article 18 of the Federal Constitution establishes the backbone of Brazilian federalism by declaring that the political-administrative organization of the Federative Republic of Brazil comprises the **Union**, the **States**, the **Federal District**, and the **Municipalities**, all of which are autonomous under the terms of the Constitution. This rule legally embodies the theoretical concept of double-tier federalism and enshrines the Brazilian singularity of recognizing the Municipality as an autonomous federative entity, a feature unique in comparative law (Cf. Gutier, 2026; Fernandes, 2022).

The phrase "**all autonomous**" is legally decisive. It establishes hierarchical equipotency among the federative entities: none of them is hierarchically superior to the others; all are equally subject to constitutional supremacy. The Union does not supervise the States, and the States do not supervise the Municipalities; the relationship is one of coordination, not subordination. This is a practical application of the distinction between **sovereignty** (an attribute of the Federative Republic) and **autonomy** (an attribute of each federated entity), examined in the previous sections (Cf. Gutier, 2026; Masson, 2022).

As a historical example, it is worth recalling that, prior to the 1988 Constitution, doctrinal controversy persisted over the federative nature of Municipalities. The 1967-69 Constitution, although it did not formally exclude them from the organization, assigned them a secondary role, treating them as mere administrative subdivisions of the States. The current wording of Article 18 definitively settled this debate, placing Municipalities on equal footing with the other entities (Cf. Gutier, 2026; Peña de Moraes, 2024).

3.1.2. Brasília as the Federal Capital and the Territories

Paragraph 1 declares Brasília to be the Federal Capital, concluding the long historical process initiated by the 1891 Constitution, which had already provided for the transfer of the capital to the Central Plateau. The inauguration of the new capital in 1960, during the government of Juscelino Kubitschek, materialized this century-long project, shifting the political axis from the coast to the inland and symbolizing the effort toward national integration (Cf. Gutier, 2026; Lenza, 2021).

Paragraph 2 addresses **Federal Territories**, which integrate the Union and whose creation, transformation into a State, or reintegration into the State of origin depends on a complementary law. The 1988 Constitution abolished the former Federal Territories of Roraima, Amapá, and Fernando de Noronha: the first two were transformed into States by the Transitory Constitutional Provisions Act (Articles 14 and 15); the last was reincorporated into the State of Pernambuco. Today, therefore, Brazil has no active Federal Territories, although the constitutional framework still allows for their eventual re-creation (Cf. Gutier, 2026; Lenza, 2021).

3.1.3. Formation of States and Municipalities

Paragraphs 3 and 4 regulate, respectively, the territorial reorganization of **States** and **Municipalities**. State territorial modifications (incorporation, subdivision, dismemberment) require two cumulative conditions: a **plebiscite** of the populations directly concerned and a **federal complementary law** passed by the National Congress. This dual requirement - direct popular expression and a national legislative act - reinforces the idea that state territorial changes are not local decisions, but involve the federative pact as a whole (Cf. Gutier, 2026; Masson, 2022).

The creation, incorporation, fusion, and dismemberment of **Municipalities** follow a similar framework: state law, within a period set by federal complementary law, preceded by a plebiscite and by the so-called **Municipal Viability Studies** (wording given by Constitutional Amendment No.

15/1996). This new wording was a legislative response to the uncontrolled proliferation of Municipalities during the 1990s, a phenomenon known as "**predatory emancipationism**," in which many small population centers sought municipal autonomy solely to access resources from the Municipalities' Participation Fund, with no real economic viability (Cf. Gutier, 2026; Fernandes, 2022).

The **Federal Supreme Court (STF)**, when ruling on **ADI 2,240/BA** (Rapporteur Justice Eros Grau, decided on May 9, 2007), addressed the issue of Municipalities created without observance of constitutional requirements and adopted a pragmatic solution: it declared such creations unconstitutional but modulated the effects of the decision to preserve the consolidated factual situation, demonstrating the tension between legal rigor and the security of social relations (Cf. Gutier, 2026).

3.2. Common Prohibitions on Federative Entities (Article 19)

Article 19 establishes three prohibitions simultaneously directed at all federative entities, setting forth genuine **negative principles** of the federal pact. Such prohibitions operate as uniform limits on the exercise of autonomy, preventing regional or local differences from violating fundamental constitutional values (Cf. Gutier, 2026; Masson, 2022).

3.2.1. Secular nature of the State (subsection I)

Subsection I prohibits federative entities from establishing religious cults or churches, subsidizing them, hindering their functioning, or maintaining relationships of dependence or alliance with them, except for collaboration of public interest. This consecrates the **principle of state secularism**, according to which the Brazilian State professes no official religion and maintains neutrality toward the different religious denominations, while acknowledging the religious phenomenon as a manifestation of freedom of conscience (Cf. Gutier, 2026; Fernandes, 2022).

Secularism, however, does not mean **laicism** (militant opposition to religion). The Brazilian State is secular, but not anti-religious. The Constitution itself, in its preamble, invokes God, and Article 5, VI, ensures freedom of belief. Collaboration of public interest is allowed, as in the maintenance of military and hospital chaplaincies, optional religious education in public schools (Article 210, § 1), and international agreements such as the Brazil-Holy See Concordat (Decree No. 7,107/2010), which the STF declared compatible with secularism in **ADI 4,439** (Rapporteur Justice Roberto Barroso, decided on September 27, 2017) (Cf. Gutier, 2026).

3.2.2. Public faith of documents (subsection II)

Subsection II prohibits the entities from denying credit to public documents issued by the others. This rule embodies the principle of **reciprocal federative trust**: a document issued by the competent authority of any federative entity must be respected by the others, under penalty of disrupting national administrative unity. A birth certificate issued in Recife is valid in Manaus; a judicial warrant issued in Porto Alegre produces effects in Belém; an identity card issued by the State of Minas Gerais must be accepted anywhere in the national territory (Cf. Gutier, 2026).

3.2.3. Prohibition of federative discrimination (subsection III)

Subsection III prohibits the creation of distinctions between Brazilians or preferences among the federative entities. This provision forbids arbitrary regional discrimination, such as differential taxation based on geographical origin or benefits granted to Brazilians of a specific region to the detriment of others. However, it does not prevent regional affirmative policies aimed at reducing inequalities, such

as tax incentives for the Manaus Free Trade Zone or the constitutional funds for the North (FNO), Northeast (FNE), and Center-West (FCO), since such measures seek precisely to bring about material equality among regions (Cf. Gutier, 2026; Carrazza, 2022).

3.3. The Union: Assets and Powers (Articles 20 to 22)

3.3.1. Assets of the Union (Article 20)

Article 20 lists, in its eleven subsections, the legal patrimony of the Union, including assets strategic for national sovereignty and economic development: **vacant lands** essential to border defense; **rivers** that flow through more than one State or serve as boundaries with other countries; **oceanic and coastal islands**, with reservations; **resources of the continental shelf** and the **exclusive economic zone**; **territorial sea**; **maritime grounds**; **hydraulic energy potentials**; **mineral resources**, including those underground; **underground natural cavities and archaeological sites**; and **lands traditionally occupied by Indigenous Peoples** (Cf. Gutier, 2026; Fernandes, 2022).

This list reveals a fundamental political choice: assets of strategic national relevance belong to the central entity, not to the States. This manifests the **centripetal** tendency of Brazilian federalism, since in federations formed by aggregation, such as the United States, these assets would frequently belong to the States. The paradigmatic case is that of the **pre-salt oil**, discovered in 2006: as a mineral resource located on the continental shelf, its ownership belongs to the Union, with the participation of the other entities only through royalties and special participations (Article 20, § 1) (Cf. Gutier, 2026; Carrazza, 2022).

Paragraph 1, with wording given by Constitutional Amendment No. 102/2019, ensures the Union, States, Federal District, and Municipalities participation in the proceeds of the exploration of oil, natural gas, water resources for the generation of electric energy, and other mineral resources. This constitutional sharing embodies **cooperative financial federalism**: the assets are federal, but their fruits are shared, mitigating the patrimonial concentration and strengthening the financial autonomy of subnational entities (Cf. Gutier, 2026; Carrazza, 2022).

Paragraph 2 institutes the **border strip** of up to one hundred and fifty kilometers, considered fundamental for the defense of the national territory, with a special legal regime for occupation and use. This regime, regulated by Law No. 6,634/1979, imposes restrictions on land acquisition by foreigners and on certain economic activities, reflecting geopolitical concerns regarding the security of the country's land borders (Cf. Gutier, 2026).

3.3.2. Administrative powers of the Union (Article 21)

Article 21 lists twenty-six subsections of **exclusive administrative powers** of the Union, configuring its material scope of action. The attributions are logically grouped into five major blocks: (i) **external sovereignty and national defense** (subsections I to VI, XXII); (ii) **economy and currency** (subsections VII to IX); (iii) **public services of national interest** (subsections X to XII, XV to XXI); (iv) **organization of the Judiciary and security in the Federal District and Territories** (subsections XIII and XIV); and (v) **nuclear activities and personal data** (subsections XXIII to XXVI) (Cf. Gutier, 2026; Fernandes, 2022).

The underlying logic is the principle of **predominance of national interest**: matters that, by their nature, transcend state borders or require national standardization fall to the Union. Maintaining relations with foreign States (subsection I) is, obviously, a task that cannot be fragmented among 27

federative units; issuing currency (subsection VII) requires monetary unity; operating nuclear services (subsection XXIII) demands single control due to the gravity of the risks involved (Cf. Gutier, 2026; Carrazza, 2022).

Subsection XXVI, included by Constitutional Amendment No. 115/2022, attributed to the Union the power to organize and supervise the protection and processing of personal data. This inclusion responded to the need for regulatory unification after the General Data Protection Law (Law No. 13,709/2018), establishing that such a transversal and technologically complex theme requires uniform national treatment, executed by the National Data Protection Authority (ANPD) (Cf. Gutier, 2026).

3.3.3. Exclusive legislative powers of the Union (Article 22)

Article 22 lists thirty subsections of **exclusive legislative power** of the Union, covering the main branches of Law (civil, commercial, criminal, procedural, electoral, agrarian, maritime, aeronautical, space, and labor), as well as strategic matters such as the monetary system, foreign trade, credit policy, telecommunications, mineral resources, and nuclear activities. Exclusivity means that only the Union may issue rules on these themes, prohibiting any autonomous legislative action by the States, Federal District, and Municipalities (Cf. Gutier, 2026; Fernandes, 2022; Melgaré, 2018).

The difference between **exclusive legislative power** (Article 22) and **exclusive administrative power** (Article 21) is doctrinally relevant: the former allows **delegation** to the States by complementary law (sole paragraph of Article 22), while the latter is, in principle, non-delegable. This escape valve permits flexibility in the system when specific issues require differentiated regional treatment, without disrupting the national legislative unity (Cf. Gutier, 2026; Melgaré, 2018).

A relevant historical example is **Complementary Law No. 103/2000**, which authorized the States and the Federal District to establish a **regional minimum wage** for workers not subject to a minimum wage defined by law or collective bargaining. This delegation allowed States such as São Paulo, Rio de Janeiro, and Paraná to establish regional minimum wages above the national one, adapting labor legislation to local economic realities without violating the federal exclusive power (Cf. Gutier, 2026).

Subsection XXX, included by Constitutional Amendment No. 115/2022, exclusively attributed to the Union the power to legislate on the protection and processing of personal data, complementing subsection XXVI of Article 21. Prior to that amendment, controversy existed as to whether such matter was exclusive, concurrent, or common, generating legal uncertainty that the constitutional reform sought to eliminate (Cf. Gutier, 2026).

3.4. Common and Concurrent Powers (Articles 23 and 24)

3.4.1. Common administrative powers (Article 23)

Article 23 lists the **common administrative powers** for all federative entities. These are matters in which the **Union, States, Federal District, and Municipalities** act simultaneously, without one's action excluding the others'. The twelve subsections cover themes essential to human dignity and collective well-being: the safekeeping of the Constitution and democratic institutions; public health and welfare; protection of historical and cultural heritage; environment and pollution control; preservation of forests, fauna, and flora; agricultural production and food supply; housing and basic sanitation; combating poverty; water and mineral resources; and traffic safety (Cf. Gutier, 2026; Fernandes, 2022).

The logic here is **cooperative federalism**: since such matters are complex and require multiple action fronts, all entities must collaborate. To coordinate this simultaneous action, the **sole paragraph**

provides for **complementary laws** that will set forth cooperation rules, with a view to balanced national development and well-being, with wording given by Constitutional Amendment No. 53/2006 (Cf. Gutier, 2026; Melgaré, 2018).

A paradigmatic example was the response of federative entities to the **Covid-19 pandemic**: Union, States, and Municipalities acted jointly in public health actions (subsection II), based on common powers. The **STF**, in **ADPF 672/DF** and in **ADI 6,341/DF**, both decided in April 2020, consolidated the understanding that it was up to the States, Federal District, and Municipalities to adopt sanitary measures appropriate to their local realities, without hierarchical subordination to the Union, in strict application of the cooperative principle (Cf. Gutier, 2026; Fernandes, 2022).

3.4.2. Concurrent legislative powers (Article 24)

Article 24 regulates the **concurrent legislative powers** between the Union, States, and Federal District, encompassing sixteen subsections with relevant matters: tax, financial, penitentiary, economic, and urban law; budget; commercial registries; production and consumption; environment; cultural heritage; education and science; procedural rules; social security and health; legal aid; protection of persons with disabilities; childhood and youth; and the organization of civil police forces. It is worth noting the absence of **Municipalities** in the list of entities authorized to legislate concurrently, which constitutes a peculiarity interpreted by scholarship as tacit permission for municipal supplementation pursuant to Article 30, II (Cf. Gutier, 2026; Fernandes, 2022).

Paragraphs 1 to 4 establish the operational logic of concurrent legislation: the Union is responsible for issuing **general rules** (§ 1), preserving the **supplementary** power of the States (§ 2). In the absence of federal law, the States exercise **full legislative power** (§ 3). Upon the enactment of federal law on general rules, the state law has its effectiveness **suspended** insofar as it is contrary thereto (§ 4). This **progressive supplementation** ensures minimum national uniformity without undermining regional adaptations (Cf. Gutier, 2026; Melgaré, 2018).

The concept of "**general rules**" generates well-known interpretive controversies. The **STF**, when ruling on **ADI 4,582/DF** (Rapporteur Justice Marco Aurélio, decided on September 28, 2011), already examined in a previous section, restricted the applicability of Federal Law No. 10,887/2004 to Union civil servants, recognizing that the federal regulation in social security matters must be limited to general rules, under penalty of invading the supplementary power of the States. Another example is **ADI 6,421/DF** (Rapporteur Justice Roberto Barroso, decided on May 21, 2020), in which the Court established a thesis on the power of the States and Municipalities to adopt sanitary measures during the Covid-19 pandemic, even in divergence with federal guidelines (Cf. Gutier, 2026; Fernandes, 2022).

3.5. Federated States (Articles 25 to 28)

3.5.1. Self-organization and reserved powers (Article 25)

Article 25 consecrates that the States organize and govern themselves by the **Constitutions and laws they adopt**, observing the principles of the Federal Constitution. This rule embodies the first dimension of triple autonomy: **self-organization**, which is externalized through the drafting of the State Constitution. State Constitutions must observe the **symmetry principle**, replicating the institutional models of the Federal Constitution, although with adaptations to regional realities (Cf. Gutier, 2026; Peña de Moraes, 2024).

Paragraph 1 establishes the **reserved** or **residual power** of the States: the States are reserved the powers not prohibited to them by the Constitution. This is the application of the U.S. technique of horizontal distribution: anything not attributed to the Union or to the Municipalities belongs to the States. This residual power, theoretically broad, is in practice restricted by the extensive enumeration of federal and municipal powers in Articles 21, 22, and 30 (Cf. Gutier, 2026; Fernandes, 2022).

Paragraph 2, with the wording of Constitutional Amendment No. 5/1995, attributes to the States the direct exploitation or, by concession, of the **local piped gas services**, prohibiting a provisional measure for its regulation. This specific prohibition responded to previous attempts at federal regulation by provisional measure, reinforcing state legislative autonomy in the local energy sector (Cf. Gutier, 2026).

Paragraph 3 allows the States to institute, by complementary law, **metropolitan regions**, **urban agglomerations**, and **microregions**, made up of groupings of bordering Municipalities for public functions of common interest. This provision enables **metropolitan governance**, essential in conurbations such as Greater São Paulo, the Metropolitan Region of Rio de Janeiro, and the Integrated Development Region of the Federal District and Surroundings (RIDE-DF), where urban problems transcend municipal boundaries (Cf. Gutier, 2026; Peña de Moraes, 2024).

3.5.2. Assets of the States (Article 26)

Article 26 lists the assets of the States, in a list significantly more concise than the federal one: **surface or underground waters** (excluding those resulting from federal works); **areas on oceanic and coastal islands** under their domain; **river and lake islands** not belonging to the Union; and **vacant lands** not included among the federal ones. The modesty of the list reveals, once again, Brazilian patrimonial centralization: the most strategic assets belong to the Union, leaving the States with residual patrimony (Cf. Gutier, 2026).

3.5.3. State Legislative and Executive Branches (Articles 27 and 28)

Article 27 regulates the state **Legislative Assembly**, whose number of State Representatives corresponds to triple the State's representation in the Chamber of Deputies, with a progression rule above twelve. The term of office is four years, applying federal rules on the electoral system, immunities, remuneration, loss of mandate, and other institutional aspects. The salary of State Representatives is limited to 75% of the salary of Federal Representatives, as per wording given by Constitutional Amendment No. 19/1998, in application of the principle of moderate symmetry (Cf. Gutier, 2026; Peña de Moraes, 2024).

Article 28, with wording from Constitutional Amendment No. 111/2021, regulates the election of the Governor and Vice-Governor for a four-year term, in two rounds (first and last Sundays of October), with inauguration on January 6 of the subsequent year. **Paragraph 1** establishes grounds for **loss of mandate** for a Governor who assumes another public position (except for taking office through public competitive examination and exceptions in Article 38). **Paragraph 2** sets the salaries of the Governor, Vice-Governor, and Secretaries of State by law of initiative of the Legislative Assembly, respecting the constitutional remuneration caps (Cf. Gutier, 2026; Peña de Moraes, 2024).

3.6. Municipalities (Articles 29 to 31)

3.6.1. Municipal Organic Law (Article 29)

Article 29 establishes that the Municipality is governed by an **Organic Law**, voted on in two rounds with a minimum interval of ten days, approved by **two-thirds** of the members of the Municipal Chamber. The requirement of a qualified quorum and internal bicameralism (two rounds) confers on the Organic Law a materially constitutional nature, being a true **Municipal Constitution**. It must observe the principles established by the Federal Constitution, the Constitution of the respective State, and the fourteen precepts listed in the subsections of Article 29 (Cf. Gutier, 2026; Peña de Moraes, 2024).

The subsections detail the municipal structure: election of the Mayor, Vice-Mayor, and City Councilors for a four-year term, with direct and simultaneous national elections (subsection I); inauguration on January 1 (subsection III); composition of the Municipal Chamber observing the population limits in subsection IV (with wording from Constitutional Amendment No. 58/2009, which established a progression from nine to fifty-five Councilors according to population); salaries of municipal political agents (subsections V and VI); inviolability of Councilors in the exercise of the mandate and within the municipal jurisdiction (subsection VIII); judgment of the Mayor before the Court of Justice (subsection X); and popular initiative of bills (subsection XIII) (Cf. Gutier, 2026).

The inviolability of Councilors has an essential peculiarity: it is limited to the **Municipal jurisdiction**, unlike Federal and State Representatives, whose material immunity is absolute throughout the national or state territory. This restriction was reaffirmed by the **STF** in several rulings, such as **Inq 2,282/MG** (Rapporteur Justice Ricardo Lewandowski, decided on September 14, 2006), which rejected the immunity of a Councilor for statements made outside the municipal limits (Cf. Gutier, 2026).

3.6.2. Limits on municipal legislative expenses (Article 29-A)

Article 29-A, included by Constitutional Amendment No. 25/2000 and updated by Constitutional Amendment No. 109/2021, sets maximum limits for the **total expenditure of the Municipal Legislative Branch**, calculated as a percentage of tax revenue and constitutional transfers. The scale ranges from 7% (Municipalities with up to 100,000 inhabitants) to 3.5% (above 8 million inhabitants). **Paragraph 1** prohibits the Chamber from spending more than 70% of its revenue on payroll, and **Paragraph 2** classifies as a **crime of responsibility of the Mayor** the failure to comply with the limits (Cf. Gutier, 2026; Peña de Moraes, 2024).

This provision represented significant progress in controlling municipal spending. Before Constitutional Amendment No. 25/2000, it was common to use Municipal Chambers as a source of jobs and as an instrument of clientelistic exchange, especially in small Municipalities where the Legislative Branch spent more than essential public services. The constitutionalization of the limits made the containment of expenses objectively enforceable and created specific criminal liability (Cf. Gutier, 2026).

3.6.3. Municipal powers (Article 30)

Article 30 lists the **powers of Municipalities**, in a list that combines legislative and administrative powers: legislate on matters of **local interest** (subsection I); **supplement** federal and state legislation where applicable (subsection II); **institute and collect** their own taxes (subsection III); **create, organize, and abolish districts** (subsection IV); **organize and provide local public services**, including **public transportation** with essential character (subsection V); maintain programs of **early childhood education and primary education** with technical and financial cooperation from the Union and the State (subsection VI); **health services** with federative cooperation (subsection VII); **urban territorial**

planning (subsection VIII); and **protection of local historical and cultural heritage** (subsection IX) (Cf. Gutier, 2026; Fernandes, 2022).

The concept of "**local interest**" (subsection I) is legally indeterminate, requiring case-by-case interpretation. The **STF** established the understanding that these are matters with **predominance** of municipal interest, not exclusivity. In **RE 313,060/SP** (Rapporteur Justice Ellen Gracie, decided on November 29, 2005), for example, the Court recognized municipal authority to legislate on the opening hours of commercial establishments, as configuring local interest. Conversely, in **ADI 3,610/DF** (Rapporteur Justice Cezar Peluso, decided on August 1, 2011), a municipal rule on a matter of federal authority was invalidated (Cf. Gutier, 2026).

The guarantee of **public transportation as an essential service** (subsection V) was reaffirmed by the STF as a constitutional municipal obligation, as decided in **RE 549,419/RJ** (Rapporteur Justice Ricardo Lewandowski, decided on March 9, 2017): public transportation is part of the urban existential minimum, and may not be interrupted for economic reasons without adequate alternatives for users (Cf. Gutier, 2026).

3.6.4. Municipal oversight (Article 31)

Article 31 regulates **municipal oversight**, exercised by the Municipal Legislative Branch (external control) and by the internal control systems of the Municipal Executive Branch. **Paragraph 1**, with wording from Constitutional Amendment No. 139/2026, provides that external control shall be exercised with the assistance of the **State Courts of Accounts** or **Municipal Courts of Accounts**, or **Councils or Courts of Accounts of Municipalities**, where they exist, with the **prohibition of their extinction, creation, or installation**. This wording consecrates the regime of Municipal Courts of Accounts existing only in São Paulo and Rio de Janeiro, prohibiting the creation of new bodies (Cf. Gutier, 2026; Peña de Moraes, 2024).

Paragraph 2 establishes that the prior opinion of the accounting body on the Mayor's annual accounts shall only fail to prevail by decision of **two-thirds** of the members of the Municipal Chamber. This qualified quorum protects the technical independence of the Courts of Accounts. The **STF**, in **RE 848,826/DF** (Rapporteur Justice Roberto Barroso, decided on August 17, 2016), established a thesis of general repercussion on the judgment of accounts by the Municipal Legislative Branch, distinguishing government accounts (political judgment by the Chamber) from management accounts (technical judgment by the State or Municipal Court of Accounts) (Cf. Gutier, 2026).

Paragraph 4 prohibits the creation of **Municipal Courts, Councils, or accounting bodies**, except for those existing before the Constitution. This prohibition was aimed at preventing the proliferation of municipal control bodies, keeping only those already constituted (TCM-SP, TCM-RJ, TCM-GO, TCM-BA, TCM-PA, TCM-CE), in respect to the principle of administrative economy (Cf. Gutier, 2026).

3.7. Federal District and Territories (Articles 32 and 33)

3.7.1. Federal District (Article 32)

Article 32 regulates the Federal District, prohibiting its division into Municipalities. The Federal District is governed by an **Organic Law**, with quorum and procedure similar to those of municipalities. **Paragraph 1** establishes that the legislative powers reserved to **States and Municipalities** are attributed to the Federal District, configuring its hybrid nature. **Paragraph 2** regulates the election of the Governor, Vice-Governor, and District Representatives, and **Paragraph 3** applies to District

Representatives and the Legislative Chamber the provisions of Article 27 (state regime) (Cf. Gutier, 2026; Masson, 2022).

Paragraph 4, with wording from Constitutional Amendment No. 104/2019, provides that federal law shall regulate the use, by the Government of the Federal District, of the **civil police, prison police, military police, and military fire brigade**. This peculiarity stems from the special condition of the Federal District as the seat of the federal capital, justifying greater Union intervention in matters of public security, as already analyzed in the sections on district autonomy (Cf. Gutier, 2026).

3.7.2. Federal Territories (Article 33)

Article 33 provides for Federal Territories, currently non-existent. Should they be created, the law shall regulate their **administrative and judicial organization** (caput). Territories may be divided into Municipalities (§ 1), their accounts will be submitted to the National Congress with a prior opinion from the Federal Court of Accounts (§ 2), and in Territories with more than one hundred thousand inhabitants there shall be first and second instance judicial bodies, Public Prosecutor's Office, and federal public defenders, in addition to a Territorial Chamber with deliberative authority (§ 3) (Cf. Gutier, 2026; Lenza, 2021).

Territories are non-autonomous entities, mere administrative decentralizations of the Union, without federative nature. Unlike States, their Governor is **appointed by the President of the Republic**, not elected by the people, and requires approval by the Federal Senate (Article 84, XIV). This structure resembles the unitary deconcentrated model more than cooperative federalism (Cf. Gutier, 2026; Lenza, 2021).

3.8. Federal and State Intervention (Articles 34 to 36)

3.8.1. Federal intervention (Article 34)

Article 34 regulates **federal intervention** in the States and the Federal District, an exceptional mechanism whereby the Union temporarily suspends the autonomy of the federated unit to restore institutional normality. The caput establishes the principle of **non-intervention**: as a rule, the Union shall not intervene. The exceptional hypotheses are exhaustively listed in seven subsections, which can be grouped into four categories: (i) **defense of national integrity** (subsections I and II); (ii) **defense of public order** (subsections III and IV); (iii) **defense of finances** (subsection V); and (iv) **defense of the constitutional order** (subsections VI and VII) (Cf. Gutier, 2026; Del Negri, 2021).

Subsection VII lists the **sensitive constitutional principles**, whose violation authorizes intervention: republican form, representative system, and democratic regime (item a); rights of the human person (item b); municipal autonomy (item c); rendering of accounts of public administration (item d); and application of the minimum required revenue from taxes to education and health (item e, with wording from Constitutional Amendment No. 29/2000). Such principles constitute the **untouchable core** of the federative pact, whose violation triggers an extreme response (Cf. Gutier, 2026).

A recent historical example was the **federal intervention in Rio de Janeiro in 2018** (Decree No. 9,288/2018), decreed by then-President Michel Temer based on Article 34, III (serious compromise of public order), for the area of public security. The measure was unprecedented under the 1988 Constitution and sparked broad debate over its legal limits, operational effectiveness, and political implications. Another memorable example is the federal intervention in Pernambuco in 1948, during the

Eurico Gaspar Dutra government, although under a previous constitutional framework (Cf. Gutier, 2026; Del Negri, 2021).

3.8.2. State intervention in Municipalities (Article 35)

Article 35 regulates **state intervention** in Municipalities (and, supplementarily, of the Union in Municipalities located in a Federal Territory). There are four hypotheses: non-payment of the funded debt for two consecutive years, without force majeure (subsection I); non-rendering of due accounts (subsection II); non-application of the minimum required in education and health (subsection III); and approval, by the Court of Justice, of a representation to ensure the principles of the State Constitution or the enforcement of a law, order, or judicial decision (subsection IV) (Cf. Gutier, 2026; Del Negri, 2021).

State intervention is a mechanism for protecting municipal autonomy through the reinforcement of constitutional obligations. Curiously, although it is an exceptional measure, it is more frequent than federal intervention, especially in small Municipalities with serious financial management problems or non-compliance with minimum constitutional obligations (Cf. Gutier, 2026).

3.8.3. Intervention procedure (Article 36)

Article 36 regulates the **procedure** for decreeing intervention. Depending on the hypothesis, the following is required: (i) **request** from the coerced Legislative or Executive Branch, or **requisition from the STF** when the coercion affects the Judiciary (subsection I); (ii) **requisition from the STF, STJ, or TSE** in case of disobedience to a judicial order (subsection II); or (iii) **approval, by the STF, of a representation by the Attorney-General of the Republic** in the cases of Article 34, VII, or of refusal to enforce a federal law (subsection III, with wording from Constitutional Amendment No. 45/2004) (Cf. Gutier, 2026; Del Negri, 2021).

Paragraph 1 establishes that the **intervention decree** shall specify the scope, term, conditions for execution and, if applicable, appoint the **intervenor**. The decree shall be submitted for review by the National Congress or the Legislative Assembly within **twenty-four hours**, with extraordinary convocation if necessary (§ 2). **Paragraph 3** waives this review in the hypotheses of Articles 34, VI and VII, and 35, IV, limiting the decree to suspending the challenged act if that is enough to restore normality. Once the reasons cease, the removed authorities return to their positions, except for legal impediment (§ 4) (Cf. Gutier, 2026; Peña de Moraes, 2024).

The submission to Congress or to the Legislative Assembly configures **political control** over the intervention, preventing it from becoming an instrument of abuse by the Executive. The hypothesis of waiving political control (§ 3), in turn, is reserved for cases in which the mere suspension of the challenged act restores normality, without the need for more drastic measures such as the appointment of an intervenor (Cf. Gutier, 2026).

- **Logic of the Constitutional Systematization of the Organization of the State**

The analysis of Articles 18 to 36 of the Federal Constitution reveals a coherent architecture, in which each provision performs a specific function within the federative machinery. The underlying logic can be synthesized in seven successive analytical movements, which must be traversed to understand the system as a totality.

The **first movement** is the **definition of the federative subjects** (Article 18). The Constitution declares who the entities that comprise the Federation are - Union, States, Federal District, Municipalities - and establishes their hierarchical equality and reciprocal autonomy. Without defining

the actors, there is no way to distribute powers; hence the logical and topographic priority of this provision.

The **second movement** consists of **limiting the action of all entities simultaneously** (Article 19). Before attributing specific powers, the Constitution imposes common prohibitions: state secularism, reciprocal faith of public documents, and prohibition of regional discrimination. These limits operate as uniform negative principles, ensuring a minimum of coherence in the actions of the federated entities.

The **third movement** distributes powers according to the **principle of predominance of interest**. The Union is responsible for matters of national interest (Articles 21 and 22); the States, for regional matters (Article 25, § 1); the Municipalities, for local matters (Article 30, I). This criterion guides the rigid separation of exclusive powers, embodying the **horizontal distribution** examined in the previous sections.

The **fourth movement** introduces mechanisms of **federative cooperation** (Articles 23 and 24). Recognizing that certain matters transcend territorial borders or require joint action, the Constitution creates common (administrative) and concurrent (legislative) powers, applying the **vertical distribution** with progressive supplementation. This mechanism balances national unity and regional diversity.

The **fifth movement internally organizes each federative entity**. The States are regulated in Articles 25 to 28; the Municipalities, in Articles 29 to 31; the Federal District, in Article 32; the Territories, in Article 33. Each normative block materializes the triple autonomic capacity (self-organization, self-government, and self-administration) adapted to the peculiarities of each entity.

The **sixth movement** establishes **exceptional mechanisms for protecting the Federation** (Articles 34 to 36). Intervention is an extreme remedy, applicable only when other means prove insufficient to restore institutional normality. Its rigorous discipline - exhaustive hypotheses, controlled procedure, political review - prevents its abusive use and preserves the general rule of autonomy.

The **seventh movement** integrates everything into a **cohesive system**. The Constitution does not treat these themes in isolated silos but in a logical sequence: defines subjects, imposes limits, distributes powers, organizes structures, and provides protection mechanisms. Understanding this logic is essential for the proper interpretation of each provision, avoiding isolated analyses that compromise systemic coherence.

The joint reading of these articles also reveals the **structuring tension** of Brazilian federalism: on the one hand, the text recognizes the full autonomy of the entities (Article 18); on the other, it concentrates in the Union vast powers (Articles 21 and 22) and the most strategic assets (Article 20). This apparent contradiction expresses the **centripetal** nature of national federalism, originated by segregation of a pre-existing unitary State, as analyzed in the previous sections. The contemporary interpretive challenge consists of maximizing subnational autonomy without compromising national coordination, calibrating the constitutional instruments to extract maximum cooperative efficiency from the system.

- **Synoptic Table: Constitutional Systematization of the Organization of the State**

Topic	Explanation of the Institute
Article 18 - Political-administrative organization	Defines the federative entities: Union, States, Federal District, and Municipalities, all autonomous. Brasília is the Federal Capital. Addresses the creation of States (plebiscite + federal complementary law) and Municipalities (state law + plebiscite + Municipal Viability Studies, pursuant to Constitutional Amendment No. 15/1996).
Article 19 - Common prohibitions	Uniform negative principles applicable to all entities: (a) state secularism (subsection I); (b) reciprocal faith of public documents (subsection II); (c) prohibition of discrimination among Brazilians or preferences among entities (subsection III).
Article 20 - Assets of the Union	Lists the federal patrimony: strategic vacant lands, interstate rivers, continental shelf resources, territorial sea, maritime grounds, hydraulic potentials, mineral resources, Indigenous lands. Paragraph 1 ensures the other entities' participation in the results of exploitation.
Article 21 - Administrative powers of the Union	Lists twenty-six subsections of exclusive powers: external sovereignty, national defense, currency, national public services, nuclear activities, personal data protection (Constitutional Amendment No. 115/2022).
Article 22 - Exclusive legislative powers	Thirty subsections of exclusive Union power: civil, commercial, criminal, procedural, electoral, agrarian, maritime, aeronautical, space, and labor law; monetary system; telecommunications; mineral resources. Delegable to the States by complementary law (sole paragraph).
Article 23 - Common administrative powers	Twelve subsections of matters executed simultaneously by all entities: health, education, environment, cultural heritage, housing, fight against poverty. Coordination via complementary law (sole paragraph, Constitutional Amendment No. 53/2006).
Article 24 - Concurrent legislative powers	Sixteen subsections of matters legislated by the Union, States, and Federal District. Union issues general rules (§ 1); States supplement (§ 2); in the absence of federal law, States exercise full legislative authority (§ 3); upon enactment of federal law, state law has its effectiveness suspended insofar as it contradicts it (§ 4).
Article 25 - Federated States	States organize themselves through their own Constitutions and laws. § 1: reserved authority (residual powers). § 2: piped gas (prohibition of provisional measures, Constitutional Amendment No. 5/1995). § 3: metropolitan regions, urban agglomerations, and microregions.
Article 26 - Assets of the States	Surface or underground waters (excluding those from federal works); areas on oceanic and coastal islands; river and lake islands not belonging to the Union; vacant lands not federal.

Article 27 - Legislative Assembly	Number of State Representatives = triple of the State's representation in the Chamber of Deputies; above 12, proportional increase. Four-year term. Maximum salary: 75% of the federal salary (Constitutional Amendment No. 19/1998).
Article 28 - Governor	Election in two rounds on the first and last Sundays of October (Constitutional Amendment No. 111/2021). Four-year term. Inauguration on January 6. Loss of mandate for irregular accumulation of positions.
Article 29 - Municipal Organic Law	Voted in two rounds with a minimum interval of ten days, approved by two-thirds of the Municipal Chamber. Regulates elections, Chamber composition, salaries, Councilors' inviolability (limited to the municipal jurisdiction), judgment of the Mayor by the State Court of Justice.
Article 29-A - Limits on legislative expenditures	Maximum percentages for Municipal Legislative spending (from 3.5% to 7% according to population). The Chamber may not spend more than 70% on payroll (§ 1). Crime of responsibility of the Mayor for irregular transfer (§ 2).
Article 30 - Powers of Municipalities	Legislate on local interest (subsection I); supplement federal and state legislation (subsection II); institute their own taxes; create districts; provide local public services (public transportation as essential); maintain early childhood and primary education; health care; urban territorial planning.
Article 31 - Municipal oversight	External control by the Chamber, with assistance from the State Court of Accounts or Municipal Court of Accounts (extinction, creation, or installation prohibited - Constitutional Amendment No. 139/2026). Prior opinion on accounts only set aside by two-thirds of the Chamber. Prohibition of the creation of new Municipal Courts or Councils of Accounts.
Article 32 - Federal District	Division into Municipalities prohibited. Governed by an Organic Law. Accumulates state and municipal powers (§ 1). Police and military fire brigades organized by the Union (§ 4, Constitutional Amendment No. 104/2019).
Article 33 - Federal Territories	Currently non-existent. Integrate the Union, are not autonomous entities. Governor appointed by the President. May be divided into Municipalities. With more than 100,000 inhabitants, will have judicial bodies, Public Prosecutor's Office, and Federal Public Defender's Office.
Article 34 - Federal intervention	Exceptional mechanism for temporary suspension of autonomy. Exhaustive hypotheses: national integrity, public order, free exercise of Powers, finances, enforcement of federal law or judicial decision, sensitive constitutional principles (subsection VII).
Article 35 - State intervention	The State intervenes in Municipalities in four hypotheses: non-payment of funded debt; non-rendering of accounts; non-application of the minimum in education and health; representation by the Court of Justice for violation of principles of the State Constitution or refusal to enforce a law or judicial decision.

Article 36 - Intervention procedure	Decreeing depends on request, requisition (STF, STJ, TSE), or approval of representation by the Attorney-General of the Republic. Decree specifies scope, term, conditions, and intervenor. Review by Congress or Legislative Assembly within 24h. Once the reasons cease, removed authorities return.

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