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## THE FRAGMENTATION OF POWER AND THE COMPLEXITY OF GOVERNING IN THE METROPOLITAN REGIONS

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### Abstract

*As a result of the greater mobility of services, capital and people, the metropolitan issue becomes more prominent. Although the Federal Constitution had already recognized the metropolitan regions, it was with the Metropolis Statute, Law n. 13,089/2015, that some progress was achieved in relation to the Brazilian interfederal governance. The government aimed to fill the gaps and explore the potential of several political urban instruments for the production of good governance from the promotion of federative cooperation and coordination initiatives that were neglected by the Public Administration for decades. However, the very fragmentation of power and the complexity of governing these regions make their management and governance fragile and call the viability and the effectiveness of the Metropolis Statute into question. Thus, by using the hypothetico-deductive method, the present research aims to analyze some innovations brought by the Metropolis Statute or that should have been disciplined by it and how they approach or not the essential questions for a solid governance or even in order to overcome the institutional fragilities of these regions.*

### Keywords

*Fragmentation of power; Complexity of governing; Interfederal governance; Metropolitan regions; Metropolis statute.*

## A FRAGMENTAÇÃO DO PODER E A COMPLEXIDADE DE GOVERNAR NAS REGIÕES METROPOLITANAS

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### Resumo

*Com a maior mobilidade de serviços, capital e pessoas, a questão metropolitana ganha notoriedade. Embora a Constituição já reconhecesse as regiões metropolitanas, foi com o Estatuto da Metrópole, Lei n. 13.089, de 2015, que houve algum avanço em relação à governança interfederativa. Pretendia-se preencher as lacunas e explorar o potencial de diversos instrumentos político-urbanísticos visando à boa governança com base no fomento às iniciativas de cooperação e coordenação federativa, por longas décadas negligenciadas pelo Poder Público. Contudo, a própria fragmentação do poder e a complexidade de governar essas regiões tornam frágeis a gestão e a governança delas, pondo em xeque a viabilidade e a efetividade do Estatuto. Assim, o presente estudo, utilizando o método hipotético-dedutivo, visa analisar algumas inovações trazidas pelo Estatuto ou que deveriam ter sido disciplinadas por ele e o modo como estas se aproximam ou não dos itens essenciais para uma sólida governança e para a superação das fragilidades institucionais.*

### Palavras-chave

*Fragmentação do poder; Complexidade de governar; Governança interfederativa; Regiões metropolitanas; Estatuto da metrópole.*

# THE FRAGMENTATION OF POWER AND THE COMPLEXITY OF GOVERNING IN THE METROPOLITAN REGIONS

*Rodrigo Rage Ferro*  
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## 1. Introduction

With globalization and the greater mobility of services, capital and people that has resulted, the metropolitan issue has acquired greater prominence upon the world stage. High population densities and the growing economic development of large urban centers across the world have provoked a more extensive use of territory, particularly stretching beyond the nuclei of cities, i.e., the population density has become higher on the margins of urban centers. At the same time, connections between cities have become closer, especially in areas where conurbation is a more intense phenomenon, and which has often resulted in the loss of the city's actual territorial boundary.

In Brazil, occupation of the peripheries has invariably occurred with no planning whatsoever. This has brought about a serious impact on urban facilities and public services (transport, health, education, sanitation, amongst others), and the impact on fragile sectors may be noted immediately. Therefore, there is an increasing need to expand the basic infrastructure in these regions, in order to provide a better quality of life for the people who occupy them.

Although the Federal Constitution of 1988 (BRASIL, 1988) – the CF-88 - recognized metropolitan regions (MR)<sup>1</sup>, urban agglomerations (UA) and microregions<sup>2</sup>, the difficulty of governing this dynamic and complex reality required a federal law that would regulate governance<sup>3</sup> and the management of different urban typologies more effectively.

Thus, one of the great advances regarding the metropolitan phenomenon most certainly occurred with the City Statute, established by Federal Law No. 10,257, in 2001 (BRASIL, 2001). It regulated Articles 182 and 183 of the Constitution and, in Article 4 II, specified the planning of metropolitan entities as being one of the important instruments of urban policy, particularly since it qualified the regional level as being necessary in order to meet the infrastructure needs of the population involved.

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1. It is important to state that, although the Metropolis Statute (BRASIL, 2015) is a veritable conceptual framework (PERES, 2018, p. 273), it does not always define with precision (or even, it may be said, actually define at all) the various concepts involved in the metropolitan phenomenon, which thereby makes political instrumentation difficult (idem, p. 284). This article, whenever considered to be of relevance, will attempt to define them based on doctrine or legal norms. *Prima facie*, it is important to consider the Metropolitan Region (MR). For José Afonso da Silva (2017, p. 665), the MR constitutes “an ensemble of municipalities whose headquarters are joined with a certain urban continuity around a pole municipality”. The criteria historically used by the Brazilian Institute of Geography and Statistics (IBGE) to define metropolitan regions (“urban continuity”) are population, activity and integration (physical-morphological). The study, *Região de influência das cidades – Regic*, from 2008, conducted by the IBGE, promoted a review of the criteria and began to value functionality, with criteria related to the classification of territorial management centers, the intensity of relationships and the dimension of the influential region of each center and regional differences. In 2015, in a new study by the IBGE, entitled *Arranjos populacionais e concentrações urbanas no Brasil*, new criteria were adopted, such as an integration index based on the intensity of commuting movements to work and study, absolute intensity of commuting movements and contiguity of the urban stain (PERES, 2018, p. 279). SILVA, J. A. da. *Curso de Direito Constitucional Positivo*. 25. ed. São Paulo: Malheiros, 2017. IBGE. *Região de influência das cidades – Regic*. Rio de Janeiro: IBGE, 2008. Available at: [https://www.mma.gov.br/estruturas/PZEE/\\_arquivos/regic\\_28.pdf](https://www.mma.gov.br/estruturas/PZEE/_arquivos/regic_28.pdf). Viewed on Jan 30, 2020. IBGE. *Arranjos populacionais e concentrações urbanas no Brasil*. 2. ed. Rio de Janeiro: IBGE, 2015. Available at: <https://biblioteca.ibge.gov.br/visualizacao/livros/liv99700.pdf>. Viewed on Jan 30, 2020.

2. For José Afonso da Silva (2017, p. 665), mentioned in the previous explanatory note, micro-regions are formed by “groups of neighboring municipalities with a certain homogeneity and common administrative problems, whose headquarters are not joined by urban continuity”. Finally, urban agglomerations (UA) are “urban areas without a pole of urban attraction”, whether they are areas that involve municipality headquarters or not. The focus of this article is on metropolitan regions, as it is the most common case and because it is the term most used in legal doctrine and legal norms with regard to metropolitan entities in general.

3. Inter-federative governance is related to the way in which the metropolitan region is managed. According to Art. 20, IV, of the Metropolis Statute (BRASIL, 2015), inter-federative governance is the “sharing of responsibilities and actions between federative entities in terms of organization, planning and execution of public functions of common interest”.\* In addition, according to Art. 8 of the Statute (BRASIL, 2015), in its basic structure are comprised an executive body composed of representatives of the Executive Power of the member federative entities, a deliberative collegiate body with representation from civil society, a public organization with technical-consultative functions and an integrated system of resource allocation and accountability. (\*This, and other extracts hereafter were translated by the authors.)

However, it was the sanctioning of the Metropolis Statute, in January 2015, through Law No. 13,089, in 2015 (BRASIL, 2015), that inter-federative governance gained due prominence within the Brazilian scenario.

Indeed, this statute reinforced the importance of inter-federative governance as a form of coordination and management between the states and conurbated municipalities. It was disciplined in general terms in the Metropolis Statute, the Complementary Legislation and in future integrated urban development plans, with a view to promoting a better manner of managing the problems that arose from the lack of public services, specifically the “public functions of common interest” (known in Brazil as *funções públicas de interesse comum*) (PFCIs)<sup>4</sup>, invariably provided for in the complementary legislation that created them, in addition to greater economic, political and cultural integration within the metropolitan region. According to Marguti (2014, p. 15), PFCIs are services that are intended for regional development, such as, for example, transportation, basic sanitation and land use.

The objective was to address the gaps and explore the potential of several political-urbanistic instruments for producing good governance, with the aim of promoting initiatives of federative cooperation and coordination, which had been long-neglected by public authorities for many decades.

Although the Metropolis Statute did not define criteria for judging the appropriateness of inter-federative governance, it did set out the principles and guideline<sup>5</sup> to be observed, respectively in Articles 6, 7 and 7-A, whereby the latter was included by Law No. 13,683, in 2018 (BRASIL, 2018). Amongst the principles there is an outstanding prevalence of common interest with regard to the place; the sharing of responsibilities and management to promote integrated urban development; the autonomy of federative entities; regard for regional and local peculiarities; the democratic management of the city; the effective use of public resources and the pursuit of sustainable development.

Maria do Livramento Miranda Clementino (2018, p. 379), when commenting on the implementation of the Metropolis Statute in the Metropolitan Region of Natal, considered that good governance requires the integration of more wide-ran-

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4. The designation of the PFCIs is in item II of Art. 2 in the Metropolis Statute (BRASIL, 2015); they are made up of “public policies or actions into which they are inserted, and which when implemented by one municipality, in isolation, are unfeasible or cause an impact on neighboring municipalities”. In general, they are common public services provided by the federative entities that make part of the MR, and which must be provided for in the complementary state legislations that establish the MR.

5. It is important to assert that the guidelines should be observed of Art. 2 of the City Statute (BRASIL, 2001), which demonstrates that the Metropolis Statute is aligned to the need to make the urban planning of the municipalities involved compatible with the regional aspects (of the metropolitan region) and with the sectorial plans.

ging public policies, such as those with a territorial scope, by overcoming obstacles to the development of member municipalities, exemplified by “environmental fragility, socioeconomic inequality and political disarticulation”.

With good reason, the very fragmentation of power and the complexity of governing these regions are still evident when analyzing the political-legal scenario of these localities<sup>6</sup>. There is a fragility and an institutional fragmentation regarding the management and governance of these regions, which has often brought into question the feasibility and effectiveness of the norms that acknowledge their creation and the central purpose of the Metropolis Statute.

Undeniably, institutional arrangements and links amongst cities require mechanisms that value identity, and that reinforce the specificities of each region. Instruments are needed that are aimed at overcoming the historic fragilities of federative cooperation and coordination mechanisms; to deal with and lead the complex metropolitan political system, shaping the diversity of interests at stake - of municipal, state, and federal governments, civil society and the market itself - and, above all, to seek a manner of adapting to the figure of the metropolitan region within the federative context consolidated by the CF-88.

It should be mentioned that the so-called “Master Plan”, provided for in Article 82 of the CF-88 (BRAZIL, 1988) and in the City Statute (BRAZIL, 2001), in isolation and delivered in a compartmentalized manner to the municipalities, has thus far failed to effectively implement the social rights and social functions of the city and of urban property (BONIZZATO, 2015, p. 1868). Furthermore, to aggravate the legal insecurity and ineffectiveness of the master plans, in the region where the limits of several municipalities come to an end and form a conurbation, as in the MRs, the links between the master plans of the municipalities involved are either minimal or even imperceptible, thereby making the MR in question in need of minimally appropriate integrated urban planning. Thus, the existence of a hierarchically superior urban plan, capable of dialoguing with the various master plans involved, is fundamental to the country’s urban development (idem, p. 1871).

This problem has also occurred in several other Latin American countries, such as Mexico and Argentina, where the metropolitan concentration and the

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6. It is relevant to indicate that, in principle, the fragmentation of power in itself is not a problem, although it is transformed into one when combined with other factors, such as the historical institutional fragility of MRs in Brazil. This situation is aggravated, as will be observed throughout this article, when there is inter-federative governance still in its early stages, based on coordination and cooperation between the entities involved. It is in this sense that the article proves to be enlightening, since fragmenting power, compartmentalizing it, without suitable links or integrated management, makes the act of governing MRs more complex, especially in executing PFICs and in the compatibility between sector and master plans.

broadening of the leadership of its metropolises, inside the metropolitan regions, have left the public authorities unable to implement metropolitan policies beyond the municipal scales, thereby bringing about a prevailing highly-compartmentalized policy, and with difficult integrated management (UN-HABITAT, 2012, p. 14).

It is also of relevance to state that, although a new federative entity has not been established, as in Mexico<sup>7</sup>, the metropolitan region in Brazil has formed a new type of administrative entity, which may become the object of public policies, in which the administration of regional problems, the promotion of socioeconomic development in metropolitan arrangements and the acceptable performance of public functions of common interest are essential for the common good of its inhabitants. Moreover, the emergence of the “metropolitan” reveals important challenges, especially with regard to formulating public policies and the need for coordination between the federative entities involved.

Therefore, the key question to be answered here is: how to overcome the institutional fragility of the metropolitan regions if the fragmentation of power and the complexity of governing the respective regions are historically part of the Brazilian political scenario, marked by a highly-compartmented and problematic integration amongst the federative entities?

Within this context, using the hypothetico-deductive method, and by indicating experiences that have occurred in various Brazilian metropolitan regions and in comparative law, and bibliographic methodology, the present study aims to analyze some of the innovations that have been brought, or should have been disciplined, by the Statute, and the manner in which they have or have not approached the items considered essential for solid governance and for overcoming the institutional fragilities of these regions.

In view of this objective, the article has been structured into two stages: the first part of the article traces a brief history of the metropolitan issue and the federative context in Brazil, while the second focuses on the question of the fragmentation of power and the complexity of governing, i.e., of administrating these

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7. In Mexico and Brazil, there are rules that prohibit the creation of intermediate levels of government between the municipality and the state (such as a metropolitan government), which thus makes it difficult to strengthen the MR. In the case of Argentina, in addition to the MR not being a political entity, the Constitution provides the provinces with the right to define the municipal regime, which further undermines metropolitan governance, since municipal systems proliferate, and compatibility is difficult (ROJAS, 2008, p. 7-8). In countries such as the United States and Canada, it is the state and provincial governments respectively, and not the central government, that facilitate the concession of power to local governments (empowerment) in order to face the metropolitan challenges, as explained by Wilson et al. (2011, p. 29). WILSON, R. H.; SPINK, P. K.; WARD, P. M. Governança metropolitana nas Américas. *Caderno Metrôpoles*, v. 13, n. 25. São Paulo, jan.-jun. 2011, p.15-44. Available at: <https://revistas.pucsp.br/metropole/article/view/5980>. Viewed on Jan 28, 2020.



areas, and the manner in which good inter-federative governance could help to overcome the institutional fragilities of these regions.

## 2. The Brazilian metropolitan phenomenon: a brief history of its formation

In a technocratic, top-down manner, the 1967 Constitution granted the Federal Government the power to create metropolitan regions, so that the concept of “metropolitan region” became the object of legal definition (BRASIL, 1967). The understanding was, therefore, that the metropolitan phenomenon constituted a national issue (PERES, 2018, p. 269).

It should also not be overlooked that there was concern, on the part of the government of the time, regarding the organization of metropolitan regions in order to provide strategic objectives for economic development; in fact, metropolitan matters were dealt with in Article 164 of the Constitutional Amendment No. 1, in 1969 (BRASIL, 1969), as a provision of the Economic Order (ALVES, 2001). Therefore, greater emphasis was placed on normalizing the performance of the state rather than necessarily on understanding the metropolitan phenomenon (PERES, 2018, p. 269).

The first attempt at a national structuring of the metropolitan agenda, still during the period of the military regime, did not seek to meet the demands for inter-federative coordination and cooperation. Indeed, grounded on a society with a strong tendency to amass in large urban centers, it aimed to establish the integration of the Brazilian territory forged in the interrelationship between the political units, so that administration remained highly centralized, with a reduction in the decision-making power of the local bases (OLIVEIRA, 2015, p. 631).

For some, this first institutionalization of metropolitan regions was imposed onto the states and municipalities by the federal government as an additional instrument of domination. This was a way of being able to exercise more direct control over the distribution of resources to these areas, in an attempt to cushion the growing social tensions in the main urban centers of the country (GUIA, 2006).

Initially, based on the 1967-69 Constitution, Complementary Legislation No. 14, in 1973 (BRASIL, 1973), created the metropolitan regions of São Paulo, Belo Horizonte, Porto Alegre, Salvador, Curitiba, Belém and Fortaleza. In addition, it also enabled the integrated provision of common services, by granting the concession of services to state entities, the establishment of companies within the metropolitan scope, together with drawing up administrative covenants (CÉSAR, 2017, p. 143-144).

Although autonomous revenue was not attributed to the metropolitan regions, this complementary legislation ensured a preference for the metropolitan municipalities in obtaining federal and state resources (HORTA, 1975), which corro-

borates the aspect of domination and control exercised by the Federal Government, as well as withdrawing policies and taxation from the responsibilities of the aforementioned municipalities.

Due to this hierarchical, top-down aspect also contained in the current constitution, the constitutional drafting commission did not consider the metropolitan issue as a priority. Guia (2006) stated that in fact, it was “to the contrary, as the metropolitan institutionalization at the time was deeply linked to draining the municipalities and to the previous astringencies of the military period, everything pointed to a non-federative policy in relation to the theme”.

In this light, it may be perceived that the CF-88, in reinforcing its municipalist character, with greater autonomy for the municipalities, decentralizing and resistant to prioritizing the metropolitan issue (MACHADO, 2007, p. 67), treated the metropolitan regions generically, since the definition of their attributions, previously ascribed to the Federal Government (CÉSAR, 2017), was delegated to the states, but without creating a more detailed discipline for the metropolitan regions and their functions. This theme was associated with the authoritarianism and centralization of public administration that occurred in the military regime (PERES, 2018, p. 271)<sup>8</sup>.

In point of fact, it is only prescribed in Article 25, §3º (BRASIL, 1988) of the constitution, that the states have the competence to institute metropolitan regions by means of complementary legislation, in order to “integrate the organization, planning and execution of public functions of common interest”. It would be pertinent to stress that, in comparison with the previous constitution, this theme was moved to the chapter referring to the Organization of the Federal Government. This

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8. It should be stated that it is not only in Brazil that metropolitan regions have suffered from the problem of territorial expansion and the deficiencies of infrastructure. In several Latin American countries, metropolitan challenges to combat poverty and socio-spatial segregation may also be observed. Additionally, for a long time the strengthening of local power in Latin America, to some extent similar to what has occurred in Brazil, was seen as a democratic achievement, to the detriment of the institutional strengthening on a metropolitan level, associated with centralist and authoritarian standards (FREY, 2012, p. 90). This omission, in terms of an institutionalized arrangement on a metropolitan level, has resulted in metropolitan regions in Latin America lacking metropolitan governance capable of “creating urban competitiveness, environmental sustainability and better quality of life” (KLINK, 2005, p. 176). According to Klink (p. 171, apud ROJAS et al., 2005), exceptions to the absence of metropolitan governability are, amongst others, represented by the cities of Quito and Bogotá. In the case of the MR of Quito, Rojas (2008, p. 8) highlights that “the strong tradition of an efficient local government” and “the almost complete equivalence amongst the territories of the metropolitan agglomeration and those under the jurisdiction of the municipality” facilitated good metropolitan management. KLINK, J. Perspectivas recientes sobre la organización metropolitana: funciones y gobernabilidad. In: ROJAS, E.; CUADRADO-ROURA, J. R.; GÜELL, J. M. F. (orgs.). *Gobernar las metrópolis*. Washington D.C.: Banco Interamericano de Desarrollo, Universidad de Alcalá de Henares, 2005, p.127-191. Available at: <https://publications.iadb.org/publications/spanish/document/Gobernar-las-metr%C3%B3polis.pdf>. Viewed on April 15, 2020.

demonstrates the aim of the original constitutional drafting commission to address this theme within the organizational and administrative structure of the Brazilian Federal Government (SANTOS, 2006), i.e., with an intergovernmental administrative nature, and no longer restricted to the economic order, as in the military period.

It should be highlighted that the constitutional provision regarding the creation of metropolitan regions, despite its organizational nature, did not authorize the creation of an inter-federative political-administrative entity with the autonomy and capacity for self-organization, with its own legislative and self-governing powers. There was no desire to create a further federative entity with its own organization and representative elections, in addition to the capacity for self-administration, with the organization and provision of public services independent of the federative entities. Therefore, the metropolitan region is not a new federative entity, but is constituted through a territorial legal-administrative body in the form of territorial, intergovernmental and multi-functional autarchy (ALVES, 2001).

Since the federalism of cooperation and integration in the CF-88 was adopted, especially in relation to the form that several government entities planned, programmed, executed and controlled state functions and public services of an urbanistic-regional character, as well as those of common interest, no provision has been made for the distribution of competences in a stagnant, compartmentalized manner, but rather by sharing normative and administrative competences of greater flexibility and agility so that the most appropriate and rational action was carried out by the public authorities, in which the predominance of interest may be observed as a major principle (ALVES, 2001).

For Luís Roberto Barroso (2007), the notion of predominance implies a dynamic concept over time and the evolution of social phenomena, so that what today would be a predominantly local interest may, in the future, be of regional predominance.

Even the Supreme Federal Court (known in Brazil as the STF) does not clarify precisely what constitutes the principle of predominance of interest. This factor, on many occasions, generates doubt as to whether or not it exists in certain situations. And circumstances become even more aggravated when local and regional interests are present, such as municipalities gathered together inside metropolitan units, in which the interests are not limited territorially to one of them, but the repercussion is external to them.

Furthermore, with the provision in the text of § 3 of Article 25 of the CF-88 (BRASIL, 1988), a new, significant dimension of federalist integration was inaugurated. These facts led to an increase in the number of metropolitan regions in order to meet the intensifying processes of urbanization and metropolitanization

throughout the national territory (PERES, 2018, p. 268). However, governance was poorly defined, and there was weak integration between the municipalities and insufficient financial resources. In general, the aim of forming such regions was to guarantee some fiscal or financial advantage to the member municipalities and was not properly aimed at “dealing with the metropolitan phenomenon” (SANT’ANA, 2016, p. 98).

In view of this, there seemed little logic in pursuing the compulsory integration of municipalities simply by complementary state legislation, in order to conduct public functions of common interest in cases where the connection between municipalities was not so strong, running the risk of interfering and compromising the autonomy of the municipalities involved.

Indeed, while the complexity involved in the concept of autonomy in the political and administrative entities in metropolitan regions is increased, there is a natural requirement for linking, coordinating and integrating municipal, state and federal public activities and actions by means of an appropriate institutional form for effectively and efficiently providing public functions of common interest within these regions. Thus, metropolitan interests can neither be restricted to a specific federative entity, at the risk of causing serious damage to the management of public functions of common interest, nor be delegated to the metropolitan region itself. In fact, they should somehow be efficiently managed, as Marco Aurélio Costa and Isadora Tami Lemos Tsukumo (2013) deduced, to materialize a more favorable degree of promoting economic growth brought together by public authority.

This was also the Colombian proposal for the creation of metropolitan regions. According to Óscar A. Alfonso Roa (2017), the metropolitan regions in Colombia have an intrinsic capacity to promote higher levels of autonomy and thereby achieve the freedom for economic growth, social balance, natural ecological reproduction and a more modern model of management.

Within this diapason, questions began to be asked concerning the conditions in which metropolitan municipalities participated in both regional decisions, and in the process of normatization, control and management of public functions of common interest (ALVES, 2001), as well as the very competence of these functions – e.g., sanitation, housing, urban mobility, street cleaning and the maintenance and preservation of water resources, amongst others -, since there was no federal law regulating criteria and guidelines for applying Article 25, § 3, of the CF-88 (BRASIL, 1988).

Under these circumstances, the STF, in the Direct Action of Unconstitutionality (ADI) 1842/RJ, considered the constitutionality of the legal instruments that created the Metropolitan Region of Rio de Janeiro and the Microregion of Lagos,

and analyzed the institutional arrangement for the provision of sanitation services in both.

On that occasion, the court recognized the collegiate formed by the municipalities and by the respective state as a grantor and holder of the public function of common interest in sanitation, since “the participation of entities in that collegiate does not need to be equal, as long as it is able to prevent the decision-making power from being concentrated within a single entity”.

According to the vote of Minister Gilmar Mendes, if the decision-making power was concentrated in the state, “this fact would eliminate, in this aspect, the self-administrating capacity of the municipalities involved and, consequently, the essential nucleus of municipal autonomy”. Nor could not be concentrated in the municipalities involved, because “the common interest is much more than the sum of each local interest involved, since the poor functioning of basic sanitation by just one municipality could place the entire effort of the whole ensemble at risk, not to mention the consequences to the public health of the entire region”. Minister Gilmar Mendes argued that the function of public sanitation often extrapolates local interest and begins to demonstrate a nature of common interest.

The STF added that “the participation of each municipality and state must be stipulated in each metropolitan region according to its particularities, whilst not allowing one entity to have absolute dominance”. Therefore, a shared solution should be structured between the municipalities and the state to provide functions of common interest in metropolitan regions, urban agglomerations and micro-regions, while maintaining a focus on the self-government and self-administration of the municipalities.

From this decision, it is clear that the state creates and organizes the public administrative entity, by means of a complementary legislation, but cannot restrict the participation of metropolitan municipalities in the management of regional affairs. In view of this, the representatives of the state and the municipalities involved must participate, not necessarily in parity (and observing the peculiarities of each case), in the corresponding normative, directive and administrative functions. Thus, there must be mutual cooperation between the levels of government, both horizontally (between municipalities in the same region) and vertically (between state and municipalities) (ALVES, 2001).

Within this context, the publication of the Metropolis Statute represented a move forward, since it established both general guidelines for planning, managing and executing public functions of common interest in metropolitan regions and urban agglomerations instituted by the states, and general norms for the integrated urban development plan. In addition, it stated that several instruments of inter-fe-

derative governance and criteria for the Federal Government support of actions involving this governance in the field of urban development (CÉSAR, 2017, p. 148) based on the concept of “full management”. Thus, the Metropolis Statute sought to encourage cooperation amongst the entities to enable an adequate provision of public functions of common interest.

The Metropolis Statute brought innovations to the field of metropolitan management and governance. However, the greatest highlight was the concept of “full management” (OLIVEIRA, 2015, p. 637). In order for this to materialize, the law (Art. 2, inc. III) (BRASIL, 2015) required (i) the formalization and delimitation of the metropolitan region through complementary state legislation; (ii) its own inter-federative governance structure; and (iii) an integrated urban development plan approved by state law. Thus, it would be possible to access federal resources in order to undertake metropolitan projects. Moreover, the Metropolis Statute excluded from the inter-federative governance arrangement (in the case of the metropolitan region) the main actor in financing the country’s public policies: The Federal Government (SANT’ANA, 2016, p. 115).

Some changes in relation to inter-federative governance were promoted by the statute. According to Article 8 (BRAZIL, 2015), the inter-federative governance of metropolitan regions will comprise an executive body, a deliberative collegiate assembly with representation from civil society, a public organization with consultation and technical assistance and an integrated system for allocating resources and accountability. Hence, democratic management is present in the deliberative bodies, but without a law to determine how civil society will participate (OLIVEIRA, 2015, p. 637).

Metropolitan management, in fact, has always been a complex issue due to the lack of specific federal legislation. Even after the Metropolis Statute was published, there still seems to have been no particularly consistent structures related to metropolitan management, except with regard to PFCIs, since no complementary legislation of MR creation has clarified what these functions are (COSTA et al., 2018, p. 31). According to Costa et al (2018, p. 31), few laws have “established the creation of an appropriate management system for the complexity of shared management or have instituted specific councils and, for the most part, have been silent in addressing the issue of metropolitan funding and development.

With regard to the Integrated Urban Development Plan (IUDP), Law no. 13,089, in 2015 (BRASIL, 2015), imposed the duty of instituting it by state law and of reviewing it at least every ten years. In addition, the master plans of the participating municipalities in the metropolitan region must become compatible with IUDP guidelines (Art. 10, § 3), thus enabling integrated planning across the region and



fulfilling an important requirement for integrated management in the metropolitan region (OLIVEIRA, 2015, p. 638). Thus, there are countless functions of common interest that need to be “linked amongst cities in metropolitan regions, and it is interesting to adapt the legal instruments referring to such functions to the IUDP” (OLIVEIRA, 2015, p. 639).

Edson Ricardo Saleme and José Marques Carriço (2018, p. 74) stated that the “IUDP establishes guidelines, projects and actions to guide urban and regional development, so as to seek to improve the living conditions of the metropolitan population, reducing, as far as possible, inequalities”.

In summary, the Metropolis Statute helped to: (i) clarify concepts; (ii) establish criteria for the constitution of the MR and UA; (iii) establish the means of social control for these units; (iv) indicate instruments for integrated urban development, with emphasis on the Integrated Urban Development Plan; (v) systematize the inter-federative governance structure of regional units; (vi) create the concept and requirements for the so-called “full management”; and (vii) establish criteria for the Federal Government to support actions that involve inter-federative governance in the field of urban development (SCHIRATO, 2016).

Although some advances have been achieved with the publishing of the Statute, management is still fragile and cooperation of the entities involved in the metropolitan region is weak (OLIVEIRA, 2015, p. 641).

Indeed, with the CF-88, management was decentralized, but the fragmentation of power and the complexity of governing have become part of the political-legal scenario of Brazilian metropolitan regions. This, added to certain omissions in the Metropolis Statute, such as there being no guarantee of sufficient available financial resources to support public functions of common interests of such complexity, ultimately makes no decisive contribution to overcoming this institutional fragility of metropolitan regions and the weak links amongst the federative entities, as will be seen below. In view of this, new mechanisms are necessary to support full management and good inter-federative governance between the entities involved.

### 3. The fragmentation of power, the complexity of governing and the institutional fragility of MRs

With the CF-88, in the states and municipalities, there was an increase in attributions and responsibilities with public policies, and also in the provision of public services, such as education, health and sanitation. There occurred a “redistribution of resources and responsibilities between the three levels of government with an emphasis on municipalism”, which caused a greater fragmentation of the decision-making processes and rendered the management of public functions more

complex (CÉSAR, 2017). Furthermore, as previously seen, the management of public functions of common interest should be shared amongst different autonomous public entities, which ultimately made the task of coordination more complex.

In an attempt to overcome this fragmentation of power, undertaken without the precautions aimed at an integrated management, and the very complexity of governing, the public authorities established a metropolitan region. In practice, however, there remained a lack of objective criteria in creating MRs, little cooperation between federative entities - which demonstrates the difficulty of decentralization in Brazil (BRUNO, 2016, p. 259) – and the reduced availability of financial resources, thereby reinforcing the institutional fragility of the Brazilian metropolitan regions (OLIVEIRA, 2015, p. 642). A lack of political maturity was also perceived in dealing with the metropolitan phenomenon when the entity with the greatest financial capacity enters into political conflict for having to contribute the largest investments in order to address certain PFCIs to the detriment of the entity with the least capacity, since this is a common fact within the format of governance established by the Statute, through promoting solidarity and cooperation so as to achieve greater efficiency (OLIVEIRA, 2015, p. 642).

In corroboration with this situation of institutional fragility, the MR has no normative capacity and, considering that public functions require regulation by law, it is necessary to “establish a legislative condominium to reach the necessary unit, aiming at the organization, planning and execution of public functions” (ALVES, 2001), which transforms the effort to resolve this state of affairs into a Herculean task. In addition, the Metropolis Statute requires the different municipal master plans to be compatible with the IUDP, thereby making the task even more complex, due to the need to “comply with plans, programs and priorities established at a regional level” (ALVES, 2001).

One example that illustrates this situation is Rio de Janeiro. As Vicente Loureiro and Vera França e Leite (2018, p. 263) specified, the discussion for approving an IUDP generated a certain resistance due to the “fear of losing the autonomy of local power”. However, increasingly, the conclusion has been drawn that it should never be forgotten that there is already an “irreversible metropolitan awareness”, with a view to enable an environment with a better quality of life for residents “in the urban-metropolitan territorial space”. Therefore, this aspect can no longer be underestimated, and debates in the Legislative Assembly of the State of Rio de Janeiro (Alerj) on the issue of federative governance are certainly fundamental for enhancing the planning proposal.

In spite of this, it should always be emphasized that cooperation between federative entities is not always stimulated by decentralization, since there are



constant disputes over tax revenues (fiscal war). The lack of financial resources, in turn, is increasingly perceived in proportion to the disorderly occupation of the peripheries of large cities and, as a result, there is an increased demand for essential public services.

The process of urban growth, especially in cases of conurbation, in which the concentration of the urban population within metropolitan areas and urban agglomerations reinforces the imbalances of city networks (SANTOS, 2006), generates a significant increase in demands on (i) infrastructure systems (energy and public lighting, water and sewage, urban drainage, amongst others); (ii) urban services (health, education, security, amongst others); (iii) public and collective facilities; (iv) the wide range of sectorial policies (housing and urban mobility, for example) (SANT'ANA, 2016, p. 96), in addition to causing problems of sustainability. These factors make these units even more dependent on resources and transfers from the Federal Government or from the federative entities that share their management.

To corroborate this thought, it is worth mentioning the MR experience in Santiago, Chile, which demonstrates that the efficient, well-defined allocation of responsibilities and resources to the various spheres of government is extremely important. The municipal governments, which are members of the MR, are responsible for, amongst other essential public services, the removal of solid waste and the use and planning of land. The regional government (the level between the municipality and the central government) is responsible for funding municipal and sectoral investments in the MR (ROJAS, 2008, p. 9), while critical metropolitan public services, such as water and sewage, are funded by private utilities, although regulated by central government (*idem, ibidem*).

It should also be noted that, although it is a facilitator for undertaking metropolitan management (OLIVEIRA, 2015, p. 645), the National Fund for Integrated Urban Development (FNDUI), with its great capacity, provided for by law (BRASIL, 2015), which aimed to support actions of inter-federative governance in metropolitan regions, was vetoed by the President of the Republic, which left the full management of integrated urban development with only the support of the Federal Government (which, unreasonably, was excluded from the direct process of managing metropolitan regions, and resulted in the absence of a national level of inter-federative governance). Amongst the arguments, it is highlighted that the fund would have crystallized “the link with specific purposes, to the detriment of the intertemporal dynamics of political priorities”. This, despite being true, compromises the smooth running of public functions of common interest, since the transfers are not always constant and depend heavily on assistance from the priva-

te sector - which, often, without efficient supervision and rigorous regulation, may end up co-opting the public authorities (OLIVEIRA, 2015, p. 643).

Nor can we fail to observe an element that reiterates this institutional fragility: the lack of an enforcement apparatus for the Metropolis Statute, i.e., a mechanism capable of guaranteeing that the instruments of the law are applied (SANT'ANA, 2016, p. 120), and that sectorial urban development actions are promoted. The sanction for administrative improbity provided for in Article 21 (BRAZIL, 2015) for state governors or public agents that fail to comply with certain basic measures, such as, for example, "elaborating and approving, within 3 (three) years, the integrated urban development plan for metropolitan regions", was revoked by Law No. 13,683, in 2018 (BRASIL, 2018).

In the same vein, as highlighted by Carolina Heldt D'Almeida and Bárbara Oliveira Marguti (2018, p. 290) in relation to the IUDP of the MR of São Paulo, if there were a better strategic assessment planned around regional priorities, and the effects and determinations of public interest, instead of the IUDP being restricted to guidelines and a simple list of proposals, the enforcement of the Metropolis Statute could certainly be applied more effectively and would guarantee an advance in metropolitan policy by enabling a basic structure of inter-federative governance. In relation to the complex game of political power disputes, it may be stated that, while popular participation and the involvement of economic agents in the private sector may collaborate for a more open, participative management process, they are also the fragmenting elements of power and that, if not well disciplined, may corroborate the institutional fragility and complexity of the act of governing the metropolitan regions.

Klaus Frey (2012, p. 91) highlighted that one of the most sensitive problems in the conduct of regional entities is the inclusion of the popular dimension, "through participatory mechanisms that are effectively democratic in metropolitan and regional decision-making processes".

This assertion is aggravated when the Metropolis Statute fails to detail accountability mechanisms that allow the "construction of an ensemble, transparent, shared action between the Federal Government, civil society and companies (economic sector agents)", aimed at producing an agenda of public policies (SANT'ANA, 2016, p. 109). Furthermore, the figure of a metropolitan identity is missing for the population to be able to have the "feeling of belonging to a territorial unit that brings together various municipal identities rooted in the heart of urban life" (idem, *ibidem*).

It should be made clear that while the focus of the law was to strengthen metropolitan governance, it did not regulate the possibility of exclusively managing

the main PFCIs, such as transportation, basic sanitation, solid waste and housing, directly by regional units or by an exclusive federative entity, such as a specific state secretariat for the management of the MR (for a counterpoint, see ADI 1842 / RJ). Considering that these are highly complex activities and require deep technical knowledge, in addition to the amount of resources, a specific technical body to manage these PFCIs could strengthen inter-federative governance (OLIVEIRA, 2015, p. 642).

Indeed, to demonstrate the importance of forming a technical body to face the challenges proposed by regional governance, especially in view of the variety of PFCIs involved and the need for adequate technical knowledge, in the Metropolitan Region of Salvador, Bahia, the local technical team took part in several seminars at a national level to enable the exchange of experiences with other regions of the country (RODRIGUES, 2018, p. 341). The objective was to achieve a better structuring of the entire system of local governance, based on the experiences of the metropolitan regions of São Paulo, Rio de Janeiro and Minas Gerais.

It is relevant to state that there was also a lack of a law to regiment how it would have been more compatible with the IUDP, or even with the master plans, of the so-called sectorial plans, such as those that involved urban mobility, sanitation, housing, solid waste and land use. This absence made the metropolitan region's management process even weaker.

This becomes even more evident when it is observed that in countries such as Italy, Portugal, Spain, France and Germany, which present more appropriate planning, urban planning is placed in a prominent position within the established legal norms, especially regional. Italy, for example, has three fundamental plans that are compatible with one another: one of territorial coordination (regional); one of general regulation (more linked to cities) and one of a private nature and more linked to the direct needs of the territory covered by it (neighborhood) (BONIZZATO, 2015, p. 1872).

Similarly, there is also a lack of a metropolitan information system for more subsidized decision-making, since Law no. 13,683, in 2018 (BRASIL, 2018), revoked the National Urban Development System (SNDU), in which "the participation of civil society was ensured and included a metropolitan planning and information subsystem, coordinated by the Federal Government and with the participation of state and municipal governments", provided for in Article 20 of the Metropolis Statute. This fact makes the troubled environment for more efficient management in metropolitan regions even more fragile.

In view of these facts, when observing a model of inter-federative governance that best meets the Brazilian federative context, marked by the institutional

fragility of metropolitan regions, it is important to take into account flexible mechanisms for dialogue and horizontal (municipality-municipality) and vertical (municipality-state) construction. (PETERS, 2008). These must be directed towards goals, projects and instruments focused on the efficiency and effectiveness of public policies, under constant control by civil society (participation), and overcome institutional complexities and fragilities (SANT'ANA, 2016, p. 109).

For this, mechanisms are needed to deal with the fragmentation and decentralization of power and that enable the act of governing the metropolitan territory, marked by its polynucleated jurisdictional arrangement (SANT'ANA, 2016, p. 106). One other important factor would be the creation of a political environment for cooperation, concertation, consultation, coordination, planning, articulation, integration and execution of public functions amongst the different levels of government, combined with the ability to consider a metropolitan arrangement that included public and private actors, in addition to organized civil society (ANDRADE, 2007) with its insertion into the decision-making process of public policies or actions. This multilevel perspective of governance, in fact, has already been the subject of debate and has gained notoriety in Europe and the United States, while in Latin America, metropolitan governance still remains linked to issues such as technical-functional optimization of physical-territorial planning (FREY, 2012, p. 93).

In view of this multiplicity of essential factors for the smooth running of regional units, it is necessary to meet a number of meta-dimensions (SANT'ANA, 2016, p. 113-117), namely:

- a) Vertical coordination: replacing the hierarchical subordination model with the subsidiarity model (upper level + lower level), i.e., partnership. For this, there must be "...better flows of information, clearer division of labour and accountability, and ensuring consent in the decision-making process" (European Union, 2020, p. 19);
- b) Horizontal coordination: with approaches aimed at combating fragmentation and the resulting fragility caused by a sectorized approach to public policies. It is a challenge that requires political strategies and instruments to strengthen subnational management and inter-federative governance (with strategies that go beyond the best management of PFCIs and the implementation of the IUDP);
- c) Functional cross-territorial integration: an attempt to integrate projects, investments and initiatives within the territorial scope amongst the various actors that are an integral part of that territory;

- d) Organizational capacity of territories: investment in developing tools and in strengthening the actors that are an integral part of the territory. Focus on strategic planning, financing, monitoring and assessment of results;
- e) Mobilization of stakeholders (interested parties): effective participation of several actors, public and private, (substantive participation), from formulation through to policy assessment. According to Gilberto Bercovici (2003, p. 147-149): “[...] in a Federative State, unity is the result of a process of integration, in which autonomy is not limited to being a passive object (guarantee), but essentially, is an active subject in the formation of this state unit (participation)”;

A number of measures may assist down the long road in search of good inter-federative governance, even though several of them have not been adopted by the Metropolis Statute: the need for an exclusive body solely responsible for managing the metropolitan region, as well as exclusive sectoral instances of metropolitan management to manage the main PFCIs; operating funds provided with resources for both metropolitan planning and management and a portfolio of structural investments in projects and infrastructure; active deliberative and advisory councils; greater participation in the multi-annual financial framework of all the actors involved (compatibility of multi-annual plans, law on budget guidelines and annual budgets of the entities involved) and diversity and a significant amount of institutional links between entities and actors for governance (COSTA, 2013).

In view of this situation, a model of inter-federative governance is necessary, based on “formulating development policies, setting guidelines and assessing results in perfect coordination, both along vertical and horizontal lines” (SCHIRATO, 2016). It should be added that the goals and directives to be adopted must be guided by sustainable economic development and the actions of the federative entities (including the Federal Government) must take place in partnership, between themselves and with society, thereby “introducing urban policies capable of offering results gradually and by appropriating from their own experiences ”(SANTOS, 2006).

#### Final considerations

During the period of military dictatorship, metropolitan regions were associated with authoritarianism and centralized public administration. This resulted in withdrawing the municipal tax competencies and policies, while using the metropolitan regions as a political instrument for wielding more direct control over

the distribution of resources to these areas, in an attempt to allay the growing social tensions in the main urban centers and to reduce decision-making power at local bases. This fact did not only occur in Brazil. Several countries in Latin America, during a long period of time, associated metropolitan management with a process of centralization and authoritarianism from the central government.

With the CF-88, a new phase of cooperative federalism focused on municipalism was inaugurated. There was an increase in the attributions and responsibilities in relation to public policies and in the provision of public services, transferring them to states and municipalities, but without sufficient financial resources. Furthermore, the ADI 1842/RJ decided that management of the PFCIs should be shared between the state and the municipalities involved. Such facts, in addition to causing greater fragmentation of the decision-making processes, causing greater institutional fragility in metropolitan regions, made the management of public functions of common interest more complex.

In an attempt to overcome the complexity of governing and this fragmentation of power, conducted in an extremely disjointed manner and with none of the necessary precautions for integrated management, the public authorities created a metropolitan region. However, in practice, there were difficulties with metropolitan management in relation to cooperation between entities: institutional fragility, little cooperation between entities and few financial resources to face the growing demand for highly complex public functions of common interest.

Within this troubled scenario, the Metropolis Statute emerged, through Federal Law No. 13,089, on January 12, 2015, in which general guidelines were established for planning, managing and executing public functions of common interest in metropolitan regions. Its objective was to create mechanisms to provide better management and deal with economic, political and cultural integration within the metropolitan region through inter-federative governance. An effort was therefore made seeking to constitute an institutional framework conducive to the governability of metropolitan regions in view of the fragmentation of the power of these territories and the very complexity of governing in these regions, thereby reinforcing the need for cooperation between federative entities.

Despite bringing necessary instruments, such as full management and the IUDP, the law did not cover the essential points, such as the exclusive management of public functions of common interest, the manner with which to integrate and create sectorial plans compatible with the master plans and with the IUDP. The main element that was lacking was the institution of large-scale funds (which was



vetoed by the government), necessary for the good management of PFCIs, thereby intensely compromising inter-federative governance.

Therefore, in a Brazilian federative context with fragmentation of power, complexity of governing and the institutional fragility of metropolitan regions, a model of inter-federative governance should encompass more fluid, flexible instruments of dialogue and integration of the involved federative entities, focused on goals and results, under the constant scrutiny of civil society. Thus, to achieve good inter-federative governance, meta-dimensions must be respected: vertical coordination; horizontal coordination; functional cross-territorial integration; organizational capacity of the territories and mobilization of stakeholders.

It is vital to understand the “metropolitan space” and the real need for better integration between conurbated municipalities and the state in order to induce a more effective associated management of public services. This study has not attempted to reduce the importance of the Metropolis Statute, but rather to demonstrate that solid, efficient and well-articulated metropolitan governance, capable of promoting the sustainable development of metropolitan regions, cannot be held hostage to political and power disputes in an environment of unnecessary competition. It must always be guided by conducts based on good administration, the appropriate execution of public functions of common interest and meeting the needs of the regional population. When disputes exist between state and municipality, the true loser is the population that experiences the lack of services (GALLACCI, 2015). As the popular Brazilian saying goes: “in the fight between the rock and the waves, it is the limpet who loses”.

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