The Federative Pact and Prevention Policies to Face Violence Against Women: A Compared Approach Between Brazil and Australia

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This article explores how understanding the Federative Pact models adopted by Brazil and Australia affects differently the formulation and implementation of public policies, leading to distinct outcomes and accountability of policy makers. When comparing gender-based violence prevention policies, it becomes evident that a centralized model as applied in Brazil seems to be less effective as the decentralized approach adopted in Australia. The autonomy attributed to the federal units have a direct impact in the responsibility and accountability of public policies implemented in a territory. The intention of this debate is to raise awareness of experts and policy makers reg arding the ways in which the federative pact impact the implementation of public policies, the accountability of states and the federal government, as well as the effectiveness of results achieve nationally based on locally implemented activities.

Keywords: Federative pact models, public policies, gender-based violence prevention, Brazil, Australia

INTRODUCTION

Brazil and Australia are countries that, though distant and diverse in economic, political, and cultural aspects, share a relevant similarity that brings them closer: their organisation as Federative States. Why does this matter? In what way does Federalism as a form of State organisation contribute to the effectiveness of public policies? How does State organisation influence public policy, especially those aimed at overcoming gender violence?

Federalism is a political system in force in only 28 countries worldwide, that corresponds to approximately 40% of the world population (ANDERSON, 2009). Federative Systems are characterised by the union of political entities with the aim to organise the management of a national territory politically and administratively, anchored in a cooperative governance among different actors involved in the design and

execution of public policy. This system may present itself in diverse formats, some bottom-up and participative, others more centralised and top-down. Though this form of State organisation is not the most common, Federalism is typically found in countries with democratic regimes, with a numerous population and/or a big territorial extension, or yet in countries whose history reveals the aggregation of territories formerly run independently. Countries in post-conflict situations or in the process of democratic consolidation usually opt for the Federative System.

Models of Federative Pact and their implementation vary from country to country. In some cases, the Federative model is more centralised, while in others there is more autonomy attributed to the Federal Units. Variations also exist in their competencies, sometimes there are shared jurisdictions, while in others cases it is possible to see a more pronounced fragmentation. There are also distinctive models when it comes to the federal representative process, some are parliamentarian and others presidential. Such a variety means that there is no 'best' Federative System. The study of institutional arrangements and models of public policy deliverance are pivotal to the understanding of formulation, implementation, and evaluation mechanisms of public policies, as it also helps to experiment with new public policy approaches inspired by international best practices.

Both Brazil and Australia, big democratic federations situated in an extensive and diversified territory (in terms of climate, geography, culture, ethnicity, and race), have committed to gender equity and eradicating the violence against women. They also share similar challenges to the State's capacity to guarantee the offer of public services and population access in the most different locations in the territory, including remote regions. This requires a model of Federative System that allows for the balance between an expected coordination in a State policy and a needed flexibility to attend local demands and respect regional specificities.

BRIEF CONCEPTUALISATION ON FEDERALISM

The meaning of Federalism is very ample and controversial. The debate concerning the meanings of the term "federal", deserves a closer look. John Quick and Robert Garran (1901), two great scholars in Australian constitutionalism, identified four main dimensions in the concept of "federal". The first flows from the Latin word *foedus* (etymological origin of "federal"), meaning pact, covenant or alliance. Federal, therefore, goes back to the covenant among independent entities united to form a collegiate political body, respecting the individual identity of its founding entities.

In the second sense, according to Quick and Garran, Federalism is taken to be the nature of the political body that was created after the pact. The term "federal" traces back to what comes from the union of states, and not to the alliance itself. The third and fourth meaning analysed by Quick and Garran, contrary to the previous dimensions, refer to the federal government, and not to the organisation of the political entities or its genesis as a State. In the third sense, "federal" is understood as a dual system of government, in what refers to the distribution of power among different instances of the Executive branch. In the fourth and last sense, "federal" relates to the structure and composition of government institutions created by the Constitution.

In synthesis, the way and the context in which a Federative System is built directly impacts the origin and type of government institutions, decision-making processes, levels of autonomy and centralisation (ARONEY, 2009). Therefore, in as much as there are structuring similarities among different Federative States, as is the case with Australia and Brazil, there is also an ample spectrum of Federative Systems, implying the existence of distinct concepts, practices and relevant policies in each of them.

Federalism in Brazil and Australia

Australia and Brazil are federative countries organised in territorial subdivisions – the states – endowed with a certain autonomy. In both cases, by means of the pact, an entity of national character was conceived: Union, in Brazil; and the Commonwealth, in Australia. This is, therefore, a democratic and decentralised arrangement, in which autonomous political entities – in both cases, former colonies of imperial regimes – exist side by side or make an agreement for the creation of a federal unit. However, as indicated by Aroney

(2016), the peculiarities observed in the political-administrative organisation of each country go back to the formation of the Federative System.

One of the main inspirations to the design of modern federative countries was the Constitution of the United States of America. In that context, and as stated by the Founding Father, James Madison, the American Constitution was endowed with a character of "partially federal, partially national" (ROSSITER, 1961). Such a model and inspiration may be seen in Australia, as well as in Brazil.

In Australia, the formative process of the federal entity occurred through an aggregation movement (centripetal). The aggregation occurs when autonomous entities - the pre-existing colonies - opt to gather and conceive a Commonwealth. Enacted in 1901, the Constitution of Australia was the result of decades of debates and constitutional conventions driven by representatives of the Australian colonies. There was a clear intention in the constituents to establish a federative pact that included constitutional structures, guaranteeing the autonomy and diversity of the colonies (ARONEY, 2009). To this effect, the synthetic Australian Constitution provides limited powers to the Commonwealth, reserving for the federated states (municipalities do not integrate the federal structure in Australia) the larger share of legislative attributions.

In Brazil, the formation was mostly via a disaggregation process (by devolution). It means that a centralised and unitary national entity – the Empire, while temporarily in the country – subdivided itself to distribute competencies to smaller entities, providing them with political autonomy limited to a determined territory. The evolution of the hereditary captaincies into provinces, and of the provinces into states under the constitutional monarchy regime of 1824, evidences the longevity of Brazil's federative characterisation by devolution. More recently, with the Constitution of 1988 and the consequent "Administrative Reform of the State", the municipalities begin to integrate the federative structure, thus acquiring their own and specific competencies.

Another relevant distinction in the formation of the Brazilian and the Australian Federative Systems resides in the juridical system adopted by each one. Brazil is historically a part of the juridical system known as civil law, while Australia belongs to the common law tradition. Within the common law system, the development of case law is a primary legal source, as are the judicial interpretations of the constitutional text. In other words, the Australian constitutional history developed from a progressive increment of the powers of the federal entity by the courts. In the beginning of the Federation, the constituent states had more power than the Commonwealth, but in time the latter began to assume more protagonism. In Brazil, in spite of the decentralisation brought by the Administrative Reform of 1990, the historical process reveals a highly centralised federative arrangement, in which, in time, the federal entity gained a certain prominence in the process of adapting and implementing national policies.

These factors combined – the constituting process of the federation, the legal system and the historical-cultural influences on government institutions – point to relevant distinctions in the responsibilities of the federated entities since the conception up to the implementation of public policy, as well as in the effectiveness of its results. In Australia, the judicial decisions taken by the original composition of the High Court of Australia, dating back to 1903, consolidated the principles of reserved power, according to which all powers not expressed in the Constitution are attribution of the States, prohibiting the Commonwealth to legislate on them; and implying intergovernmental immunities, that provide for the protection of States against interferences on the part of the Commonwealth. These two principles are fundamental for the interpretation of the federative Australian structure, since they express the original intention of the constituents in assuring the normative autonomy of the states, admonishing the Commonwealth to restrain itself to its limited field of action.

In 1920, however, with the paradigmatic decision in the Engineers Case (Amalgamated Society of Engineers vs. Adelaide Steamship Co Ltd (1920) 28 CLR 129), an alteration of the federative balance was conceived. The attributions of the Federative entity were enlarged, and partially re-established by the doctrine created by the Melbourne Corporation Case (Melbourne Corporation vs. Commonwealth (1947) 74 CLR 31). Note, hereafter, that the Australian constitutional history developed itself following a progressive increment in the powers of the federal entity. If, at the beginning of the Federation, the constituent states possessed greater power in deterrence the Commonwealth, in the development of history the latter began to assume a more prominent role.

Currently, the Commonwealth exercises a conciliatory role in the dialogue and convergence of the states' positions in propositions of national directives, as does the "National Cabinet", for example. However, the legislative centre and responsibility for the effective application of public policy remain in the realm of the states. In other words, the federative Australian model entrusts to the states the implementation and effectiveness of public policy. What is finally observed in Australia is a partially national model (with financial and directive prominence of the *Commonwealth*) and partially federal (with a greater part of material and legislative attributions to the states, as well as the responsibility for implementation of policies and their results).

In Brazil, the historical trajectory points to a highly centralised federative arrangement, different in this sense from what occurred in Australia. The historical roots of the Brazilian Federalism also trace back to the colonial period and the decentralised model adopted by the Portuguese crown. The establishment in 1824 of a constitutional monarchy regime is evidence of the longevity of this centralised trace of Brazil's federal system.

As a response to the historical centralising tendencies that preceded the Federal Constitution of 1988, the contemporary formatting of the Federative System tried to design mechanisms to ensure a greater decentralisation of powers – among the federated entities, as well as between government institutions of the same entity. This fact is evidenced by the adoption of measures since the early 1990s, when the *modus operandi* of the Brazilian Public Administration underwent a substantial reform permeated by the conception that delivery of public services should be decentralised, in order to be more democratic, equal and socially fair. Another motivation was to make policy implementation more efficient by delegating authority to the states, at the same time as the practices of control and monitoring by society would also gain effectiveness (ARRETCHE, 1996; FARAH, 2001; ABRUCIO, 2010).

This said, the Brazilian administrative reform transferred a group of relevant attributions in public policy management, previously concentrated at the federal government, to state and municipal levels. However, this expansion of attributions on the part of subnational entities, in a country as heterogeneous and unequal as Brazil, soon faced situations of low technical, managerial, and financial capacities on the part of most municipalities. The expressive inequities and regional heterogeneity gradually induced, over the last two decades, to a movement back to centralisation of decision making on the part of the federal government, specifically in what concerns management of social public policies.

This centralisation process was materialised in the "creation of systems, plans or national programs with incentives for adherence by subnational entities, combined with specific requirements to be met by these entities, such as (...) the standard on policies execution" (LOTTA, GONÇALVES and BITELMAN, 2014, p. 15). Consequently, even with different degrees of institutionalisation, delivery of public services was reorganised following a logic of big national systems, or at the least the construction of national plans and public policies.

Considering this, it is worth mentioning, because of these historical nuances and unfolding from the constitutional evolution of the countries, that the characterisation of each Federal State allows for countless practical distinctions. These practices directly impact the conformation of institutions and their organisational cultures, the political arrangements for the execution of programs in the national sphere, and the distribution and balance of powers among federated entities. It is, therefore, of foremost importance to make evident historic, constitutional, political and legal developments of Australia and Brazil in what they reveal of their heterogeneity, in spite of the fact that they partake in the same federative principle of political and administrative organisation in their government institutions and mechanisms of formulation and execution of policies.

FEDERAL DESIGN AND THE POLICIES TO COMBAT VIOLENCE AGAINST WOMEN

In what concerns social policy, the complexity inherent to the problem of violence against women stands out (UN WOMEN, 2015). Because it requires an articulation of a number of essential services provided by different actors and sectors (such as education, health, police, justice and social services), the

policies to combat violence against women have become object of both federal entity of Brazil and of Australia. The expectation is that these services, when carried out in a coordinated manner, may contribute to stopping violence and to mitigate its consequences on the well-being, health, and security of women victims of violence.

It is in this context, when reflections on the best ways to articulate many different fronts of action required by policy to combat violence, raising its effectiveness, that the discussion about Federative Systems and their distinctive models of political and administrative organisation gain relevance. An analysis of the role assumed by the Union (in the Brazilian case) and by the Commonwealth (in the Australian one) points to differences much beyond those identified in the formation of the Central Government. A series of differences can be observed ranging from the form of political coordination and responsibility on the part of the federated entities to the process of designing national policies and the autonomy attributed to each federated entity in their execution, including converging efforts from ample groups of governmental and non-governmental actors.

The Brazilian Case

In Brazil, violence against women became a public issue only in the early 1970 decade, because of efforts by the feminist movement. But it was only in the following decade that the State assumed responsibility in formulating and implementing policies in this area. In 1985, it was inaugurated, in São Paulo, the first Police State of Women Defence (DDM). But it was only in 2006 that the Law Maria da Penha (LPM) was approved, providing the main existing legal framework to combat domestic and family violence against women in the country. On top of dealing with mechanisms to ensure punishment to the aggressor, LPM brought general guidelines for institution on comprehensive public policy to combat violence against women (ARTICLE 19, 2015).

More recently, the Law on Femicide (BRAZIL, 2015) was enacted, impacting institutional practices and the workings of services delivered in the supporting network, becoming a global reference in countering violence against women. In spite of the notable advances in the promotion of public policy for women in situations of violence, the biggest current concerns are centred in the maintenance and expansion of the protection network, as well as on more equitable access to services, given the profound and structural racial and ethnic inequalities in Brazil.

The assistance network for women in situations of violence reflects the characteristic of the Federal Government's centrality combined with management by delegation to disaggregate attributions (federative model by devolution) analysed in the formation of the Federative System in the national sphere, the organ responsible for external control of the Judiciary, the National Council of Justice (CNJ), seeks to construct and disseminate guidelines for action of the state´s judiciary in assisting women in violent situations (BRAZIL, 2018). The CNJ and the National Council of the Public Prosecution Office (CNMP) approved, in partnership, the Joint Resolution n. 05/2020, instituting the “National Form for Risk Assessment”, currently being disseminated in the country. It is worth mentioning that CNMP also has a relevant role in developing prevention practices against violence, that include orientation for the incumbent State Public Prosecution Office on combating gender violence.

In the realm of the Federal Executive, through the Secretariat of Policy for Women (SPM), the National Policy to Combat Violence against Women was launched. To make it operative, in 2007 came the National Pact for Combating Violence against Women (with a new and revised edition in 2011) that consists of an agreement between federal, state and municipal governments to plan and implement actions pertaining to the national policy (BRAZIL, 2007). Another important point is that the main public policies for women, including those on violence, were formulated grounded on processes of social participation, by means of public conferences carried out in municipalities, states and at national level (from 2003 to 2015). This openness to participation makes evident the efforts of the Federal Government to put in place mechanisms to ensure the greater decentralisation of power in the formulation of public policies.

Either in disseminating legal guidelines by institutions of the Federal entity, or by means of executing strategy for public policy, structures under the guard of the national system, the policy to combat violence against women has gained space in the Federal Government´s agenda, suffering with discontinuity of

actions or lack of priority in the face of other relevant national themes. However, the efforts employed to induce a greater political decentralisation – object of the administrative reform of the 1990 decade – should also be reviewed with an aim to ensure not only participative mechanisms of policy formulation, but also to entrust states and municipalities with the execution of planned actions, pressing them to assume more responsibility for results obtained.

The Australian Case

The federative design in Australia also presents clear impacts on political strategy and implementation of policies to combat violence against women. The predominant characteristic observed is the aggregation, in which states are protagonists in formatting and implementing policies, and therefore assume responsibility for effects of adopted measures. Important yet to signal that the Australian Constitution does not possess a roll of fundamental rights. No federal *Bill of Rights* or any other such charter on human rights exists. In effect, Australia is the only country of Occidental tradition in the world without such a charter, leaving to the Commonwealth the observance of international treaties of which Australia is a signatory. Some federated entities, however, possess laws guaranteeing the fundamental rights of its citizens (Charter of Human Rights), as is the case of the state of Victoria, Australia Capital Territory, and more recently, the state of Queensland.

This means that a deeper analysis on legal treatment of combating violence against women would need to appreciate all distinct nuances of each state, beyond a general overview on the attributions of the Commonwealth. It is fitting, though, to analyse only the last aspect, aiming at a more comprehensive panorama of the role of the federal Australian entity in fighting violence against women. Among the powers assigned to the Commonwealth, articles 51 and 52 of the Australian Constitution contain a restrictive list of attributions relating to marriage and the protection of children, under the perspective of family law (FAMILY LAW ACT, 1975). It is under this authority that the federal entity has legislated on domestic violence.

By means of the Family Law Act a national treatment is given to combating violence against women, highlighting an emphasis of the Australian legislation on domestic, family and sexual violence. This serves not only to allow the Commonwealth to produce actions and formulate guidelines on the theme, anchored in participative processes with distinct federated entities; but also fulfills the need for a legal base for the states that, as previously mentioned, are entities responsible for producing laws and moulding them accordingly with local needs. In other words, from the legal framework of the Commonwealth, the federated entities assume the role of adapting their laws and norms to the reality of their territory, and also become the main actors in the execution of actions, responsible for results produced in their locality.

Reflecting on the perspective of the responsibilities of the federal entity, two courses of action adopted by the Commonwealth should be noted. The first, considered more direct, in which assertive actions are executed in combating violence against women. The second, more discreet, in which the Federal Government fosters private and third sector initiatives in this area.

In the first perspective presented, actions in prevention and the educational role exercised by the Commonwealth are worth mentioning, characterising a primary form of prevention of violence against women. It is standard to use audio-visual media to raise awareness among different community groups. The federal entity takes responsibility not only to equip public institutions with means necessary to repress violence, but also invests in preventive and educational measures for the population, including targeting regions with higher rates of crimes against women in such initiatives.

Also deserves mention the role of the Australian federal government in the elaboration of the National Plan to Reduce Violence Against Women and their Children 2010-2022, that resulted in a coordinated work with states by means of the Council of Australian Governments Advisory Panel on Reducing Violence Against Women and their Children. Based on a consultation process and on common ground among federated entities, a national plan to counter violence against women was formulated, containing six action areas and 28 recommendations. This resulted in the implementation of a national counselling program for women victims of violence; the creation of a 24-hour hotline for victims; the destination of a specific budget for countering domestic violence, and an increase in marketing and propaganda on the issue. Important to

signal that in Australia norms related to police action and criminal law, differently from Brazil, are a state attribution. In the area of family law, there is a federal legislation on intervention orders, one of the main legal frameworks for countering domestic and family violence against women (VAW).

Currently the Third Plan of Action, conceived following the National Plan, is being implemented, and the Australian government – by means of ANROWS – commits to developing and putting in place a national risk assessment system, as well as principles for its management, aiming to guarantee the security of children and other family members at risk or exposed to violence.

Beyond that, fostering and destination of public budgets to private entities are the second course of action adopted by the Commonwealth to combat violence against women. There are many NGOs and agencies that handle cases of violence against women. Such organisations in the social field receive direct financial help from the federal government, by means of destination and approval of sums of the federal budget, based on an agreement of actions and interventions to be delivered by each beneficiary institution. There are currently six networks of private or third sector organisations receiving money annually from the federal budget, all of them focussed on combating domestic violence and supporting victims of such crimes. The existing networks (or alliances) are: Economic Security4Women (eS4W); Equality Rights Alliance (ERA); Australian Women Against Violence Alliance (AWAVA); National Rural Women's Coalition (NRWC); National Aboriginal and Torres Strait Islander Women's Alliance (NATSIWA); e Harmony Alliance. Jointly, they include more than 120 organisations for the promotion of the rights of women, including the protection against violence.

As private institutions receiving public money, they must prove performance by means of reports. The Commonwealth is responsible for the monitoring of actions implemented and the evaluation of results, most frequently carried out by consultation with the final beneficiaries of policies, combined with information of the system of risk assessment of domestic and familiar violence provided by ANROWS.

Final Considerations

It was not the focus of this chapter to produce a study on the federative genesis and evolution of Australia and Brazil. However, it is of foremost importance to make evident how legal-historical development in both countries impose a model apparently homogeneous, at first, but when seen in a little more depth, reveals its heterogeneity. For this reason, an effective analysis of strategies to implement public policies of prevention of violence against women, require, to begin with, full comprehension of the way in which constitutional and historical design resulted in distinct models of Federalism, in Australia and Brazil.

It is based on the comprehension of dynamics of Federative Systems for the political-administrative organisation of the territory that a comparative analysis of polices to reduce gender-based violence may be better put to use, in extracting lessons and rethink ways and alternatives to policies in Brazil and Australia.

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