

<http://www.if.org.br/?action=doExibirArtigo&inCodigo=35>

(Um Jeito de Transformar o Eterno Jeitinho Brasileiro)

A Way to Change the Eternal Brazilian Way

Article by Thomas Korontai

Translation by Joao Martins

When we speak of changing the model for the way certain people live their lives in the public view, and while we're at it, people and their private lives, we come to the understanding that interpretation and evaluation of the same is done using a model of operational existentialism. This is akin to analyzing globalization via a sextant used by navigators prior to the discovery of America or trying to understand our universe without taking what surrounds it into account. This behavior is natural for those that have lived and learned under limited conditions. In this manner, with all of the studies and acquired knowledge, from the universities to the seminaries, the problems are debated and their respective proposed solutions are presented as actual opinions. An interesting text exists – The Fable of the Roasted Pigs – that deals specifically with that situation of resistance or misunderstanding for the proposed changes. The fable can be read in minutes and serves all of life's situations.

With respect to what should be done in Brazil, to deal with this Brazilian way, several points come forth when we discuss federalism. For example, "What should we do with the Northeast?" This is done without imagining that the region is wealthy and is so underutilized by federal centralization that it's even deformed the healthy development of an elite class; consequently, it has ended up promoting local oligarchic behaviors. Other innumerable points are also questioned, curiously without regard for the solution in one's own backyard; oftentimes there persists the preoccupation with our neighbors' backyards. Therefore, when faced with the opportunity to better oneself, the tendency is to sabotage oneself.

There are many points of contention, but let's just cite a few to provide a better idea of what's going on. For example, regarding the number of local authorities, should there be more, less or should they be prohibited from multiplying? The truth is that we have too few municipalities and too much bureaucracy. For each newly created municipality, per the Federal Constitution, the following are created: new posts, from the mayor to the councilors, and the administrative retinue of the legislative and executive. A municipality with three to five thousand inhabitants is expected to have, per the Federal Constitution, nine councilors, whose salaries can be as much as 75% of state deputies, and these deputies' salaries can go as high as 75% of their federal counterparts. In addition to the salaries, there are other benefits including the money from the FPM – Fund for Municipal Participation – that removes funds from the municipalities. Furthermore, in order not to pay the municipalities, the federal government created "contributions", a name change for new taxes that are not redistributed to anyone. The

chronic and perverse centralism absorbs nearly 70% of what is collected in the country, which is about 40% of GNP. In other words, little escapes the federal funnel.

One only has to recall the municipalities of Germany, Switzerland, Austria, Spain, among other first world countries, numbering in the thousands. In tiny Switzerland there exist three thousand and Germany has roughly eighteen thousand. Moreover, in the US, when joining communities, counties, cities, etc., the sum reaches fifty thousand! The Principle of Subsidiarity exists in all of them along with the freedom for self-management without the obligation of having mayors, councilors or anyone else. Since the population of municipality is the one fronting the bill, they decide whether to pay for councilors or how many will make up the town council. The way the town is managed is decided by its inhabitants. For example, they can decide to replace the town council with a council of notable town figures, or even have an urban administrator in place to run the place. Resources originating from the Federal State can be requested for specific projects – hospital, road, bridge, orphanage, school, etc – directly from the region’s state deputies or the State Secretary. Moreover, the maintenance of each municipality will occur as it does in any condominium, via taxes that are agreed upon by the community. The costs will fall precipitously. Furthermore, prehistoric work laws will be replaced by laws decided upon by each state. The FPM (Municipal Participation Fund) will cease to exist along with the federal extortion of the municipalities and its citizens. We are not coming up with anything that doesn’t already exist; it is already in place in first world countries.

While on this topic, it is clear that smaller municipalities can combine common services within a set geographic area. These include: better equipped hospitals and firefighters; and district level judges elected by the region. Once again, this is nothing new as it already takes place in Germany, England and the United States.

We are not different from these other people. To believe we are would signal an eternal inferiority complex imposed by force; moreover, to support it would only perpetuate our current situation. This isn’t a law that can be changed: “if you continue to do things the same way, you will continue to get the same results”.

In addition to the municipality question, whose importance stems from the fact that it is where we reside, there also exists the transformation of the State of Rights/Laws transforming into the Rights/Law of the State. In a country where contractual guarantees are practically non-existent due to the exorbitant delays in and costs of finalizing contracts, there is no way to get around this obstacle. Consequently, the judicial system needs some substantial reform. This reform does not simply refer to the absolute need to decentralize the same, but also a revaluing of transparency, efficiency, agility and the correct relation between law and justice. While the American Supreme Court presides over 100 cases per year, our judicial system with its five top courts has accumulated roughly 228 thousand cases in only eight months! It is absolutely clear that the results indicate that the Brazilian judicial system needs to be reevaluated.

Why can’t we have depoliticized popular elections of judges on the district level here in Brazil? Moreover, candidates should only become attorneys with a law degree covering

the basics needed for district wide investiture. The district judges would form electoral colleges for the purpose of electing superior court judges within their own class. Will there be internal politics? Yes, inevitably. However, this already takes place in all sectors in a sordid manner. What can we say when members of the Legislature are directing the Judicial...? This wouldn't happen with the project proposed by the federalists.

Still relating to the election issue, the reform of the Judiciary base, which is where 60% of lawsuits occur, implies that there exists the possibility of greater transparency in the sector in addition to bringing the law system closer to the general population. The judicial rulings will be, in their overwhelming majority, depoliticized because they will bring clarity to the "little issues", that are big issues for the general population. The "larger items" that deal with state level constitutional and legislative issues, will be judged in higher level spheres within the Federal State. All that is not a federal constitutional matter will be outside the scope of the Federal State. In their separate spheres, outside interference will become more difficult, unlike today where it is becoming evermore prevalent. The worst thing that can happen today is the politicization of the judicial branch by the State, whether by the executive or legislative, effectively eliminating the independence of the three powers. Furthermore, the State Supreme Courts and the Federal Supreme Court will be composed of judges elected without Executive meddling. The federalists' proposals will transform the judicial branch into a much more technical, agile, just, and complete unit, and not to mention also less costly. This is the way it should be.

The proposals offered here by the federalists are basic, conceptual, consist of a list of topics to be studied and projected within a new national reality, on both the state and municipal/community level. It is better to objectively reflect upon the ways Brazil can escape its current jam, rather than try solutions within the model that caused this mess. Meanwhile, the more difficult dilemma is that of the systemic vision of the reform process in all sectors. Our brain was trained to resolve problems piece by piece and not as a whole. Therefore, a full systemic overhaul of the Brazilian State, will be viewed as demagogic, preposterous or false. An isolated reform will not be possible in Brazil because all sectors are interdependent. In other words, Brazil is literally tied down by the legal ropes, many of which are illegal if not immoral.

In order to guarantee that nothing will change, a Constitution that depends on regulation might as well be called the Magna Carta, even more so because it can't be applied. A Magna Carta contemplates principles by which a nation is guided by, making up the base by which law is practiced, and where one can obtain the justice expected by the tax payers, the true owners of the country. The worst thing is that the Federal Constitution of 1988 only has 1/3 of its regulatory text and eighteen years after its promulgation it is being amended in the Transitory Dispositions. To substitute this one for a new, simple, short and comprehensible text accessible for any literate Brazilian; containing self enforcing principles, even if it's missing complementary legislation, is absolutely essential. How so? Only via a specific project such as the one the federalists are

preparing for the nation, to be submitted for national referendum in the near future. However, that is another story for the near future.

It is important to note that nothing that is proposed is going to be completely bulletproof. The general principles will be further developed by studies conducted within the scope of the Instituto Federalista Brasil (www.if.org.br) so that Brazil can truly take that great leap forward and transform itself. There is no time to waste because we are being left behind by nations that were at the feet of our GDP twenty years ago.

We know that there will be resistance; a good part of it will be caused by our accommodation with the “Brazilian way”. However, we are certain that all that is being proposed is so that every Brazilian can take notice of the options that will make themselves available in the next couple of years; first with the conceptual point of view and later with the electoral point of view. Only then can each citizen decide if Brazil will continue with its old “way”, or whether it can find a new “way” to reach its destiny. We do not own truth. However, I believe that few doubt we need a transformation, something much more than just reform.