

Transportation Planning and Development in Brazilian Constitutional Economic Law

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How to cite this paper: Mascarenhas, F. S., Begosso, R., & Salgado, R. O. (2023). Transportation Planning and Development in Brazilian Constitutional Economic Law. *Beijing Law Review*, 14, 2216-2229. <https://doi.org/10.4236/blr.2023.144122>

Received: November 21, 2023

Accepted: December 24, 2023

Published: December 27, 2023

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Abstract

The purpose of this article is to analyze transportation planning in Brazilian constitutions. To this end, it examines the way in which Brazilian constitutions from the 1930s to 1988 include the role of the state in the transportation sector, bearing in mind that it was from this time onwards, marked by the internalization of economic decision-making centers, that transportation planning was constitutionalized. The research concludes that constitutional treatment of transportation planning, which was first introduced in the Brazilian Federal Constitution of 1934, is linked to the inclusion of the Economic and Social Order in the constitutional text. This relation is currently established in the Federal Constitution of 1988 and is essential to comprehend the legal framework of transportation planning in Brazil, dedicating particular attention to the National Road System.

Keywords

Transportation, Federal Constitution, Planning

1. Introduction

Brazilian economic development history is strongly connected to national constitutional culture. In fact, if law is to be seen as a cultural product, shaped by societal values, it is possible to affirm that *development* is to be found at the core of values crafting Brazilian constitutional history (Grau, 1981: p. 7).

Since the 1930s, Brazilian constitutions have incorporated sections on the so called economic order—at first, along with the “social order”, and after the Constitution of 1988, along with the “financial order”—, that is, the body of legal rules governing economic relations (Moreira, 1973: p. 67). When compared to

previous, 19th century constitutions, this fact indicates a growing political consensus around the need to organize or even drive economic life.

In an underdeveloped country like Brazil, faced with social and regional inequality, economic backwardness and the challenge of integrating a territory of continental dimensions, a fundamental aspect of these economic constitutions is the internalization of decision-making centers (Bercovici, 2011: pp. 208-237). Before developmentalist ideas such as industrialization and state intervention assumed a prominent role in national economic ideology during the 1930s (Bielschowsky, 2000), institutions inherited from the colonial past or from 19th century cosmopolitanism were porous and marked by a high degree of influence from foreign capital (Prado Júnior, 2012).

As natural as it could be, 20th century constitutional history in Brazil reflects the integration of developmentalist ideals into the constitutions. In light of this movement, transportation planning also became a constitutional matter, since transportation and economic development are intertwined in a myriad of ways, as from the perspectives of: 1) logistics necessary to industrialization; 2) exports; 3) urbanization and mass society infrastructure and mobility needs; 4) national security; and 5) territorial integration, especially in face of regional inequalities in a continental-sized country.

Nonetheless, the present work aims at analyzing transportation planning in Brazilian constitutions since 1934. To achieve this purpose, a dogmatic legal research is contextualized by means of comprehending constitutional changes within its political-economic setting.

2. The Ruling Constitution and Transportation in Brazil: The Pre-1988 Path

From a legislative standpoint, the Brazilian experience of integrated planning in the transportation sector originated, not by chance, during President Getúlio Vargas' first term in office in the early 1930s. The milestone for the development of Brazilian transportation planning came at the end of the provisional government with the Constitution of 1934. The charter reclaimed the characteristics of the Mexican Constitution of 1917 and the Weimar Constitution of 1919 by including the economic and social order in its framework¹ (Title IV, articles 115-143).

The Constitution of 1934 structures its economic and social order in line with the principles of justice and the needs of national life (article 115)², as would be the case with: 1) the possibility of monopolization of a certain industry or economic activity by the Union, as long as it complied with reasons of public interest and it was authorized by a special law (article 116; 2) the promotion of the

¹Bercovici (2005: p. 17). On the inclusion of the economic order in the constitutional text in Brazil, see Souza (2002: p. 108), Venâncio (1998: pp. 33-34) and Bercovici (2005: pp. 11-43).

²“Article 115 – The economic order shall be organized in accordance with the principles of justice and the needs of national life, in such a way so as to enable everyone to lead a dignified existence. Within these limits, economic freedom is guaranteed. Sole Paragraph—The Public Authorities shall periodically verify the standard of living in the various regions of the country.”

popular economy (article 117); 3) the separation of subsoil property and land property and the nationalization of mines and deposits (articles 118 and 119; as well as 4) the adoption of cooperative federalism (articles 9, 10, 140 and 177).

The establishment of a new model of federalism³ and a novel economic and social order had a direct impact on the legal basis underlining the regulation of transportation. Previously, the Federal Constitution of 1891 made few references to this subject, essentially when addressing the prohibition of the states and the Union to impose transit taxes in state territory, in the passage from one state to another, or else on products from other states of the Republic or foreign, as well as on the land and water vehicles that transported them (article 11). Another example would be when it addressed the right of the Union and the states to legislate on railways and inland navigation, which would be regulated by federal law (article 13), promptly determining that coastal navigation should be carried out by national ships (article 13, sole paragraph).

In 1934, the prohibition set up by the previous constitution was extended beyond the states and the Union to include the Federal District and the municipalities (article 17). Transportation was also discussed in Chapter II (“On the Legislative Branch”) with regard to the composition of the Chamber of Deputies, which instated a class of Deputies named “occupational Deputies”, who would be indirectly elected by occupational bodies comprehending four different groups: agriculture and livestock farming; industry; commerce and transportation; liberal professions and public servants (article 23, §3).

In addition the Constitution of 1934 deemed the transportation industry as especially relevant to national security. This assertion holds true as the Charter, under its Title VI (“On National Security”), in article 166, stipulates that:

Article 166. Within a hundred-kilometer strip along the borders, no land or communication route shall be granted or opened without the consent of the Superior Council for National Security, which shall establish the predominance of national capital and workers and determine the interior connections necessary for the defense of the areas served by the penetration roads. Paragraph 1 - The same procedure shall be followed regarding the establishment, within this strip, of industries, including transportation, that are relevant to national security.

Such constitutional provisions concerning transportation are an indication of socioeconomic transformations and changes in the structure of the Brazilian federative model (Furtado, 1972: p. 20; Oliveira, 2003: pp. 35-36; Ianni, 1977: pp.

³On the establishment of cooperative federalism in Brazil in the 1934 Constitution, see Nohara (2018: p. 12). Due to historical social and regional inequalities, Brazilian federalism, born in liberal the Constitution of 1891, evolved in the direction to become a cooperative federalism, i.e. an organization of the State orientated towards cooperation between its units. The main features of cooperative federalism in Brazil are the constitutional combination of federal units to accomplish fundamental social and economic transformations while, simultaneously, safeguarding the units’ political autonomy. In more authoritarian moments of Brazilian history, as it further outlined in this work, political autonomy was undermined in favor of concentration of power in the Union (Bercovici, 2004: pp. 95-99).

13-22; Rangel, 2002: pp. 49-57; Cano, 2012: pp. 144-156; Cabral, 2016: pp. 41-50; Fonseca, 2012: pp. 159-178). Article 5, item IX, of the Constitution of 1934 reflects the shift from the prohibitive perspective of the Constitution of 1891 to a more proactive and centralizing one, stating that it is the exclusive competence of the Union: “to establish the national railroad and highway plan, and to regulate interstate road traffic”. This article provides the constitutional guidelines for the first major national road plan: the General National Road Plan (GNRP)⁴.

According to Fonseca (2012), this first major initiative to integrate transportation was one of the mechanisms created during the first Vargas government to develop the national industry. For the author, although this development took place in the early years of Vargas’ government, it was only intensified after the *Estado Novo* and its wartime context, when there was a massive creation of bodies, councils and institutions aimed at industrialization.

Politically, the *Estado Novo* emerged with the aim of restoring national authority, faced with circumstances that imposed: “an exceptional decision, with wide repercussions and profound effects on the life of the country, above the ordinary deliberations of government activity” (Vargas, 1938: p. 19).

This “exceptional decision” took place on November 10, 1937, when the President announced on the radio that he had decreed a new Constitution, ordered the closure of the legislative branch, revoked the mandates of parliamentarians, canceled the presidential elections scheduled for the beginning of 1938, dismissed the governors of the states and appointed federal interveners in their places, extinguished all political parties and all civic militias (Codato, 2015: p. 306).

During this period arose the conditions for financing economic development, for which the creation of an investment bank in Brazil is a solid illustration (Draibe, 1985: p. 91). Luciano Martins (1976: pp. 368-369) also highlights the formation in this period of an economic database, crucial for financing development. Economic missions would gather data instrumental for economic planning, with implications extending to transportation planning as well (Mello, 1975: p. 9; Tavares et al., 2010: p. 14).

Particularly with regard to transportation planning, the Plan of the National Department of Roads and Highways (NDRH) stands out. This body was created by Law No. 467 of July 31, 1937, and was responsible for general planning, execution or supervision of works (Brasil, 1962: p. 48; Coimbra, 1974: p. 188; Brasil, 1974: p. 141).

⁴The General National Road Plan was undisputedly the greatest road plan to emerge at the time. However, it does not erase the importance of plans prior to 1930. In this context, Mário Travassos’ perspective holds significance as he asserts that: “there are flagrant traces of the deep impression left by those plans, which makes them the indisputable foundations of the Brazilian communications policy that the 1934 national highway plan came to consolidate” (Travassos, 1941: pp. 51-52). See also Azevedo (1950: pp. 89-97). For a more general analysis of the plan see Silva (1949: pp. 5, 205-208), Nunes (2011: p. 14). For a wider analysis of the rail modal in order to understand it beyond the plan, see Adolpho Pinto (1977: p. 28), Castro (2002: pp. 251-283), Reis and Miguel (2015), Nunes (2011: p. 13), Silva (2015: pp. 244-249), Lima Neto (2001: pp. 214-215).

In addition to this new institutional format and the planning instruments, the Constitution of 1937 also contained provisions for transportation. This Charter attributed exclusive competence to the Union to legislate on international or interstate communications and transportation, whether by rail, water, air or highway (article 16, XI). Depicting the high degree of centralization of the period, the Charter came to understand the national territory as customs unit, as well as from the economic and commercial point of view, prohibiting states and municipalities from levying interstate or intermunicipal road or transportation taxes that had the power to burden or disturb the free movement of people or vehicles (article 25).

In addition, in a chapter on the National Economy Council, the Constitution of 1937 highlights a specific section for transportation (article 57, sole paragraph, “b”)⁵. Among the Council’s responsibilities were the organization, on the government’s own initiative or proposal, of inquiries into the conditions of work, agriculture, industry, commerce, transportation and credit with the purpose of increasing, coordinating and perfecting national production (article 61, “e”).

At the end of the Second World War, support for the *Estado Novo* collapsed. New elections took place and General Eurico Gaspar Dutra assumed office in January 1946. The period was marked by a clash of visions and doctrines in the discussion of economic planning, the peak of which was between 1944 and 1945 and whose main interlocutors were the industrialist Roberto Simonsen and the economist Eugenio Gudin. Although planning proposals emerged from this controversy were not practiced due to disagreement, the balance of power tipped in favor of planning and institutional mechanisms for state intervention expanded its influence (Diniz, 1978).

In the view of Barbosa and Koury (2012), by this time Brazilian political landscape could be read as a dichotomy: on the one hand, there is a liberal interregnum with the government of Eurico Gaspar Dutra (1946-51); on the other, new potential for democracy revealed itself, due to a decisive and articulated intervention driven by a developmentalist logic, despite a liberal government.

That is the background of the Federal Constitution of 1946. Three aspects of this Constitution regarding transportation are worth emphasizing: 1) the assertion of transportation planning in the list of prerogatives of attributed the Union, one of which was to “establish the national road plan” (article 5, X); 2) the claim that coastal navigation for the purpose of transporting goods should be the confined to national ships, except in the case of public necessity (article 155); and 3) the need to complete the Rio-Northeast highway in two years (article 32 of the Constitutional Transitory Provisions).

The presence of such a concrete task, namely the completion of the Rio-Northeast highway, in the constitutional text, is related to the fact that the Constitution of

⁵Article 57—The National Economy Council is made up of representatives of the various branches of national production appointed, from among people qualified by their special competence, by the professional associations or unions recognized by law, guaranteeing equal representation between employers and employees. (...) Sole Paragraph—The National Economy Council shall be divided in five sections: (...) (d) Transportation Section.”

1946 consolidated cooperative federalism, emphasizing northeast socioeconomic underdevelopment in comparison to other regions, particularly the Southeast of Brazil (Bercovici, 2004: p. 46).

Later on, during the dictatorial governments initiated in after the military coup of 1964, federalism was turned into an instrument of national integration. The concept of national integration adopted by the military referred to centralization of power in the Union, which would be responsible for leading national policies and bring collective security to federal units. From the cooperative model solidified in the Constitution of 1946, the new federalist standard was merely formal (Buzaid, 1971).

As for the chapters referring to the economic and social order in the Constitution of 1967 (articles 157 to 166) and in the Constitution of 1969 (articles 160 to 174), they both foresaw development as an end of the constitutional economic order (Carvalhosa, 1972: pp. 69-106).

Nonetheless, according to Bercovici (2005: p. 28), a main feature of the legal-economic model inaugurated then was that “the military’s main concern was to perfect the conditions for the operation and expansion of national and international private enterprise, benefiting transnational companies and the large national business groups linked to them”. In this sense, the Constitution of 1967 welcomes development as a core value, just the 1934, 1937 and 1946 charters did, but with new lens, much more appropriate for the government’s new vision of an alliance with multinational capital.

In the Constitution of 1967, the Union’s competence to establish a national highway plan (article 8, XI) and to operate, directly, or by authorization or concession, air navigation (article 8, XV, “c”) and transportation routes between seaports and national borders or that cross the boundaries of a state or territory (article 8, XV, “d”) were maintained.

In addition, with regard to the chapter on the National Tax System, the Union, states, Federal District and Municipalities are forbidden to establish limitations on the transit of persons or goods, by means of taxes on interstate or intermunicipal movement (article 20, II). However, the Union retained the power to impose taxes on transportation and communication services, except those of a strictly municipal nature (article 22, VII).

Similarly important was the provision of transportation regarding national security, which established as a competence of the National Security Council the concession of lands, opening of transportation routes, the installation of means of communication (article 91, II, “a”) and the construction of bridges, international roads and airfields (article 91, II, “b”) in areas indispensable to national security.

With the Constitutional Amendment No. 01 of 1969, the main change in relation to the Constitution of 1967 as far as transportation is concerned is the establishment, in the chapter on individual rights and guarantees, of an extra-fiscal exception for customs and transport tariffs (article 156, §29) and in the chapter on the economic and social order, of a paragraph that excludes fishing vessels

from the Union's exclusive competence for coastal navigation (article 173, §2). As this was the constitutional experience of transport planning that precedent to the Federal Constitution of 1988, we can realize that transportation planning has been significantly connected to the issues of industrialization and economic sovereignty, having entered the constitutional sphere and remained, albeit with nuances, during transitions between democracy and authoritarianism. Fundamentally, the pre-1988 path of constitutional history reveals a trend of centralization which nevertheless coexisted with cooperative federalism, at least until cooperative federalism attained its peak in the Constitution of 1946. Regarding transportation planning, national integration after the Constitution of 1967 was distinguished not by the need to reduce regional inequalities, as was the case before, but by the need to assure national security.

3. Transportation Planning in the Federal Constitution of 1988

The Federal Constitution of 1988 can be classified as a Ruling constitution (Bercovici, 1999: p. 35; Canotilho, 1982: p. 12; Moreira, 1974: pp. 112-115; Tavares, 2011: p. 72; Bercovici, 2005: p. 12; Souza, 2005: p. 201; Grau, 2015: pp. 75-76; Mascarenhas & Salgado, 2022: pp. 168-188). Hence, it is concerned with setting up programs and guidelines to be carried out by institutions, federal units and subordinate legislation itself. At the core of this programmatic nature, article 3 enumerates the fundamental objectives of the Federative Republic of Brazil, namely: 1) to build a free, fair and solidary society; 2) to guarantee national development; 3) to eradicate poverty and marginalization and to reduce social and regional inequalities; and 4) to promote the well-being of all, without prejudice as to origin, race, sex, color, age or any other forms of discrimination.

The transformation of social structures is expressly brought up in the chapter on the economic order, which organizes the legal configuration of the economy and the role of the state in the economic sphere—issues that are not confined to this chapter, but appear sparsely in the constitutional text (Bercovici, 2005: p. 30). According to Bercovici (2011: p. 210), these provisions “have the functions of ordering economic activity, satisfying social needs and directing the general economic process”.

To be complete, the ideal of social transformation demanded the recovery of cooperative federalism. The Constitution of 1988 included, for the first time, the municipalities as components of the federation. In article 1, the Constitution declares that the Federative Republic of Brazil is formed by the permanent union of the states, the municipalities, and the Federal District.

Planning, therefore, as an instrument included in the constitutional economic order, must be engaged with the task of economic ordering, but also with the search to satisfy social needs, in the light of the constitutional objectives set out above⁶. In this sense, article 174 of the Constitution states that: “as the normative

⁶To understand the “determinant” character given to state planning by the Federal Constitution, see Nohara (2015: pp. 35-36).

and regulating agent of the economic activity, the State shall perform, in the manner set forth by law, the functions of supervision, incentive and planning, the latter being binding for the public sector and indicative for the private sector". Souza (2005: p. 386) points out some of the central issues related to planning, such as: "competence to legislate on the plan', 'control of compliance with its goals', issues of budgetary resources and, specifically, the various policies to be pursued, such as agricultural policy, agrarian reform and urban development and expansion policy".

The constitution attributes competence to the Union to prepare and implement the national and regional planning for organizing the territory and for economic and social progress; (article 21, IX), while indicating that the states may establish metropolitan regions and urban agglomerations by means of a supplementary law (article 25, §3), and that the municipalities are responsible for promoting, as far as they are able, adequate territorial organization, by means of planning and control of use, apportionment and occupation of urban land (article 30, VIII). It also deals with pluriannual plans and their execution (article 48, II, IV and IX), centralizes competence in the federal legislature for national, regional and sectorial plans (articles 58, §2, VI, 165, §9, and 166) and forbids their delegation (article 68, §1, III), determines that the legislative, executive and judicial branches shall maintain integrated systems of control to evaluate the attainment of goals of the pluriannual plan (article 74, I) provides for provisions on budgetary instruments (articles 165, I, §1, §5, i, ii, §7, 167, I, II), defines plans, competencies and limitations and master plans for urban policies (article 182), regulates agricultural policy (article 187), agrarian reform (article 188) and program financing (article 239).

In the field of transportation, there are extensive constitutional provisions which, in conjunction, govern transportation planning. In the title on the organization of the State, the Union is given the power to operate directly, or by means of authorization, permission or concession, railway and waterway services between Brazilian ports and national borders, or which cross state or territory boundaries (article 21, XII, "d"); interstate and international highway passenger transportation services (article 21, XII, "e"); sea, river and lake ports (article 21, XII, "f"); directives for the development of urban transport (article 21, XX), reserving to the municipalities the competence to organize mass-transportation, which according to the Constitution, is of essential nature (article 30, V). In addition to administrative powers, the Union was also given exclusive legislative powers to establish guidelines for the national transportation policy (article 22, IX), legislate on the regime of ports and lake, river, sea, air and aerospace navigation (article 22, X) and on traffic and transportation (article 22, XI). The states and the Federal District have reserved the power to enact taxes on the circulation of goods and on the performance of interstate and inter-municipal transportation and communication services (article 155, II).

With regard to the chapter reserved for the Economic Order, it is established that "[t]he law shall provide for the regulation of air, water and ground trans-

portation, and it shall, in respect to the regulation of international transportation, comply with the agreements entered by the Union, with due regard to the principle of reciprocity” (article 178). Specifically with regard to the organization of water transportation: “the law shall set forth the conditions in which the transportation of goods in coastal and internal navigational waterways will be permitted to foreign vessels” (article 178, sole paragraph).

It is also interesting to note that when the Constitution of 1988 addresses agricultural policy, it stipulates that planning and execution is to be carried out by law with the effective participation not only of producers and rural workers, but also of the marketing, storage and transportation sectors (article 187).

The inclusion of transportation in this section indicates a broad and consolidated understanding of circulation as pivotal to the economic order, translating what Souza (2005: p. 534) would call physical circulation. In fact, the Constitution groups producers, workers and transportation as a means to impose a more democratic project of agricultural policy.

In addition, since Constitutional Amendment No. 90 of 15 September 2015, transport has been constitutionally reaffirmed as a social right (article 6, *caput*), although it was already included in the chapter on the Social Order, within the scope of health (article 200, VII), education (article 208, VII), the family, children, adolescents, young people and the elderly (articles 227, §2, and 230, §2), and as a form of accessibility for the disabled (article 244).

However, the most relevant provision comes from the systemic and integrative vision attributed to the sector by determining the Union’s competence to establish the principles and guidelines of the National Road System (SNV) (article 21, XXI of the 1988 Constitution and Law No. 12.379, of January 6, 2011) (Bercovici, 2013: pp. 421-432), as well as legislating on traffic and transportation (article 22, IX and XI of the 1988 Constitution). In the aforementioned law, the SNV was organized in line with the Federal Constitution of 1988 (article 1), consisting of the physical and operational infrastructure of the modes of transportation of people and goods, under the jurisdiction of the Union, the States, the Federal District and the Municipalities (article. 2, §1), comprising the highway, railway, waterway and aviation subsystems (article 2, §2).

The Federal Road System (SFV) is the responsibility of the Federal Government and is divided into the Federal Highway Subsystem, which includes all the roads administered directly or indirectly by the Federal Government (article 12); the National Railway Subsystem, which is made up of: “existing or planned railroads, belonging to the major interstate, interregional and international integration axes” (article 20); in the National Waterway Subsystem, which is made up of waterways, sea and river ports, locks and other level-crossing devices, waterway interconnections of hydrographic basins and facilities, installations and structures intended for the operation and safety of waterway navigation (article 25, I, II, III, IV and V); and in the National Aviation Subsystem, which is made up of public aerodromes that serve civil air traffic, regular and alternative, domestic and international, in the country or that are strategic for national integration

and security, by the set of air routes, air traffic terminal areas and other divisions of Brazilian airspace necessary for the regular and safe operation of air traffic, as well as by the set of facilities, installations and ground structures for flight protection and aid to air navigation (article 34, I, II, III).

The division of the SFV is carried out in order to fulfill its responsibility to plan, build, maintain and operate its components, either directly or through concessions or public-private partnerships (article 3, items I, II, III, IV, article 5, article 6, items II, III). This responsibility belongs to the Federal Government (article 6, *caput*), except in cases of delegation to the States, Federal District and Municipalities (article 6, §2), in addition to the hypotheses mentioned above. Its objectives are to ensure national unity and regional integration, to guarantee a strategic highway network in order to promote the security of the national territory, to promote physical integration with the highway systems of the countries that surround Brazil, to handle large flows of goods efficiently through strategic export and supply corridors and to provide means and facilities for the transportation of passengers and cargo at interstate and international level (article 4, items I, II, III, IV, V). With the exception of concessions, the SFV's financial resources will be invested by the Federal Government, regardless of the management system adopted (article 7, sole paragraph).

Although one of the main functions of the new SNV was to update the regulatory structure of the sector, which was regulated by Law No. 5.917/1973, all of its annexes that would have prescribed the works and projects that the system would be responsible for were vetoed, and the lists from the dictatorial period remained in force, corroborating the principle of the transience of political regimes in the face of the tendency for bureaucracy to endure (Rebollo, 1989: p. 68).

In addition to this legislative issue, which makes it impossible for the SNV to be effective, its regulatory structure is completely anachronistic. The turbulent political and economic scenario that followed, with the advance of neoliberalism and conservatism, made the transportation sector even more riddled with challenges.

Since at least the 1990s, privatization has advanced in the transportation infrastructure sector. This, however, has been accompanied by significant injections of public funds in the privatization process. Private investments have been encouraged by the State, creating a paradoxical situation: due to fiscal reasons, the State must increasingly abandon the direct operation of the sector; yet, it must assure that the same public resources will be channeled to private companies to invest. This mechanism is safeguarded by Law No. 9.491/1997, which establishes "public credit" as an instrument of the National Privatization Program (article 1, IV) (Silva, 2015).

There are many specific challenges to be faced by the sector, such as technical and technological issues, the choice of a particular modal for the most appropriate purposes, the lack of funding at certain historical moments, the inappropriate extinction of bodies, institutes, groups and other institutions that pro-

moted the development of the sector, among many other issue specifically applicable to transportation (Mascarenhas, 2023).

However, there are currently two major structural challenges that must be tackled, otherwise the conditions will remain unfavorable for the integrated development of the transportation sector in general, or more specifically for a policy that encompasses the planning of the various modes in an integrated manner: 1) reversing the privatization process and 2) inserting the sector's integrated policy into a country project aimed at national development.

These are the main challenges currently facing Brazilian transportation. In benefit of private companies, the State sacrificed its planning capabilities. Through privatizations, not only public expenditure was directed to finance private investments, but sectorial planning has come to prevail over the global and integrated planning of infrastructure (Mascarenhas, 2023).

As a core value of the Brazilian constitutional economic order, *development* does not align with the scenario described above. In light of social and regional inequalities, the allocation of public resources with the objective of fostering privatization is not the most transparent mechanism. The loss of State's capacity to plan also conflicts with the objectives of the Constitution of 1988⁷.

In fact, according to article 219 of the Constitution of 1988, "the domestic market is part of the national patrimony". Thus, the task of economic development ought to influence transportation planning, viewing it as a tool aimed at integrating the domestic market.

4. Conclusion

What society understands as development is a cultural issue. In societies in which development becomes a core value for legal thinking, embodied by the Constitution, the meaning of development is particularly relevant.

From the outset, transportation planning in Brazilian 20th century constitutions was a matter of development. Different interpretations of development by opposite political and social forces challenged the goals of transportation planning. It is possible to conclude that: 1) in the Constitutions of 1934 and 1937, centralization of power in the Union was employed to both industrialize, tackle social and regional inequalities and to promote transportation as a means to integrate national territory; 2) in the Constitution of 1946, centralization retreated in favor of cooperative federalism, industrialization continued to be seen as necessary for social and regional justice, while transportation planning was seen as instrumental to the broader objective of development; 3) in the Constitutions of 1967 and 1969, industrialization remained undisputed, but the concept of development and federalism were integrated into a wider ideology of national security, which shaped transportation planning as well; and finally, 4) in the Con-

⁷A clear example of that is the level of unpreparedness of the State to deal of with logistical problems during the COVID-19 pandemic. Lack of transportation infrastructure integration was a key challenge for the vaccination campaign and also for the delivery of oxygen or for the connection of remote areas with better equipped hospitals (Ledur, 2021).

stitution of 1988, cooperative federalism has been expanded, transportation planning appears in several sections and even as a social right, but political changes in favor of a privatizing economic model marginalized the national development essence that guided constitutional projects.

The current scenario of the constitutional model of 1988 impacts transportation planning. Although transformative goals were set by the Constitution and constitutional provisions treat transportation as a means to build a fair development model, the background of social forces that elaborated the Constitution has deeply changed. This lack of legal effectiveness regarding constitutional provisions challenges the guidelines for transportation planning professed by the Ruling Constitution.

At present, reconciling the transportation sector and infrastructure with constitutional values and norms is an urgent task. It is a fundamental piece of any strategy to build a more resilient society and economy in light of 21st century challenges, such as climate change, pandemics and economic competition. These are challenges that add to the unresolved issues of the past like territorial integration, an obstacle to Brazilian economic and social development.

This reconciliation finds support in the 1988 constitutional model, which contains the appropriate framework to advance the development of transportation in Brazil.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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