

Intergovernmental Conflicts in a Time of Pandemic: State and Municipality Power Struggles in the United States and Brazil.

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The United States and Brazil are federal countries with constitutions that diffuse regulatory power away from the centre in favour of state and local governments. The COVID-19 pandemic has exposed the faultlines in the legal arrangements that govern the vertical separation of powers in these two countries and has generated intergovernmental tension specifically at the state/municipality interface. This paper considers these issues in the context of COVID-19 related responses, by specific reference to the role of municipalities in what Professor Hirschl terms ‘old-world’ and ‘new-world’ constitutions.

The paper is in two parts. In Part 1 we consider the position in Brazil where the FST has been asked to pronounce specifically upon the constitutional allocation of competencies. We consider these lawsuits and the context in which they arose with the premise that they have something important to contribute to our understanding of federalism and constitutional design in Brazil.

By way of contrast, Part II moves to the United States. We identify and examine disputes between five states and their municipalities where the issues are similar but the constitutional dynamic is different. In the absence of a constitutional framework that can recognise and empower local authorities vis à vis the states, the disputes to date have not made it into a federal court but are framed in terms of state law under which they stand little prospect of success.

We observe that there is a discrepancy between the role that municipalities in both Brazil and the United States play *de facto* and their position *de jure*. This means that the formal constitutional position notwithstanding, municipalities in both Brazil and the United States will continue to conduct their inter-governmental disputes with skills that are primarily political rather than legal.

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Dr. Ilaria Di Gioia is a Senior Lecturer in Law and Associate Director of the Centre for American Legal Studies at Birmingham City University, UK.

Her research investigates the role of the courts in setting the balance between central and local government and, more widely, the various ways in which constitutional law interacts with the political process. She has published and presented research in the U.S. and Europe on the federal aspects of the Affordable Care Act and the sanctuary cities phenomenon.

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Dr. Anne Richardson Oakes is Director of the Centre for American Legal Studies at Birmingham City University. She has a professional legal background and a teaching specialism in property law. Her current research interests focus on matters of constitutional and administrative law. She has published widely on both sides of the Atlantic.

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