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2021

THE EFFECTS OF THE COVID-19 PANDEMIC IN REGIONAL AND LOCAL GOVERNANCE: THE FEDERAL SYSTEM IN BRAZIL AS A CASE STUDY

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ABSTRACT

This paper will analyse the power shift from the federal to the regional and local governments in Brazil, concerning the jurisdiction and governance over measures to fight the Covid-19 pandemic. It will pursue this objective from a legal viewpoint. The approach will be of a case study, showing the timeline of milestone events in the year 2020 that lead to this power shift. It will focus on the Medida Provisória 926/2020, issued by the President to prevent the spread of Covid-19, and the ADI 6341, the ruling of a paramount case by the Brazilian constitutional court – Supremo Tribunal Federal – that acknowledged the governance of regional and local governments over the measures to contain the pandemic. The paper will present empirical evidence, consisting of the discourse and legislation adopted by the federal government and the legislation adopted by the states and municipalities. Finally, supported by the evidence and the theoretical background, the conclusions will address the

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power shift within the Brazilian federation as a symptom of the end of the Era of the Nation-state.

KEYWORDS

Governance, Covid-19, Nation-state, Federation, Brazil.

1. Introduction

This paper will analyse the power shift from the federal to the regional and local governments in Brazil, concerning the jurisdiction and governance over measures to fight the Covid-19 pandemic. It will pursue this objective from a legal viewpoint. The approach will be of a case study, showing the timeline of milestone events in the year 2020 that lead to this power shift. It will focus on the Medida Provisória 926/2020, issued by the President to prevent the spread of Covid-19, and the ADI 6341, the ruling of a paramount case by the Brazilian constitutional court – Supremo Tribunal Federal – that acknowledged the governance of regional and local governments over the measures to contain the pandemic.

The chapter will present empirical evidence, consisting of the discourse and legislation adopted by the federal government and the legislation adopted by the states and municipalities. The sources are the official gazette of the Union, states, and municipalities as well as the Folha de S. Paulo, which not only is the largest and oldest newspaper in the country but also complies with the highest information literacy standards.¹

1. Theoretical background

It is not a new scholarly argument that the era of the Nation-state is coming to an end. From the 1980's studies on globalization in the business and economics schools to the more recent theories about the new world order, scholars may disagree on its foundations (Marxist or non-Marxist theories), characteristics (hegemonic or inclusive), and implications on the future of mankind. Nevertheless, a common point seems to be the

¹ ALA-ACRL. *Information literacy competency standards for higher education*. Chicago, Illinois: The Association of College and Research Libraries. The American Library Association; 2000.

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conclusion that the power has shifted from the central governments within the borders of a Nation to regional arrangements.²

The Nation-state has become obsolete because it is no longer the optimal unit for organizing economic activity, that has detached itself from the geographical borders and may relocate to the most promising environment that it can find, namely low-cost nations and low-tax regions. Kenichi Ohmae brings us these arguments to develop his concept of regional states, with borders that are not imposed by political decision, but by the global market. Region states are natural economic zones, linked not with their host nations but with the global economy. Traditional issues in foreign policy, education, security, and defence remain in the domain of Nation-states, according to the author. However, regional, and local governments also possess an international approach that tends to be free of the tensions of "foreign" versus "domestic" that usually affect central governments.³

The power shift refers both to regional arrangements in a supranational approach (the European Union, the United Nations, the NAFTA) or an intranational approach (northern Italy, Catalonia, Alsace-Lorraine). In either case, the Nation-states that exercise strong central control in the name of safeguarding their integrity and identity begin to decompose.⁴

This scenario also reveals that layers of governance of the Nation-state are not only being transferred to international organizations, but also local governments. That is why some scholars mention a new era for the City-state.

Joel Kotkin represents this line of thought:

"The city-state, a relic dating back to Classical or Renaissance times, is making a comeback. Driven by massive growth in global trade, shifts in economic power and the rise of emerging ethnic groups, today's new independent cities have witnessed rapid, often startling, economic growth in the past decade."⁵

² See Castells, Manuel, 1996, *The Rise of Network Society*, Oxford: Blackwell. Giddens, Anthony, 1990, *The Consequences of Modernity*, Stanford: Stanford University Press. Harvey, David, 1989, *The Condition of Postmodernity*, Oxford: Blackwell. Held, David, McGrew, Anthony, Goldblatt, David, and Perraton, Jonathan, 1999, *Global Transformations: Politics, Economics and Culture*, Stanford: Stanford University Press.

³ Ohmae, Kenichi. *The rise of the region state* in Foreign Affairs, Spring 1993, p. 80-84. Available at: <https://www.foreignaffairs.com/articles/1993-03-01/rise-region-state>.

⁴ Idem, p. 86.

⁵ Kotkin, Joel. *A New Era for the City-state?* In Forbes, December 23, 2010. Available at: <https://www.forbes.com/sites/joelkotkin/2010/12/23/a-new-era-for-the-city-state/>

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It is a notorious fact that urbanization is a worldwide trend in the 21st Century. The United Nations report that in 1950, 30% of the world's population were living in urban areas. In 2018, the percentage raised to 55%. The UN estimates that by 2050 around 70% of the world's population will be living in cities.⁶

The C40 Cities Climate Leadership Group, the Global Parliament of Mayors, and the UN-Habitat conferences are undoubtedly pieces of evidence that cities managers and local policymakers are also organizing themselves at the international level to exchange best practices, develop common policies, and transfer technology.

The Covid-19 pandemic has added to this debate by casting light on the incapacity of some Nation-states to deal with the challenges brought by it at the national governance level. In the European Union, a common solution has been adopted by member states to tackle border control and lockdown policies. In Brazil, the lack of response of the federal government opened the way for the states and cities to take control of the decision-making process.

Those scholarly findings form the theoretical basis for the case study analysed in this paper. Along with the data collected, the study will show that during the year 2020 there was a power gap within the Brazilian federation, which was eventually filled by the regional and local governments.

2. The jurisdiction over responses to the Covid-19 pandemic in the Brazilian legal system

Brazil is a federation composed of the indissoluble union of three levels of government: the Union (federal or national), the federal states (regional), and the municipalities (local), as predicted by Article 1 of the Constitution of the Federative Republic of Brazil. The Federal District is considered a *suis generis* unit, and it can perform the functions of federal state and municipality. The competences to legislate and to adopt public policies at each level are described in Articles 21 to 32 of the Constitution.

This federal system is supported by the principles of political autonomy and division of powers, where power slots are allocated to political entities and allows them to make decisions under the terms of the Constitution and seeking to maintain the federative

⁶ United Nations. *World Urbanization Prospects: the 2018 revision. "Key Facts"*. Available at: <https://population.un.org/wup/Publications/Files/WUP2018-KeyFacts.pdf>

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pact⁷. The division of competences is provided by the Constitution, and it is divided into administrative competence (executive power) and legislative competence (legislative power), since the presidential system allocates a significant amount of power to the executive.

The administrative competence concerns the decision-making process of political-administrative acts, the implementation of public policies and the general management of public administration at all levels⁸. It is classified as exclusive or common. In the case of exclusive competence, the Constitution establishes precisely what governmental level has jurisdiction over the policy (Articles 21 and 30), which cannot be transferred to another level. For instance, the collection of income tax is an exclusive responsibility of the federal government. In common competence, the jurisdiction over the decision-making process is simultaneously assigned to the Union, the federal states, the Federal District and the municipalities. For instance, the administration of public health services is a common competence (art. 23, II, of the Constitution).

The legislative competence concerns the possibility of issuing mandatory, general and abstract norms, and it is divided into private, concurrent, and complementary or supplementary. The private competence (Article 22) belongs to the Union through the bicameral Congress, which can legislate on civil, commercial, criminal, procedural, electoral, agrarian, maritime, aeronautical, space and labour law, among others. Unlike administrative competence, it admits delegation; federal law may delegate to a certain federal state the possibility of enacting law on specific topics. As regards to concurrent competence, the Union, the federal states, and the Federal District may legislate on health and social assistance (Article 24, XII), on protection and guarantee of the rights of people with disabilities, on cultural, artistic and historical heritage, among others⁹. From this competence, derives the complementary or supplementary competence, in which the Union issues general norms, and the states are responsible for the complementary legislative activity (when there is a general law) or supplementary (when in the absence of a general law, the states can fully legislate on the matter). In the case conflict between federal law and state law, the first will suspend the effectiveness of the state legislation¹⁰.

⁷ BULOS, Uadi Lammego. *Curso de Direito Constitucional*. São Paulo: SaraivaJur, 2020.

⁸ SCARLET, Ingo Wolfgang. *Curso de Direito Constitucional*. 9^a ed. São Paulo: Saraiva, 2020.

⁹ SILVA, José Afonso da. *Curso de Direito Constitucional Positivo*. 37^a ed. São Paulo: Malheiros, 2013.

¹⁰ MARTINS, Flávio. *Curso de Direito Constitucional*. 5^a ed. São Paulo: SaraivaJur, 2021.



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Therefore, the jurisdiction over public health policies and legislation is common and concurrent, meaning that all three levels of the Brazilian government share the prerogative to adopt public policies but only the federal and state levels can legislate over the matter. When analysing the competence of the municipalities (Article 30), one will find the possibility to legislate over local matters within their territory, a general classification that encompasses, for instance, the opening hours of the commerce, the zoning plan, and the waste management.

From this brief description of the Brazilian system of governance among the levels of the federation, a reasonable number of questions arise, as it happened when the time came to adopt policies and legislate about the measures to fight the Covid-19 pandemic. The conflicts between the legislation adopted by the federal government and the legislation adopted by the states and municipalities were then posed to the constitutional court on a paramount case that will be analysed in this paper.

3. The legislative and administrative response to the Covid-19 outbreak in Brazil

The notoriously negationist discourse regarding the Covid-19 outbreak at the Brazilian federal government was not affected by the major events that took place in March 2020, when the World Health Organization declared the pandemic and issued recommendations of actions to contain the spread of coronavirus¹¹. President Bolsonaro himself disregarded the Covid-19 disease as a "minor case of flu"¹² and appeared in public without a face mask on several occasions, generating gatherings around him¹³. He also dismissed the Minister of Health Luiz Henrique Mandetta¹⁴ and pressured the following Minister of Health Nelson Teich to adopt hydroxychloroquine as the standard protocol

¹¹ WORLD HEALTH ORGANIZATION, *Timeline: WHO's COVID-19 response*. Available at: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/interactive-timeline>

¹² FOLHA DE S. PAULO, 20.03.2020. "Não vai ser uma gripezinha que vai me derrubar, diz Bolsonaro sobre coronavírus." Available at: <https://www1.folha.uol.com.br/poder/2020/03/nao-vai-ser-uma-gripezinha-que-vai-me-derrubar-diz-bolsonaro-sobre-coronavirus.shtml>

¹³ FOLHA DE S. PAULO, 23.05.2020. "Em dia com 965 mortos pela Covid, Bolsonaro ouve panelaço, come cachorro-quente e provoca aglomeração". Available at: <https://www1.folha.uol.com.br/poder/2020/05/em-dia-com-965-mortos-pela-covid-bolsonaro-ouve-panelaco-come-cachorro-quente-e-provoca-aglomeracao.shtml>

¹⁴ FOLHA DE S. PAULO, 16.04.2020. "Bolsonaro demite Mandetta e convida Nelson Teich para o Ministério da Saúde". Available at: <https://www1.folha.uol.com.br/poder/2020/04/bolsonaro-demite-mandetta-e-convida-nelson-teich-para-o-ministerio-da-saude.shtml>

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treatment on Covid-19 cases, which lead to the resigning of Teich¹⁵, leaving the federal health authority headless for four months¹⁶. The following Minister was Eduardo Pazuello¹⁷, also quickly dismissed by the President. Finally, the current Health Minister Marcelo Queiroga, appointed one year after the outbreak emergency was declared by the World Health Organization, is supporting the vaccination campaign and social distancing measures.¹⁸

Recently, a parliamentary committee of inquiry, known as “CPI da Covid”, has been approved and launched by the Brazilian congress. The parliament members are currently focusing on the responsibility of the federal government in the alleged mismanagement of the Covid-19 outbreak, resulting on the death of almost five hundred thousand Brazilian citizens¹⁹. There are records of about two hundred speeches of the President disregarding the pandemic, the vaccine and the need for social distancing.²⁰ A “shadow cabinet” was allegedly formed by the President to advise the management of the outbreak, disregarding the role of the Ministry of Health²¹. In the course of the statements, former members of the government argued that this cabinet circulated, though unsuccessfully, a proposal of decree – a formal act issued by the executive power to

¹⁵ FOLHA DE S. PAULO, 15.05.2020. “Após ultimato sobre cloroquina, Teich pede demissão do Ministério da Saúde”. Available at: <https://www1.folha.uol.com.br/equilibrioesaude/2020/05/apos-ultimato-sobre-cloroquina-teich-pede-demissao-do-ministerio-da-saudade.shtml>

¹⁶ FOLHA DE S. PAULO, 16.09.2020. “Após quatro meses como provisório-eterno, General toma posse como Ministro efetivo da saúde”. Available at: <https://www1.folha.uol.com.br/equilibrioesaude/2020/09/apos-quatro-meses-como-provisorio-eterno-general-toma-posse-como-ministro-efetivo-da-saudade.shtml>

¹⁷ FOLHA DE S. PAULO, 08.03.2021. “Bolsonaro adota ‘Plano Vacina’ para tentar estancar perda de popularidade.” Available at: <https://www1.folha.uol.com.br/poder/2021/03/bolsonaro-adota-plano-vacina-para-tentar-estancar-perda-de-popularidade.shtml>

¹⁸ FOLHA DE S. PAULO, 14.03.2021. “Saiba quem é Marcelo Queiroga, o novo ministro da Saúde de Bolsonaro.” Available at: <https://www1.folha.uol.com.br/equilibrioesaude/2021/03/saiba-quem-e-marcelo-queiroga-o-novo-ministro-da-saudade-de-bolsonaro.shtml>

¹⁹ FOLHA DE S. PAULO. 10.06.2021. “Brasil registra 2.344 mortes por Covid em 24 h e total passa de 482 mil”. Available at: <https://www1.folha.uol.com.br/equilibrioesaude/2021/06/brasil-registra-2344-mortes-por-covid-em-24-h-e-total-passa-de-482-mil.shtml>

²⁰ FOLHA DE S. PAULO, 30.04.2021. “CPI mira discursos do governo e levanta 200 falas negacionistas de Bolsonaro.” Available at: <https://www1.folha.uol.com.br/poder/2021/04/cpi-mira-discursos-do-governo-e-levanta-200-falas-negacionistas-de-bolsonaro.shtml>

²¹ FOLHA DE S. PAULO, 05.06.2021. “Documentos do Planalto entregues à CPI mostraram 24 reuniões com atuação de ‘ministério paralelo’ na gestão da pandemia”. Available at: <https://www1.folha.uol.com.br/poder/2021/05/documentos-do-planalto-entregues-a-cpi-mostram-24-reunoes-com-atuacao-de-ministerio-paralelo-na-gestao-da-pandemia.shtml>

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establish public policy – to include Covid-19 in the recommendations of the package leaflet of the hydroxychloroquine.²²

Furthermore, the testimonials suggest that President Bolsonaro supported, along with the state government of Amazonas, the testing of a “herd immunity without vaccination”, which lead to the collapse of the public health system in the state capital Manaus.²³ The summoned civil servants also presented proof that the federal government refused to buy vaccine for months during 2020, leaving dozens of emails and offers from the pharmaceutical company Pfizer unanswered.²⁴

The legislative and administrative measures established at the federal level are consistent with the scenario unveiled by the parliamentary commission of inquiry. The Act 13.979/2020, approved by congress in February, contained measures concerning exclusively the management of the public health system, namely the isolation and quarantine of suspect or confirmed Covid-19 cases, the testing plan, and the protocol of treatment. From the negationist discourse and lack of effective action of the federal government concerning the pandemic, a gap in the power balance emerged and made it possible for the states and municipalities to take control of the decision-making process. This conclusion will be further explored in the next sections.

4. ADI 6341 and the power shift between federal, regional and local governments

On February 6, 2020, the first milestone event of this case study took place: the Brazilian Congress enacted law proposed by President Jair Bolsonaro, containing measures that could be adopted in the national territory to fight the Covid-19 pandemic. However, the later called Act 13.979/2020 measures concerned exclusively the management of the health

²² FOLHA DE S. PAULO, 01.06.2021. “Mandetta reafirma proposta de alterar bula da cloroquina e diz que Nise agia ‘como urubu na carniça’.” Available at: <https://www1.folha.uol.com.br/columnas/monicabergamo/2021/06/mandetta-reafirma-proposta-de-alterar-bula-da-cloroquina-e-diz-que-nise-agia-como-urubu-na-carnica.shtml>.

²³ FOLHA DE S. PAULO, 05.05.2021. “Vice do Amazonas diz que política de imunidade de rebanho apoiada por Bolsonaro levou Manaus ao colapso.” Available at: <https://www1.folha.uol.com.br/columnas/painel/2021/05/vice-do-amazonas-diz-que-politica-de-imunidade-de-rebanho-apoiada-por-bolsonaro-levou-manaus-ao-colapso.shtml>.

²⁴ FOLHA DE S. PAULO, 09.06.2021. “Senador fala em 81 emails da Pfizer enviados ao governo, e coronel responde que eram repetidos.” Available at: <https://ao vivo.folha.uol.com.br/poder/2021/06/09/5998-braco-direito-de-pazuello-no-ministerio-da-saude-fala-agora-a-cpi-da-covid-acompanhe.shtml#post408637>

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system, namely the isolation and quarantine of suspect or confirmed Covid-19 cases, the testing plan, and the protocol of treatment.

On the same day, the President issued the Provisional Measure 926/2020²⁵, an instrument conceived by the Article 62 of the Constitution whose effects are equivalent to Congress approved legislation. It is issued by the President to act in urgent or relevant circumstances, and it must be submitted to Congress after issued, otherwise, its legal effects cease to exist. This is the second milestone event the research reveals.

Provisional Measure 926/2020 established that the policies against the outbreak that could restrict the citizens' mobility, or the businesses and services operations would remain under the jurisdiction of the federal authorities. Articles 3, §§ 8º, 9º and 10º of the MP determined that the President and the federal authorities would later indicate the cases to be subject of restriction, letting the state and local administrations respond only when the federal authorities expressly authorized.

As Annexes I and II unveil, between March 12, and April 6, 2020 – almost in an orchestrated manner – the Brazilian states and the Federal District, as well as their capitals, issued decrees containing response regulations and policies to the Covid-19 pandemic. Moreover, they were not limited to the cases determined by the federal government but adopted restrictions that broadly affected citizens' mobility and services and business operations in their territories. In the Brazilian civil law presidential system, decrees have the same nature of legislation, except for being issued by the executive power and not the legislative.

On March 23, 2020, the third milestone event occurred: the political party Partido Democrático Trabalhista (PDT) filed the Ação Direta de Inconstitucionalidade (ADI) 6341²⁶, requesting the ceasing of the effects of MP 926/2020. The ADI is an instrument of judicial constitutionality control, and the petition was grounded in arguments related to the conflict between the content of the norm issued by the President and the Constitution itself.

On March 24, the day after the petition was filed, a decision by Justice Marco Aurélio of the Supreme Court granted provisional effects to the action, acknowledging the common and concurrent competence to implement policies against the pandemic, therefore allowing states and municipalities to respond with legislation and policies to the outbreak,

²⁵ BRASIL, Palácio do Planalto. Medida Provisória nº 926/2020. Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/Mpv/mpv926.htm.

²⁶ BRASIL, Supremo Tribunal Federal. Ação Direta de Inconstitucionalidade nº 6341. Available at: <http://portal.stf.jus.br/processos/detalhe.asp?incidente=5880765>.

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despite what the federal authorities could determine. With the issuing of that decision, the judicial review of states and municipalities decrees that established policies and restrictions to prevent the spread of Covid-19 became limited by judicial precedent. Unlike the previous cases analysed by the court, this decision had *erga omnes* effect, and the judicial review from that moment on could only be imposed on grossly unlawful cases.

Notwithstanding, President Jair Bolsonaro made a last attempt to overcome the ruling by filing a claim subscribed by himself, another Ação Direta de Inconstitucionalidade (ADI) 6764 against decrees issued in the states of Bahia, Distrito Federal and Rio Grande do Sul which established lockdown measures. The petition was dismissed by the same Justice Marco Aurélio on the grounds of gross error, since the Constitution grants the right to the President to file an ADI, but not in his name, and only representing the Brazilian sovereign State through the competent institution, that would be the Federal Attorney General's Office.²⁷

Even before the ADI 6341 was filed, the federal states, the Federal District, and thousands of municipalities – state capitals included – started to implement restrictions to contain the spread of coronavirus. But it was after the Supreme Court decision on March 24, 2020, that regional and local governments increased the number and variety of measures, taking them far beyond the first responses described in Annexes I and II.

The empirical evidence reveals three categories of measures in the timeframe analysed: a) measures within the public administration, such as the establishment of the teleworking regime for civil servants and mandatory use of hand sanitizer in public buildings; b) measures under the framework of the Federal Act 13.979/2020, establishing the isolation, quarantine, testing and treatment protocol for Covid-19 cases; and c) measures that broadly affected the citizens mobility and non-essential services and businesses operations, namely the closure of stores, malls, cinemas and theatres, schools and public spaces and the prohibition of large social events and gatherings. Annexes I and II focused only on the third category; the research tackled the first decrees issued by each state and state capital that affected the citizens mobility and non-essential services and business operations.

The reason this was set as the framework for this brief analysis is that those are the measures that show how far the state and local governments were willing to go despite the limited framework provided by federal legislation. Furthermore, they are the ones that remained in a power gap within the Brazilian federation, which was then filled by the states

²⁷ BRASIL, Supremo Tribunal Federal. *Ação Direta de Inconstitucionalidade nº 6764*. Available at: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=6136024>.



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and local governments before and through the ADI 6341. The measures affecting industrial operations were also left out of the framework of this study since specific provisions were scarce and did not represent a sufficiently broad sample for analysis.

Some states and municipalities issued a diverse set of decrees for each category of response, while others gathered them under a single act. Some were bolder in the first restriction established and others were more cautious. Annexes I and II focused on the content only, regardless of those formal aspects of each decree, since the merit of the law (the response measures) are what the federal government tried to uphold under his authority by issuing MP 926/2020.

Finally, on April 15, 2020, the Brazilian constitutional court submitted the ADI 6341 to the panel of Judges that confirmed the initial decision, ruling in favour of states and municipalities to acknowledge their jurisdiction over legislation and policies to guarantee the fundamental right to health.

5. Final remarks

The regional and local governments in Brazil, during the year 2020, filled the power gap left by the federal government based on such strong grounds that the Brazilian constitutional court acknowledged their reasoning and ruled in favour of their jurisdiction over the measures to fight the Covid-19 pandemic. This was a bottom-up process based on interpretation of the Constitution, later submitted to the Supreme Court, which confirmed the concurrent and common competence of the federal, regional, and local governments to prevent the spread of coronavirus.

Apart from the response policies found in the empirical research, the mayors of the cities and governors of the states created forums of discussion to develop common policies and share information and technology. The result can be verified by the majority of the decrees issued containing similar language and regulations. The more recent initiatives to buy or produce a vaccine against the Sars-Cov-2 were also a measure taken by several states, including the state of São Paulo that started the vaccination before the federal government plan was put to action.²⁸

²⁸ FOLHA DE S. PAULO, 30.09.2020. “População de SP será uma das primeiras do mundo a ser vacinada contra a Covid-19, diz Dória”. Available at: <https://www1.folha.uol.com.br/equilibrioesaude/2020/09/populacao-de-sp-sera-uma-das-primeiras-do-mundo-a-ser-vacinada-contra-a-covid-19-diz-doria.shtml>



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Brazil has 5.570 municipalities and 84,72% of the population of more than 211 million citizens live in urban areas.²⁹ The fact that local governments took control of the decision-making process is evidence that cities are also part of the process of filling the gap in power balance, in this case, left by the federal government when it failed to establish effective measures against the spread of coronavirus.

"The rise of the nation-state curtailed urban autonomy in many ways, but in recent years – as Greece's current plight reminds us – nation-states have themselves lost a measure of control over their destiny. And it appears that cities are stepping into the breach."³⁰

The trend described above was originally published in *The Boston Globe* on August 9, 2015, long before the world would face the unimaginable challenges of the Covid-19 pandemic. It resonates with the book published by Bruce Katz and Jeremy Nowak which carries the argument that, in response to the challenges brought by a globalized world economy, 21st Century New Localism proposes governance networks that allow more devolution of power from federal and state governments to cities and metropolitan regions.³¹

As a disclosure note, this research must report that after the first decrees were issued, other norms followed almost immediately, reacting to the increase or decrease of the number of cases and deaths related to Covid-19, which varied enormously among the regions of the country. Therefore, the empirical evidence proves only that the states and municipalities filled a power gap left by the federal government and acted more resolutely in that precise moment, which might have varied in the time that followed. What did not alter, though, is the fact that the control of the decision-making process on the responses to the pandemic remains, until today, under the governance of regional and local governments. The effectiveness of the actions carried by the states and cities is not subject to analysis in this brief research.

The Brazilian constitutional court has been bound by precedent since the ruling of ADI 6341, maintaining the same foundations on subsequent rulings, and has stated through them that the common and concurrent competence of the states and municipalities is not unlimited; the merit of the administrative and legislative acts are also taken in consideration. The decision was innovative and paramount, but any grossly unlawful excess

²⁹ Source: Instituto Brasileiro de Geografia e Estatística. Available at: <https://www.ibge.gov.br/>.

³⁰ Clark, Justin T. *The city-state returns* in *The Boston Globe*. Available at: <https://www.bostonglobe.com/ideas/2015/08/08/the-city-state-returns/rmuGzOlxbOzipwz8T45b1I/story.html>

³¹ Katz, Bruce. Nowak, Jeremy. *The new localism: How cities can thrive in the age of populism*, Washington DC: Brookings Institution Press, 2017.



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of legislation or policies by the states and municipalities is not treated with condescendence by the constitutional court.

This paper approached the case study of Brazilian federative conflict concerning the legislation and policies to respond to the Covid-19 pandemic in the year 2020, through a legal and governance point of view, based on the empirical evidence described. The evidence revealed may not be sufficiently broad to obtain a conclusion concerning the end of the era of the Nation-state and the comeback of regional and City-states models of governance. Nevertheless, it shows that where there is a gap in power balance, there are levels of governance willing to fill it. In the Brazilian case, the balance of power distinctly shifted from the federal government to the states and municipalities.

Bibliography:

- ALA-ACRL. *Information literacy competency standards for higher education*. Chicago, Illinois: The Association of College and Research Libraries. The American Library Association; 2000.
- BULOS, Uadi Lammego. *Curso de Direito Constitucional*. São Paulo: SaraivaJur, 2020.
- CASTELLS, Manuel, *The Rise of Network Society*, Oxford: Blackwell, 1996.
- CLARK, Justin T. *The city-state returns* in The Boston Globe. Available at: <https://www.bostonglobe.com/ideas/2015/08/08/the-city-state-returns/rmuGzOlxbOzipwz8T45b1l/story.html>
- GIDDENS, Anthony, *The Consequences of Modernity*, Stanford: Stanford University Press, 1990.
- HARVEY, David. *The Condition of Postmodernity*, Oxford: Blackwell, 1989.
- HELD, David, McGREW, Anthony, GOLDBLATT, David, and PERRATON, Jonathan. *Global Transformations: Politics, Economics and Culture*, Stanford: Stanford University Press, 1999.
- KATZ, Bruce. NOWAK, Jeremy. *The new localism: How cities can thrive in the age of populism*, Washington DC: Brookings Institution Press, 2017.
- KOTKIN, Joel. *A New Era for the City-state?* In Forbes, December 23, 2010. Available at: <https://www.forbes.com/sites/joelkotkin/2010/12/23/a-new-era-for-the-city-state/>
- MARTINS, Flávio. *Curso de Direito Constitucional*. 5^a ed. São Paulo: SaraivaJur, 2021.
- OHMAE, Kenichi. *The rise of the region state* in Foreign Affairs, Spring, 1993. Available at: <https://www.foreignaffairs.com/articles/1993-03-01/rise-region-state>.
- SCARLET, Ingo Wolfgang. *Curso de Direito Constitucional*. 9^a ed. São Paulo: Saraiva, 2020.

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JUNHO
2021

SILVA, José Afonso da. *Curso de Direito Constitucional Positivo*. 37^a ed. São Paulo: Malheiros, 2013.

UNITED NATIONS. *World Urbanization Prospects: the 2018 revision. “Key Facts”*. Available at: <https://population.un.org/wup/Publications/Files/WUP2018-KeyFacts.pdf>

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ANNEX I

State	Date	Instrument	Measures
Acre	20.03.2020	Decree 5.496/2020	Lockdown of stores, malls, churches, clubs, bars, restaurants
Alagoas	13.03.2020	Decree 69.501/2020	Confinement, quarantine, testing, prohibition of large social events
Amapá	03.04.2020	Decree 1.497/2020	Lockdown of stores, malls, churches, clubs, bars, restaurants
Amazonas	17.03.2020	Decree 42.063/2020	Prohibition of large social events and closure of schools
Bahia	16.03.2020	Decree 19.529/2020	Confinement, quarantine, testing, prohibition of large social events
Ceará	16.03.2020	Decree 33.510/2020	Prohibition of large social events and closure of schools
Distrito Federal	23.03.2020	Decree 40.550/2020	Lockdown of stores, malls, churches, clubs, bars, restaurants, prohibition of large social events and closure of schools
Espírito Santo	18.03.2020	Decree 4.600-R/2020	Closure of malls and gymnasiums
Goiás	13.03.2020	Decree 9.632/2020	Prohibition of social events and visitation in prison or Covid-19 treatment hospitals
Maranhão	16.03.2020	Decree 35.662/2020	Closure of schools and universities
Mato Grosso	16.03.2020	Decree 407/2020	Confinement, quarantine, prohibition of large social events
Mato Grosso do Sul	17.03.2020	Decree 15.393/2020	Closure of schools
Minas Gerais	12.03.2020	Decree 113/2020	Establishes the state of emergency
Pará	16.03.2020	Decree 609/2020	Lockdown of bars, restaurants, closure of schools and prohibition of large social events
Paraíba	20.03.2020	Decree 40.135/2020	Lockdown of stores, malls, gymnasiums, cinemas, theatres, banks, and touristic activities
Paraná	16.03.2020	Decree 10.646/2020	Lockdown of stores, malls, gymnasiums and prohibition of large social events
Pernambuco	14.03.2020	Decree 48.809/2020	Prohibition of large social events, lockdown of museums, fairs, and gymnasiums
Piauí	16.03.2020	Decree 18.884/2020	Closure of schools and cancelation of large social events

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Rio Janeiro	13.03.2020	Decree 46.970/2020	Prohibition of large social events, closure of cinemas and theatres, closure of schools
Rio Grande do Norte	13.03.2020	Decree 29.513/2020	Prohibition of large social events, closure of schools
Rio Grande do Sul	16.03.2020	Decree 55.118/2020	Prohibition of large social events, closure of schools
Rondônia	N/A	N/A	N/A
Roraima	16.03.2020	Decree 28.587-E/2020	Prohibition of large social events, and visitation in prison, closure of schools
Santa Catarina	23.03.2020	Decree 525/2020	Lockdown of stores, malls, bars, restaurants, gymnasiums, prohibition of large social events, closure of hotels, schools and churches and limited transport circulation in and out the state
São Paulo	13.03.2020	Decree 64.862/2020	Prohibition of large social events and closure of schools
Sergipe	24.03.2020	Decree 40.567/2020	Lockdown of stores, malls, bars, restaurants, gymnasiums, prohibition of large social events, closure of hotels and limited transport circulation in and out the state
Tocantins	13.03.2020	Decree 6.065/2020	Closure of schools

N/A: Information not available for technical reasons, according to the sources.

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ANNEX II

City	Date	Instrument	Measures
Aracaju	06.04.2020	Decree 6.111/2020	Lockdown of stores, malls, bars, restaurants, prohibition of large social events, closure of schools, suspension of touristic activities
Belém	18.03.2020	Decree 95.955/2020	Lockdown of stores, malls, bars, restaurants, public spaces and fairs, mandatory use of facial mask
Belo Horizonte	18.03.2020	Decree 17.304/2020	Lockdown of stores, malls, bars, restaurants, gymnasiums, closure of cinemas and theatres, prohibition of large social events
Boa Vista	20.03.2020	Decree 35-E/2020	Lockdown of stores, malls, bars, restaurants, gymnasiums, closure of cinemas, theatres and public spaces, closure of schools
Brasília³²	-	-	-
Campo Grande	15.03.2020	Decree 14.189/2020	Closure of schools, prohibition of large social events
Cuiabá	N/A	N/A	N/A
Curitiba	16.03.2020	Decree 421/2020	Closure of schools, prohibition of large social events
Florianópolis	16.03.2020	Decree 21.347/2020	Closure of cinema, theatres, libraries and museums, prohibition of large social events, closure of schools
Fortaleza	17.03.2020	Decree 14.611/2020	Closure of schools, prohibition of large social events
Goiânia	16.03.2020	Decree 751/2020	Closure of schools
João Pessoa	15.03.2020	Decree 9.456/2020	Prohibition of large social events
Macapá	15.03.2020	Decree 1.627/2020	Prohibition of large social events
Maceió	16.03.2020	Decree 8.846/2020	Prohibition of large social events, closure of schools
Manaus	16.03.2020	Decree 4.778/2020	Prohibition of large social events
Natal	17.03.2020	Decree 11.920/2020	Closure of schools
Palmas	14.03.2020	Decree 1.856/2020	Lockdown of stores, malls, bars, restaurants, gymnasiums, closure of cinemas and theatres, prohibition of large social events, closure of schools and churches
Porto Alegre	16.03.2020	Decree 20.499/2020	Closure of schools

³² This Annex is not applicable to the capital Brasília, since it's the federal capital and the competence to legislate over local matters belongs to the Federal District.

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Porto Velho	N/A	N/A	N/A
Recife	N/A	N/A	N/A
Rio Branco	17.03.2020	Decree 196/2020	Closure of schools, prohibition of large social events
Rio de Janeiro	21.03.2020	Decree 47.282/2020	Closure of schools
Salvador	14.03.2020	Decree 32.248/2020	Prohibition of large social events
São Luís	02.04.2020	Decree 54.971/2020	Closure of schools
São Paulo	19.03.2020	Decree 59.290/2020	Closure of public spaces
Teresina	18.03.2020	Decree 19.532/2020	Closure of schools
Vitória	20.03.2020	Decree 18.047	Lockdown of stores, malls, bars, restaurants, gymnasiums, closure of cinemas and theatres, prohibition of large social events, closure of public spaces and schools

N/A: Information not available for technical reasons, according to the sources.