

**HUMAN RIGHTS IN FOCUS:
CHALLENGES TO BE FACED IN CONTEMPORARY SOCIETIES EXTENDED DOSSIER**

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A. PRESENTATION BY ANNE OAKES

The COVID-19 pandemic which took hold initially in 2019 and within months reached global proportions, prompted governmental interventions on a scale unprecedented in peace time with major implications for the lives of citizens all over the world. The Law and Society Annual Meeting which took place virtually in 2021 brought together scholars from the Global North and the Global South under the aegis of the collaborative partnership developed by Birmingham City University, Birmingham UK, and Estacio de Sa and Fluminense Universities, Niterói, Brazil and LSA/CRN 01¹ to explore some of these implications in the context of three discussion roundtables.

Roundtable 1: Covid & the Administrative State examined governmental responses to the pandemic. Participants were asked to focus specifically on the issues of administrative challenges, such as resources, adequacy of infrastructure/ problems of federal design, etc, and the implications for democracy and human rights protection. This session was organised by professors Perlingeiro (Brazil) and Oakes (UK) and professor Perlingeiro served as chair.

¹ For more information, see: <https://lawandsociety.site-ym.com/page/CRN01>

Roundtable 2: Giving Content to Human Rights stayed with the issue of human rights protection but took a broader focus. This roundtable examined the ways in which national courts translate international human rights guarantees into a form that is compatible with the conceptual frameworks of national constitutional commitments. In particular, participants were encouraged to take a comparative view by, for example, comparing the human rights jurisprudence of the European Court of Human Rights with that of the Inter-American Court of Human Rights, and to consider what, if any, might be the role of transnational judicial dialogue in this process. This session was organised by professors Duarte (Brazil) and Oakes (UK) and professor Oakes served as chair

Roundtable 3 Vulnerable Populations in Focus Roundtable dealt with issues regarding vulnerable populations. Building upon CRN1 Asia and the Americas socio-legal and political research, participants were asked to focus on the issues of recognition for democracy and human rights and human rights protection. This session was organized by professor Cristina Lúcia Seabra Iorio (Brazil) and professor Fernanda Duarte (Brazil) served as chair.

The collaboration generated a rich collection of papers. A full list of participants together with short abstracts of the papers presented has already been published in *Juris Poiesis* (August, 2021) a selection of which are now abstracted in extended form. In this issue a selection of these abstracts is presented in extended form.

ROUNDTABLE 1 COVID & THE ADMINISTRATIVE STATE

Fabio Giglione of Sapienza University Rome started us off with a keynote paper that recognised the potential threats to democratic legitimacy inherent in the requirements of an effective administrative response. Ana Fiero from Centro de Investigación, Docencia Económica (CIDE) picked up this theme in relation to the specific issue of access to reliable public information concerning administrative responses to the pandemic emergency. She emphasized the importance of transparency in relation to agency decision-making and the role of plain language communication if fake news is to be effectively countered and public confidence in administrative processes is to be achieved and maintained.

Sarah Cooper, Birmingham City University (BCU), Michael Baynham, Arizona State University, and Thomas Nicklin, BCU, considered the relationship between public health and incarceration in the United States. They noted that correctional facilities quickly emerged as places with the largest number of known Covid-19 infections—²leading to calls for state (and federal) authorities to ‘slow the spread’ through *inter alia* reducing correctional populations.³ Their research investigated the availability of state-based statutory powers that could be used to remove inmates from correctional facilities as a mechanism of disease control but concludes that to date, these mechanisms have so far largely not been used.

Anne Oakes and Ilaria Di-Gioia, both from BCU and Vanice Valle from Rio de Janeiro considered the extent to which in Brazil and the United States, the pandemic has accentuated the problem of intergovernmental tension that can be inherent in a federal system. They examined the constitutional frameworks of Brazil and the United States, with particular reference to the role of municipalities in what Professor Hirschl terms ‘old-world’ and ‘new-world’ constitutions. They noted that despite apparent similarities, the mechanisms for the resolution of intergovernmental conflict are in fact very specific to the constitutional history of these two federal giants. Nevertheless they suggested that, the formal constitutional position notwithstanding, municipalities in both Brazil and the United States will continue to conduct their intra-governmental disputes with skills that are primarily political rather than legal.

I-Ju Chen, BCU, brought the discussion to a close with a consideration of the extent to which the impact of COVID-19 might be said to have contributed to the development an emerging Global Administrative Law which can draw on but eventually transcend national systems of administrative law. She argues that, although still in their infancy, the developments that she identifies can provide the foundations for a new system of global governance which can break down the dichotomy between domestic and international regimes and more effectively respond to the administrative challenges of COVID-19.

² Alexandria Macmadu *et al*, *COVID-19 and mass incarceration: a call for urgent action*, *The Lancet* (Comment), October 09, 2020 (“In the USA, more than 40 of the 50 largest clustered outbreaks in the country have occurred in jails and prisons.” [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(20\)30231-0/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(20)30231-0/fulltext). (last visited Nov. 11, 2021).

³ Peter Wagner & Emily Widra, *Five ways the criminal justice system could slow the pandemic*, *Prison Policy Initiative* (March 27, 2020), <https://www.prisonpolicy.org/blog/2020/03/27/slowpandemic/> (last visited Nov. 11, 2021).

ROUND TABLE 2 GIVING CONTENT TO HUMAN RIGHTS

Fernanda Duarte and Rafael Mario Iorio Filho, both of Universidade Estácio de Sá/UNESA. Universidade Federal Fluminense/UFF, Brazil, discussed the issue of dialogue between national and international courts in the context of the role of human rights law and courts in systems of transitional justice. Specifically they argued that the conflicts between the jurisprudence of the Inter-American Court of Human and the Brazilian Supreme Court concerning the scope of the provisions of the Brazilian Amnesty Law represent a dimension of an important question that is arguably the biggest challenge facing human rights courts today, namely, to what extent can these courts respond appropriately when faced with conflicting perceptions of what situational justice should be.

Picking up the theme of transitional justice, Ebba Lekvall from Birmingham City University presented a comparison of the jurisprudence of the European Court of Human Rights and the Inter-American Court of Human Rights regarding domestic reparation programmes. (DRPs) Her paper explored how and the extent to which recent jurisprudence from these courts has slowly begun to change the standards for DRPs and what the consequences might be, both for the right to reparation for victims receiving reparation through DRPs and for victims who bring cases before these courts.

Guilherme Calmon Nogueira da Gama, Estácio de Sá University; State University of Rio de Janeiro presented a paper on the response of the Inter-American Court of Human Rights to human rights abuses in the Brazilian penitentiary system, concluding that, even though close monitoring continues to be required, the “Urso Branco Penitentiary” case is paradigmatic in demonstrating how the Inter-American Human Rights System can act effectively to reduce or even reverse situations of serious violations of human rights, resulting in prisoner deaths and serious injuries in the period from 2002 to 2006 in the state of Rondônia, in the northern region of Brazil.

Finally for this selection Lissa Griffin, Elisabeth Haub School of Law at Pace University, NY brought a perspective from the United States. Her paper considered the “uneasy” relationship of the United States to international human rights norms and enforcement mechanisms, the

explanation for which lies not simply in a deep-seated belief in its own moral exceptionalism but also in its constitutional jurisprudence and federal structures which circumscribe the ability of the federal government to bind the sovereign states and ensure regard for international treaty obligations throughout the nation. On a positive note she points out that the US is a signatory to the ICCPR, and as such has subjected itself to international human rights norms through the United Nations Human Rights Commission and continues to engage with its monitoring processes via the mechanism of the Universal Periodic Review.

ROUNDTABLE 3: VULNERABLE POPULATIONS IN FOCUS

This Roundtable considered the consequences of the Covid-19 pandemic with particular reference to the struggles of vulnerable peoples for democracy and for recognition and protection of their human rights. Rubens Beçak and Rafaella Marineli Lopes, both of the University of Sao Paulo, considered the response of the the Supremo Tribunal Federal (STF) to the failure of the Brazilian federal government to provide a Covid-19 General Coping Plan for indigenous peoples. They argue that although the response of the STF was, from one point of view ‘activist’, from another point of view it can be seen to have exposed the limits of judicial activism when courts are called upon to make determinations concerning executive failures but have no power to formulate and carry out remedial policy.

Ana Paula Felipe of Universidade Estácio de Sá, presented on the issue of violence against women. She considered the Maria da Penha law, a historic landmark in the defence of women’s rights and, according to the United Nations, (UNO) one of the world’s most advanced legislative responses to the issue domestic violence against women, third only to those of Spain and Chile. She argues that in spite of its progressive nature the legislation has still to be internalised by the population and that much remains to be done if real and lasting social and behavioural changes are to be achieved.

Lara Denise Góes da Costa, of Superior War College (Escola Superior de Guerra/ESG) tackled the issue of trafficking of women and girls in Brazil. She considers the link with organised

crime and argues that current control measures are largely inadequate as criminal groups exploit the absence of adequate policies at the state level.

Cristina Iorio, Universidade Estácio de Sá, considered the effects of the pandemic on the Roma community. She considers the historical origins of the racism and discriminatory practices to which Roma people continue to be subject and argues that in spite of Brazil's international commitments, not only is there no systematic remedial programme in place but on the contrary the public cleansing attempts by public authorities to respond to the pandemic have actually worsened the condition of the Roma peoples.

Filipa Pais d'Aguiar and Tânia Gaspar both of Lisbon Lusíada University considered the human rights position of the Roma people with particular reference to the Lisbon Lusíada University research project "*The Music, Health, Social Inclusion, and Human Rights Lab.*" This is an innovative and exciting project led by a multidisciplinary research team of psychologists, social workers, music and law professors with the aim of researching the human rights impact of musical performance activities on matters related to the health, social inclusion, well-being, and quality of life improvement of marginalized peoples.

Birmingham UK, November 2021.