

EDITOR'S NOTE¹

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With great satisfaction, in the seventh year (**Volume 7**) of the *Revista Culturas Jurídicas*, a journal edited by the Master Program in Constitutional Law of the *Universidade Federal Fluminense* (PPGDC/UFF), we release the **Number 17**, whose editorial guideline is "**Democracy in legal cultures: between new and old challenges**". In its turn, this Number 17 has important contributions from Brazilian and foreign authors, in order to bring content of interest to the academic community and maintain the standard of excellence and internationalization achieved in previous editions, which guaranteed the journal the **Qualis A2** stratum, conferred by CAPES.

In this edition, an approach to democracy in its different aspects was sought, bringing debates and reflections about the risks and problems faced in different legal cultures. For that, they are addressed from essential issues - such as legitimacy, disruptions and the rights of different nations that integrate a certain people - to typical issues of contemporary times - notably those related to the use of the internet, social networks and Big Data.

The papers published in the **Articles Section** propose reflections, discussions, clippings and themes that, to some extent/invariably, touch the axis from which this number is structured: democracy in legal cultures. However, democracy is understood here besides the formal exercise of the vote that is limited to the episodic power of election of representatives by the governed people. It is about democracy as a commitment and the realization of the protection of human rights in material equality and effective participation from a place of non-exclusive or exclusive exercise of autonomy. In this scenery, challenges are growing: new and old.

The first group of articles brings topics that are known about the democratic regime, such as legal responsibility, legitimacy and impacts of the capitalist system, which return to the debate driven by some event. Likewise, it presents social groups systematically excluded and, therefore, excluded from full democratic experience. This is the case, for example, of the indigenous people, the remaining Maroon groups (*quilombolas*) and traditional communities that appear in the pages of this issue and

¹ Translation from Portuguese into English by Giuliana Ribeiro Casazza, Master candidate at PPGDC/UFF.

expose the old challenge of material equality; so that everyone can participate in this space, having their rights guaranteed and enforced.

The second group of articles deals with the new challenges to democracies associated with the technological revolution and informational development, whose influence extends to the political and legal field. These articles deal, therefore, with the internet, algorithms, data protection, digital militias and, also, its interface with rights. New challenges are said to be linked to contemporary phenomena and only recently experienced by democratic legal cultures.

The **first article** of the edition is authored by Ranieri Lima Resende, PhD in Law from the Federal University of Rio de Janeiro (UFRJ), with a postdoctoral internship as a visiting fellow at the Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht - MPIL (Heidelberg, Germany). Entitled "**Impeachment and legal responsibility: theoretical and historical notes of Common Law**", the article addresses the theoretical and historical bases of impeachment, in order to analyze it as a form of institutional control mechanism for political agents.

The **second article** has as authors Heleno Florindo da Silva and Daury Cesar Fabríz. Heleno Florindo da Silva holds a PhD in Fundamental Rights and Guarantees at the Law Faculty of Vitória (FDV, ES) and a specialist in Public Law from the Centro Universitário Newton Paiva and Daury Cesar Fabríz holds Masters and PhD in Law at the Federal University of Minas Gerais (UFMG), and is the coordinator of the Stricto Sensu Post Graduation Program in Fundamental Rights and Guarantees (Master and PhD) at the Law Faculty of Vitória (FDV, ES). Under the title "**Fundamental duties and civil disobedience in democracies of very low intensity - approximations and distances from the illegitimacy of a government**", the authors work on civil disobedience as a fundamental duty in relation to illegitimate governments, which tend to arise in contexts of separation between civil society and its leaders.

The **third paper** that makes up the edition is entitled "**Migration, Law and Capitalism**" and analyzes the migratory issue from the perspective of the capitalist mode of production. With a critical objective and from the interface of Law and International Relations, the goal is also to understand the new migration statute in Brazil, as well as its place in the global system. The work is authored by Vanessa Berner and Luiz Felipe Brandão Osório. Vanessa Berner holds a PhD in Law at the Federal University of Minas Gerais (UFMG) and is a professor at the National Faculty of Law (UFRJ). Luiz Felipe Osório holds a PhD in International Political Economy at the

Federal University of Rio de Janeiro (UFRJ) and is an adjunct professor of Law and International Relations at the Federal Rural University of Rio de Janeiro (UFRRJ).

The **fourth contribution** is the result of the co-authorship among Fernanda Frizzo Bragato, Marco Antônio Delfino de Almeida and Jocelyn Getgen Kestenbaum, with the text “**Indigenous Peoples, genocide and pandemic in Brazil**”. Fernanda Frizzo Bragato holds a PhD in Law at the *Universidade do Vale do Rio dos Sinos* (UNISINOS, RS), with a post-PhD stint at Birkbeck Law School (England) and is the coordinator of PPGD-UNISINOS. Marco Antônio Delfino de Almeida is a PhD candidate in History and has a Master's degree in Anthropology at the Federal University of Grande Dourados (UFGD - MS), and federal public prosecutor (MPF). Jocelyn Getgen Kestenbaum holds a PhD in Law at the Cornell Law School (USA) and is a Professor at the Cardozo Law School (New York, USA), as well as the director of the Benjamin N. Ferencz Clinic for the Prevention of Holocaust and Atrocity, and the director of the Cardozo Law Institute on the Holocaust and Human Rights. The article aims to examine how the condition of susceptibility to the destruction of some indigenous communities in Brazil, during the pandemic of COVID-19, can be understood as a result of a State policy considered as genocidal by the authors, given their peculiar characteristics.

The **fifth article** was written by Isabella Madruga da Cunha and Thais Giselle Diniz dos Santos and is entitled "**Territorial rights in Brazil: interdisciplinary analysis of an autonomous legal category**". Isabella Madruga da Cunha has a Master's degree in Environment and Development at the Federal University of Paraná (UFPR) and is a lawyer and professor. Thais Giselle Diniz dos Santos holds a PhD in Law at the Federal University of Paraná (UFPR). In their article, the authors deal with territorial rights as an autonomous category, of a public nature and relevant social interest, seeking an interdisciplinary theoretical approach and verifying the subjects of Law, notably, traditional peoples and communities.

The **sixth article** was written by Adriana Biller Aparicio, who holds PhD in Law at the Federal University of Santa Catarina (UFSC) and is a Professor at the State University of Maringá (UEM, PR). Entitled "**Indigenous Territorial Rights: from Hispanic Modernity to Legal Pluralism**", the article seeks to theorize indigenous territorial rights within the framework of legal pluralism, addressing from its construction to the new indigenous rights brought by the Constitution of 1988, in addition to the indigenous policy of Brazil's First Republic.

The **seventh paper** was written by Antonio Carlos Wolkmer and Julio Cesar Lopes and is entitled "**Insurgent legal pluralism and counter-hegemony of the remaining quilombo peoples**". Antonio Carlos Wolkmer holds a PhD in Law and is a professor at the Master Program in Law at UNILASALLE-RS and at the Master Program in Law at UNESC-SC. Júlio César Lopes holds a Master degree in Human Rights and Society and is a member of the NUPEC Research Group, at UNESC-SC, as well as he is a professor of Law UNESC. The research aims to understand the insurgent normative plurality as a constant and counter-hegemonic praxis of black people in five centuries.

The **eighth article** is the result of the research of Rodrigo de Medeiros Silva, PhD candidate in Law and Society at the UNILASALLE - RS, and Diógenes Vicente Hassan Ribeiro, PhD in Public Law at the University of Vale do Rio dos Sinos (UNISINOS - RS), with post-PhD stint at CES - Center for Social Studies / FEUC / University of Coimbra, Portugal. Under the title "**Judging the other: the damage to the life project of traditional and original communities as a challenge for jurisdiction**", the paper seeks to discuss the challenges of judging fair reparation when there is a different reality regarding values and cultures, adopting as a focus the idea of justice in the face of subjective and social differences, as well as the limits and possibilities of the Judiciary to achieve its objectives in this matter.

The **ninth article** that makes up the edition is entitled "**Legal structures of Espoliation: a case of structural reform in Mexico**", authored by Aleida Hernández Cervantes, who holds PhD and Master in Law at the *Universidad Nacional Autónoma de México* (UNAM) and is a researcher at the *Centro de Investigaciones Interdisciplinarias en Ciencias y Humanidades* (CEIICH) of UNAM, Mexico. The text was translated from Spanish into Portuguese by Flaiza Sampaio, who is a Master candidate at PPGDC-UFF. The paper seeks to analyze the new legal configuration that presents itself, generating new legal forms of plunder. Still, the focus is on demonstrating the relationship between economic and political power and normative production aimed at ensuring certain interests. The article aims to establish the functionalities of each change in the State and in the context of Globalization, based on an analysis of structural reform at the expropriation institute in Mexico.

The **tenth paper** presented is the result of research by Von Matthias C. Kettemann, who holds a PhD in Law at the *Graz Universität* (Germany) and is a senior researcher at the Leibniz Institute for Media Research / Hans-Bredow-Institut (HBI),

Germany. The article, entitled "**The normative order of the internet**", addresses the normative order that disciplines the use of the internet in its different spheres (regional, national and international) and types (private and public creation), in addition to verify the legitimacy relationships that are capable of producing the normative result. The text was translated from English into Portuguese by Thaiana Nogueira, who holds a Master in Law at PPGDC and is an assistant editor at RCJ.

The **eleventh article** is entitled "**Big Data, Data Protection and Transparency: Challenges for the Consolidation of Trust and Guarantee of Citizens' Rights**" and focuses on the challenges for the consolidation of citizens' rights in the context of Big Data, especially with regard to transparency. The research is authored by Juliano Napoleão Barros, who holds a PhD and a Master in Law at the Federal University of Minas Gerais (UFMG) and is a professor of Philosophy of Law, Human Rights and Methodology of Scientific Research at the undergraduate course in Law at UniSALESIANO / Lins.

Entitled "**Algorithmic Democracy: the future of democracy and the fight against digital militias in Brazil**", the **twelfth article** in this edition was written by Edilene Lobo, José Luis Bolzan de Moraes and David Nemer. Edilene Lobo holds a PhD in Law and is a professor at Masters Program at the University of Itaúna, MG. José Luis Bolzan de Moraes holds a PhD in Law at the Federal University of Santa Catarina (UFSC) and *Université de Montpellier I* (France), and is a professor at the Masters and PhD Program at the Faculty of Law of Vitória (FDV), ES. David Nemer is a professor in the Department of Media Studies at the University of Virginia, USA, and author of the book "Digital favela: the other side of technology". The authors investigate the use of algorithmic formulas to mine data extracted from social networks to induce political choices and their reflexes for democracy, reducing the debate of ideas that form free thinking.

As the **thirteenth article**, the work "**Constituting by speech: notes on freedom of expression, performance and hate speech**" is presented. The author, Francisco de Castilho Prates, holds a PhD in Law at the Faculty of Law of UFMG and is an adjunct professor in the Public Law Department of the Faculty of Law of UFMG. The work aims to address hate speech, demonstrating that the distinction between speaking and acting in this context disregards some impacts on those affected by such speech. The article questions this distinction to affirm the need for an epistemological review.

The **fourteenth article** that makes up this edition is entitled "**The institutional role of the Supreme Federal Court in the Democratic Rule of Law: analysis based on Direct Action of Unconstitutionality n. 4.439 / DF**" and was written by Ana Luiza Pinto Coelho Marques, Marcelo Andrade Cattoni de Oliveira and Dierle Nunes. Ana Luiza Marques holds a Master's degree in Law at the Federal University of Minas Gerais (UFMG) and is a member of the Democratic Constitutional Processualism and Procedural Reforms Research Group. Marcelo Andrade Cattoni de Oliveira is a professor of Constitutional Law at the Faculty of Law of the Federal University of Minas Gerais (UFMG) and holds a PhD in Law by the Law Graduate Program at the Faculty of Law of UFMG. Dierle Nunes is an adjunct professor at PUC-Minas and the Federal University of Minas Gerais (UFMG), as well as he holds a PhD in Procedural Law (PUC-Minas / *Università degli Studi di Roma "La Sapienza"*, Italy). In their article, the authors seek to verify ADI n° 4.439 / DF, which deals with religious education in public schools, in order to understand the nuances regarding the fulfillment of the institutional role of the Supreme Federal Court in the Democratic Rule of Law. For the analysis, the proceduralist perspective of Law is adopted through the Discursive Theory of Jürgen Habermas.

The **fifteenth and last article** of this edition was written by Valéria Silva Galdino Cardin, who holds a PhD in Social Relations Law at the Pontifical Catholic University of São Paulo (PUC-SP), with a post-PhD stint at the University of Lisbon (Portugal), in co-authored with Raissa Arantes Tobbin, Master candidate in Legal Sciences at *Centro Universitário de Maringá* (UNICESUMAR, PR). Under the heading "**From the discussion about the constitutionality of homeschooling and the risks of the trend towards vulnerable groups in Brazil**", the research seeks to analyze the constitutionality of home education in the light of the Constitution of 1988, examining risks of the trend towards vulnerable groups.

From all the papers presented, we hope this edition will contribute to the research and academic community widely considered, and we thank all the authors and referees, who dedicated their time to collaborate with publications that elevate the standard continuously sought by the RCJ. Finally, we emphasize that the RCJ remains open arms to receive new contributions and, thus, to continue the work performed in recent years.

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