

EDITOR'S NOTE

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With great satisfaction *Revista Culturas Jurídicas/Legal Cultures* (RCJ) – scientific law review edited by the Post-Graduate Program in Constitutional Law housed in the Universidade Federal Fluminense (PPGDC/UFF) – proudly presents its third issue to the academic community. The editorial line is focusing on *Law and the meaning of Community*.

Started in 2013 with the purpose of fostering contextualized approaches on the legal-constitutional thinking, RCJ aims to present topics with noteworthy contributions from both Brazilian and foreign authors. The quality of the selected articles published herein is what makes RCJ a contemporary and plural repository of information.

In times of German protagonism on the world geopolitical scenario due to the humanitarian crisis involving the issue with the refugees in Europe, António Avelãs Nunes tracks down the settling of the *freedom of capital movement* on the European trajectory on the Post-War period to the role presently played by Germany as from the 2012-approved Fiscal Stability Treaty (*Treaty on Stability, Coordination and Governance in the Economic and Monetary Union* or *European Fiscal Compact*). Considering that the Treaty deals with matters that befall under the legislative authority of the national parliaments, Nunes dissects its contents to the level of economic-financial, social and wage policies and points to what he named an *European Coup D'état*, this being a violation to the notion of equality between the member states of the European Union.

From the Southern Cone André Vitorino Brayner brings into context the origin of the Union of South American Nations (*USAN, UNASUL[pt] or UNASUR[es]*) – created in 2008 – from a perspective that demonstrate the purpose of strengthening the sovereignty in the region by the incorporation of cultural, social and ideological elements through the combination of local liberal democracies.

In the wake of public participation, Karine Grassi and Clóvis Eduardo Malinverni da Silveira peruse the Right to the City in Brazil with a perspective pertaining to emancipation and social movements. With the starting point being that the conception of “right to the city” goes beyond the right to use assets and public services, the authors put forward an interpretation that makes the “right to the city”

comprise the right to take part on the urban planning through public participation on the writing of a city's long term development plan as a way to have a democratic management of public spaces.

And speaking on making public spaces more democratic, Thaís Dalla Corte and Rogério Silva Portanova shed light on movements for sustainability and environmental justice by presenting the basis for water management. The authors state that the misrepresentation brought upon sustainability as an ideology must be credited to the excessive importance given to economic rationale, which ends up increasing both social exclusion and the asymmetric distribution of resources – in this case, the natural ones.

Speaking on plurality, democratization and mutuality in an article prepared as an outcome of the lecture “*Integrity and Efficiency in Sustainable Public Contracts*”, organized by the PPGDC, Gabriela M. Racca and Roberto Cavallo Perin, both researchers with the University of Torino (which has a cooperation agreement with PPGDC) dissert on the break of trust on the Public Administration caused by corruption – which corrodes the pillars of democracy – and issue a call for the society to remain vigilant of their government on a daily basis and to denounce any deviations on the management of the *res publica*.

Mauricio Borba Filho's paper brings us a comparison between the problem incorporated on the figure of authority found in Kafka's *The Trial* and the fetishism as theorized by Karl Marx. Borba rejects the image of Law as being obscure and transcendental, both set apart from human comprehension and controller of men, denouncing the fetishism of legality on Kafka's work and presenting it as a problem contrary to plurality.

On his turn, Luís Gustavo Blaskesi de Almeida proposes to define similarities and differences between the two main Marxist views with regards to Justice. Therefore the author circumscribe its approach to the Marxist writings that are totally opposite to the very conception of the principle at hand and also to those which share the emphasis given by the egalitarian liberalism lends to Justice, effectively composing what could be named as a Marxist moral theory.

Written by six hands, the paper from Rafaela da Cruz Mello, Jânia Maria Lopes Saldanha e Maria Beatriz Oliveira da Silva focus on the multiplicity of rules and institutions found nowadays in several degrees in the world. With emphasis on the European situation, the authors peruse how feasible it would be to build a

common and plural Law in the context of internationalization of Law, and analyze in which way the European Court on Human Rights has applied its tools to contribute to the creation of this Law – which would bring harmony to the human rights of the relativism of cultural differences.

Finally, Denise Leal Albano goes on a journey through a critical-reflexive analysis on the ill-famed phenomenon known as *judicialization of politics* – which on her perspective is no more than one development of a bigger picture, the judicialization of life itself. In face of the crisis of the representative democracy, of the broken promises of modernity and out of the perplexity created by the growing atomism of the individual before society and the waning solidarity between social groups and also the abandonment of the achievements of the welfare states in tow of the demise of experiences on real socialism, Denise outlines how the individuals who feel adrift on this state of affairs put their last hopes on the judge as a provider of ever failing expectations.

On the *Interviews* section, Professor Roberto Gargarella, from Buenos Aires University (UBA), shows RCJ some different considerations on dialogic justice on Latin America. Prompted by Professors Eduardo Manuel Val (UFF) and Sidharta Legale (UFJF), who were conducting the interview, Professor Gargarella begins by clarifying in which way the path he has taken during his academic training justify his intellectual standpoint of trying to conciliate in one hand the deliberative democracy – with some individual autonomy – and on the other hand a republican, socialist mindset – where there is a strong idea of self-government.

Professor Gargarella criticizes the disparity between rhetoric and practice found on public hearings in Latin America, which at best bow down to the discretionary powers and control of the one who had it convened, of whom takes part on it (and how such participation is carried out), effectively removing one real possibility of public participation and at last converting it in an *instrument of promises and many difficulties*. Gargarella touches a nerve common to the Latin American Judiciaries and that ultimately block them down as instruments to lend voice to those layers of society that are socioeconomically unprotected, and stresses the absence of serious debates on the most basic questions. Resisting the top-down model that courts use to impose their rulings, the Argentinian scholar argues in favor of the potential of inclusive mechanisms on the political setup, foreseeing that a real

path to recover the voice of the ordinary citizen is a democratic construction that acknowledge the participation of society on a bottom-up manner.

In section *Reviews* we bring several contributions from UFF's undergraduate Law students. Bianca de Castro L. C. Reis and Vitória Lima Bastos write on *Un Largo Termidor: La ofensiva del constitucionalismo antidemocrático*, from Geraldo Pisarello, while their colleagues Keren González e Leticia Lindolpho bring us *Refundación del Estado en la América Latina: Perspectivas desde una Epistemología del Sur*, from Boaventura de Sousa Santos. We also have a reflection from Tiago de Souza Fuzari over Tony Judt's *Um tratado sobre nossos atuais descontentamentos*.

On *Legislative Commentary* section we have an opinion on Draft Law nº 4.330/2004, which seeks to regulate contracts for rendering services to third parties, and which will effectively – if approved – enlarge the legal possibilities for using outsourced labor force. Rene peruses in which way the approval of this draft law will impact on overexploitation of labor force and its reflexes on the growing phenomenon of putting a price to social rights.

At Last, on section *Abstracts* we may find the overviews of the Master's thesis approved on 2015 (from our class admitted into the program in 2013).

Paying homage to those authors who presented us with such extraordinary works it is with true pleasure we publish the present Volume, certain to be delivering to our readers articles of substance and capable of instigating serious reflections. Last, but not least, we remind all who may be interested that the doors to RCJ are fully open to receive articles from authors engaged in strengthening the dialectic between the several legal cultures.

Niterói, Spring of 2015.

Prof. Dr. Enzo Bello, DSc.

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