

EDITOR'S NOTE
VOLUME 4, ISSUE #8, 2017

In this edition, the *Revista Culturas Jurídicas/Legal Cultures (RCJ)*, journal edited by the Post-Graduate Program in Constitutional Law of Federal Fluminense University (PPGDC-UFF), and Qualis A2 publication level, gives continuity to the pattern of excellence established on the previous numbers, what increases its responsibility with the Post-Graduate Program which houses the journal and recently has been recognized as Concept 4 on the four-yearly Capes evaluation. In this issue, the editorial line adopted was the ecologic constitutionalism: rights of the nature, city and of the indigenous and the traditional communities.

The first article was prepared by the Doctor Honoris Causa and Professor **Xavier Albó**, spanish living in Bolivia. He is also member of the Directive Committee of the Program of Strategic Investigation in Bolivia (PIEB), Latin american Coordinator of Jesuits in indigenous areas and member of the Bolivian Academy of Ecclesiastic History. On the text, presented here on a bilingual form (translated to Portuguese by the Assistant Editor and Master Student at PPGD, Bianca Rodrigues Toledo, revised by the editon-in-chief, DSc. Professor Enzo Bello), the Professor Albó seeks to expose the “Buen vivir” that was recently inserted on the Constitution of Bolivia of 2009. Departing, firstly, from a linguistic approach, the author explains the expression “Suma Qamaña”, contextualizing with the everyday life of the *Aymara* community and expanding to a broader reasoning in relation with the bolivian people.

The second article was authored by the DSc. **Ramiro Ávila Santamaria**, ecuadorian who is Professor and Coordinator of the Master and Specialization Program in Criminal Law at the Andean Simón Bolívar University. He approaches a very precious theme to the latin american constitutionalism: the rights of the nature. Dividing his studies into four parts, the Professor Santamaria contextualizes the critical thought in Latin America, in a way that he explains concepts of the Andean legal system, like “colonialism” and “harmony with the nature”. Then, he continues exposing the hegemonic theoretical matrix under a premise which supposes that the mentioned matrix prevents the full recognition of fundamentals and potentialities of the rights of the nature. He contrasts this traditional matrix with another: the “dual harmonic”, which one he believes to be capable to contribute to break with the traditional schemes and to comprehend the rights of the nature. He ends his work verifying empirically that the few judicialized cases on the Ecuador demonstrate to follow the traditional matrix. The article is presented on a bilingual form, being available the original in spanish and a version in

Portuguese, translated by the Assistant Editors Bianca Rodrigues Toledo and Pablo Ronaldo Gadea de Souza, revised by our editor-in-chief, Doctor of Law and Professor Enzo Bello.

The guarantee of the politics and electoral rights of the indigenous people - a very neglected theme - is approached by the Mexican **Karla Fabiola Vega Ruiz**, Professor and Full-Time Researcher at the University of Guadalajara, and Director of The Institute of Investigation and Electoral Training of the Estate of Jalisco. Analyzing the Mexican Federal State, the author seeks to demonstrate which States have any mean or process that allows the effective exercise of those constitutional rights, concluding for an omission and consequently a violation of such rights. At the same time, the research aims to show the dimensions of the practice of the ethnical and political law on Mexico, observing thus the link with Principle of Self Determination, which recently was recognized constitutionally. Finally, the author pretended to present the creation of the Electoral Court of the Federal Judicial Branch as an guarantor organ of these kinds of rights. The work was developed having as base the deductive method, the study points as result the violation of the ethnical and political rights. According to her, some of the Mexican States are responsible for not enacting the state laws guarantying the mentioned rights. This interesting study is presented in this issue on its original language (spanish), but also in Portuguese, translated by the student of Law at UFF, Stefanie de Souza Pedroso.

The fourth article is a work made by the Professor **Enoque Feitosa**, Doctor of Law and Doctor of Philosophy. He is associated professor at the Federal University of Paraíba, where he teaches to the graduation and at the Doctorate of Law and Philosophy. The essay seeks to approach the theoretical and practical possibilities of an Marxist analysis of the question of the preservation of the nature as human right. Taking as background the relations between central countries, the Professor Enoque aims to demystify the strategy of defending decreasing policies in developing countries while the developed countries are the world's biggest polluters. His hypothesis claims that exists a supposed environment matrix - which in name of the nature - aims to legitimate a discourse to limit the development of the other countries.

The fifth article of this issue of the journal, we have the work made by the Professors of the Federal University of Santa Maria (UFSM) **Maria Beatriz Oliveira da Sala** (DSc. Professor of Law and Coordinator of the Group of Law, Marxism and Environment - NuDMarx/UFSM), **Waleska Mendes Cardoso** (Doctorate student of Law at the Federal University of Paraná and member of the NuDMarx/UFSM) and the Law student at UFSM, **Juliana Vargas Palar** (scholar of Scientific initiation and member of NuDMarx). The researches approach an ethical perception of the nature as carrier of intrinsic valor on the

Constitution of 1988, using a marxist theoretical framework and the deductive method to answer if the perception of the nature is compatible with the material-historic relation established between this and the human being in a capitalist formation. The historical and comparative procedure is also used to make an analysis of the treatment that the nature receives from the Brazilian Constitutions.

Expounding about Environment Crisis, Development and Eco socialism, **Eduardo Só dos Santos Lumertz**, master of Law at University of Caxias do Sul and public persecutor at Rio Grande do Sul, investigates the possible contributions of Marxism to the ecological question. Having as starting point the premise that we are on a grave crisis motivated for the breakdown of a development model which is ruled by unsustainable standards of production and consumption. According to him, this model causes a paradox because at the same time that the wealth increases, the environment degradation and the misery increases in a vertiginous way. The author distinguishes growth and development to delimitate how the international community and the Economics have been behaving themselves in the face of the nowadays environment crisis. On a second moment, the article aims to evidence the importance and the contemporaneity of the categories created and developed by Karl Marx with regards to ecologic theme, once that the appropriation of the nature by the labor generates degradation both in the social and in the environmental areas. So, he says that the dialectical-materialistic method is indispensable to apply real measures that concretely promote a balanced environment as a diffuse fundamental right. Finally, he concludes that Marxism and Ecology converge on an Eco socialism, because the logic of the markets and profit are incompatible with the exigencies needed to the preservation of the environment.

The seventh of this issue brings an multidisciplinary analysis about the rights of the nature and the struggles for water, an analysis prepared by the researcher and Doctorate students **Efendy Emiliano Maldonado** (Doctorate student of Law, Politics and Society at the Post-Graduate Program of Law of the Federal University of Santa Catarina) and **Natália Jodas** (Doctorate student of Economic, Financial and Tax Law at the University of São Paulo). They were searching relate the contributions of Political Ecology and the Ecologic Economy with an innovative perspective of Rights of the Nature. Their work presents the possible connections between these two knowledge areas departing from a proposition of an Indoamerican Eco socialism, using as research methodology the bibliographic revision of national and international literature situated on the fields of sociology, economics, politics and ecology. All

these counting with an analysis of political and legal documents produced on the last years in Latin America.

The eighth article was authored by the Doctor of Law and Professor **José Adércio Leite Sampaio**, Professor at the Pontifical Catholic University of Minas Gerais (PUC-Minas) and federal prosecutor, will analyze the decisions about the protection of the environment at the International Court of Justice. In the paper, is adopted the dialectical comparative method to demonstrate that the Court already recognized expressly the obligation that the States have to assure that the activities under their jurisdiction and control respect the environment of other States or International areas. He concludes that exist functional limitations to the acting of this judicial organ which – allied to the cautious orientation of the Court - prevent a deeper contribution to the enforcement of this area of law.

The ninth paper of this issue was prepared by the Doctor of Law and Professor **Rodrigo Oliveira Salgado**, Professor at the Faculty of Law of the Mackenzie Presbyterian University and he aims to revisit the creation of the urban zoning of Frankfurt occurred in 1891. Analyzing the german context of final of the XIX century and the rest of the actions taken by the local government, the article seeks also to comprehend the zoning as an integrant part of a public policy of space regulation, which had as main elements the preserving of the industrial expansion and the protection of the interests of properties owners, removing the working class from the downtown. Born in context of spatial exclusion, the zoning of Frankfurt have preserved the economic accumulation of the industrial sector and the production process of the city.

The tenth article of the present issue, we have the research made by the Doctor of Law and Professor **Maria Tereza Fonseca Dias**, Professor of the Federal University of Minas Gerais (UFMG) and other three collaborators of her group of research: **Juliano dos Santos Calixto** (Doctorate student of Law at UFMG), **Carolina Spyer Vieira Assad** (Master student of Law at UFMG), Amanda Reis da Silva (Law graduate) and **Henrique Gomides Zatti** (Law Student). The work is about urban occupations in Belo Horizonte-MG and developed a sociojuridical cartography of the case “Ocupação Camilo Torres”. On a first stage, the empirical researched handed social aspects of the occupation and, on a second stage, promoted a documental analysis of the judicial processes of this urban conflict. The article presents the legal arguments used by the parts and which one prevail on the solution of this urban conflict. The main conclusion points that the judges don’t evaluate all the rights involved and always privilege the right to property.

The eleventh article was made by **Fernanda Dalla Libera Damacena**, Doctorate student of Law and Professor of Law at the Unisinos University; Francine Dearmas Oliveira, Law student at Unisinos and by **Julia Marta Drebes Dörr**, Law graduate. Asserting about right to habitation, the researchers investigate the relation among right to housing, vulnerability and “natural” disasters (emphasizing the floods and landslides), as well the criterions of decision adopted by the Judiciary – from 2010 until now – about this matter. The authors use hypothetical-deductive reasoning and bibliographic and jurisprudence researches.

The twelfth contribution to this issue is an article also written by three authors, all housed on the Unisinos University. The first one is the Doctor of Law and Professor **Fernanda Frizzo Bragato** and the Master students of Public Law **Paulo Víctor Schroeder** and **Simone Schuck da Silva**. The article seeks to rescue the thoughts of the actors that the hegemonic theory of human rights ignores, shedding lights on the studies made by Bartolomé de las Casas, Mary Wollstoncraft and Frantz Fannon. The production of those three actors denounces the use of a specific concept of rationality to define and restrain the human concept and, consequently, limit the rights titularity and justify the domination of subjects and groups historically excluded, challenging the philosophic-anthropological presupposition of the hegemonic theory of human rights. The approach of these rescued actors frees the theory of human rights to a comprehension and a justification of such rights to subjects and groups that are on exclusion situation.

Returning the discussions about the rights of the indigenous peoples, the penultimate article was authored by four researchers from the Master Graduate from the University Center Ritter dos Reis (UNIRITTER/Porto Alegre): the Professors **Paulo Gilberto Cogo Leivas**, **Roger Raupp Rios**, **Gilberto Schäfer** and **Dailor Sartori Junior**. The text raises an interesting question about the collective rights inserted on the Brazilian Constitution: are those rights fundamental rights? Departing from a jurisprudence construction of collective human rights in the Inter-American system of human rights about the existence of such rights. The article seeks to answer the question relativizing the individual origins and concluding for the fundamental status of the collective rights of the indigenous peoples and the traditional communities, what give to those peoples the guarantees of immediate applicability and the protection of the stone clauses (cláusulas pétreas).

Ending the articles section, the last contribution was made by the Doctors of Law and Professors **Melina Girardi Fachin** and **Flávia Piovesan** who analyze the decision taken by the

Federal Supreme Court at the Direct Action of Unconstitutionality¹ no. 4.983/CE, which has declared the unconstitutionality of the Law 15.299/2013 of the State of Ceará. This invalidated law had regulated the practice of “vaquejada” as a sporting and cultural practice. To this analysis, the article seeks to face the universalists and the relativists perspectives of the theories after doing a contextualization about the “vaquejada” and its cultural, political and economic characteristics.

In the interviews section, we have the presence of the illustrious Vice-President of the Plurinational State of Bolivia, DSc. Álvaro Marcelo García Linera, who besides being a Politian on his third mandate on the Vice-Presidency, is also a mathematical, sociologist and Professor of Sociology and Political Science at the Mayor de San Andrés University, in La Paz. He has a great number of publications about bolivian and latin american problems. The interview was recorded at September 11th, 2017, when the DSc. Professors Daniel Araújo Valença (UFERSA) and Ilana Lemos de Paiva (UFRN) visited the Vice President. Álvaro Marcelo García Linera spoke greatly about the challenges that the Marxist Latin American left-wing have to face and the changing process that has been passed on the last ten years in Bolivia. The audio transcription and translation to Portuguese was made by the students Bianca Rodrigues Toledo (Master student at PPGDC-UFF and Assistant Editor of RCJ), Cariza Morandi (Master student at PPGD/UNESA), Cecilia Pires (Master student at PPGDC), Gabriela Cassab (Master student at PPGD/UNESA), Larissa de Paula Couto (Master student at PPGDC/UFF), Osias Peçanha (Master student at PPGD/UNESA), Samira Daudt (Doctorate student at PPGD/UNESA) and Walter Gustavo Lemos (Doctorate student at PPGD/UNESA). The revision of the translation was made by the interviewers themselves.

In the Reviews section of this issue, we present six books critical reviews. They are: (i) Gabriel Barbosa Gomes de Olivera (Doctorate student of Law at PPGD/UERJ), who have written about the book “A Democracia Através dos Direitos: O Constitucionalismo Garantista Como Modelo Teórico E Como Projeto Político” by Luigi Ferrajoli; (ii) Ana Clara Gonçalves Flauzino (student of Law at UFF), she analyzed the book “Descolonialidade e Constitucionalismo na América Latina”, organized by Ana Cecília de Barros Gomes, Lenio Luiz Streck and João Paulo Allain Teixeira; (iii) Melissa Bello de Campos Simões Silva (student of Law at UFF), who reviewed the book “Direitos e Democracia no Novo Constitucionalismo Latino-Americano”, collective book organized by Gustavo Ferreira Santos,

¹ A Direct Action of Unconstitutionality is the kind of action used to question, abstractly, the constitutionality of a federal or state law at the Federal Supreme Court of Brazil.

Lenio Luiz Streck and Marcelo Labanca Corrêa de Araújo; (iv) Matheus Barbutti, Nathália Ramos e Paula Brandão (all students of Law at UFF), those students examined the book “O Direito Achado na Rua: Concepção e Prática”, coordinated by José Geraldo de Sousa Junior; (v) Victor Carvalho de Filippis and Carolina Voto Batista (both students of Law at UFF) worked on the review of the classic “Civil Disobedience”, by Henry Thoreau; and finally (vi) Alexandre Pereira Pimentel, Bruna Pillar Grillo and Juliana Santos Rigo (all students of Law at UFF) approached the book “Ficções do Direito Latino-Americano, by Jorge Esquirol.

In the Law Commentaries section, the architect and urbanist Daniel Mendes Mesquita de Sousa analyzes the Law no. 13.465/2017, about the agrarian regularization and promulgated by the Michel Temer government. The author approaches many unconstitutionality of the mentioned law. The matter has gotten a great importance, once one of the last acts from the former Chief of the Public Ministry of the Union (Procurador-Geral da República), Rodrigo Janot, was to petition the Direct Action of Unconstitutionality (ADI) no. 5.771/DF, contesting the formal and material unconstitutionality of such law and requiring the declaration of unconstitutionality *in totum*. The ADI 5.771 is under the report of the Justice Luiz Fux, and on the time of this publication was in phase of information requisition.

Finally, in the Abstracts section, we bring the master dissertations abstracts that were defended at PPGDC/UFF on the mid-year of 2017. Anna Cecília Faro Bonan approaches the theme “Camelôs Rebeldes: a dimensão sócio-espacial do direito na cidade em disputa”; Bernardo Xavier dos Santos Santiago defended the theme “O Direito Achado no Rio: Conflito pela Água e Usos do Direito no Território do Vale do Guapiaçu (RJ)”; and Marcelo Queiroz presented: “Direito à Cidade em Disputa; o caso da comunidade metro-mangueira.

We publish this issue sure that all those contribution will elevate the high standard that we search as a scientific journal. This, associated with the grown of PPGDC, not only incentive us, but obligate us to seek always the academic excellence.

So, to this end, we reverence all of ours authors, who have given such presents so far. We also take this opportunity to remember that the doors of the journal remain opened to receive new works to keep strengthening the dialectic among the different legal cultures.

Niterói, October 12th, 2017.

Enzo Bello, DSc.

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