

EDITOR'S NOTE

Vol. 5, Nº. 10, 2018

It is with great satisfaction we inaugurate the fifth year of the *Revista Culturas Jurídicas*, the journal edited by the Master's Program in Constitutional Law of *Universidade Federal Fluminense* (PPGDC / UFF). Its Volume 5 brings the number 10, which has as editorial line *Constitutional Justice and Human Rights in Times of Authoritarianism and Retreats*. The number 10 counts on important contributions from Brazilian and foreign researchers in order to bring contents of interest to the academic community and to maintain the standard of excellence and internationalization reached in previous editions, which guaranteed the journal the Qualis A2 category conferred by CAPES.

The theme that entitles and permeates this # 10 of the RCJ was not freely chosen by its editors and collaborators, unfortunately. It presents itself from the reality experienced in contemporary Brazil, in which the State violates human rights. Whether through illegal conducts perpetrated by public authorities or through legality by producing hardening measures in relation to civil and political freedoms and, at the same time, by enacting (un)constitutional statutes and amendments restricting social, economic and cultural rights. The so-called Constitutional Justice transcends all the State spheres, especially the Federal Supreme Court, which has been making controversial decisions on political and economic issues, generating concern in the legal community.

Especially after the removal of the ex-President Dilma Rousseff (2016) and during the federal intervention in the State of Rio de Janeiro (enacted in February 2018 and still in force until the closing of this edition), much has been debated in Brazil on Constitutional Justice and Human rights in the institutional perspective. For example, in police operations and judicial processes, "anti-corruption" discourses and search for effectiveness of criminal justice are defended, even at the cost of relativization or disrespect to fundamental guarantees. In a permanent exception dynamic, there are innumerable non-institutional episodes that cause general consternation and require deep critical reflection, especially when the Armed Forces

govern one of the most important states of the country and carry out violent incursions in poor communities, with collective search and seizure warrants.

In this context, the *Revista Culturas Jurídicas* gives a fair and well-deserved tribute to Marielle Franco and Anderson Gomes, brutally murdered on March 14, 2018, in Rio de Janeiro, generating enormous commotion not only in Brazil, but in the international community too. These two young people, full of energy, vitality and peaceful ideals of social progress, symbolize countless people who have had their lives abbreviated in an urban violence scene that seems to have no end. That crime provoked the intensification of debates and creation of concrete actions in relation to the constant violation of human rights in Brazil, especially of the poor, black and young population. Until the closing date of this Editor's Note, the investigation by the federal and state authorities had not yet been completed. The minimum expected of them is that the investigation will be conclusive and that the memory of these and of many other young people who have had their lives interrupted by acts of violence to be respected.

The first paper of this edition was written by Beto Ferreira Martins Vasconcelos, José Eduardo Martins Cardozo, Marivaldo de Castro Pereira and Renato Campos Pinto de Vitto. Beto Ferreira Martins Vasconcelos holds Master's degree from *Universidade de São Paulo* (USP) and *Universidade Federal de Santa Catarina* (UFSC). José Eduardo Martins Cardozo is São Paulo's City Attorney, and holds a Master's degree from *Pontifícia Universidade Católica de São Paulo* (PUC-SP) and a PhD degree from *Universidad de Salamanca*, Spain. Marivaldo de Castro Pereira is a lawyer who holds a Master's degree from *Universidade de São Paulo* (USP). Renato Campos Pinto de Vitto is São Paulo's State Public Defender, graduated from *Pontifícia Universidade Católica de São Paulo* (PUC-SP). The paper discusses some aspects about the Brazilian federal system, with a special focus on the prison question. From the analysis, the authors draw a diagnosis of the financing structure of the prison policy and bring proposals that allow us to overcome the current situation.

The second paper was written by the Argentinean Alejandro Medici, who holds a Master's degree in Human Rights from *Universidad Pablo de Olavide*, Spain. He is Professor at *Universidade Nacional de La Plata*, in Argentina, and at the *Universidad Autónoma de San Luis Potosí*, México. In the paper, the author analyzes the theme of the Latin American Philosophy of Liberation and the decolonizing or decolonial twist to support the Constitutional Theory in the context of the New Latin American Constitutionalism. The paper

was translated from Spanish into Portuguese by Ilana Aló Cardoso Ribeiro - who holds a Master's degree in Constitutional Law from PPGDC-UFF. She is also a PhD candidate at PPGD-UFRJ, and works as a professor at UNESA - and reviewed by Julia García Tavora Menegaz – who studies Law at FND-UFRJ - with final review by the Editor-in-Chief of RCJ, Prof. Enzo Bello.

Titled "The Ethnic Factor in Constitutional Regulation of the State's Territorial Structure in the BRICS Countries", the third paper was written by Artur Nikolaevich Mochalov, a Russian who is Professor at Ural State Law University, Russia, and Editor-in-Chief of the "Russian Law: Education, Practice and Research" Journal. The paper focuses on how the territorial arrangement of India, the Republic of South Africa, China, Brazil and Russia is influenced by the ethnic and linguistic structure of its populations. The paper was translated from Russian into Portuguese by Olga Alyokhina Alves, a translator from Minsk State University, and reviewed by Fernando César Costa Xavier, Adjunct Professor of the Institute of Legal Sciences of *Universidade Federal de Roraima* (ICJ / UFRR), who holds a PhD degree in International Relations from *Universidade de Brasília* (UnB).

The fourth paper was written by Diva Julia Souza da Cunha Safe Coelho, Saulo de Oliveira Pinto Coelho and Ricardo Martins Spindola Diniz. Diva Julia Souza da Cunha Safe Coelho holds a PhD degree in Human Rights and Citizenship from *Universitat de Barcelona*, Spain, and is a post-PhD researcher at *Universidade Federal de Uberlândia* (UFU). Saulo de Oliveira Pinto Coelho holds Master's and PhD degrees in Law Theory and is Professor of the Interdisciplinary Post-Graduation Program in Human Rights of the *Universidade Federal de Goiás* (UFG). Ricardo Martins Spindola Diniz holds a Master's degree from *Universidade de Brasília* (UnB) and is Professor at IESGO-Goiás. The paper is based on Russian Constitutionalism, seeking to counter the different approaches of constitutionalists on the role of the constitution and human and fundamental rights with the official nomological discourse of the Russian Constitution.

The fifth paper in this edition was written by Gilberto Bercovici, Professor of Economic Law and Political Economy at the Law School of the *Universidade de São Paulo* (USP). His work is about the criticism of the Social State composed from the Constitution of Weimar, according to Carl Schmitt. Mobilizing its main concepts and ideas, the author presents the proposal of a strong State in a free economy as a way of restoring German political unity.

The sixth paper presented was written by José Ribas Vieira and Pedro Araújo Fernandes. José Ribas Vieira is Professor of Constitutional Law at the *Universidade Federal do Rio de Janeiro* (UFRJ) and Associate Professor at *Pontifícia Universidade Católica do Rio de Janeiro* (PUC-Rio). Pedro de Araújo Fernandes holds a Master's degree in Constitutional Law and State Theory from *Pontifícia Universidade Católica do Rio de Janeiro* (PUC-Rio). The main focus of the work is the impeachment process of the former President Dilma Rousseff, seeking to verify the link between the role played by the Judiciary and the economic agenda of Michel Temer government. Based on the ideas of political scientist Ran Hirschl, the authors work on the judicialization of politics and look for explanations for the Brazilian case.

The seventh paper entitled "The Heterogeneous Models of Transparency in the Judgement Sessions of Constitutional Courts" has as its main object the study of the different models of publicist opening in the constitutional courts, highlighting its positive and negative aspects. The work was written by Thiago Sacchetto, Professor at *Pontifícia Universidade Católica de Minas Gerais* (PUC-Minas), who holds a Master's degree in Legal and Political Sciences from *Universidade de Lisboa*.

The eighth paper is written by Isabelly Cysne Augusto Maia, Cynara Monteiro Mariano, Emmanuel Teófilo Furtado. Isabelly Cysne Augusto Maia is lawyer, holds a Master's degree in Constitutional Order from *Universidade Federal do Ceará* (UFC) and a post-graduate degree in Administrative Law from PUC-Minas. Cynara Monteiro Mariano holds a Master's degree in Public Law from *Universidade Federal do Ceará* (UFC), a PhD in Constitutional Law from *Universidade de Fortaleza* (UNIFOR), and a post-PhD degree from *Universidade de Coimbra*. Emmanuel Teófilo Furtado holds a Master's degree in Law and Development from *Universidade Federal do Ceará* (UFC) and a PhD in Law from *Universidade Federal de Pernambuco* (UFPE). The paper is about the ADPF nº 347 and the existence of an unconstitutional state of affairs regarding the overcrowding of penitentiaries.

Entitled "Fundamental human rights and compliance of international decisions", the ninth paper of this edition was written by two authors. Vladimir Oliveira da Silveira holds post-PhD degree from the *Universidade Federal de Santa Catarina* (UFSC), a PhD degree from *Pontifícia Universidade Católica de São Paulo* (PUC-SP), and is Professor of International Law at the same University. Ana Carolina Souza Fernandes holds a Master's degree in Law with emphasis in International Economic Relations from PUC-SP. The work has as reference the Theory of Democracy, mobilized to verify the compliance of

international judgments in the Brazilian legal system. The study is carried out in the perspective of human rights and the competence of the Inter-American Court of Human Rights, recognized by Brazil.

The tenth paper is the result of the work of Maiquel Ângelo Dezordi Wermuth - PhD in Public Law at UNISINOS, Professor of Law at UNIJUÍ and UNISINOS, professor-researcher of the Master's Program in Human Rights at UNIJUÍ and Editor-in-Chief of the *Revista Direitos Humanos e Democracia* - with Jeannine Tonetto de Aguiar, who holds a Master's degree in Human Rights at UNIJUÍ. In the paper, the authors seek to demonstrate the existence of a selective and utilitarian paradigm of management of migratory flows in the country, based on phenomenological and historical analysis.

The eleventh paper was written by Thais Janaina Wenczenovicz - Associate Professor / Senior Researcher at *Universidade Estadual do Rio Grande do Sul* (UERGS), member of the Global International Committee on Media and Gender (UNESCO) - and Carlos Eduardo de Araújo Rangel, specialist in Public Law. The paper "Freedom is what imposes: indigenous communities and violence" aims to analyze the violence experienced by indigenous communities in Brazil, using the concepts of "freedom", "prison" and "violence" in the post-Constitution of 1988.

The twelfth paper has as its scope the policy of the Judicial Centers for Conflict Resolution (CEJUSC), in order to analyze its effectiveness in reducing judicial conflict through conciliation in the context of the city of Balsas, in the State of Maranhão, Brazil. From the study, deficiencies and potentialization spaces for the development of this policy are identified. The work is authored by Bruno de Oliveira Rodrigues, Renato Vargas Fonseca and Jivago Ulguim. Bruno de Oliveira Rodrigues holds a Master's degree in Sociology from *Universidade Federal Fluminense* (UFF), a PhD degree in Sociology and Law from the same University; he is also Professor at *Faculdade de Macapá* (FAMA), Amapá, and at *Universidade Estadual do Amapá* (UEAP). Renato Vargas Fonseca is graduated from UNIBALSAS and Jivago Ulguim holds a Master's Degree in Criminal Sciences from *Pontifícia Universidade Católica do Rio Grande do Sul* (PUC-RS) and is Professor of Criminal Law at *Faculdade da Concordia*.

The thirteenth paper was written by Paulo Henrique Tavares da Silva and Suelly Coelho Tavares da Silva. Paulo Henrique Tavares da Silva has Master and PhD in Human Rights and

Economic Development at the *Universidade Federal da Paraíba* (UFPB). He is also Professor at the same University, and at *UNIPÊ*. Suely Coelho Tavares da Silva has a Master's Degree in Nutrition Sciences from UFPB; she is specialist in Family and Community Medicine AMB / SBMFC and also Professor of Medicine at *UNIPÊ*. The paper is about the judicialization of public health policies in Brazil, based on the contributions of Friedrich Müller. The authors aim is to elaborate an hermeneutic and descriptive model for the demands related to health, demonstrating that the fundamental right to health is effective in the decision and that it requires transparency and security.

The fourteenth and last paper of this edition was written by Patrícia Perrone Campos Mello and Philippe de Oliveira Nader. Patrícia Perrone Campos Mello is Professor of Constitutional Law at UniCEUB, who holds a Master's and a PhD degrees in Law from the *Universidade do Estado do Rio de Janeiro* (UERJ). She is Rio de Janeiro's State Attorney and currently holds the position of assistant consultant at the Federal Supreme Court. Philippe de Oliveira Nader holds a Master's degree in Law from UniCeub and is lawyer at Petrobras. The main focus of this paper is the application of the theory of precedents in the Federal Supreme Court, based on RE 760.931.

Following, RCJ # 10 brings two interviews. The first with Talíria Petrone, a History Professor and Councilor of the Municipality of Niterói / RJ, on the contemporary conjuncture of setbacks and violations of human rights. The second with Jocelyn Kestenbaum, Professor of Cardozo Law School, USA, and the theme is how to lead a Human Rights Clinic.

In addition to the papers and interviews, the RCJ # 10 has a several contributions in the section of reviews, all elaborated by students and graduation candidates of the UFF Law School. The first one, written by Luiz Alberto Soares and Pedro Maia, is about the book "Mulheres, Cultura e Política", by Angela Davis. The second review, written by Anderson José Guedes Bezerra dos Santos and Renan Cândido de Oliveira, refers to the book "Pele Negra, Máscaras Brancas", by Martin Frantz Fanon. The third, is about the book "Lugar de Negro" by Lélia Gonzalez and Carlos Hasenbalg, was written by Camilla Verdán do Nascimento Sant'Anna and Marcone de Souza Henrique.

Then we have the reviews of two books by Cameroonian Joseph-Achille Mbembe: "África Insubmissa – Cristianismo, Poder e Estado na Sociedade Pós Colonial", written by Camille Trindade Duarte and Matheus Vargas Veiga; and "Sair da Grande Noite – Ensaio

sobre a África Descolonizada" by Luis Alekssandre L. Nascimento and Matthew Sena. The Cuban writer Carlos Moore was contemplated in two book reviews involving the racial issue. They are: "Racismo e Sociedade – Novas Bases Epistemológicas para a Compreensão do Racismo na História", whose review was written by André Luiz Rosa Barbosa and Carla Rodrigues Souza, and "O Marxismo e a Questão Racial: Karl Marx e Friedrich Engels frente ao Racismo e a Questão Racial", by Gustavo Roberto Pinheiro Oliveira and Lara Rocha de Almeida Pipas.

The eighth review was written by Pedro de Assis Helmold and Isabella da Cunha Silva, about the book "Estado Democrático e Estado Autoritário", by the Polish Franz Neumann. The book "A Radiografia do Golpe", by the Brazilian Jessé Souza, was the object of the ninth review, by Leonardo Coreicha and Matheus Nery. The tenth review is about the book "Direito e Ascensão do Capitalismo", by Michael E. Tigar and Madeleine R. Levy and is the result of the work of Paulo Eduardo Sampaio Barreto da Rocha and Vítor Jorge Santos Vieira Alves. As the eleventh and last, we have the review by Beatriz Serrapio Peres and Fernando de Britto Falci about the book "Reivindicação dos Direitos da Mulher", by Mary Wollstonecraft.

The last section of this edition has comments on the Federal Senate Bill nº 352/2017, which adds a paragraph to the article 25 of the Penal Code. The authors are Fernanda Frizzo Bragato, a researcher in the CNPq, PhD and Professor at UNISINOS and post-PhD degreee at Birkbeck College of the University of London, and Larissa de Oliveira Elsner, Master's student at UNISINOS, approach the theme on the constitutional and human rights perspective.

From all the presented, we hope this edition contributes to the research and academic community widely considered and we thank all the authors and reviewers, who have dedicated their time to collaborate with publications that raise the RCJ's standard. Finally, we emphasize that the RCJ remains with open doors to receive new contributions and to continue the work carried out in recent years.

Niterói, June 16, 2018.

Prof. Dr. Enzo Bello

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