

EDITOR'S NOTE

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Legal Cultures / *Revista Culturas Jurídicas* (LC/RCJ) reaches its Volume 6, with the publication of its Number 13, referring to the period January-April 2019. The editorial line is “Challenges of the present time to Constitutional Law in Brazil and Latin America: Environment, Indigenous Peoples & Transitional Justice”. The motto is the critical assessment of how Latin American and Brazilian constitutionalism response to the challenges created at the present time by the advent of governments committed to discourses of economic growth combined with setbacks on fundamental rights.

While hate speeches are pronounced daily and in profusion by public authorities, in parallel, a process of dismantling the state and frontal attacks on social minorities is walking strides in Brazil and in several Latin American countries. More intense and faster than the process of incorporation of the guidelines of neoliberalism in the 1990s, what we see today goes beyond, especially, in relation to the material reduction of the sovereignty of countries of dependent economies, which once again present high numbers of poverty, socioeconomic inequalities, deforestation and deaths of popular leaders.

The negation of a past of institutionalized authoritarianism of bloodthirsty dictatorships and an attempt to discursively reconstruct history through detached narratives of facts and documentation goes hand in hand with the offense against the democratic rule, fundamental rights, social conquests and constitutionalism itself. Moreover, the aspects of a probable rise of authoritarianism are centrally targeted at public educational institutions, educators, teachers, researchers, undergraduate and extension students and also...pedagogical autonomy and national sovereignty. Instead of an ideological controls traversed by discourses of neutrality, the option is clearly to strangle the autonomy of free-thinking institutions through the budgetary way. With the abrupt and sumptuous budget reductions - even already provisioned - and in order to make public education unfeasible, it reverts to the market (to the large multinational conglomerates and / or with mostly foreign shareholders) not only the origin of “funding”, but the choice of areas and themes of research in higher education, as well as the subjects of professionalization in secondary and technological education, as well as the militarization of elementary education.

Among many others, these are the challenges of the present time to Constitutional Law in Brazil and Latin America, which are thematically condensed in this Number 13 editorial line,

in the axis “environment, indigenous peoples and transitional justice”, based on the contributions received from researchers from Brazil, Mexico and Cuba. At this point, we reaffirm the objective of Legal Cultures / “Revista Culturas Jurídicas” (LC/RCJ) to be a safe harbor for the diverse currents that make up the Brazilian, Latin American and world legal pluralism, always striving for scientific rigor in the analysis of the texts received, so that they are recognized as a contribution to the generation of knowledge in a plural and critical way.

Our readers and contributors can be assured that the articles presented here have been, are and always will be the result of the hard work of the authors who honor us with their texts and rigorous editorial work. More than ever, we welcome the authors who have chosen these pages to publish their work and urge readers and potential and former contributors to submit their articles for publication on our pages.

We started this edition with the Articles Section, inaugurated with two articles in bilingual format – Spanish / Portuguese.

The first paper was written by the Cuban **Mylai Burgos Matamoros**, Professor (Ph.D.) and Researcher of Law Academy, *Universidad Nacional Autónoma de México* (UNAM), in Mexico. Titled “**The new Constitution of the Republic of Cuba: republican, democratic, socialist and fraternal self-government**”, the article is one of the first published – especially in Portuguese – about the new constitution of Cuba, promulgated in April 10, 2019.

The purpose of the article is to critically analyze the new constitution of Cuba’s Republic, demonstrating in detail how the popular consultation and constitutional reform occurred and how that gave rise, in the present days, to a new constitutional text that attempts to adapt the socialist project to the new Cuban and global context. From a critical dialectical perspective the author sets out in detail the main elements of the new Constitution - fundamental principles, politics, economics, human rights and fundamental guarantees - outlining the whole constitutional process, which had as its initial process the broad and effective participation of the Cuban citizens, including Cuban residents abroad. The paper was translated from Spanish to Portuguese by Bruna Jakobi, Master’s degree student in Constitutional Law from PPGDC-UFF, and by Professor Enzo Bello, Editor-in-Chief of RCJ and faculty member of PPGDC-UFF.

The second paper was written by the Mexican **Jesús Antonio de la Torre Rangel**, Doctor of Philosophy from the *Universidad Nacional Autónoma de México* (UNAM) and Professor from the *Universidad Autónoma de Aguascalientes*, in Mexico. The celebrated Mexican Professor, from the studies field of “right born of the people”, deals with the subject

“Insurgent law and human rights: the defense of the territory and the autonomy of Mexican indigenous communities”, in an article that presents the struggles for resistance led by Mexican indigenous or indigenous peoples against the economic, political and legal offensive of capitalism in the present times. Precisely, it analyzes experiences of defending the rights of indigenous peoples proclaimed and exercised from political-legal insurgencies that produce an insurgent right. The paper was translated by Giuliana Ribeiro Casazza, Master’s degree student in Constitutional Law from PPGDC-UFF, with review by our Editor-in-Chief Professor and Doctor Enzo Bello, member of PPGDC-UFF.

Our third contribution is from the Professor and Doctor **Vívian Lara Cáceres Dan**, from the *Universidade do Estado de Mato Grosso* (UNEMAT), in Barra do Bugres (MT), and is titled: **“The consolidation process of Monkoxi's nation indigenous autonomy”**. This article deals with the context and mobilization of the indigenous organization named Indigenous Central of the Lomerio Native Communities (CICOL) that struggles for the consolidation of autonomy and rights of indigenous in Bolívia, its political and administrative structure, and seeks to understand the specific elements of the confrontations with the Bolivian State to then to advance the discussion about the process of decolonization and indigenous autonomies that go beyond the legal and institutional aspects.

The fourth study of this number is the collaboration among the Professors and Doctors **Daniel Araújo Valença** and **Rodrigo Vieira Costa** from the Graduated Program of Law of the *Universidade Federal Rural do Semi-Árido* (UFERSA), in Rio Grande do Norte, and written also by **Ronaldo Moreira Maia Júnior**, graduated student of the same university and Master’s degree student in Law from *Universidade Federal do Rio Grande do Norte* (UFRN). The study, is titled **“The historical construction of the human right to water: from the *Guerra del agua* to international recognition”**, analyze the right to water, while human right, from the process of reivindication for that natural resource in the context of privatizations of the 2000’s in Bolivia, also known as Guerra Del Agua, the repercussions of this conflict in the Bolivian constituent process, as well as the recognition of the water while Human Right in the international plan.

The fifth study that illustrates this edition is an article written by four hands by Professor and Doctor **Tatiana de Almeida Freitas Rodrigues Cardoso Squeff**, from the Graduated Program of Law from *Universidade Federal de Uberlândia* (UFU), in Minas Gerais, and by **Michelle Alves Monteiro**, Master’s degree student in Public Law from UNISINOS, in Rio Grande do Sul. The study has the titled **“Brazil a country of all? The indigenous territorial**

question under the Brazilian legal order and the construction of a Plurinational State”, and aims to debated in this text a way of (re)thinking the oppressive and assimilatory situation today presented from the construction of the Plurinational State, a model of State that prizes for pluralism and the participation of all peoples in their political, legal and social life.

The sixth article from this Number 13 was created by Professor and Doctor **Caroline Barbosa Contente Nogueira**, from *Universidade Federal do Amazonas* (UFAM), in Amazonas, by **Diego Ken Osoegawa**, a PhD student of Biotechnology from UFAM e Observatory Researcher of Socioenvironmental Law and Human Rights in Amazônia (FD/UFAM), by **Roger Luiz Paz de Almeida**, PhD in Law from *Pontifícia Universidade Católica do Paraná* (PUCPR) and Professor from *Universidade Federal do Amazonas* (UFAM), in Amazonas. Entitled **“Development policies in the Amazon: analysis of deforestation in the last ten years (2009-2018)”**, this text proposes to describe and analyze the main development strategies taken in Amazon and its effects on deforestation, whether by the incentive to territorial occupation, promoted by the Brazilian State or by the introduction of agricultural activities. The methodology used was the descriptive and analytical research, with bibliographical and documental research, besides the data analysis obtained by Amazon deforestation monitoring program in the last ten years. After data analysis and historical description, can be concluded that development projects are based on economic logic, without considering social-environmental regional peculiarities, producing irreversible environmental impacts, such as deforestation.

The seventh text is a paper also written by two authors, Professor and Doctor **Leilane Serratine Grubba**, Professor from the Graduated Program of Law from *Complexo de Ensino Superior Meridional* (IMED), in Rio Grande do Sul, and by Professor and Doctor **Marta Carolina Giménez Pereira**, PhD in Law from *Instituto de Investigaciones Jurídicas UNAM* (México), who holds a Master’s degree in Private Law by *Universidad Nacional de Rosario* (Argentina) e graduated in bachelor's degree in Law from *Universidad Nacional de Asunción* (Paraguai).

The authors presented a study published in bilingual format (Portuguese / Spanish) and entitled **“The environmental dimension of development: contributions to human rights”**. The paper discusses the environmental dimension of the complexity of human development, with the objective of investigating the relationship of dependence of human development to sustainable environmental development. The paper problematized the relationship between the human being and the environment, to affirm the need to creat a complex relationship between

human and nature in favor of development, understood as the development of dignified life, materially and immaterially.

The eighth paper was written by Professor and Doctor **Gustavo Borges Silveira**, from Graduated Program of Law from *Universidade do Extremo Sul Catarinense* (UNESC), in Santa Catarina, and by **Marina Moura Lisboa Carneiro de Farias Carvalho**, Master's degree student from the same university and notary public from *Escrivanía de Paz do Distrito de São Bento Baixo*, in Nova Veneza/SC. The title of the paper is **“The “new” rights and the irruption of the constitutional protection of natural rights”** the general objective of this paper is to analyze the rights of nature and the emergence of this "new" subject of law in the perspective of protection of "new" rights. In order to verify this objective, the following research problem was formulated: can nature be considered a "new" subject of law?

The ninth paper of this edition was written by Professor and Doctor **Cleide Calgato**, from Graduated Program of Law from *Universidade de Caxias do Sul* (UCS), in Rio Grande do Sul, and by the PhD student that holds a Master's degree from the same institution, **Giovani Orso Borile**. The work is entitled **“Environmental geopolitics and the international dimension of environmental protection”** and develops an analysis about Geopolitics and the application of its concepts and practices in the environmental field and in the proposal of environmental protection. It aims to demonstrate its effectiveness in relation to local and transnational environmental issues, bringing the proposal of Environmental Geopolitics as the study of territorial, political and ecological issues with a greater emphasis on international dynamics. The main nuances and perspectives of environmental geopolitics and their importance for the conservation and protection of natural resources are presented through an analytical and interpretative process.

The tenth paper was written by Professor and Doctor **Rafael Lameira Giesta Cabral**, from Graduated Program of Law from *Universidade Federal Rural do Semi-Árido* (UFERSA), in Rio Grande do Norte, and by **Ramon Rebouças Nolasco de Oliveira**, Professor in the same institution and a PhD student in Law from *Universidade de Brasília* (UnB). With the titled: **“National Commission of Truth in Brazil: the wire of the report and the right to memory and to truth”**, this research focuses on the theme of memory and Transitional Justice, examining the context of the institution of the Brazilian National Truth Commission (CNV), responsible for investigating violations of human rights that occurred in the period between 1946 and 1988. Legislative documents and with subsidy of constitutional history as a methodological starting point, a historical normative contextualization was made about the

emergence of the Truth Commission in Brazil and its relations between memory, history, oblivion and resentment.

The eleventh paper treats the same subject and is entitled “**Transitional justice and amnesty in Brazil: the paradox of a “negotiated transition”**”. Produced by **Vitor Umbelino Soares Junior**, who holds a Master’s degree in Human Rights from *Universidade Federal de Goiás* (UFG), in Goiás, and is the judge from the state court in Goiás (TJGO), the purpose of this article is to analyze the Brazilian transitional model based on one of its main aspects, namely, the approval of Law 6683/79 and the consequent construction of a dominant legal-political thinking in the sense of the non-accountability of the agents public officials who committed serious violations of human rights during the dictatorial regime as a condition for "national reconciliation." The analysis of this question takes into account the interpretation adopted by the Federal Supreme Court on the Amnesty Law, which was born as a result of a political agreement between government and civil society. Through a bibliographical revision of some of the main works on the subject, the aim is to point out the paradox of a victory of all with the approval of the mentioned law and its consequences for the current maintenance of the limits that impede the progress of a transitional justice in the Brazil.

Our twelfth paper was produced by é Professor and Doctor **Emilio Meyer**, by Professor and Doctor **Thomas da Rosa de Bustamante** and Professor and Doctor **Onofre Alves Batista Júnior**, members from the Graduated Program of Law from *Universidade Federal de Minas Gerais* (UFMG). The trio of researchers presents the result of their research entitled “**University autonomy, democracy and federalism**”. The aim of this article is to argue for the claim that university autonomy is a constitutive norm of the Brazilian democracy, authoritatively settled by the Constitution of 1988. For such endeavor, the article demonstrates the connections between the meaning of university autonomy, the preservation of democracy and the guarantee of federalism. The methodology makes reference to the recent attacks on Brazilian public universities, comparing them to the international scenario of authoritarian rise. Financial autonomy appears as a key element: we will show that recent budgetary cuts amount to a breach of law and of the Constitution of 1988. The research results show that restrictions to university autonomy are connected to authoritarian politics. The conclusion is for the necessity of an urgent normative recovery of university autonomy in Brazil.

At the last but one, the thirteenth paper is a collaboration from Professor and Doctor **Flávio Pansieri**, from *Pontifícia Universidade Católica do Paraná* (PUCPR), in Paraná, and from **Rene Erick Sampar**, PhD student in Law from *Universidade Federal de Santa Catarina*

(UFSC), in Santa Catarina, and Coordinator from *Escola Judiciária Eleitoral do Tribunal Superior Eleitoral* (TSE). The authors presented the study entitled "**Democratic constitutionalism and the normative force of the constitution for Konrad Hesse**" and the purpose of this text is approach democratic constitutionalism under the prism of normative power, postulated established by Konrad Hesse in the well-known debate set with the ideas of Ferdinand Lassalle. Through the bibliographical review of several authors, especially the text "The Normative Power of the Constitution," the text relates the postulates of Hesse with contemporary democratic theory, establishing a dialogue about some political-social issues of present time. From the bibliographical review of Konrad Hesse and other jurists, required to the comprehension of thematic, the aims is remember the significance and actuality of his constitutional and democratic theory specially for strengthening of the legal and political institutions that were bequeathed to us.

Ultimately, the fourteenth paper from this edition was written by **Daniela Regina Pellin**, PhD student of Public Law from **Universidade do Vale do Rio dos Sinos** (UNISINOS), in Rio Grande do Sul, *Visiting Scholar* from the *Universidade de Pádova/Itália* and Professor from the Graduated Program of Corporate Law and Business from UNISINOS, and by **Wilson Engemann**, who holds a PhD from *Universidade do Vale do Rio dos Sinos* (UNISINOS), Executive Coordinator of the Graduated Program of Corporate Law and Business from UNISINOS and Professor and Researcher from do from the Program for Master's and Doctorate in Law from UNISINOS. This study is published in bilingual format (Portuguese / English) and entitled "**Brazil and the oneway of Agenda 2030 Compliance: Companies, Institutions and Nanotechnologies**". The general objective is to demonstrate that these are two flawed sides of the same coin: the internal, because of little systemic understanding of global communication that includes the role of institutions and new technologies; owing to the low contribution and lack of management of this global systemic communication that goes beyond resources provided in developing countries.

In the section of interviews, we published an interview entitled: "**Constitutional Democracy in the crossroads**" granted by the Chilean Professor **Javier Couso Salas**, Ph.D., from *Universidade da Califórnia em Berkeley* (EUA), Professor of Law in the *Universidade Diego Portales* (Chile) and Coordinator of Global Trends in Constitutionalism from *Universidade de Utrecht* (Holanda). Professor Javier Couso Salas answers questions about the themes treated in this Number 13, approaching it with clarity and in depth the questions asked

by our interviewers and let a real class as a record about the nuances of democratic constitutionalism in the present days.

Finally, we have the reviews made by the Graduated students of Law from the *Universidade Federal Fluminense* (UFF). The students **Wiliam Adolcino Siqueira Ferreira** and **Yan Victor Amorim de Paulo** reviewed a master's dissertation entitled “**Law and racial relations – a critical introduction to racism**”, written by Dora Lúcia de Lima Bertúlio, Pioneer in the theme from the Graduated Program of Law of; the students **Gabriel Campos Lopes da Silva** and **Lorena Cabral Botelho** presented their work about the book “**Time Purchased - The Postponed Crisis of Democratic Capitalism**” from Wolfgang Streeck.

In order to finish this editor’s note we pay tribute to those that left us, and had their lives cut short by authoritarian and violent practices of the Estate, in the past and in the present, to those that fought for equality and diversity witch are renowned brands from the democratic constitutionalism, but not assured in a practical way. **Fernando Santa Cruz, presente! Francisco Pereira Tukano, presente! Emyra Wãiapí, presente!**

Niterói, August 5th, 2019.

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