

EDITOR'S NOTE

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As this 15th issue is published online the *Revista Culturas Jurídicas* (RCJ), journal edited and published by the Masters Program in Constitutional Law of the *Universidade Federal Fluminense* (PPGDC/UFF), closes its sixth year of existence. This issue brings the editorial line “Legal Research and Education in Constitutional Law and Human Rights” and was built around articles prepared by both foreign and Brazilian authors and investigators. Always with focus in keeping and exceeding the excellence standard achieved by this publication and attested by CAPES with its Qualis A2 rating.

As usual, we endeavor to bring all our themes inside Constitutional framework of Latin America, this being the mark by which the RCJ is recognized inside the Brazilian academic community. In this vein, we hereby bring thirteen articles which originated from the research effort of professors who teach Constitutional Law at their institutions spread around several countries. And also articles from research fellows which question the very legal education and the legal research, leading the reader into pondering on the choices we make.

Our first article originates from the work of Professor **Guillermo Luévano Bustamante** (PhD in Social Sciences, *Centro de Investigación y Estudios Superiores en Antropología Social* [CIESAS], Mexico), Professor at *Universidad Autónoma de San Luis Potosí* (UASLP), Mexico. In his article, Professor Luévano Bustamante provides a critical analysis of the prevalent training models for researching and teaching Law as generally being vertical, high-handed, verbose and with emphasis in rote learning. The author points out these models lead the students into roles that are passive, mildly responsive and mainly receptive, with little emphasis on the execution of mental operations and on the performance of legal procedures such as legislative, administrative, judicial or investigative ones by those individuals who attend classes at Law Schools. The author proceeds by maintaining that there are newer training models on research and teaching Law – such as critical teaching – committed to more interactive and proactive approaches and that demand other models than those taught

at Law schools. The conclusion discusses the social role of a Human Rights Clinic. The text was translated from the original in Spanish into Portuguese by the author himself.

Our second article is the outcome of a workgroup led by Professor **Fayga Silveira Bedê** (PhD in Social Sciences, *Universidade Federal do Ceará* – UFC, Brazil, professor at the Graduate Program on Law at *Centro Universitário Christus* – UNICHRISTUS, Brazil), and comprised by **Marina Nogueira de Almeida** (Masters Degree Candidate at UNICHRISTUS, Brazil), **Lincoln Mattos Magalhães** (M.Sc., Law, UNICHRISTUS, Brazil) and **José Wendel Silva de Oliveira** (Law School undergraduate, UNICHRISTUS, Brazil). Their very appropriate theme is on the ethical dilemmas involving authors, coauthors and others who share the authorship of published legal research. By criticizing the Brazilian model – which is currently plagued by a notion that quantity is better than quality – the authors wanted to problematize the ethical directives on attribution of authorship set by the main Brazilian and International organizations which deal with the regulation of research, aiming to bring the culture of good practices into the spotlight.

The third article was prepared by Professor **Napoleón Count Gaxiola**, (D.Sc., Law, *Universidad Nacional Autónoma de México* [UNAM]), Mexico, Full Professor Titular and research fellow at *Escuela Superior de Turismo del Instituto Politécnico Nacional* (Mexico City). The article has already been published by RCJ as an Ahead of Print publication, both in its original Spanish version and its Portuguese translation. On the article, the author aims to introduce the Marxist critiques to the liberal concepts that form the framework of the State and the Law by going through the works of Evgeni Pachukanis, Norberto Bobbio, Carl Schmitt, Hans Kelsen, Herbert Hart and Ronald Dworkin, viewing Law not from theoretical standpoints, but through the lenses of the concepts of Use-Value, Exchange Value, Capital, Commodity, Value, Labor Power and Form. The article was translated to Portuguese by Anne Nimrichter Oliveira (M.Sc., Law, PPGDC/UFF, Brazil) and revised by Professor Lucas Machado Fagundes (D.Sc., Law, UFSC, Brazil), Professor at the Masteres Program in Law of the *Universidade do Extremo Sul Catarinense* – UNESC, Brazil).

This issue's forth article comes from Professor **Caroline Stéphanie Francis dos Santos Maciel** (D.Sc. Candidate and M.Sc., Law, Graduate Program in Law of the *Universidade Federal de Minas Gerais* [UFMG], Brazil, and CAPES scholarship holder). Challenging the problematic situation concerning the prominence of the Executive Power in the Brazilian legislative process, the author analyzes the legislative powers constitutionally granted to the President of the Republic, bringing forward detailed statistical data with emphasis to basic education in order to test whether such prominence could be verified. Finally,

the author examines the actual usage of these legislative powers and their effect on the internal organization of the legislative work at the National Congress.

The fifth article presented on this fifteenth issue was prepared by Professor **María Candelária Domínguez Guillén** (D.Sc., Law, *Universidad Central de Venezuela*, Venezuela) and Professor at the *Instituto de Investigación de Ciencias Jurídicas* of the *Universidad Central de Venezuela*, Venezuela) and translated into Portuguese by Ms. **Tatiana dos Santos Ribeiro Strauch**, attorney in Brazil. The author discusses the “constitutionalization” of the Civil Law in Venezuela while distinguishing two categories of the said institute: the constitutionalization in the “narrow sense”, which implies the incorporation of Civil Law institutes to the constitutional text and its opposite, the “Constitution in wide or interpretative sense”, which implies the interpretation of the Civil Law rules and institutions in line with the Constitution, considering its status as supreme norm, therefore an interpretative one. The first one depends on the will of the Constituent; the latter is shown to be more relevant as it is necessary to the interpretation process. The author finishes the article by making references to relevant opinions and rulings of the Constitutional Court of the Venezuelan Supreme Court of Justice (*Sala Constitucional del Tribunal Supremo de Justicia de Venezuela*) and by demonstrating some outcomes and criticisms to the institute.

Our sixth article was written by Professor **Javier Couso Salas** (Ph.D., University of California, Berkley, USA), Law School Professor at *Universidad Diego Portales* - Santiago, Chile, and Coordinator of the Chair on Global Trends in Constitutionalism at Utrecht University, Holland. In his article, Professor Couso analyzes the relationship between the Chilean Constitutional Law and the neoliberalism introduced in Chile through directives set by the government of former dictator Augusto Pinochet. In order to do so, the author examines the political choices that ultimately led Chile to the 1973-1990 dictatorship period, as well as their legal and economic implications. Bringing into context the moment of strong polarization and the breaking with democratic institutions, the author also discusses the introduction of neoliberalism in the constitutional framework through the prominence of the *Chicago Boys* and their doctrine, then validated by the Military Junta. This fact demystifies the alleged spontaneity ascribed to the neoliberal thought, as well as demonstrates its intimate relation to authoritarianism and technocracy. Finally, the author also analyzes the most current impacts of the neoliberal Constitution after the dictatorial regime was superseded. The text was translated into Portuguese by Roberta de Stéfani Vianna (Master Degree Candidate at PPGDC/UFF, Brazil) and revised by Victoria Lourenço de Carvalho e Gonçalves (Master Degree Candidate

at PPGDC/UFF, Brazil) and Professor Enzo Bello (D.Sc. Law, UERJ, professor at PPGDC/UFF, Brazil, and Chief Editor of RCJ).

The seventh article is the outcome of a collective research by Professor **Carlos Frederico Marés de Souza Filho** (D.Sc., Law, UFPR, Brazil, Full Professor at PUC-PR, Brazil) and by **Anne Geraldi Pimentel** (D. Sc. Candidate at the Graduate Program in Law at PUC-PR, Brazil). The text discusses the Agrarian Issue and the Cuban Constitution. The article aims to verify a few key points which demonstrate the continuing socialist ideals natural to the Cuban State since the 1959 Revolution up to the recent Cuban Constitutional Reforms in 2019, while analyzing the continuities and discontinuities of the State formation process in view of the aforementioned socialist ideals. One among the continuities is revealed by the treatment given to the subject of the Land Reform (Agrarian Reform). The Land Reform was one of the first measures taken by the post-1959 government and is one of the pillars upon which the Cuban State was formed. This fact brings the reader back to the constitutional institutes of land use and land property, a matter that was rewritten in the new Cuban Constitution.

Our eighth article is the result of an analytical effort of Professor **Wanda Capeller** (Ph.D., Law, *Université de Picardie*, Amiens, France, Professor Emeritus at *Sciences Po Toulouse* do *Institut d'études politiques de Toulouse*, France). Throughout her article, Professor Capeller states that there have been several inflexions on the Rule of Law during the 21st Century, such inflexions being the political, social and cultural mutations. In order to better observe these transformations, the author proposes a semantic approach to the relations between legal speech and power, avoiding the crystallization of this paradigm so as to observe it from the critical and multidimensional standpoint. Stating that the deconstruction of the discourse on the State and rights allows one to apprehend the meanings of the legal speech in the era of neoliberal capitalism, the author seeks to understand the complexities inherent to those relations, from whose solidarity sprout new legal rationales and new normative meanings.

Our ninth article was a contribution by Professor **Marco Aurelio Lagreca Casamasso** (D.Sc., Law, PUC-SP, Brazil), Professor (and present Coordinator) of the Graduate Program on Constitutional Law at UFF. In contrast to traditional legal approaches, the author focuses on the ambiguities, tensions and conflicts that occur between, on the one hand, demands for the guarantee and extension of citizenship rights and, on the other hand, the Constitution. Considering its relevance in the scenario of modern constitutionalism, the author has chosen to limit the object of the investigation to the USA constitutional experience, initially proposing a critique of the legal perspective of citizenship, highlighting its limitations in the face of social claims and disputes for the expansion of fundamental rights. Then the possible

antagonism between the Constitution and citizenship is highlighted. The final stage involves the presentation of aspects of the U.S. Constitution which are refractory to citizenship, and an example of unjust decisions by the U.S. Supreme Court, to the detriment of citizens. Despite its relevance, there is little academic production dedicated to the problematic of the antagonism between the Constitution and citizenship.

The tenth article was written by Professor **Carolina Alves Vestena** (D.Sc., Law, UERJ, Brazil), professor at Kassel University and researcher at the *Institut für Entwicklung und Frieden* of the Duisburg-Essen University (both in Germany), and discusses the *Bolsa Família* Programme (“Family Allowance Support”). Based on the continued discussion over said public policy, the author states its relevance, topicality and responsiveness to different political party and government models should be systematically evaluated, which is the purpose of the article. Besides investigating the institutionalization process the Programme went through during the presidential terms when the Worker’s Party (PT) held the presidential chair, the article offers several insights to enable the reader to understand the Programme’s continuity through time in spite of the changes of political orientation at the Federal Government. From a historic-materialist political analysis the author argues that the Programme is a hegemonic policy inside the Brazilian Social Care system that reinforces a welfare paradigm based on granting access to basic services through the market and not as universal social rights. The hegemonic character of the Programme is attributed to strategies for having it unified and centralized that were agreed upon by federal entities and that were created by the agenda which led to its implementation. The article is hereby published in English and Portuguese versions, both originals prepared by the author herself.

The next two articles analyze the Latin-American theme of *Buen Vivir*.

The eleventh article was the result of a collaborative approach by Professors **José Luiz Quadros de Magalhães** (D.Sc., Law, UFMG, Brazil, professor at the Graduate Program in Law of PUC-Minas, Brazil) and **Sofia Miranda Rabelo** (D.Sc., Law, PUC-Minas, Brazil) and by **Silvia Gabriel Teixeira** (D.Sc. Candidate at *Universidade de Coimbra*, Portugal). The article aims to address the ethics behind the *Buen Vivir* as a resistance project and as an alternative to the hegemonic comprehension of *development* that has been disseminated and executed by large international organizations and corporations. And from this new Andean Constitutional Principle the authors affirm the importance to rethink the role played by National States and international organizations on the local development matters through the lenses of a decolonial approach.

The twelfth article is also the outcome of a collaborative approach, this time by Professors **Maria Aparecida Lucca Caovilla** (D.Sc., Law, UFSC, Brazil; professor at the Graduate Program on Law at the *Universidade Comunitária da Região de Chapecó – Unochapecó*, Brazil) and **Silvana Winckler** (D.Sc., Law, *Universidad de Barcelona*, Spain; professor at both the Graduate Programs in Law and in Environmental Sciences at Unochapecó, Brazil). The authors emphasize the uplift that has been given to the interculturality, to the mystical knowledge and to the pluralistic legal expressions of the Southern Peoples and that were long silenced from the constitutional processes of Ecuador (2008) and Bolivia (2009). In sequence, the authors analyze whether the constitutional proposals of the *Buen Vivir* could be regarded as an alternative development model capable of making feasible a collective construction of life that opposes itself to the conventional theories on development. And then critically browse the development models adopted in the world, which has been understood as being merely economic growth and that have been subjecting poor and developing countries to adopt them. The authors articulate well-known concepts on the fields of Economy, Social Sciences, Ecology and Law with the historical process that started the crisis on the environmental, economic, political social and cultural spheres.

The thirteenth and last article that closes this issue was written by Professor **Andreas Fischer-Lescano** (Ph.D., Law, *Johann Wolfgang Goethe-Universität Frankfurt am Main*, Germany, Professor at Bremen University and Executive Director of the *Zentrum für Europäische Rechtspolitik – ZERP*, Germany). The article was translated to Portuguese from the original German version by Professor **Ramón de Vasconcelos Negócio** (D.Sc. in Theory of Law – *Rechtswissenschaft, Goethe-Universität, Frankfurt am Main*, Germany, professor at *Centro Universitário 7 de Setembro - UNI7*, Ceará, Brazil). The author will demonstrate the limits on adopting the proportionality approach to solve cases involving *Whistleblowers*, since it is now common sense that whistleblowing can be an effective way to bring unlawful actions and social grievances to public attention. This has spurred numerous international efforts, from corporate compliance governance codes to endeavors in the political realm, to create transnational safeguards to protect Whistleblowers against repression and enable protest against unlawful practices. This article seeks to demonstrate the limits of proportionality for the resolution of cases involving Whistleblowers.

The present issue is published with the reassurance that the selection of articles included herein both keep and raise the high standard of excellence that RCJ continuously aim to uphold with regards to the academic legal research. Once more we pay homage to the authors who have gracefully submitted their work for our consideration, and we remind our

“open doors” policy to all who may be interested in publishing their articles in this journal, as long as those articles aim to strengthen dialog among the several legal cultures.

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