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Editorial

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We've closed another year! And what a year! 2017 was a landmark for the editorial processes of Law and Praxis as many of our readers could experience. In this editorial, a little longer than usual, we would like to bring together the novelties of such an important period to the improvement of D&P's editorial policies.

Two changes were especially important this year. The first was the inclusion of Law and Praxis in the SciELO Brazil collection, formalized with the release of the first two issues of 2017 in the website. Since then, our authors can count on the wide dissemination of their works in the most different virtual search networks, besides, of course, the recognition as to the accuracy and quality of the indexed journals in the collection. In the SciELO webpage of the publication, all editions of 2017 can be found: LINK.

Another important editorial turnaround was the implementation of the Ahead of Print publication system. As anounced in the last issue, this practice of immediate publication of articles after they're accepted allows the release of works with more agility and gives the authors more control over the time flow of their publications. During the months of October and November, all articles in press were diagrammed and published in AOP and, gradually, will be allocated in the next editions. To check on the published articles, just follow the LINK.

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Revista Direito e Práxis, Antonio C. Wolkmer, Efendy Emiliano Maldonado Bravo, Lucas Machado Fagundes
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As a consequence of the two editorial changes mentioned, and also of the continuous work of our editorial team, we emphasize that 2017 represented a record in the number of submissions directed to Law and Praxis. Even before the end of the year, now at the beginning of December, we have a balance of more than 350 articles received from Brazilian and international authors. This large volume of submissions motivated us to adopt the AOP publication process (in order to reduce waiting time between acceptance and publication), but also to reinforce the need for evaluation practices, constructive and supportive as always, but increasingly rigorous. As a form of accountability to our authors and readers, we inform that we have taken the following steps to improve our editorial processes: we have changed small details in the evaluation form, in order to clarify certain evaluation criteria; we expanded and internationalized our body of evaluators (approximately 130, being more than 25% international); and internally established a more restricted limit on the number of evaluation requests for each evaluator per year, in order to guarantee a more detailed analysis of the works.

Some issues of Law and Praxis for the year 2017: the journal closes the year with more than 350 submissions received - articles, reviews and translations - of which approximately 90 articles published in this year's editions, as well as 10 reviews and 6 translations. Our average rejection remains stable, with a slight increase this year, from 70% to approximately 75%. On a general note, we find that most rejections occur because of what we call “inadequate submission” or “out of scope”. This means that these articles or (1) do not respect the formal rules of submission regarding the reference template, extension of the paper, the submission of mandatory items, or (2) do not reflect the current level of debate on the topic they write about, or yet (3) they have an exploratory, preliminary, essayistic, research character, which would lack further study.

Due to the large number of submissions we receive weekly, sometimes we can not give a return as detailed as we would like to authors who have their articles rejected by our journal. This does not mean, however, that we

are not always available to answer questions and clarify our editorial decisions. For this, our email channel is always available.

About the content, we highlight the critical and innovative profile of the articles published this year. Several current issues with social impact were addressed through academic research and presented as an alternative discourse to mainstream concepts and debates. In addition, we published three dossiers in 2017: “Mobilization of Rights” (March), “The Future of the Inter-American Human Rights System” (June) and “100 Years of the Russian Revolution” (September). The latter was released at an event organized at UERJ on October 24 and 25, in partnership with IPDMS. This edition presents a dossier on “Critical Constitutionalism and Latin American and Caribbean Decolonization”, organized by professors Antonio Carlos Wolkmer, Efendy Emiliano Maldonado Bravo and Lucas Machado Fagundes, of the Federal University of Santa Catarina, (UFSC), University of Extremo Sul Caterinense (UNESC) and University La Salle (UniLaSalle - RS).

In this issue - **vol. 8, n. 4, 2017, December edition**, we bring over twelve new unpublished articles related to core issues in the field of critical research in law, as well as translations and reviews. The articles deal with issues such as indigenous peoples, public security, legal pluralism, labor law, agrarian issues and international law theory. In addition, one of the reviews addresses the book by Professor Jessé de Souza, “A Tolice da inteligência brasileira”. The dossier also brings researchers from Brazil, as well as from different Latin American countries, such as Chile, Ecuador, Bolivia, Mexico, Venezuela, Colombia, Cuba and Puerto Rico. It reflects the effort of a network of researchers who focuses on the theme of critical Latin American constitutionalism and the processes of decolonization over a long period. Finally, the edition also brings a translation from Spanish to Portuguese of the article “La filosofía de la Liberación ante los estudios poscoloniales y subalternos y la Postmodernidad” of professor Enrique Dussel. The presentation of the dossier, written by the invited editors, follows below.

We are very happy to close the year with yet one more number and to reinforce precisely the importance of this theme, key to the autonomous development of legal thinking in Latin American law colleges.

We remind you that the editorial policies for the different sections of the Journal can be accessed on our page and that the submissions are permanent and always welcome! We thank, as always, the authors, evaluators and collaborators for the trust deposited in our publication. And, of course, we wish a great 2018 for all!

Good reading! **Law and Praxis** Team

Critical Constitutionalism and Latin American and Caribbean Decolonization

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This issue of the *Law & Praxis* journal, in collaboration with the Center of Emancipatory Studies and Practices (NEPE-UFSC) and the Critical Legal Thought in Latin America research group (UNESC), aims to insert within the Brazilian legal debate the reflections and researches produced in the last few years on Latin American Constitutionalism, approaching subjects as Human Rights, Constitutional Processes, Legal Pluralism, Interculturality, Multinationality, Nature Rights and Decolonization in Latin America and the Caribbean.

This effort is justified in the sense that a significant part of the Brazilian legal academy is either not familiar with the affluence of the legal thought in our region or simply ignores it, using theoretical benchmarks produced in the "Global North" in its investigations, without even trying to make connections that allow a intercultural dialogue between these theoretical arrays and perfect analysis of our social reality and institutions.

In a moment of deep crisis in institutions and dominant paradigms, specially of the model adopted by the so-called "neoconstitutionalism", uncritically imitated by legal experts in our country, who believed and promoted the idea that judicialization of politics/politicization of justice could serve as a means of "conciliation" between classes (or different social segments) and, also, that it would be possible to ensure a series of rights through the Judiciary Branch – which were conquered by the struggle of the country's subordinate sectors in the 1988 constitution – within the capitalist model, we understand it is paramount to open new horizons for the constitutional debate in our country.

In that way, during the last few years, we have brought together and promoted a series of reflections on the importance of returning to the legacy of Latin American critical thought on the recent legal-political experiences of the region. These experiences, likewise, are under strong attack by the imperialist and transnational capital interests, which traditionally shape and limit (ideologically) the legal-political debate(s) in *terrae brasilis,* hindering access and diffusion of vast literature and access to the affluent new

jurisdicities construction processes, which are being promoted/adopted in various Latin American countries.

This is a a sort of “concealment” that reflects directly on the forms by which legal experts and operators of the brazillian (in)justice system comprehend, deal and take part on the main conflicts experienced by the original peoples, afro-brazillian, riverside and traditional peoples and communities, landless, homeless and a good portion of popular movements. As long as these “external models” are not overcome and we do not recognize the countries in the region are historically marked by coloniality – which reflects on the three structural incisions in our social-political formation, that is, oppression of class, race and gender -, there will be no possibility of overcoming of landmarks imposed by the hegemonic centers opf capitalist reproduction, and our countries will keep on being mere territorial spaces of exploitation of people and nature.

In an effort to make these debates accessible and promote new possibilities for thinking constitutionalism and rights, this dossier will attempt to combine collective and individual productions of various researchers from the countries in the region (Argentina, Bolivia, Chile, Cuba, Equador, Colombia, Venezuela, Porto Rico and Mexico) and from brazillian research groups that have been crutial for the development of critical legal research committed to the social transformation of *Nuestra* America.

In that sense, we aim to make the results of researches carried out in the last few years on the theme of Latin American constitutionalism available,

approaching the debate on our constitution-making experiences and the construction of a peculiar constitutionalism, as well as to bring this debate closer to reflections made by the humanities and social sciences about the need to decolonialize the cientific thought, the forms of organizing the State, the debate on rights, for they derive from modernity, coloniality and capitalism.

In order to start the dossier, in their article, the three organizers present the results obtained by their research on constitutionalism, pointing out the need to return to a **"Critical Historicity of Latin American and Caribbean Constitutionalism".** With that goal, the study is bound by the social-political relationship between liberation struggles in their intersection with constitutional power and human rights, both based on popular sovereignty. Thus, whithin the scope of supplying theoretical reflection with concreteness, they propose the retrieval of the legacy of two constitucional experiences (Haiti and Uruguai) with the objective of (re)acknowledging the importance of these processes for the rupture with the oligarquical colonial model and for redefining the founding marks of the bicentennial Latin American constitutionalism.

The second paper; **"The Constitutionalism found on the street - a proposal of decolonization of the Law",** written by professors José Geraldo de Sousa Júnior and Lívia Gimenes, portrays the perspective elaborated, in the University of Brasília, by the group "Law Found on the Street" on the region's constitutionalism. From this teorethical viewpoint, paramount to the Brazilian

critical legal thought, the possibilities and challenges in the construction of a constitutionalism regarding transformation in the modern State organizational model so as to decolonialize and depatriarchilize it present themselves, opening up for the recognition of its emancipatory legal mobilizations. Additionally, the paper incorporates the gender debate to its critical perspective of law, relating it to the decolonial epistemological array.

The third paper, **"Quilombos in Brazil and socio-environmental rights in Latin America",** written by Carlos Frederico Marés de Souza Filho (PUC-PR) and Fernando Prioste (Terra de Direitos), approaches the important debate on socio-environmental rights, starting from the experience of the authors' popular advocacy and activism in conflicts faced by original and afro-brazillian peoples. In it, they demonstrate Latin American countries have very similar social and historical formations, independent from their colonizing metropolis. The exploitation/expropriation of peoples and nature is the defining trait of this colonization. In that sense, in addition to the indigenous peoples, afro-descendants, while creating mechanisms of resistence to slavery, constituted themselves as a "people" and formed "quilombos". Throughout the twentieth century, these resistant peoples strengthened their agendas, creating a certain unity and promoting significant change in regional and international legal structures.

Opening the international papers section of the dossier, Alberto Acosta (Flacso-Equador) and Esperanza Martínez (Acción Ecológica), researchers of ecological causes, who participated actively of the equatorian constitutional

process and the significant advances of that Constitution, offer us the article **"The Rights of Nature as a gateway to another possible world",** in which they attempt to demonstrate the importance of this new perspective to the legal field through the superation of the separation subject/object, tipically modern, through the recognition of Nature as a subject of rights. They approach, in addition, the important reflection about the intrinsic duality of Law, which can be either an instrument of domination or emancipation. Finally, they present an important assessment of the obstacles and challenges in the implementation of this new perspective in Equador.

Continuing the work on the equatorian experience, the fifth paper **"Sumak Kawsay, Yasuní and Indigenous Peoples in Voluntary Isolation: An Alternative to capitalist development?"** by Ramiro Avila Santamaría, researcher in the Andean University Simón Bolívar (UASB-Equador), starts from the premise that, intrinsically, capitalism generates inequity, violence, extractivism, destruction and death. In this scenario, it becomes urgent to look for alternatives to this economic model. One of these possible alternatives, according to the author, is the *Sumak Kawsay,* a system of life that recollects indigenous experience and knowledge together with the emancipatory knowledge of the West. In this course, from the case study of the conflict(s) in Yasuní National Park, he points out the contradictions in capitalism and the potential of *Sumak Kawsay* practiced by the peoples in isolation in one of the most biodiverse regions of our planet.

The sixth paper, **"Dimensions of the Plurinational"**, written by Bolivian professor Frit Rojas Tudela, coordinator of the Social Investigations Center (CIS) from the Bolivian State's vice-presidency, aims to present and develop three possible interpretations of the Plurinational. The first would be what has been called *plurinational parallax.* In that aspect, it is relevant to identify the *locus* of enunciation of the discourse on the Plurinational. The second possible interpretation portrays the idea of producing a *common plurinational,* developed from the idea of "community without community". Finally, the third possibility would be the one elaborated by certain jurisprudences on the plurinational theme and reflect the parallax tension and the possibilities of creating the "plurinational common".

The seventh paper, **"Decolonization of constitutional judicial practices in Bolivia-Colombia",** by professor Rosembert Ariza Santamaría (UNAL-CO), carries the results of a comparative research between the two Andean countries before the decolonial conditions and possibilities in legal practices of Colombian Constitutional Court and the Decolonization Unit in the Plurinational Court of Bolivia. In that sense, the author approaches the instrument of "*Resguardo",* of colonial origin in Colombia, and the "*Ayllus*", of ancestral origin in Bolivia, and reviews some legal cases taken to the Decolonization Unit, comparing the experience of multicultural practices adopted by the Counstitutional Court of Colombia in the last few decades.

The eight paper, **"Legal Pluralism in Mexican constitucionalism before the new Latin American constitucionalism"***,* by the Human Rights Master's

course coordinator in the Autonomous University of San Luís Potosí (UASLP), Alejandro Rosillo Martínez, reviews the impact generated by the legal pluralism practiced by indigenous peoples on Mexican constitutionalism and evaluates the possibility of considering it as part of the so-called new Latin American constitutionalism. His research identifies legal pluralism as an expression of the modern State's crisis and comprehends this phenomenon, specially the legal pluralism promoted by indigenous peoples, as part of a liberating project being constructed in various countries of the region. The author presents a descriptive panorama of how a number of different constitutions have recognized this demand made by the original peoples and approaches, especially, the conflictuous relation of this paradigm with Mexican constitutionalism starting from the claims of indigenous peoples contained in the San Andrés Agreements.

The ninth paper, **"Constituent Power, Crisis of Oligarchic State: Chile, 1910-1925",** by political scientist Juan Carlos Leyton (UPLA-Chile), works from a historical and political perspective of the constituent power in Chile. During the crisis of the oligarchic State (1910-1925), a constituent power develops and elaborates the 1925 constitution. However, according to the author, this constitution was an authoritarian imposition of the constituted powers disguised as constituent power. This process prevented the democratic, pluralist and participative genesis of Chilean society in the building of a new political order through a legitimate National Constituent Assembly, as various social and political sectors demanded. That is, by the limiting of socio-political

participation, popular constituent power was excluded from this process, which recurrently happens in our region.

The tenth paper, **"Towards a non-colonial human rights theory",** by Venezuelan professor Manuel Gándara (UPO), aims to contribute from the legacy of critical legal thought to the effective construction of a legal pluralism marked/guided by the diversity that constitutes our peoples. That way, the text criticizes the liberal perspective, exemplified in the paradigm defended by the universalism of human rights and, consequently, attempts to identify possible horizons for the dialog in search of valid normative references beyond specific comunitary contexts.

The eleventh paper, **"Venezuelan constituent assemblies of 1999 and 2017: Contexts and participation",** is the collective construction of Venezuelan researchers Antonio J. González Plessmann, Ana Graciela Barrios and Martha Lía Grajales Pineda. In their work, they describe and comparatively analyze the two last Venezuelan constituent processes, of 1999 and 2017, from their historical contextualization and the mechanisms of popular participation in its activation, convocation and deliberation. The comparison allows for the elaboration of a few challenges to the Bolivarian political process.

The twelfth contribution, entitled **"Constitutional Critical Analysis of Socio-Juridical Changes in Current Cuba",** by the mexican-rooted Cuban author Mylai Burgo Matamoros (UNAM), makes a legal-political analysis of the Cuban Constitution, especially after the changes initiated in 2006. This last decade is a turning point in the political and economical action of the Cuban

State and has incidences on the legal framework adopted in the island. The work analyses these changes critically from a socialist, democratic and participative conception, guided by the satisfaction of various necessities of the diverse sectors in Cuban population, in contrast with centralizing, purely economic and utilitarian perspectives, which fetishisize the legal-political system structural and functionally through instrumentalization processes. Aditionally, the author reflects on how these changes affect the Cuban constitution, by action or omission, analysing the necessary constitutional reforms and openning for the possibility of a constituent process in the island.

Finally, the legal expert Carlos Rivera Lugo (Puerto Rico), in his paper **"The Constitution of the common"**, demonstrates that crisis are moments in which unsuspected transformations intertwine and when the perception that the much longed-for change is possible reveals itself. Before the classic liberal constitutionalism emerges a new constitutionalism of the Common, presenting itself as an articulation of new forms in political sociability, a new meaning in life, based on the common, as the only possibility of factually creating a new civilizatory post-capitalist order.

In the translations section Lucas Machado and Emiliano Maldonado, coeditors of this dossier, translate the paper *"La filosofía de la liberación ante los estudios poscoloniales y subalternos y la postmodernidad",* by argentinian-mexican philosopher Enrique Dussel, originally published in the book "***Filosofías del Sur.*** *Descolonización y Transmodernidad.* Ediciones Akal: México, 2015". This translation's proposition reflects the need of granting

access of the Portuguese-speaking public to the important reflection of one of the icons of critical latin-american thinking on the possible convergences and divergences between the perspective of the Philosophy of Liberation and the subordinate and post-colonial studies along with Post-Modernity.

Commonly and mistankenly used as sinonyms, the author points out to the need of acknowleding the circumstances and peculiarities of each of these currents, as well as proposing the need of solidifying common strategies for the superation of the current model of capitalist exploitation, from a transmodern perspective and based on the concrete political demands of subordinate groups.

The last session, 'Review', was written by aymara-bolivian Magali Vienca Copa Pabón and brings the seminal work of Fausto Reinaga to the knowledge of the brazillian public. With the text ***"Fausto Reinaga: Pensamento e libertação índia Aymara-Quechua nos Andes",*** the section's author presents the perspective of the indianism constructed at *Qullasuyu* and *Abwa Yala*, by one of its precursors in Latin America. To whom, relations of oppression were, at the same time, the place/relation that would make indigenous liberation possible. In a period when Bolivia stands out by the broad recognition of indigenous peoples' rights, debates and reflections of this author gain relevance, but demand a creative reading for the construction of contemporary indianism.

In sum, this dossier in Law & Praxis journal, dedicated to Latin American Constitutionalism, hereby presented to its readers, is a result of the

effort from researchers, professors and social scientists in Latin America and the Caribbean who accepted to contribute, examine and impulse the discussion on themes of great importance and currentness in the political-legal field, in the presence of the tradition of struggles and resistance within Latin American thought. These are reflections of theoretical-critical nature that offer resources for the opening of alternative spaces towards rethinking and reinventing the knowledge processes and the political legal practices, making them more democratic, pluralistic and liberating. Finally, we thank one more time the whole Direito & Práxis team for the trust and, above all, the commitment to the dissemination and construction of publications for the promotion of critical reflection.

Expediente desta edição