



**Qualis A1 - Direito CAPES**

## **Presentation**

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2021 continues its course, replete with social, political and economic challenges since the beginning of the Covid virus pandemic. While a vaccination campaign is advancing slowly, as disputes on the political and legal levels are continually advancing and daily renewing the need for critical readings engaged to understand the moment we are experiencing, as well as to formulate alternatives to the present conflicts. With this in spirit, we present the new issue of Revista Direito & Praxis (Vol. 12, N. 2, 2021 – April-June), with fourteen unpublished articles, a dossier, as well as translations and reviews.

In the general section, the fourteen unpublished articles bring analyzes of the pandemic crisis from approaches in the fields of constitutional law and social theory, in addition to work in the fields of transitional justice, labor law, post-colonial studies, critical theory of hegemony, as well as analyzes of the field of critical criminology. Our translation section presents four unpublished works, originally written in Portuguese, the first three components of the dossier in this edition and the fourth, a work by Professor Kevin Anderson, with the title “Class, Gender, Race and Colonialism: The Intersectionality of Marx”. The review section also brings two relevant work discussions on the field of critical studies, the first is part of the dossier and promotes a debate with Professor David Trubek, representative of Critical Legal Studies (CLS). The second addresses the issue of research in law from the perspective of indigenous peoples.

No less important, this edition’s dossier makes a fundamental contribution to revitalizing the debate on the North American tradition of Critical Legal Studies, a current of critical socio-legal thought, which had its peak after the 1970s, but which still



marks critical research in the field of law in Brazil today. The dossier was organized by Professors Julia Ávila Franzoni, André Coelho and Philippe Almeida from the Universidade Federal do Rio de Janeiro (UFRJ). This section contains, in addition to eight unpublished articles that are presented by the editors themselves in the text accompanying this editorial, the three translations previously mentioned, by authors such as Derrick Bell Jr., Duncan Kennedy and Angela P. Harris. This effort is part of a research and extension project developed at UFRJ, which aims, based on translations of pioneering works by these authors, to spread the thought and ideas originating from this tradition to female and male researchers in portuguese language. The review in dialogue with Professor Trubek also accompanies this collective effort to promote the debate on CLS based on the dossier.

We appreciate the rigorous work of the invited editors, as well as the translators who contributed to this edition! We remind you that the editorial policies for different sections of the magazine can be accessed on our page and that the submissions are permanent and always welcome! We thank, as always, the authors, reviewers and collaborators for the trust placed in our publication.

Have a nice reading!

**Direito e Praxis** team.



## Critical Legal Studies

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### 1. Introduction to the Context and Purpose of the Dossier <sup>1</sup>

There is no wrong time for Critical Legal Studies. Every time, in any context, it is always right, because the wheel that unites law, power and privilege never stops turning. Rules are created every day that combine the promotion of dominant interests with the allegedly neutral and universal point of view and language. Every day, judicial decisions are made that invoke deductive force and pure technicality to the selection and application, among all possible ways of using Law, of the one way that most reproduces the *status quo* and reinforces inequality. Every day young law students are converted, with more or less knowledge and consent, into subjects trained in the hierarchical habitus of the legal academy and convinced of the liberal, capitalist and colonial myths - transmitted to them as scientific knowledge. Every day biomes and ethnicities disappear under the conniving eye of law. And, above all, every day, with the sanction of Law, black bodies are exploited and slaughtered, female bodies are harassed and raped, homosexual or transsexual bodies are prostituted and eliminated, and so many

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<sup>1</sup> This dossier is part of the actions of the FND-UFRJ Critical Legal Studies (EJC) research project, an initiative that entangles the groups State Control, Racism and Coloniality (CERCO), Labá - Law, Space & Politics and Pure Law Theory (PTD), coordinated, respectively, by Professors Philippe Almeida, Julia Ávila Franzoni and André Coelho, co-editors of this issue. The publication of these materials would not have been possible without the efforts of researchers, professors and students who are part of the EJC, a project that aims to popularize and make accessible materials related to critical theory and law for Brazilian public, translating classic texts linked to the CLS and the different generations of the movement, as well as promoting new productions in the legal field engaged with the critical *repertoire*. We are very grateful to the researcher Jennifer Moraes for her dedication and partnership in the organization of this dossier with cited teachers.



anonymous bodies that intersect these identities are victims of oppression equally crossed on the colonized periphery. For this reason, any voice that screams to make itself heard against the current and undo the false consensus of the hegemony of traditional law is always welcome, no matter at what time it arises.

There are contexts, however, where the task of criticizing and transforming the Law becomes more urgent than ever. This is the case of the economic, social and political crisis into which the new stages of Neoliberalism have launched all countries, especially those in the periphery – a crisis recently turned explicit and intensified by the health apartheid<sup>2</sup> and the generalized precarization of life in the Covid-19 pandemic.

With the increasing expansion of globalized financial capitalism and the cyclical expansion of the growth frontiers open to appropriation by dispossession<sup>3</sup>, Law is increasingly called upon to play the role of establishing and regulating the extension of competitive logic to all fields of social life<sup>4</sup> and implementing the conversion of public spaces and institutions into efficient agencies guided by goals and typical processes of business rationality<sup>5</sup>. It is through reforms and decisions of Law that labor becomes more precarious (flexibilization, outsourcing, uberization, etc.), that a growing private securitization of life in general and social care in particular takes place and that more and more controlling and perverse forms of biopolitical governmentality are exercised<sup>6</sup>, which in the periphery becomes predominantly necropolitical<sup>7</sup>.

It is not surprising that the new subject, neo-subject, formed this way is much more vulnerable not only to the standard ethical discourse of neoliberalism in the form of self-entrepreneurship, but also to the polarization and political intoxication of the manipulative forms of the post-truth and reactionary and denialist circles, which know how to mobilize the feelings of resentment and insecurity in the form of directed and perpetually self-nurtured paranoia and hatred according to not so hidden agendas<sup>8</sup>. This is also why the constitutive marriage between capitalist exploitation and multiple forms

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<sup>2</sup> PINHEIRO MACHADO, Rosana. Coronavírus não é democrático: pobres, precarizados e mulheres vão sofrer mais. In: The Intercept Brasil. Disponível em <<https://theintercept.com/2020/03/17/coronavirus-pandemia-opressao-social/>>. Acessado em 17 mai 2021.

<sup>3</sup> HARVEY, David. *O neoliberalismo: história e implicações*. São Paulo, Edições Loyola, 2008.

<sup>4</sup> DARDOT, Pierre; LAVAL, Christian. *A nova razão do mundo: ensaio sobre a sociedade neoliberal*. São Paulo: Boitempo, 2016.

<sup>5</sup> *Ibid.*

<sup>6</sup> FOUCAULT, Michel. *O nascimento da biopolítica*. São Paulo: Martins Fontes, 2008.

<sup>7</sup> MBEMBE, Achille. *Necropolítica*. 3. ed., São Paulo: n-1 edições, 2018.

<sup>8</sup> BROWN, Wendy. *Nas ruínas do neoliberalismo: a ascensão da política antidemocrática no ocidente*. São Paulo: Editora Política, 2019.



of identity oppression<sup>9</sup>, which has defined the dynamics of capitalism since its inception, returns in the context of deepening neoliberalism in the form of association, both strategic and structural, among neoliberal agenda, social and religious conservatism and fascism (euphemistically dubbed right-wing populism)<sup>10</sup>, which reinforces all identity oppressions (gender, race, gender identity, sexual orientation, physical capacity and fitness, etc.) in the name of restoring and sharpening the social distinctions that structure the capitalist reproduction.

The experience of Bolsonarism in Brazil, however nuanced with idiosyncratic and Latin American nuances, echoes, in its own way, experiences that occurred in Russia under Vladimir Putin, in Hungary under Viktor Orbán, in Turkey under Recep Tayyip Erdogan, in India under Narendra Modi, in the Philippines under Rodrigo Duterte and, to a lesser extent, but with greater prominence, in the United States with Donald Trump and in the United Kingdom of the UKIP and Boris Johnson, not to mention countless other extreme right parties that aspire to do the same in other countries. In this way, if neoliberalism has been, in one of its facets, a form of production and management of psychological suffering<sup>11</sup>, at the same time it dedicates, on the other hand, to the explicit corrosion or cynical corruption of all public spaces for participation and transformation, marching towards a post-democratic horizon of political life<sup>12</sup>.

Even the strategies that the left wing and social movements have used in the past (and continue to be used in the present), such as the gaining of gradual tactical spaces by means of the platform of rights and the exploitation of the innovative capacity of the judicial branch, have been captured and mimicked by the neoliberal and conservative right, which makes use of certain classic political freedoms (thought, conscience, religion, speech, association, protest) to create shields and niches of anti-progressive resistance where the freedom to believe and to speak serves of excuse to discriminate and harass groups and dismantle and sabotage social policies<sup>13</sup>. If, through

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<sup>9</sup> FEDERICI, Sílvia. *Calibã e a bruxa: mulheres, corpo e acumulação primitiva*. Rio de Janeiro: Editora Elefante, 2017.

<sup>10</sup> BROWN, Wendy. *Nas ruínas do neoliberalismo: a ascensão da política antidemocrática no ocidente*. São Paulo: Editora Politéia, 2019.

<sup>11</sup> SAFATLE, Vladimir; SILVA JÚNIOR, Nelson da; DUNKER, Christian (orgs.). *Neoliberalismo como gestão do sofrimento psíquico*. Belo Horizonte, Autêntica, 2020.

<sup>12</sup> BROWN, Wendy. *Undoing the Demos: Neoliberalism's Stealth Revolution*. New York: Zone Books, 2015.

<sup>13</sup> *Idem*. *Nas ruínas do neoliberalismo: a ascensão da política antidemocrática no ocidente*. São Paulo: Editora Politéia, 2019.



austerity laws and policies<sup>14</sup>, Neoliberalism hijacks the present and sabotages the future, through these strategic uses of freedom rights it also ensures that some of the worst ghosts of the past return to haunt new generations. All of this within the framework of a true “capitalist realism”<sup>15</sup>, which internalizes the end-of-history thesis and converts tiredness, precariousness and hopelessness into melancholy, inability to even conceive an alternative to capitalism, producing not only resigned normalization, but also the defeatist acceptance of the more unequal, genocidal and ecologically suicidal economic-social system in history.

It is in this scenario that jurists with a critical inclination and emancipatory aspiration are called, again, to reevaluate the history, debates and gains of Critical Legal Studies and to engage creatively with this movement. It is the reason why we consider, as editors of this dossier, that the moment, both country and its legal intellectuals, was so appropriate for us to take stock of how far our predecessors have advanced and the propose the new strategies that the generation of crits needs to face the challenges of the present. This dossier brings together both types of contributions, mixed in different proportions in a diverse, but interrelated, network of themes. We would like, as an introduction, to make our contribution as editors to an account of the past, present and future panorama of Critical Legal Studies.

## 2. Presentation of Critical Legal Studies

“You know my temperature's risin' / And  
the jukebox's blowin' a fuse / My hearts  
beatin' rhythm / And my soul keeps  
singing the blues / Roll over Beethoven /  
And tell Tchaikovsky the news”

**Chuck Berry, “Roll Over Beethoven”  
(1956)**

“But what have I got? / Let me tell ya  
what I've got / That nobody's gonna take  
away / I got my hair on my head / I got  
my brains, I got my ears / I got my eyes, I  
got my nose / I dot my mouth, I got my  
smile / I got my tongue, I got my chin / I  
got my neck, I got my boobies / I got my  
heart, I got my soul / I got my back, I got

<sup>14</sup> BLYTH, Mark. *Austeridade: a história de uma ideia perigosa*. São Paulo: Autonomia Literária, 2017.

<sup>15</sup> FISHER, Mark. *Realismo capitalista: é mais fácil imaginar o fim do mundo que o fim do capitalismo?* São Paulo: Autonomia Literária, 2020.



my sex / I got my arms, I got my hands / I  
 got my fingers, got my legs / I got my  
 feet, I got my toes / I got my liver, got my  
 blood / Got life, I got my life"

**Nina Simone (intérprete), Galt  
 MacDermot, Gerome Ragni e James  
 Rado, Ain't Got No - I Got Life (1968)**

In the 1960s, the West saw the emergence of the so-called New Left. Seeking inspiration from groups such as Socialism and Barbarism (a French post-war movement that included the participation of figures such as Cornelius Castoriadis, Claude Lefort e Marcel Gauchet),<sup>16</sup> the New Left proposed to provide an alternative to capitalism and Stalinism, combining freedom and equality in new ways. Influenced by hippie communities, by counterculture, by student protests (which claimed, for example, the end of the Vietnam War), by the struggles of decolonization in Asia and Africa and by the Civil Rights Movement, the New Left occupied the universities, inflating students and young teachers concerned with demonstrating how supposedly “neutral”, “objective” and “technical” knowledge acted, in fact, to underpin bourgeois society and the market economy. Many of these actors, it is worth remembering, were present in the mobilizations of 1968, which fought, among other flags, for the “imagination in power” – against the instrumental rationality (self-referential and monadic) that would have impregnated the public space.

Although refractory to change, law schools were also marked by the “1968 generation”. Polarized between “liberals” and “conservatives” – friendly and rival forces that, like Cila and Caríbdis, are still fighting for control of speculative capitalism today – Law Schools saw, between the end of the 1960s and the beginning of the 1970s, the emergence of a plethora of critical, neo-Marxist and neo-Hegelian schools, which began to guide the debate about the directions of legal education.<sup>17</sup> Denouncing the jurists' commitment to maintaining the establishment, these schools proposed different ways of researching, teaching and practicing law. Would lawyers, prosecutors and judges be legal operators or artisans, caretakers or architects of the social order? Would it be up

<sup>16</sup> *About the group Socialism and barbarism and the work of Castoriadis*, v. ALMEIDA, Philippe Oliveira de. *Universalismo e relativismo cultural em Castoriadis*. *Revista Estudos Filosóficos*, São João Del-Rei, n<sup>o</sup>. 16, p. 23-38, primeiro semestre de 2016c.

<sup>17</sup> V. WOLKMER, Antonio Carlos. *Introdução ao pensamento jurídico crítico*. São Paulo: Saraiva, 2002. V., também, KALMAN, Laura. *Law school and the sixties: revolt and reverberations*. Chapel Hill: The University of North Carolina Press, 2005.



to them to validate the status quo, explaining the “rationality” underlying the hierarchies that cross our daily lives? Or, on the contrary, would they be charged with the mission of highlighting the contingent, precarious and historically conditioned character of our norms and institutions, inciting the population to produce new models of organization of collective life? In several legal education centers in Europe and the Americas, such issues have started to be aired.<sup>18</sup>

Among the proposals for articulation between the New Left and Law that streaked during this period, the longest-lived, most articulate and influential was, without a doubt, the one represented by the Critical Legal Studies movement. Focusing on prestigious institutions such as Yale and Harvard, Critical Legal Studies began to germinate in the mid-1970s, based on the work of seminal thinkers such as Roberto Mangabeira Unger, Duncan Kennedy e Peter Gabel.<sup>19</sup> Insurgent against legal formalism - which, under a “scientific” veneer, would conceal the jurists' adherence to the (neo) liberal ideology -, the crits (as the CLS members became known in the USA) sought to lay bare their pretensions ideological, economic interests and cultural prejudices that would remain underlying the legal universe.

“Law is politics”: with this adage, the CLS sought to highlight the power struggles that lay under the “production” and “application” of the rules, deconstructing the “impartial” (reifying and alienating) language assumed by hegemonic legal thinking. From creative rereadings by Pachukanis, Bakhtin, Gramsci, EP Thompson, the Frankfurt School and Parisian post-structuralism, the crits made an innovative analytical grid - “dark, modern, pure simulacrum”, “post-everything” (to refer to Caio Fernando Abreu)<sup>20</sup> - to think about issues related to the legal world. With annual seminars, academic journals and strategic spaces in the administration of Ivy League institutions, Critical Legal Studies quickly gained a prominent role in the American public debate. However, its reach beyond the borders of the United States remains severely limited: Brazilian editorial policy, for example, has chosen to prioritize much less “subversive” authors (such as Ronald Dworkin), which ended up creating a “sanitary cord” in around the *crits*.

<sup>18</sup> *Sobre tais questões*, v. MARTIN, Peter W. “Of law and the river”, and of nihilism and academic freedom. *Journal of Legal Education, Ithaca*, v. 35, n<sup>o</sup>. 1, p. 1 a 26, 1985.

<sup>19</sup> Cf. UNGER, Roberto Mangabeira. *The Critical Legal Studies Movement: another time, a greater risk*. London; New York: Verso, 2015.

<sup>20</sup> ABREU, Caio Fernando. *Limite branco*. São Paulo: Siciliano, 1994.





Critical Legal Studies were characterized by unity in diversity: if, in the dispute for academic and extra-academic spaces, they sometimes acted with monolithic cohesion in the development of theoretical approaches to Law, they were always marked by polyphony – a plethora different concepts, working hypotheses and methods. Institutional innovation, trashing and legal storytelling are just a few examples of the research tools designed by CLS over the years. It is not surprising, considering this plurality, that the movement has, repeatedly, placed itself under the yoke of the same critical analysis that it directed to the preceding currents of legal thought. At various points in their trajectory, the CLS problematized their own doctrinal assumptions, which enabled the group to get oxygenated and take unusual paths. During the 1980s, non-white jurists associated with Critical Legal Studies – such as Derrick Bell, Patricia J. Williams and Kimberlé Crenshaw – began to question the role played by heterosexual white upper middle class men in leading the movement.<sup>21</sup> It is possible to discuss the relationship between law and class without paying attention to the way in which other social markers – race, gender, sexual orientation, etc. – focus on structures of oppression? Is it possible to debate the reverberations of capitalism and liberalism about legal formalism while ignoring the way in which sexism, racism and colonialism shape the structure of the global market? Inquiries like these have allowed new CLS branches to unfold (associated with Feminist Legal Theory, Critical Racial Theory, etc.).

Internal and external reasons contributed for the Critical Legal Studies movement to collapse in the course of the 1990s. On the one hand, the *American pax*, the fall of the Berlin wall and the advancement of the policy of easing guarantees produced, within the scope of law schools, a neoliberal backlash, felt, not only in the United States, but also in Brazil. Many professors linked to critical theories of law were silenced and even expelled from universities, and neoformalist projects began to emerge, guaranteeing the survival of mainstream legal dogmatics. On the other hand, the academicism of many crits – “chair revolutionaries”, tied to an autophagic rhetoric of “deconstruction” of the legal discourse – caused the movement, at times, to lose its connections with the concrete struggles waged on the streets, in factories, forums and

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<sup>21</sup> V. BRACAMONTE, Jose. Minority critiques of the Critical Legal Studies movement. *Harvard Civil Rights-Civil Liberties Law Review*, v. 22, n. 2, p. 297 a 299, primavera de 1987. V., também, CRENSHAW, Kimberlé Williams. Twenty Years of Critical Race Theory: Looking Back to Move Forward. *Connecticut Law Review*, v. 43, n. 5, Storrs, p. 1253 a 1349, julho de 2011.



assemblies.<sup>22</sup> Replicating *French Theory* vices, some CLS representatives distanced themselves, more and more, from the horizon of concern of vulnerable groups, thus embodying the same distant and elitist stance that they denounced in previous generations of lawyers. It is undeniable, however, that, in currents such as *QueerCrit* - Critical Racial Theory Queer – and *DisCrit* – Critical Racial Theory of D/efficiency -, the original drive that triggered Critical Legal Studies remains alive and potent, unmasking the games of hidden under the letter of the law and inciting democratic experimentalism, in the search for new paradigms of life-in-common.<sup>23</sup>

### 3. The tradition of Critical Studies in Brazil

“Eu quis cantar minha canção iluminada de sol / Soltei os panos sobre os mastros no ar / Soltei os tigres e os leões nos quintais / Mas as pessoas na sala de jantar / São ocupadas em nascer e em morrer”  
**Os Mutantes, "Panis et Circenses" (1968)**

“Negro acorda é hora de acordar/ Não negue a raça/ Torne toda manhã dia de graça/ Negro não se humilhe nem humilhe a ninguém/Todas as raças já foram escravas também/ E deixa de ser rei só na folia e faça da sua Maria uma rainha todos os dias/ E cante o samba na universidade/ E verás que seu filho será príncipe de verdade/ Aí então jamais tu voltarás ao barracão”  
**Candeia, "Dia de Graça" (1970)**

Critical Legal Studies has a strong tradition in Latin America, although it does not carry the emblem that made the CLS movement famous in the USA. The theoretical formulations that have been built since the beginning of the twentieth century, in this Afro-Latin symbolic-material territory, carry, in their differences, historical commitments to social struggles and to the intellectual trajectories that claim the right as an instrument for the liberation of peoples and at the service of the poorest. The imaginary and legal practice that are designing this legal-critical field are, as a trend, linked to the criticism of colonial violence in its multifaceted expressions and historical

<sup>22</sup> For a Gramscian criticism of CLS, see the work of the Professor Cornel West, “Critical Legal Studies and a Liberal Critic,” *Yale Law Journal* 97 (5) (1988) e “Reassessing the Critical Legal Studies Movement,” *Loyola Law Review* 34 (1988)

<sup>23</sup> V. ALMEIDA, Philippe Oliveira de; ARAÚJO, Luana Adriano. *DisCrit: os limites da interseccionalidade para pensar sobre a pessoa negra com deficiência. Revista Brasileira de Políticas Públicas*, Brasília, v. 10, n. 2, p. 611 a 641, 2020.



transformations in the legal form and in the state-form. Amerfrican legal criticism (borrowing the term enshrined by Lélia Gonzales) is manifested, for these reasons, embedded in the accumulations of historical materialism in a way that is necessarily crossed by other traditions, agencies and forces that mobilize the struggles on the continent: theology and the philosophy of liberation, Amerindian well-being and knowledge of African origin.

Important rescue and consolidation of these debates and critical movements have been made by the field of Insurgent Law, giving historical outlines and organicity to the critical studies of Latin American law and by Aphrodisporic Legal Thought, contributing fundamentally to work on criticism from a conscious perspective of racialization and to make visible the long trajectory, strategically forgotten, of the racial legal theories in the continent. These counter-hegemonic movements in Afro-Latin legal literature are crucial to broaden the reflection and diagnosis about the role of law in social struggles throughout history, to update our legal, theoretical and practical engagement, rooted in our conflicts and in social imaginary and also to bring our traditions closer to and different from other cultures.

Similar to what we have considered about the CLS, the Brazilian Legal Criticism is multiple, and its development has been distinguished by long periods of authoritarian regime in the country, whose violent marks already preceded and are updated in our Rule of Law. Furthermore, at the time of debates within the North American CLS movement, in Brazil, foundational legal works were already underway linking law and race relations, developed by black intellectuals who denounced the role of the legal system in the construction of racial inequalities and hierarchies.<sup>24</sup> Nationally articulated, we also experienced a historic and important movement of Critical Legal Studies, especially in the second half of the Twentieth Century, sparked by the Alternative Law Movement (MDA). Different *repertoires* of criticism and legal practice were developed in the wake of country's re-democratization process and the creation and strengthening of important popular social movements and progressive political parties, with repercussions on proposals for the mobilization of legal discourse and practice in a manner linked to the defense of human rights, the expansion of citizenship, social justice and the deepening of democracy.

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<sup>24</sup> Cf. FERREIRA, G. L. ; QUEIROZ, M. V. L. . A trajetória da Teoria Crítica da Raça: história, conceitos e reflexões para pensar o Brasil. *Teoria Jurídica Contemporânea* , v. 3, p. 201-229, 2018.



The ideological and political horizon of these movements demanded, in general, the alternative use of law through, for example, a positivism and a jusnaturalism of combat, as means to increase the chance of winning the struggles against inequalities and in favor subordinate groups. The movement, moreover, exchanged learning with the field of Popular Legal Advice<sup>25</sup>, responsible for politicizing the use of rights and claiming their popular roots, through the necessary amalgam between the practices of technical litigation, political and organizational influence and the pedagogy of autonomy. Contributing to the consolidation of a contiguous defense gradient of the Brazilian Federal Constitution of 1988, in line with an emancipatory constitutional dogma, the MDA also reverberated for the formation and development of fundamental schools of Brazilian critical legal thought, such as “Law Found on the Street”<sup>26</sup>.

### 5. Proposal for resumption: materialistic, corporal, geographic, decolonial and intersectional

"Com isto, a crítica do céu se converte na crítica da terra, a crítica da religião na crítica do direito, a crítica da teologia na crítica da Política."

**Karl Marx**

“Sem teoria revolucionária, não pode haver movimento revolucionário”

**Lenin**

“Há todo um velho mundo ainda por destruir e todo um novo mundo a construir. Mas nós conseguiremos, jovens amigos, não é verdade?”

**Rosa Luxemburgo**

In critical legal thinking, the resumption of Critical Theories has represented an epistemic and political effort to balance the world of discourse and the mute of matter. Rejecting the anti-materialist character of tendencies that are orthodox, skeptical of the transformative potential of rights, other perspectives have also developed as a

<sup>25</sup> V. GORSDF, Leandro F.. *A advocacia popular - novos sujeitos e novos paradigmas*. In: RENAP. (Org.). Cadernos da RENAP - Advocacia Popular. São Paulo: Maxprint Editora, 2005, v. 6, p. 9-14.

<sup>26</sup> V. SOUZA JUNIOR, J.G. O Direito Achado na Rua: condições sociais e fundamentos teóricos. In: Rev. Direito Práxis, Rio de Janeiro, V.10, N.4, 2019, p. 2776-2817



corrective to the overly discursive and culturalist emphasis of agglutinated studies on the postmodern nickname. The difficulties that the CLS – enmeshed, sometimes, in politically and epistemologically relativistic horizons – faced in building global social justice programs end up, in this way, being overcome. If – as Peter Gabel and Mangabeira Unger have pointed out in recent years – the CLS emphasis on “deconstructing” the legal language has often led to nihilistic orientations, incapable of generating effective engagement, the new shift towards praxis may represent a new opportunity for Critical Legal Studies to rekindle passion, and to foster real alternatives (and not just escapist reflections) to the current order.

By repositioning legal reflection in an environment that is also self-reflective, studies linked to Critical Legal Geography, Queer Theories, Racial Theories, Political Ecology, broaden and deepen the horizon of the critique of rights inherited from historical materialism and modernist studies. Concrete dimensions that have been neglected by discourse-oriented approaches or poorly worked on by skeptical perspectives on the use of rights, such as bodies and their expressions, physical-geographical spaces and their material limits, the precarious condition of human life and its intrinsic relationship with the world physical, the relations between human beings and non-human entities gain prominence in contemporary legal criticism<sup>27</sup>.

Otherwise, the conflicting understanding of the legacy of political-legal liberalism cuts across these contemporary approaches to the critique of rights in a kind of unseemly – heterodox, ambivalent – resumption of the materialist agenda, bringing back the universal in order to confront it (or polemicize the universal, in the expression of Jacques Rancière). The lessons brought by the linguistic turn and post-structuralism in legal theory are reaffirmed, understanding that the law is conflicting and contested in its creation and application, connecting symbolic representation, normative discourse and the ways of exercising power to the bodies, territories and social relations. Furthermore, anthropology and legal sociology, feminist and queer theories, post-colonial studies, ethnic-racial theories, and critical legal theory, in general, renew critical perspectives in law, problematizing sexual and racial marks and gender in bodies, places and territories and the correlations between law, politics and private appropriation - the critique of political economy and the critique of legal form are colorful.

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<sup>27</sup> Cf. FRANZONI, Julia Ávila. Geografia jurídica tropicalista: a crítica do materialismo jurídico-espacial. REVISTA DIREITO E PRÁXIS, v. 10, p. 2923-2967, 2019.



If, under capitalism, the proletarian is one who "is worth what he weighs", that is, he has no genuine good other than his own body, it must be noted that different bodies have always been historically valued differently. The fact that many white workers in the North of the Globe do not sympathize with non-white workers in the global South is indicative that the "color line" institutes, even among the most vulnerable groups, hierarchies and differences in access to goods and services, resources produced by our material civilization. As Cheryl I. Harris demonstrated in a classic article, whiteness functions, in the market society, as a "property", which assures its holders – that is, those read as whites – a set of rights/privileges opposable to the third-parties.<sup>28</sup> For this reason, the fight against racism and colonialism sometimes sounds, even to the ears of white people in conditions of extreme misery, as "spoliation", "misappropriation". Hence, a critique of capitalism (and legal formalism, which is its logical corollary) must be connected to a critique of colonialism, racism and sexism.

The discussion about the reverberations of class oppression in the structuring of the legal system must come together with a reflection on the way in which modern capitalism, created from the "Great Navigations" of the 16th century, used categories such as gender and race to legitimize arbitrary criteria for the distribution of property and power. The continent where I was born defines my race, the race I belong to defines my behavior, and my behavior defines the role that I will play in the international division of labor: it is this equation, developed in the First Modernity, that structured a system-world (neo) colonialist, and in which race, gender and class are interdependent elements.

This turn towards the body marks, in the scope of the American Critical Legal Studies, the transition from the first to the second generation. Embodying the analysis of law and political economy – missions undertaken by both Feminist Legal Theory and Critical Racial Theory – implies radically re-addressing the concerns faced in the 1970s by CLS. For an author like Derrick Bell, for example (considered one of the founders of Critical Racial Theory), racism is one of the backbones of the modern West, being "necessary", "natural" and "normal".<sup>29</sup> This implies that racial discrimination is not an "overgrowth" that will, over the years, be overcome by liberal dynamics. Racism and capitalism are coextensive vectors, and the elimination of one depends on the

<sup>28</sup> V. HARRIS, Cheryl I. Whiteness as Property. In: CREENSHAW, Kimberlé et. al. (Org.). *Critical Race Theory: the key writings that formed the movement*. New York: The New Press, 1995.

<sup>29</sup> Cf. BELL, Derrick. *Race, Racism, and American Law*. New York: Little, Brown, 1972.



extermination of the other. Bell's "racial realism" – closely followed by diverse intellectuals such as Angela P. Harris – offers a new key to thinking about the legal system as a whole, operating a shift in CLS "classic" approaches.<sup>30</sup> The indeterminacy of the legal language, already pointed out by intellectuals such as Mark Kelman and Mark Tushnet, becomes associated with the "color blindness"<sup>31</sup>, which is, the refusal, of legal formalism, to recognize with the rhetoric of formal equality and "democracy" racial "only covers and validates racial segregation routines, globally.

Even the perception of the intertwining between class and race, Modernity and Coloniality, is not enough for us to understand the role played by Law in the contemporary dynamics of violence and exclusion. More than racism, we should talk about racism, considering the way in which mechanisms of racial subordination "acclimate" to different audiences. The racism suffered by black women has specificities, in relation to the racism suffered by white men. The racism suffered by black lesbian women also has particularities, in relation to the racism suffered by black heterosexual women. It is natural that, in the debate on the formation of agendas for struggle, we end up prioritizing guidelines: "first, it is necessary to correct injustices against workers in general; in sequence, we must face violence against black workers in general; afterwards, we need to comply with the demands of heterosexual black workers in general; then etc."

This logic, which puts already marginalized groups into dispute, often makes the conditions of those who are in the most vulnerable situations invisible. It is not surprising that non-white women linked to Critical Racial Theory – especially Kimberlé Crenshaw – have forged, through dialogue with black feminism, the concept of "intersectionality", to think of ways to map aggressions and silences experienced by those groups that are at the "crossroads" between different types of oppression (racism, sexism, homophobia, capacitism, etc.). The challenge of "naming reality itself" (creating a grammar different from the one imposed on us) is fully assumed, by intersectional approaches: recognizing how different social markers correlate and feed each other, in order to keep entire portions of the population permanently subordinated, implies

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<sup>30</sup> V. HARRIS, Angela P. Race and essentialism in feminist legal theory. *Stanford law review*, v. 42, n. 3, p. 581-616, 1990

<sup>31</sup> The term color-blind ideology dates to the 1960s and it was used by Critical Racial Theory as a response to the false racial neutrality of the normative text. Today, some Dis/ability theorists have problematized the use of the term, but it continues to be commonly used within these debates.



developing a more sensitive view of the insertion of the legal in the social, of the norm in life. However, it must be stressed that Crenshaw's original project was far from being relativistic. The emphasis on recognizing differences was linked to an appeal for social justice and material equality (a dimension often overlooked, due to the liberal reappropriations of the concept of intersectionality).<sup>32</sup>

## 6. Synopsis of the articles, translations and review included in the Dossier

The materials that make up the dossier seek to articulate different repertoires of the critical tradition in the legal culture, engaging in contemporary themes to update and debate fundamental issues for the criticism of law in the CLS: different works present conscious perspectives of the racialization of bodies and relationships, contributing to broaden reflections on critical racial theories at the Brazilian level, involving themes on blackness and rights, intersectional methodologies, indigenous citizenship and bodies with disabilities. Furthermore, in addition to this effort, the innovative approaches brought by *LatCrit* are added, intertwining different traditions for consolidating anti-colonial epistemologies in the legal field, also present in the debate promoted by the *GeoCrit* movement. The resumption of antiliberal criticism, so dear to the CLS, is articulated in the works that update theses on the paradoxes of rights and institutional experimentalism, rescuing authors and bets from more than three decades. The dossier also includes interviews and translations of the movement's founding characters, some of them little known in the national debate.

Articulating Patricia Willians 'legal criticism to Patricia Hill Collins' black feminist thought, the authors Ciani Sueli Neves and Ana Paula Pontes-Saraiva propose an approach that works with the category of intersectionality as a method and as a practice for criticizing rights. In a bold and radical construction, the authors debate the accumulations of Critical Racial Theories, along the lines drawn by Willians and Hill Collins, as epistemic clues for the social and legal treatment of racial and political issues.

Rodrigo Portela Gomes's text offers a comprehensive panel of aphasphoric legal culture, establishing parallels and correlations between Critical Racial Theory in the

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<sup>32</sup> CRENSHAW, Kimberle. Mapping the margins: Intersectionality, identity politics, and violence against women of color. *Stan. L. Rev.*, v. 43, p. 1241, 1990.





USA and the Law and Race Relations movement in Brazil. The comparative reading of the two traditions has great heuristic potential, and invites us to rescue the memory of the anti-racist struggles on homeland.

Directing our attention to the theme of the construction of indigenous citizenship in Brazil, Gabriela de Freitas Figueiredo Rocha offers us a critical historical retrospective of the various ways in which the ethnic and cultural difference of the original peoples was destroyed, attacked, romanticized, diminished, denied, assimilated and regretted, until it was grudgingly admitted and taken into account, even if never fully, in the multi-ethnic dialogue that is still in dispute and under construction in Brazil. The text exposes some of the colonial, racial and capitalist commitments that, although normally kept in the silent background, had and continue to have a direct influence on our citizenship paradigm.

Luana Adriano Araújo's text was one of the few reflections, in Portuguese, about the *DisCrit* (Dis/ability Critical Race Theory, or Critical Racial Theory of Disability). A relatively new aspect of Critical Racial Theory – it began to emerge at the beginning of the new millennium –, *DisCrit* is dedicated to thinking about the intersection between racism and capacitism. Araújo's work builds a bridge between *DisCrit* and the tradition of Critical Disability Studies, operating a resumption of one of the most well-known (and controversial) concepts of Critical Legal Studies, namely, that of trashing.

The article by Marc Tizoc Gonzales, Saru Matambanadzo and Sheila I. Vélez Martínez provides an overview of the theory, community and practice of LatCrit, a category of contemporary legal studies that includes and intersects critical legal studies, feminist legal theory, theory race criticism, race critical feminism, Asian American legal study and queer theory. It is a fundamental article to get to know this branch of critical studies and to raise the reflection about the need for Brazilian studies to take inspiration and influence from the same source, enrich these studies with their particularly situated point of view and join forces towards a multi-colored epistemology of the South.

Introducing the field of Critical Legal Geography (GJC) to Brazilian readers, Lucas P. Kozen develops what are the possible investigative relationships between normativity and spatiality. The formation and trajectory of the GJC are presented, contributing to expand the repertoire of methods and practices for the materialist treatment of law. With an emphasis on the contributions of socio-legal studies, the author also points out and develops theoretical categories for empirical engagement between law and space.



Antiliberal criticism of rights is a central element of the work of Felipe C. Gretsichskhin and Gustavo F. L. e Silva, sewing the debate from the contributions of Wendy Brown on the emancipatory potential of rights. Focusing on theoretical disputes, the work provides elements to update theses articulated by the author for three decades, dealing with the ambivalence of radical criticism of rights, their appropriation by specific political struggles and, alternatively, the possibility of creating political imagery that transcend present social conditions.

With Mangabeira Unger, against Mangabeira Unger: the article by Vinícius Batelli de Souza Balestra could be described in these terms. Considered one of the founding fathers of Critical Legal Studies, Unger stood out for forging the concept of “institutional experimentalism”. For Unger, it is necessary, in order to “energize democracy”, to stimulate new proposals for institutional modeling, against the “false needs” created by neoliberalism. Balestra, starting from categories developed by Unger, will, however, revisit one of the most sensitive points of his work: the defense of presidentialism from Mangalore.

The review and interview with David Trubek, carried out by the researchers Camila A. Borges Olivera, Raquel de M. Pimenta and Letícia G. R. Dyniewicz, allow a dive in the academic and personal trajectory of this author, fundamental to the CLS movement and his dialogue with Brazil. In addition, the material also provides an excellent entry into the author's classic works linked to the field of Law and Development and his contemporary theses on Autocratic Legalism.

Among the translations that this dossier introduces to the public in Portuguese, is the classic text by Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, which has the virtue of, on the one hand, submitting to critical explanation a multiplicity of simultaneous aspects of Ivy League law courses as they were in the USA in the early 80s and, on the other hand, continue to sound relevant not only for present times, but for a multitude of biographical trajectories of teachers and students outside the USA, where the same hierarchical appetites, pedagogical sadisms, subjective duplicities and market pressures are manifested in their own way every day. The careful translation by Sophia da Silva Vigário and Vitória Sinimbu de Toledo aimed at the widest possible audience, of all who can find in this text the verbalization of their silent experiences of suffering and their desire for the legal academy to become more humane and emancipatory.



We also celebrated the unprecedented publication of Professor Derrick Bell's work in Portuguese. *Brown v. Board of Education* and the interest-converging dilemma, specially translated to compose the dossier by the young researchers Heitor ML Guimarães, Ruann FF Domis and Beatriz de O. Pereira is fundamental work to problematize the critique of rights from the conscious point of view of race and to deepen the contradictions of liberalism in the legal field.

Finally, the dossier also includes a publication, unpublished in Portuguese, by Angela P. Harris. Translated, especially for the dossier, by Ana Luiza de Oliveira Pereira, Alba Fernanda Pinto de Medeiros, Mylla Cristina Henrique Bezerra Cardozo and Lucas do Couto Gurjão Macedo Lima, *Compaixão e Crítica* is a jusphilosophical analysis of the relationship between theory and affection. Harris, from a reflection on care, interprets critical theory as a mobilizing force of compassion, commitment to the other. Thus, it seeks to overcome nihilistic aspects of Critical Legal Studies.

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