



Qualis A1 - Direito CAPES

Presentation

September 2023

September heralds the last months of the year and in this omen of spring we present the third issue of 2023 of the Direito e Práxis journal, Vol. 14, N. 3, 2023. We present, as usual, our section of unpublished articles, an exquisite dossier, reviews and translations.

The general section of this issue begins with a cutting-edge article presenting research at the intersection of studies on indigenous peoples and the rights of indigenous children, it goes on discussing philosophical critical theories and jurisprudence, and discusses social participation in urban planning, public hearings at the Supreme Court, decolonization and minority rights, as well as laborism and neoliberalism.

The September dossier also offers innovative contributions. With eight unpublished articles, this special section deals with a topic that is still little explored in the Brazilian legal field, "anti-discrimination law". The editors of the dossiers, Professors Roger Raupp Rios and Lawrence Estivalet Mello, have organized an exquisite selection of papers under the general title "The technical-legal construction of anti-discrimination law: contributions to the development of its concepts, techniques and normative categories", bringing together contributions from a very fruitful call for papers. Also, as a part of the dossier, we have a translation of Sandra Ferdman's work, "Substantive Equality Revisited", which also makes up the dossier from the translations section. We would like to thank the editors for their efforts and their rigor in selecting the works!

Finally, in the other sections of translations and reviews, we present works in the fields of legal materialism and statistics and social criticism, as well as reviews in the fields of criminology and decolonial thought. As usual, we would like to thank everyone who



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contributed to this edition of the Journal: authors, translators, guest editors. Collaborative work is fundamental to the quality of our journal! We would like to remind you that the editorial policies for the different sections of the Journal can be found on our website and that submissions are permanent and always welcome! As usual, we would like to thank the authors, evaluators, and collaborators for their trust in Direito e Práxis.

Happy reading!

Direito e Práxis Team



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The actuality of the struggles for equality and anti-discrimination law

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Struggles to build fair and egalitarian societies spread across various fields and fronts. Thanks to the challenging, by so many social movements, of discriminations of many kinds, there have been significant achievements, such as the dismantling of racial segregation regimes, the enactment of international anti-discrimination legal instruments and the recognition of the rights of historically discriminated individuals and groups. This trajectory, marked by renewed challenges, not only remains open, but is increasingly confronted by the dramatic worsening of inequalities, the profusion of the politics of hatred and enmity, attacks on democracy and the resurgence of manifestations of discrimination.

Among the multiple types of knowledge, experiences and practices engaged in this journey is anti-discrimination law, understood as an area of specialized legal knowledge and practice aimed at making the right to equality a reality. In its development, the understanding of the respective legal frameworks, concepts, categories, and principles requires consolidation and deepening, as indicated by the technical-legal issues raised by the constitutional and legal norms relating to equality, the disputes over the application of international and inter-American conventions against various forms of



discrimination, the clashes in jurisprudential and legislative activities and the growing specialized legal literature.

As it happens with all fields of knowledge and legal practice, contextualizing, analyzing, understanding, and criticizing anti-discrimination law requires the input of various perspectives, disciplines, and approaches: history, philosophy, and the social sciences, among other fields of knowledge, have been and cannot be ignored in this task. To this end, this journal, alongside the efforts of many others, also seeks to contribute.

To compose the dossiers, the Direito & Práxis journal put out a public call, which was answered by over 90 researchers from all over the country and demonstrated the collective strength of anti-discrimination academic production in Brazil. The articles selected and published in the dossier express the richness and plurality of the struggles for equality in the field of law, with repercussions in the field of social theory and in different areas of legal knowledge, such as constitutional law, labor law, social security law, business law, LGBTI+ rights and international law.

The article by Roger Raupp Rios and Lawrence Estivalet de Mellot "*The neoliberal offensive to anti-discrimination law: the expansion of protected freedom in the Brazilian Federal Supreme Court and the US Supreme Court*" is dedicated to the analysis of the grammar of rights from a neoliberal perspective, in its growing commodification and disposability of the human, combined with the valorization of the subject as a protected personal instance, a theoretical instrument mobilized to examine the anti-egalitarian offensive embodied in emblematic jurisprudential responses from the Supreme Court of the United States (case "303 Creative LLCC vs. Elenis", 2023) and from the Supremo Tribunal Federal (cases involving the "Escola Sem Partido/Escola Livre" legislation, 2018-2020). The text proposes an understanding of the similarities and disparities between neoliberalism and neoconservatism, as well as between judicial responses to neoconservatism in the two countries. It compares the attacks on the freedom of professorship in Brazil and the ruling that expands business freedom to allow the right to LGBT-phobic discrimination in the provision of services in the United States.

The article by Thiago de Souza Amparo, Fernanda Reis Nunes Pereira and Odara Gonzaga de Andrade "*Anti-Discriminatory Capitalism? Stock Market and the Governance of Diversity*" presents a unique study on the role of anti-discrimination law in the private sector, particularly in the financial market. By asking about the relationship between business companies, structural racism and investment actors in the protection of



discriminatory violations, the text analyzes the diversity policy for publicly traded companies proposed by the Brazilian stock exchange and then discusses the hypothesis that “diversity governance” is characteristic of the moment of neoliberalism, drawing on aspects of critical legal theory. The text sets out to bring anti-discrimination law to the center of the debate in private law studies, emphasizing how diversity governance stands on a pendulum between democracy and the authoritarian advances of neoliberalism.

The article by Adilson José Moreira, Gabriela Doll Marinelli, Helena de Araújo Bento and Rafaella Pavanello Palmieri *“Aesthetic Discrimination”* problematizes aesthetic discrimination in the corporate world, such as official and informal institutional rules that result in discriminatory dismissal of set visual standards in the hiring and promotion of male and female workers. The use of appearance as a criterion for judging the professional capacity of individuals, as the study of sixty Brazilian judgments and US and Australian jurisprudence shows, is a procedure that negatively affects a significant number of people, especially women and members of subalternized racial groups.

The article by Fernando Cesar Mendes Barbosa and José Antônio Peres Gediel *“Migrant subject of law: equality and discrimination”* examines discriminations found in the Law and in institutional practices regarding migrants, asylum seekers and refugees in Brazil, with an empirical, bibliographical, and normative examination. The parameters of the analysis are the denial of the exercise of citizenship due to the deprivation of political rights and the difficulty that migrants and refugees find in having their professional university education obtained in another country recognized. The processes of labor precariousness are intensified by the irregular migratory status, by the procedural obscurity of the revalidation of foreign degrees, and by the latent borders of race, gender, language, and nationality, which contribute to positioning underemployment as a place of discrimination against migrants.

The article by Francine Oliveira, Renata Dutra, and Valdemiro Santos Junior *“Social security affiliation and discrimination: domestic work between precariation, spoliation and genocide”* discusses the social security protection of paid domestic work from the perspective of anti-discrimination law. Considering that this labor segment is overrepresented by the black female community and that the legally established condition of social security affiliation reflects the effects if the general and positional precariousness of this group in the world of work, the effects os social security filters are



critically analyzed as elements of reaffirmation of structural inequalities, which culminate in spoliation effect consistent with the idea of genocide of the black population.

The article by Marcelo Maciel Ramos and Pedro Augusto Gravatá Nicoli "*Is there a legislated anti-discrimination law for LGBTQIA+ people in Brazil today?*" carries out a vigorous survey of legislation in the states and municipalities to identify and analyze the main rules that deal, directly or indirectly, with lgbtphobic discrimination. The first step of the article is to draw a map of the legislation, based on the disputes over the regulation of LGBTI+ rights in bills, the scarcity of federal legislation, and the breadth and solidity of anti-discrimination law for LGBTI+ people in the states and municipalities. As the authors show, 83% (eighty-three percent) of the Brazilian population lives in states whose constitutions or state laws expressly prohibit discrimination against LGBTI+ people. Following, in an analytical exercise combined with interdisciplinary theoretical research, the authors situate the map and present dimensions of LGBTI+ rights, namely, enforceability, interdependence and social progressiveness.

Daniel Borrillo's article "*Persona sexum non habet: How to reconcile the rights of women with the rights of non-binary people?*" describes changes in the legal discipline and jurisprudential understanding of the contours of the notion of gender in anti-discrimination law, based on an examination of the matter in the courts of Denmark, Malta, Ireland and Norway. In these legal documents, the category of gender is understood as an intimate experience, lived from individualized subjectivities. Understandings based on a cisnormative behavioral standardization are thus revisited, making it possible to articulate and reconcile women's rights and the rights of non-binary people, in line with the material aspect of the principle of equality.

The article by Paulo Gilberto Cogo Leivas, Alice Hertzog Resadori, Amanda de Almeida Schiavon, Aline Aver Vanin, Amiel Modesto Vieira, Thiago Souza Reis and Paula Sandrine Machado "*Intersexuality and the tensioning of the prohibited criterion of discrimination sex*" discusses the body standard that historically constitutes the legal field (binary, cisgender, endosexual), which excludes bodies that don't fit this norm, as is the case with intersexuality. Because of this, intersex people suffer discrimination and have their rights violated by early and cosmetic surgical and hormonal procedures, even in childhood. The text discusses how intersexuality strains the legal content of the prohibited criterion of sex discrimination, contributing to its broadening, through a bibliographical review and examination of national and international legislation on the content of the



prohibited criterion of sex discrimination, considering the need for anti-discriminatory protection of intersex people.

This thought-provoking set of articles, very diverse in their approaches, objects and methodologies of analysis, contributes to the knowledge, dissemination and consolidation of anti-discrimination law among us. As a result of the commitment and interest of so many who generously sent in their article proposals, and made a reality by the renowned journal *Direito & Práxis*, articles by Brazilian and foreign authors are offered here for reading and debate in an open environment, whose breadth, although significant, is always far from exhausting the challenges facing anti-discrimination law and the struggle for equality.

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