EDITORIAL
// NOTA EDITORIAL

DIREITO.UnB aims to be a new space for interdisciplinary studies and discussions of legal problems. It will be published annually in one volume consisting of two six-monthly issues, in accordance with the usual international practice for academic journals. The electronic edition, which will be available via Brazilian and international academic portals, will be in two languages: Portuguese and English, or Spanish and English. The print edition will be in Portuguese only.

The journal is divided into six sections: 1. Articles (regular); 2. Review Essays (occasional); 3. Case Notes & Commentaries (regular); 4. Replies & Rejoinders (occasional); 5. Book Reviews (regular); 6. News & Events (occasional).

This first issue publishes articles by three invited authors. Gunther Teubner sent us a thought-provoking piece entitled "The law before its law: Franz Kafka on the (im)possibility of law's self reflection", which is our opening article. Based on a highly creative analysis of Franz Kafka's parable Vor dem Gesetz ("Before the Law"), seasoned with references to Jorge Luís Borges, the author concludes paradoxically that the non-communi-cable aspects of law are made communicable only in the form of litera-ture or art, not in legal doctrine or the theory of law. Teubner's strikingly original reading of Kafka suggests it is not a specific individual who "stands before the law" in all its oppressiveness, but legal discourse itself, seeking compulsively to understand Law. The author appears to hint that the paradox inherent in the "mysterious relationship" between "Law and its law" (Recht and Gesetz) cannot be processed from the perspective of an immanent justice, but from that of justice as a "transcendence formula", which surpasses legal doctrine and mere formal legality.

In "New legal approaches to policy reform in Brazil", Marcus Faro de Castro presents an authoritative discussion of Public Capital Management, one of the approaches to analyzing the relations between law and economic development in Brazil. Based on his critique of this model, he offers instead his Legal Analysis of Economic Policy, which he considers appropriate to new state activism in the economic sphere. He distances himself critically from the naturalized forms of understanding of the relations between law and economics termed "economic analysis of law", according to which the rationality of law is evaluated via an abstract notion of the market, to which legal institutions must submit in order to be considered socially valid. On the contrary, with confidence and academic firmness, he asserts the flexible and provisional nature of legal ideas and institutions, which in their plasticity are well-suited to molding and conditioning a plurality of "market economies". In this way he stresses the contingent, rather than necessary or ontologically predefined, nature of the relations between law and economic development.

By my suggestion anthropologist Rita Laura Segato submitted the unpublished Portuguese and English translations of her article "*Que cada pueblo teja los hilos de su historia: el pluralismo jurídico en diálogo didáctico con legisladores*", which resulted from a public hearing to discuss a legislative proposal that would have "ultracriminalized" prac-tices of indigenous communities involving the killing of newborns with

physical disabilities or one twin. Segato's strong opposition to the bill led Brazil's lower house to amend it radically, removing its original punitive emphasis. The article raises anthropological questions that should alert us to the dangers of an ethnocentric approach to lawmaking and enable us to rearticulate our constitutional identity in light of the normative orders of Latin America's indigenous peoples. The intention is to disseminate the argument more widely both inside and outside Brazil.

Four articles were approved by blind peer review, out of a total of 38 submissions.

Hauke Brunkhorst's article, "The beheading of the legislator: the European crisis – paradoxes of constitutionalizing democratic capital-ism", deals with the European crisis in terms of the paradox between increasing constitutional development on the supranational plane and the prevalence of a "managerial mindset", oriented above all by the demands of the financial markets, over a "Kantian mindset", which would require fortification of democratic self-legislation. Brunkhorst proposes "a massive change against the lethal sickness of neoliberalism called austerity", suggesting a rise in taxes as an alternative and conclud-ing that "there is no way out of the crisis without renewed transnational democratic class struggle".

Ana Luiza Pinheiro Flauzina's critical reflection, "The racial boundar-ies of genocide", points to the eurocentric characteristics of international justice, especially in respect of the racial question. In her analysis, white European victims of the Holocaust have received extremely different international judicial treatment from the "black bodies" massacred in genocides elsewhere. After a careful exposition, she concludes that "the representatives of white elites in the diaspora do not fit the pattern of accused in the destruction of black communities because white suprem-acy systems must not be defied".

"*Criminal compliance*, control and actuarial logic: the relativization of the *nemo tenetur se detegere*" by Ricardo Jacobsen Gloeckner and David Leal da Silva is a study of the penal mechanism known as "criminal compliance", which in Brazil has gained relevance especially as a result of Laws 9613 (1998) and 12683 (2012). The authors question compliance duties, which they consider contrary to the right to remain silent and the privilege against self-incrimination, summed up in Brazil by the Latin tag nemo tenetur se detegere and designed to limit state action in obtaining evidence against the will of a suspect or defendant. In this perspective they argue that compliance duties submit criminal law to a culture of control, to actu-arial logic, and to economic reason. Based on Michel Foucault, the authors conclude that "compliance duties are merely one more security device immersed in post-disciplinary society's vast network of governamentali-ty", proposing research to find out "to what extent they are compatible with the Constitution of the Republic and what boundaries should be imposed".

In an article entitled "Human dignity, social security and minimum living wage: the decision of the *Bundesverfassungsgericht* that declared the unconstitutionality of the benefit amount paid to asylum seekers", João Costa Neto analyzes in detail the ruling mentioned in the title. He

clarifies the line of argument used by Germany's Federal Constitutional Court, stressing that the decision was based on the principles of human dignity and the right to a dignified minimum subsistence. He also notes that the Court modulated the effects of its ruling in time.

In "Moral theology for hedgehogs: Ronald Dworkin's theory of justice", the only review essay in this issue, also approved by blind peer review, Alexandre Araújo Costa presents a scathing critique of the arguments advanced by Dworkin in his last book, Justice for Hedgehogs. The author claims to have identified a tension between Platonic assumptions and Aristotelian methodology in Dworkin's universalist liberalism. He repudiates a model of objective morality that refuses to accept philosophical criticism or questioning of its assumptions, and concludes therefore that Dworkin's thesis is theological rather than philosophical.

In Case Notes & Commentaries, we invited three renowned constitutionalists — Luís Roberto Barroso, Lenio Streck and Leonardo Martins — to discuss the decision of Brazil's Federal Supreme Court (STF) in Direct Unconstitutionality Suit (ADI) 4277 and Breach of Fundamental Precept Suit (ADPF) 132, ruling in favor of the principle that a same-sex civil union is a family entity. While Barroso argues mainly from principles that the STF's decision was correct, Streck and Martins criticize the decision for lack of constitutional grounding. Streck takes a hermeneutical approach, objecting to the subjective and arbitrary nature of the judgment ("one cannot say anything about anything"). Martins focuses on what he sees as methodological and doctrinal inconsistency, concluding that the decision was rhetorical and theoretically unsustainable given its inappropriate recourse to German legal doctrine and case law.

Finally, we have three reviews of books by Brazilian authors: Luís Roberto Barroso's "A dignidade da pessoa humana no direito constitucional contemporâneo: a construção de um conceito jurídico à luz da jurisprudência mundial", reviewed by Gilberto Guerra Pedrosa; Marcus Faro de Castro's "Formas jurídicas e mudança social: interações entre o direito, a filosofia, a política e a economia", reviewed by Carina Calabria; and Juliano Zaiden Benvindo's "On the Limits of Constitutional Adjudication: Deconstructing Balancing and Judicial Activism", reviewed by Gabriel Rezende de Souza Pinto. This is the first step in the development of a regular practice of publishing reviews of books not only by foreign authors, but also by Brazilian scholars.

We hope this first issue marks the advent of a journal that serves as a means to internationalize Brazilian legal culture and facilitate a permanent debate among academics interested in law and related matters, especially in terms of interdisciplinarity, within the complex horizons of world society.

Brasília
January, 2014

Marcelo Neves
Editor-in-Chief