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Editorial

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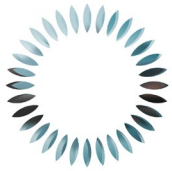

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EDITORIAL

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1. The emerging political relevance currently attributed to climate change has been accompanied by an equal rise of interest by legal scholars. More than its regulatory issues, discussion in and outside of courts on climate change has taken a rights-approach turn. International legal literature has always focused on the deep interdependence between environmental conditions and the enjoyment of human rights. However, a multilevel analysis of climate change law and litigation perceives the slow but steady summoning of constitutional law and legal theory to the realm of environmental law even when a fundamental right to a healthy environment is not specifically protected under a particular constitution. Crossing the bridge between different areas of research is not an easy task, but that is the goal of this issue dedicated to climate change and fundamental rights.

2. Climate change law also presents itself as an opportunity to test legal concepts and theories. Climate litigation has increased significantly and given rise to disruptive legal issues concerning the grounds and limits of jurisdictional control of laws, policies, and omissions, using fundamental rights theory, human rights law, and administrative law theory, to solve problems in a context of complex, extraterritorial, long-distance, and long-term damages, with significant epistemic uncertainty.

3. Gonçalo Almeida Ribeiro addresses the intergenerational paradox of constitutionalism, the short-term bias of democratic systems, and the need for a strong judicial review theory similar to that of endangered minorities, illustrating his point with the balance between democracy, expertise, and justice observed in a recent climate litigation constitutional case.

The Brazilian Constitution is the case-study for the study of fundamental rights theory and climate protection by Ingo Wolfgang Sarlet and Tiago Fensterseifer. Environmental protection is thus considered both as a constitutional legal interest and a fundamental right to a clean, healthy, and safe climate, giving rise to State duties of climate protection that must be complied with by national authorities. A reflection on the relevance of judicial review of national law in light of international climate treaties is also delivered.

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Mauricio Maldonado-Muñoz analyzes conflicts of rights in environmental contexts, beginning with a focus on subjects and the specificities that arise from the global nature of climate change, the asymmetry of the subjects in the conflict (states and persons), and the extraterritorial nature of climate conflicts. As for the object of environmental conflicts, the emphasis is on fundamental rights and intra-systemic conflicts, with a final reflection on moral dilemmas.

The ecological minimum as a legal standard for judicial review is the topic chosen by Margarida Vidal Sampaio. Building on a recent climate constitutional case, the minimum is then defined based on legal principles, such as sustainable development, intergenerational solidarity, proportionality, and deficit prohibition, and on the relevance of different actors, such as the scientific community, courts, legislators, and public administration.

4. This issue proceeds with two papers dedicated to specific fundamental rights. Innovatively, Patryck de Araújo Ayala proposes a fundamental right to socioecological systems' integrity through an inductive method in the context of climate constitutionalism. Is it argued that this right results from imperative protection duties, discussing a few illustrative cases on the topic.

In an entirely different perspective, Thalia Viveros-Uehara scrutinizes how traditional fundamental rights to life and health are crucial in climate change law and litigation in the context of the new Latin American constitutionalism. Highlighting the interactions and complementarities between these two rights, an inquiry then follows on how they are used in practice in climate litigation cases in domestic courts, with a zoom on cases from Colombia and Ecuador.

5. The relevance of climate litigation is mirrored throughout the entire issue, but it is the specific object of two papers. Pau de Vílchez Moragues presents an overview of the evolution of climate cases and pinpoints the main cases and features of a complex tapestry of legal grounds for action, such as human rights, national constitutions, environmental treaties, and legal principles. The crucial role of science, the broadening of the geographic and temporal scopes of rights, and a new trend of legal actions against corporations are also analyzed.

Maria Antónia Tigre also makes a multilevel analysis of climate litigation, but through the lens of Indigenous groups and rights. Providing evidence of the disproportionate burden of climate change on these groups, she signals the growing relevance of Indigenous groups in cases in both international and domestic courts. These cases are set to defend Indigenous rights enshrined in national Latin American constitutions and in the Inter-American System of Human Rights, with a brief mention to the African System. A note is also made on the link between this topic and that of rights of nature.

6. Finally, the related issue of the protection of intergenerational interests through environmental liability regimes is developed by Morgan Eleanor Harris. Considering the legal obstacles continuously raised to the representation of the interests of future generations, it is argued that the public duty to protect inter-temporal interests results from solidarity and the principle of sustainable development. Environmental liability and damage repair are then examined as sets of rules that pursue this goal.