

Cristiano Paixão (University of Brasília; Brasília, Distrito Federal, Brazil) is professor of legal history and constitutional law at the University of Brasília Law School. He is a member of the Graduate Program (PhD in Law and LLM), researching and teaching in the Research Line “Constitution and Democracy”, especially in Constitutional History and Historiography (http://direito.unb.br/index.php?option=com_content&view=article&id=513&Itemid=311&lang=pt).

Member of the *Collegio dei Docenti del Dottorato in Scienze Giuridiche del'Università degli Studi di Macerata*

Member of the *Profesorado Externo del Doctorado en Ciencias Juridicas y Sociales de la Universidad de Málaga* (<https://www.uma.es/doctorado-ccjuridicas/info/106665/profesorado-externo/>).

Professor Paixão has an LLM from Federal University of Santa Catarina (1997) and a Doctor in Law degree from Federal University of Minas Gerais (2004), with post-doctoral studies in modern history at Scuola Normale Superiore di Pisa (2008-2009) and in historiography at Ecole des Hautes Etudes en Sciences Sociales (2014-2015).

He was a visiting professor at the Master's Program in Constitutional Law at Seville University (2010-2011), and has published extensively about constitutional history.

He was a member of the Brazilian Amnesty Committee in the Ministry of Justice (2012-2016), one of the coordinators of the Anísio Teixeira Memory and Truth Commission in the University of Brasília (2012-2015) and is a Senior Labor Prosecutor at the Public Labor Prosecutor's Office.

Selected publications:

PAIXÃO, Cristiano; BLAIR, Paulo. **Between Past and Future: The 30 Years of the Brazilian Constitution**, in Int'l J. Const. L. Blog, Oct. 10, 2018. Available at: <http://www.iconnectblog.com/2018/10/between-past-and-future-the-30-years-of-the-brazilian-constitution/>

PAIXÃO, Cristiano; CARVALHO, Claudia Paiva. **O conceito de crise constitucional: esboço, delimitação e sua aplicação à história do Brasil República**. In *História do Direito – entre rupturas, crises e continuidades*, ed. Arno Wehling, Gustavo Siqueira, Samuel Barbosa. Belo Horizonte: Arraes, 2018, p. 184-204.

PAIXÃO, Cristiano. **Letteratura e giustizia di transizione nel Brasile contemporaneo: testimonianza, memoria ed esperienze del tempo**. In *Dialoghi tra diritto, letteratura e politica – atti del Convegno italo-brasiliano Dialoghi tra diritto, letteratura e politica: le sfide della globalizzazione e la crisi del costituzionalismo – Università degli Studi del Molise – 6 maggio*

2016, ed. Francesco Petrillo, Alberto Vespaziani. Chieti: Solfanelli, 2017, p. 85-94.

PAIXÃO, Cristiano. **Dispute concettuali nel Brasile contemporaneo: amnistia, costituzione e diversità culturale.** In *Diversità e discorso giuridico. Temi per un dialogo interdisciplinare su diritti e giustizia in tempo di transizione*, ed. Massimo Meccarelli. Madrid: Dykinson, 2016, p. 149-174. Available at: <http://e-archivo.uc3m.es/handle/10016/23792>

PAIXÃO, Cristiano; FRISSE, Giovanna. **Usos da memória: as experiências do holocausto e da ditadura no Brasil.** *Lua Nova: Revista de Cultura e Política*, n. 97, p. 191-212, 2016. Available at: <http://dx.doi.org/10.1590/0102-6445191-212/97>

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PAIXÃO, Cristiano. **Past and future of authoritarian regimes: constitution, transition to democracy and amnesty in Brazil and Chile.** *Journal of Constitutional History/Giornale di Storia Costituzionale*, n. 30, 2/2015, p. 89-105. Abstract available at: http://www.storiacostituzionale.it/doc_30/Abstracts_GSC_30.pdf

PAIXÃO, Cristiano; BARBOSA, Leonardo. **Perspectives on human dignity (on judicial rulings regarding contemporary slavery in Brazil).** *Quaderni Fiorentini per la Storia del Pensiero Giuridico Moderno*, v. 44, p. 1167-1184, 2015. Available at: <http://www.centropgm.unifi.it/cache/quaderni/44/1178.pdf>

PAIXÃO, Cristiano. **Autonomia, democracia e poder constituinte: disputas conceituais na experiência constitucional brasileira (1964-2014).** *Quaderni Fiorentini per la Storia del Pensiero Giuridico Moderno*, v. 43, p. 415-460, 2014. Available at: <http://www.centropgm.unifi.it/cache/quaderni/43/0421.pdf>

PAIXÃO, Cristiano. **The protection of rights in the Brazilian transition: amnesty law, violations of human rights and constitutional form** (01. September 2014), in *forum historiae iuris* (Max-Planck Institute for European Legal History). Available at: <http://www.forhistiur.de/en/2014-08-paixao/>.

PAIXÃO, Cristiano; BARBOSA, Leonardo. **Crise Política e Sistemas de Governo: origens da 'solução parlamentarista' para a crise político-constitucional de 1961.** *Universitas Jus*, v. 24, p. 47-61, 2013. Available at: <https://www.publicacoesacademicas.uniceub.br/jus/article/view/2622>

PAIXÃO, Cristiano; BIGLIAZZI, Renato. **História constitucional inglesa e norte-americana: do surgimento à estabilização da forma constitucional.** 1ª reimpressão. Brasília: Editora da UnB/Fundação de Empreendimentos Científicos e Tecnológicos, 2011.

PAIXÃO, Cristiano. **Direito, política, autoritarismo e democracia no Brasil: da Revolução de 30 à promulgação da Constituição da República de 1988**. Araucaria – Revista Iberoamericana de Filosofia, Política y Humanidades (Universidad de Sevilla), v. 26, p. 146-169, 2011. Available at: http://alojoptico.us.es/Araucaria/nro26/monogr26_5.pdf

PAIXÃO, Cristiano. **O Teatro e a História do Direito: a experiência da tragédia grega**. Afreudite – Revista Lusófona de Psicanálise Pura e Aplicada, v. 5/6, p. 113-137, 2007. Available at: http://recil.grupolusofona.pt/bitstream/handle/10437/1098/03_%20teatro.pdf?sequence=1

PAIXÃO, Cristiano. **Modernidade, Tempo e Direito**. Belo Horizonte: Del Rey, 2002.

Research projects

Current projects

1.

Constitutional History: temporalities, crisis, possibilities

PAIXÃO, Cristiano (coordinator). PINHEIRO, Douglas; GUERRA, Maria Pia; MARQUES, Raphael Peixoto; CARVALHO, Claudia Paiva; COUTO, Ana Carolina; HONORATO, Fernando Henrique; GORDILHO, Maria Celina; UTZIG, Mateus (members).

Outline

The project aims to attract and foster research on the various temporalities embedded in the relationship between law and politics, between constitutionalism and democracy.

An interesting example involves the anatomy, development and unfolding of the constitutional crises that occurred in Brazilian history.

Situations such as those experienced in 1955, 1961, 1964 and 2016 can be analyzed with the concept of constitutional crisis? And in other periods, it would also be possible to think about the activation of the concept? What experiences from history can be productive, in the comparative dimension, for Constitutional history? The concept of a constitutional crisis can be articulated with other categories related to constitutional history?

Among the various possibilities for research, the following stand out:

- (i) constitutional crises, such as those occurred in 1955, 1961, 1964 and 2016 in Brazil;
- (ii) transitions to democracy, with an emphasis on for the policies of memory, amnesty, and uses of the past;

- (iii) constitutional assemblies and constitution-making processes, with special attention to temporal and constitutional ruptures and continuities.

Main references:

BEVERNAGE, Berber. Writing the Past Out of the Present: History and the Politics of Time in Transitional Justice. *History Workshop Journal Issue*, Vol. 69, 2010, p. 111-131.

HARTOG, François. "What is the Role of the Historian in an Increasingly Presentist World?", in HARLAFTIS, Gelina. KARAPIDAKIS, Nikos. SBONIAS, Kostas. VAIPOULOS, Vaios (ed.). *The New Ways of History – Developments in Historiography*. London and New York: Tauris Academic Studies, 2010, p. 239-251.

LUHMANN, Niklas. La costituzione come acquisizione evolutiva. In: ZAGREBELSKY, Gustavo. PORTINARO, Pier Paolo. LUTHER, Jörg. *Il futuro della costituzione*. Torino: Einaudi, 1996.

MARLE, Karin van. Constitution as Archive. In: VEITCH, Scott (ed.). *Law and the Politics of Reconciliation*. Aldershot, Hampshire: Ashgate, 2007, p. 215-228.

MECCARELLI, Massimo (ed.). *Reading the Crisis – Legal, Philosophical and Literary Perspectives*. Madrid: Dykinson, 2017.

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_____. Past and Future of Authoritarian Regimes: Constitution, Transition to Democracy and Amnesty in Brazil and Chile. 30 *Giornale di Storia Costituzionale* 89 (2015)

RISTROPH, Alice G. Is Law? Constitutional crisis and existential anxiety. *Constitutional Commentary*. v. 25, p. 431-459, 2008-2009.

ROSA, Hartmut. SCHEUERMAN, William (ed.). *High-speed society – social acceleration, power, and modernity*. University Park: Pennsylvania State University Press, 2012.

RUBENFELD, Jed. Freedom and time. *Acta Juridica*, Vol. 291, 1998, p. 291-311.

Expanded text available at: http://direito.unb.br/images/Pos-Graduacao/Projetos_de_Pesquisa/Linha2/Projeto_de_pesquisa-hist%C3%B3ria_constitucional-2018-2019-Cristiano-Douglas-final.pdf

2.

Law, History and Literature: literature as a reflexive field for legal and constitutional history

PAIXÃO, Cristiano (coordinator). PINHEIRO, Douglas; GONZÁLEZ, José Calvo; VESPAZIANI, Alberto; TRINDADE, André Karam; GUERRA, Maria Pia; MARQUES, Raphael Peixoto; CARVALHO, Claudia Paiva; GORDILHO, Maria Celina (members).

Outline:

The task of understanding legal history requires an amplification of the narratives included in the historical sources, encompassing literary productions in which narratives about subalternities, about justice and other reflexive spheres than the institutional ones.

Therefore, a rapprochement between law and literature can become a reflexive source and for legal history.

The research based on literary narratives can unveil mentalities, ideas, concepts, clues, social temporalities, perceptions of crisis and perspectives of justice.

The main goals of the project are:

- (i) Creation of a space for interdisciplinary dialogue between law and literature in the light of experiences and the narratives resulting from: violations of human rights hidden in official records but present in literature; limits between fiction and truth; contrast between utopia, dystopia and distrust;
- (ii) Finding out possibilities of understanding concepts of law, justice, inclusion, democracy, equality, freedom, power from the analyses of literary narratives;
- (iii) Production of texts about legal history and literature in contemporary perspective.

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CARDOZO, Benjamin. *Law and literature and other essays and addresses*. New York: Harcourt, Brace and Company, 1931.

CHAKRABARTY, Dipesh. *Provincializing Europe: postcolonial thought and historical difference*. Princeton: Princeton UP, 2000.

GONZALEZ, Calvo José. *Derecho y narración*. Barcelona: Ariel, 1996.

_____. *La justicia como relato: ensayo de una semionarrativa sobre los jueces*. Málaga, Ágora, 1996.

_____. *Implicación Derecho Literatura. Contribuciones a una Teoría literaria del derecho*. Granada: Comares, 2008.

NIKULIN, Dimitri. Mikhail Bakhtin: a theory of dialogue. *Constellations*. Oxford/Malden, v. 5, n. 3, 1998.

PAIXÃO, Cristiano. Shakespeare entre Marlowe e Borges: o papel da memória em O Mercador de Veneza. In: COUTINHO, Jacinto Nelson Miranda (Org.). *Direito e psicanálise: intersecções a partir de O Mercador de Veneza de William Shakespeare*. 1ª ed. Rio de Janeiro: Lumen Juris, 2008, p. 365-382.

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_____. Ressonâncias de Clarice Lispector e Arnold Schönberg: música e narrativa em “A Hora da Estrela”. In: COUTINHO, Jacinto Nelson Miranda (Org.). *Direito e psicanálise: intersecções a partir de A Hora da Estrela de Clarice Lispector*. Rio de Janeiro: Lumen Juris, 2010, p. 81-95.

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PINHEIRO, Douglas A. R. Por uma teoria da narratologia jurídica: de que modo a teoria literária pode servir à compreensão e crítica do Direito. *Revista da Faculdade de Direito da UFPR*, n.47, p. 29-64, 2008.

POSNER, Richard. *Law and literature: a misunderstood relation*. Cambridge: Harvard University Press, 1995.

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SILVA, Joana Aguiar e. *A prática judiciária entre Direito e Literatura*. Coimbra: Almedina, 2001.

Expanded text available at: http://direito.unb.br/images/Pos-Graduacao/Projetos_de_Pesquisa/Linha2/Projeto_-_Direito_e_Literatura_-_Cristiano-Douglas_-_final.pdf

Past projects

1.

Brazilian Constitutional History post-1930: constitutional change and citizenship building

PAIXÃO, Cristiano (coordinator). BIGLIAZZI, Renato; LOURENÇO FILHO, Ricardo; MARQUES, Raphael Peixoto; CARVALHO, Claudia Paiva; CABRAL, Rafael Lamera; HONORATO, Fernando Henrique (members).

Duration: 2011-2014

Goals:

- Identify, from the concepts of constitutional form and popular participation, the affirmation of the fundamental rights and the moments of construction of spaces of citizenship as an open process on Brazilian Constitutionalism;
- Understanding the forms of re-elaboration of history and memory in contemporary Brazil, and the role of law and legal institutions in these historical processes;
- To investigate the process of making and enacting the 1988 Brazilian Constitution and the subsequent attempts to change its amendment procedure.

Main references:

AARÃO REIS FILHO, Daniel (org.). *Intelectuais, história e política (séculos XIX e XX)*. Rio de Janeiro: 7Letras, 2000.

AARÃO REIS FILHO, Daniel; RIDENTI, Marcelo; SÁ MOTTA, Rodrigo P. (orgs.). *O golpe e a ditadura militar: 40 anos depois (1964-2004)*. Bauru: Edusc, 2004

ALVES, Maria Helena Moreira. *Estado e Oposição no Brasil: 1964-1984*. Bauru: EDUSC, 2005

BENJAMIN, Walter. *Reflections: essays, aphorisms, autobiographical writings*. New York: Schocken Books, 1986.

DELGADO, Lucilia de Almeida Neves; FERREIRA, Jorge (orgs.). *O Brasil Republicano: o tempo da ditadura, regime militar e movimentos sociais em fins do século XX*. 4 v. 2ª ed. Rio de Janeiro: Civilização Brasileira, 2007

DERRIDA, Jacques. Declarations of independence. In: ROTTEMBERG, Elizabeth (Ed.). *Negotiations: Interventions and interviews – 1971-2001*. Stanford: Stanford University Press, 2002. p. 46-54

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- FAORO, Raymundo. *Assembléia Constituinte: a legitimidade recuperada*. 3ª ed. São Paulo: Brasiliense, 1985
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- OLSON, Kevin. Paradoxes of constitutional democracy. *American Journal of Political Science*, Oxford, v. 51, n. 2, Abr. 2007, p. 330–343
- PAIXÃO, Cristiano. BARBOSA, Leonardo Augusto Andrade. A memória do direito na ditadura militar: a cláusula de exclusão da apreciação judicial observada como um paradoxo. *Revista do Instituto de Hermenêutica Jurídica*, Porto Alegre, vol. 1, nº 6, 2008, p. 57-78.
- PAIXÃO, Cristiano; BARBOSA, Leonardo Augusto de Andrade. Cidadania, democracia e constituição: o processo de convocação da Assembléia Nacional Constituinte de 1987-1988. In: Flávio Henrique Unes Pereira; Maria Tereza Fonseca Dias. (Org.). *Cidadania e Inclusão Social: Estudos em Homenagem à Professora Miracy Barbosa de Sousa Gustin*. Belo Horizonte: Fórum, 2008, p. 121-132.
- PREUSS, Ulrich. Constitutional Powermaking: some deliberations on the relations between the constituent power and the constitution. In: ROSENFELD, M. (ed.) *Constitutionalism, identity, difference and legitimacy: theoretical perspectives*. Durham: Duke University Press, 1994
- SANTOS, Rogério Dutra. Francisco Campos e os fundamentos do constitucionalismo antiliberal no Brasil. *Dados – Revista de Ciências Sociais*, Rio de Janeiro, v. 50, n. 2, 2007, p. 281-323
- ZAGREBELSKY, Gustavo. *Historia y constitución*. Madrid: Trotta, 2005

2.

Challenges to constitutionalism: war on terrorism, emergency and Human Rights

PAIXÃO, Cristiano (coordinator). BIGLIAZZI, Renato; MARQUES, Raphael Peixoto; GUIMARÃES, Guilherme Cintra; MAIA, Paulo Sávio Peixoto; HONORATO, Fernando Henrique (members).

Duration: 2008-2011

Goals:

- Identify the redefinition of the limits of fundamental rights from the war on terrorism;
- Understand the main aspects and consequences of the extreme forms of treatment of suspects: torture, isolation, lack of due process;
- Analyze judicial rulings related to the application, to prisoners of the war on terrorism, of fundamental rights like due process, privacy, freedom of expression and others.

Main references:

BALL, Terence. FARR, James. HANSON, Russell L. (ed.). *Political innovation and conceptual change*. Cambridge: Cambridge University Press, 1995.

BALL, Terence. POCOCK, J.G.A. (ed.). *Conceptual change and the constitution*. Kansas: University Press of Kansas, 1988.

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CHEMERINSKY, Erwin. The Constitution and national security. *Touro Law Review*. Vol. 25, 2009.

COLE, David. *Enemy Aliens – double standards and constitutional freedoms in the war on terrorism*. New York: The New Press, 2003.

DWORKIN, Ronald. The Threat to Patriotism. *The New York Review of Books*. New York, Vol. 49, número 3, fevereiro 2002(a). Disponível em <<http://www.nybooks.com/articles/15145>>.

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FEREJOHN, John. PASQUINO, Pasquale. The law of the exception: A typology of emergency powers. *International Journal of Constitutional Law*. Volume 2, Number 2, 2004, pp. 210–239.

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ISSACHAROFF, Samuel. PILDES, Richard H. Emergency contexts without emergency powers: The United States' constitutional approach to rights during wartime. *International Journal of Constitutional Law*. Volume 2, Number 2, 2004, pp. 296–339.

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PAUST, Jordan J. Judicial Power to Determine the Status and Rights of Persons Detained Without Trial. *Harvard International Law Review*. Vol. 44. N° 2. Cambridge, MA, Summer 2003.

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_____. War and Enemy Status After 9/11: Attacks on the Laws of War. *The Yale Journal of International Law*. Vol. 28. N° 2. Cambridge, MA, Summer 2003.

WALDRON, Jeremy. In Case of Emergency: Security and Liberty: The Image of Balance. *The Journal of Political Philosophy*: Volume 11, Number 2, 2003, pp. 191–21.

Participation as a speaker in Conferences/Seminars (International Events):

1.
Conference: **Memorial histórico y verdad ficcional en Incidente em Antares, de Erico Veríssimo**. 1er Simposio Internacional La cultura literária del derecho: alianzas transatlânticas. Málaga, 1 December 2017.

2.
Conference: **Interpretación como desafío contemporáneo: archivo, memoria, texto**. Asociación Argentina de Filosofía del Derecho. XXXI Jornadas Anuales de Filosofía Jurídica y Social “Creación e Interpretación del Derecho”. Salta, 23 August 2017.

3.
Presentation of paper: **Constitutional History and Transitional Justice in Contemporary Brazil: Towards a Politics of Time**. European Society for Comparative Legal History. 4th Biennial Conference: Culture, Identity and Legal Instrumentalism. Gdansk, 1 July 2016.

4.

Conference: **Letteratura e giustizia di transizione nel Brasile contemporaneo: testimonianza, memoria ed esperienze del tempo.** Convegno italo-brasiliano Dialoghi tra diritto, letteratura e politica: le sfide della globalizzazione e la crisi del costituzionalismo. Campobasso, 6 May 2016.

5.

Discussion: **Authoritarian violence.** Program in Race, Law, and History at the University of Michigan Law School. Ann Arbor, 11 November 2014.

6.

Presentation of paper: **The Past and Future of Authoritarian Regimes: Constitution, Transition to Democracy, and Amnesty in Brazil and Chile.** 2014 American Society for Legal History Annual Meeting. Denver, 8 November 2014.

7.

Presentation of paper: **Constitutional history, transitional justice and legal tradition: amnesty laws and constitutional change in Brazil and Chile.** European Society for Comparative Legal History. 3th Biennial Conference: Traditions and Changes. Macerata, 8 July 2014.

8.

Presentation of paper: **A tutela dos direitos na transição brasileira: lei de anistia, violações de direitos humanos e forma constitucional.** Max-Planck-Institut für europäische Rechtsgeschichte. International Workshop: Rights, Justice, Cultural Diversity: Dynamics of Legal Protection in Times of Transition. Frankfurt-am-Main, 26 November 2013.

9.

Conference: **Dignity Guarantees in the 1988 Constitution: Giving Juridical Meaning to a Concept,** University of Michigan Law School. Seminar: Brazil: History, Human Rights, and Contemporary Slavery. Ann Arbor, November 2013.