

GEOPOLITICS AND THE CONSTITUTION IN LIGHT OF THE DEMOCRATIC CONSTITUTIONAL STATE

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Introduction

This article is the result of research carried out during a post-doctoral stay at the Graduate Program in Aeronautical Sciences of the University of the Air Force in Brazil, under the theme ‘Geopolitics, Culture and Law: Epistemological dialogues needed in times of postmodern statecraft’. Therefore, it aims to examine the scientific connections that unite geopolitics and law, disciplines that overlap in order to guarantee fundamental rights for ordinary people.

Indeed, in order to fulfill its function of distributing justice and guaranteeing fundamental rights, the 1988 Brazilian Constitution cannot be left out of geopolitics, in the same way that geopolitics, in its task of promoting national development, cannot be alien to the constitutional text, and must faithfully follow the democratic rule of law and the international legal order of civilized nations. Unfortunately, it must be recognized that this epistemological lineage is still incipient in Brazil. However, it cannot be denied that, in times of globalization of the economy, it is the duty of the Brazilian strategist to formulate a long-term prospective vision to learn ‘to play the strategic game of world geopolitics’ within the limits imposed by the Constitution and by public international law. Likewise, it is the duty of the national jurist to know ‘to strategically interpret the Constitution in the light of the impacts arising from the geopolitical disputes on the world stage’.

This means that the search for the country’s geopolitical development must not depart from the democratic pillars of the 1988 Constitution. Hence the relevance of ‘geolaw’, here envisioned as an autonomous branch of science which is intended to examine the interconnections between law and geopolitics. Under geolaw perspective, strategy gains greater legal vision and law gains greater strategic vision, since both the world geopolitical order and constitutional law are placed side by side, with the aim of systematically

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examining them as an epistemological whole².

As a result, everything seems to indicate that geolaw is the harbinger of a new scientific era, in which statesmen, strategists, judges, democratic, constitutionalist, internationalist and legal operators in general will have to rethink the connections involving the normativity of law and the strategic action of the state. It is within this framework of multidisciplinary complexity that geolaw presents itself as the last scientific frontier, be it in geopolitics or in law. Thus, there is both a geopolitical control of law (constitutionalization of geopolitics) and a legal control of geopolitics (judicialization of geopolitics).

Unfortunately, geolaw is practically unprecedented in Brazil. We have no major academic work on this subject. In Italy, for example, there are several scholars, among them the eminent and notable jurist Natalino Irti (2005), author of 'Norm and place: principle of geolaw', whose main scientific lines aim to study the relations between the deregulating forces of the economy and technology, as well as the law on the periphery of the world system (Irti 2005).

Similarly, Philip Bobbitt (2003), in the United States, develops a dense literature on the epistemic relationships between national strategy, constitutional law and public international law. In fact, Bobbitt's academic trajectory shows this dual characteristic of the constitutionalist and the strategist:

Perhaps this conviction is owed to my unusual personal history; I sometimes think that not only was I supposed to write this book but that I am perhaps one of the few who would. That is because for the last twenty-five years I have led a double life. As a teacher, I have divided my life between Texas and England. In the United States, I have taught constitutional law at the University of Texas; in the United Kingdom, I have taught the history of nuclear strategy, first at Oxford and later at Kings College, London (Bobbitt 2003, 3).

In short, the intention here is to show the vast path to be covered, whether through geopolitics or constitutional law, in order to outline the

² With that in mind, it is possible to understand the influence of world geopolitics, which practically imposes changes to the Constitutions of developing countries. In essence, geolaw puts geopolitical variables in direct contact with legal variables, within a multidisciplinary symbiosis that advances both law and geopolitics. Geolaw can be defined as the branch of scientific knowledge that aims to examine the epistemological relations between geopolitics and law (broader sense), as well as the epistemological relations between constitutional interpretation and the national grand strategy (strict sense). In this sense, geolaw is the statesman's scientific basis in his task of promoting national development, just as it is the judge's scientific basis in his task of deciding on a fundamental geopolitical issue for the Brazilian state (Goes and Visentini 2019, 28-29).

theoretical elements of the scientific encounter between the Great National Development Strategy and the 1988 Constitution, especially during gloom times of post-pandemic globalization. Here, the relevance of the study of judicialization of geopolitics emerges, when major geopolitical decisions of the Brazilian state will be brought to the judgment of the Judiciary, notably the Supreme Federal Court (STF). That is why the present work supports the thesis that the reason why judges and courts should understand world geopolitics is quite simple: they will decide the country's geopolitical future from the judicialization of fragmented geopolitical issues that are part of power plays on the world stage.

Consequently, the central objective of this article is to investigate, initially, the paths followed by neoliberal globalization since the end of the Cold War in 1989, going through the terrorist attacks of September 11, 2001 and the financial crisis of 2008, until finally reaching the global pandemic of Covid-19 (1989-2019). To this end, in addition to the North American strategic archetypes that will be examined (the National Security Strategies of Clinton, Bush, Obama and Trump), it is also imperative to analyze the influence of the hegemonic power of industrialized nations over the countries of late modernity in the Global South, as, unfortunately, is the case in Brazil³.

Subsequently, under the influence of this verticalization of hierarchical geopolitical relations, we intend to formulate the theoretical bases of an autochthonous geopolitics, genuinely linked to national identity and with sufficient cratological latitude to guarantee the expansion of the Brazilian strategic core, defined here as being the set of autonomous economic-technological segments capable of effectively participating in international competition. In this sense, the question is simple: can a country with more than 200 million inhabitants give up its strategic technological-industrial base, becoming a mere service society, exporting primarily goods with no added value?

Hence the great geopolitical dilemma of late modernity countries, as is the case of Brazil: if they automatically align themselves with the world powers, they will probably be forced to accept the simplistic role of exporters of commodities. On the other hand, if they reject large multilateral trade

³ The end of the Cold War brought negative effects upon the nations of Africa, Central and Latin America and most of Asia, which are collectively regarded as the Global South. Unfortunately, the situation of these underdeveloped countries in the Global South projects a paradoxical picture that can both generate economic and social development and further aggravate poverty, environmental degradation, hunger and human rights violations, unlike in the Global Center, which is formed by the rich countries that control the decision-making process of the international system. [...] In recent times, the discussion around these relations has intensified, especially considering the ongoing neoliberal reconfiguration of the state, scientifically and methodologically rested on the minimum state model with the objective of deregulating private legal relations and, thus, relativizing the concept of sovereignty (Góes 2019, 57-58).

opening agreements, they could be isolated from the largest consumer markets in the world.

Therefore, conceiving a grand strategy of national development based on the maintenance and expansion of its strategic base seems to be the greatest challenge for Brazilian society, jurists and strategists alike. It is for this very reason that this article has the broader objective of identifying the geopolitical role of Brazil within the reconfiguration of the postmodern world order (still under construction), which already places, on the one hand, the era of deglobalization, sponsored by the Trump Doctrine and the resumption of the old strategic concept of 'America First' from the Eurocentric era, and, on the other, the potentiation of the neoliberal world order, now captained by Chinese geopolitics, leaving to question whether the Mackinderian-Spykmanian classic paradigm of geopolitics is being rewritten with a postmodern bias?

In fact, it all indicates that the reconfiguration of post-pandemic global geopolitics will be characterized not only by the resignification of the social role of the contemporary state (the liberal state or social state), but also by great power competition between the United States and China. Ultimately, this is the thematic spectrum of this article.

A World to be Rebuilt: Between American Deglobalization and Chinese Neoliberal Globalism

The objective of this thematic section is to present the incredible speed of evolution of postmodern statecraft, which, in just three decades, has already produced four great moments of paradigmatic rupture, namely: the fall of the Berlin Wall (1989), the collapse of the Twin Towers (2001), the global financial crisis (2008), and the health crisis of Covid-19 (2019). In this sense, it is argued that postmodern statecraft now endures the protectionist wave of economic deglobalization, sponsored by the Trump Doctrine in response to the geopolitical rise of China, as well as the decline of the American world order, here interpreted as the neoliberal order captained by the United States with the support of its allies of the capitalist triad (Europe and Japan)⁴.

⁴ The wide controversy that exists around the idea of postmodern statecraft is not a novelty, in which different theoretical constructs dispute the primacy over this matter, hence a whole plethora of fractal elements willing to represent it, such as: disbelief in the discourse of modernity's metanarratives (Lyotard 2004), the cultural logic of late capitalism (Jameson 2002), the theoretical construction of hypermodernity (Lipovetsky 2004) and the epistemic lineage of liquid fear (Bauman 2008). However, this relevant doctrinal discussion must also recognize that the post-1989 world has undergone major transformations in the existing structures of world power. That is why the view that the postmodern world order should be analyzed less as an academic fetish and more as a new binding geopolitical reality that arises from the collapse of the Soviet Union as a world superpower, thereby creating a new archetype of hegemonic power

This is the ‘geopolitical turn of deglobalization’ fostered by Trump’s America, which shuns away from the world leadership of neoliberal globalization to approach the nationalist, truly protectionist economic rationality, repatriating its national industry to stop the expansion of Chinese geopower on the world stage. It is important, therefore, to examine whether post-Covid-19 geopolitics will rescue the American world, characterized by the unilateral hegemonic control of neoliberal globalization (of Lockean inspiration) or if a post-American world will at last emerge: a cosmopolitan global governance system of Kantian inspiration, shared with other great powers, notably China and its Belt and Road Initiative.

However, in order to fully understand the post-pandemic world, it is necessary to travel back in time to the Bretton Woods Conferences, in the throes of the Second World War, in July 1944, in order to identify three major events that marked the beginning of the cycle of world hegemony of the United States. Indeed, the trajectory of hegemonic America begins with the Bretton Woods international financial system and the creation of the International Monetary Fund (IMF), the World Bank and the gold-dollar system, three major events which signaled the alliance of the industrialized countries that emerged victorious from the war – and under American leadership.

The American strategist’s pragmatic genius soon realized that it was also necessary to promote the democratic reconstruction of his former enemies, Germany and Japan, as a way to ward off the communist threat, hence the formulation of the 1947 Marshall Plan. Here, the embryo of today’s capitalist triad (the North American bloc controlled by the United States, the European bloc led by Germany and the Asian bloc ruled by Japan). In other words, an archetype of international relations that converges geopower to a small number of industrial powers, under the influence of a dominant state, which considers himself capable of leading the international system.

Following this timeline, the hegemonic cycle of the US continues, now with the inauguration of the Paris Club of rentier states, in 1956, which appears as an instrument of control of the peripheral world economy (again, the concentration of power by the rich club from North America, Western Europe and Japan can be observed here). The trail of America’s hegemony leads us to the creation of the Club of Rome, in 1968, whose objective was to build prospective scenarios for the formulation of global policies⁵.

relations, which differs from its predecessors: the Eurocentric order (1648-1945) and the bipolar order (1945-1989). Thus, as it goes beyond the scope of this article, such discussion will be abandoned here to the detriment of the development of a minimal analysis that allows describing this possible postmodern world order, here envisioned as the order that emerged with the end of the Cold War and that it is still under construction to this day.

⁵ Formed by distinguished personalities (statesmen, economists, industrialists, political leaders, educators and humanists, among others), the Club of Rome, after the famous Dana Meadows report from 1972,

Regardless of the relevance of all these multilateral mechanisms, the fact is that the idea of a *Pax Americana* will gain irrefutable visibility from the unilateral declaration of 1971, by Richard Nixon, which reformed the Bretton Woods system, uncoupling the American dollar from the gold but maintaining it as a world reference, now without a ballast, a fact that evidently renewed American world hegemony, projecting it vigorously towards the future – specially due to the repercussions of the Vietnam War. In fact, note carefully that the 1971 unilateral declaration (the ‘Nixon shock’) is the foundation of American monetary and financial hegemony and of the *Pax Americana* until today.

Therefore, it is argued here that the end of the dollar as a reference for the global monetary-financial system will indicate the beginning of the end of the American world. It is in this sense that the great dispute of the 21st century will be the financial war of the dollar against the Chinese renminbi. Returning to the long sequence of events that consolidate American hegemony, it is also important to highlight the creation, in 1975, of the Group of Seven richest and industrialized countries (G7).

With the right sharpness of mind, the reader should realize that the G7 gave intrinsic systematicity to the *Pax Americana*, insofar as it established an archetype of geopower with the aim of controlling the world through unified global policies focused on trade and investment flows on a global scale, thus strengthening the triad of democratic capitalism (the United States, Europe and Japan). With such a kind of intellection in mind, it becomes easier to understand that the G7 has its most remote origin in the Clubs of Paris and Rome and, more recently, in the 1973 trilateral commission, materialized by David Rockefeller and Zbigniew Brzezinski, whose purpose was to develop the cooperation between the most developed regions of the world: Western Europe, Japan and North America. Highlighting the importance of the trilateral commission, Roberto Machado de Oliveira Mafra explains:

The Trilateral [Commission] was, according to some, the ‘financial arm’ of the New World Order that would be implemented upon the world, in order to avoid the negative scenarios arising from the reports of the Club of Rome. This ‘new order’ would be materialized in the form of a single transnational world government. Three blocs were formed around the three main member countries (a triad) as an initial base for this endeavor – the United States, Europe and Japan –, representing the most influential elite in several countries – bankers, industrialists, businessmen, scientists,

was widely criticized for its tendency of not being properly representative of the world, moving away, in Philippe Braillard’s view, from the position of a guardian of the survival of the human species to approach a technocratic ideology, within a global society focused on the maintenance of multinational companies’ interests (Mafra 2006, 174).

economists, military, politicians and others –, which formed the core of the Trilateral Commission. (...) The great objective of the Trilateral was to economically unite the entire world. The three blocs would be under the ‘area of influence’ of the United States, materializing a New Age ‘prophesied’ by Brzezinski as the [Electronic Age] (Mafra 2006, 176-177).

Thus, we can visualize the long way traveled by hegemonic America, from Bretton Woods (1944), through the Marshall Plan (1947), the Clubs of Paris (1956) and Rome (1968), the unilateral declaration of untying the dollar from the gold (1971), the Trilateral Commission (1973), the creation of the G7 (1975) and the exchange misalignments of the Plaza Agreement (1985)⁶, until, finally, the fall of the Berlin Wall in 1989, the height of the hegemonic cycle of the *Pax Americana*’s economy, driven by the collapse of the Soviet Union. In effect, the fall of the Berlin Wall inaugurated neoliberal globalization, captained by Washington, in which the only remaining superpower on the planet would oversee the opening of economies across the globe while guaranteeing world peace. This means that the *Pax Americana* has become the engine of the post-1989 neoliberal governance, asserting the idea that the term globalization can and should be associated with American hegemonic projection⁷.

With the right sharpness of mind one can also note that American global hegemony, according to the Clinton strategy for engagement and enlargement, would be exercised by the grand scheme of the world trade constellation, composed of three major supercontinental areas of trade, namely: the Free Trade Area of the Americas (FTAA); the Transatlantic Market (TM) and the Asia-Pacific Economic Cooperation (APEC). Such an archetype would have as support elements the traditional Bretton Woods mechanisms (IMF, BIRD and the dollar), now joined by the World Trade Organization (WTO), which emerged in 1994 from the Uruguay Round of the General Agreement on Tariffs and Trade (GATT).

Here, we can clearly visualize the most advanced stage of the theory of the capitalist triad: the American bloc is the Free Trade Area of the Americas,

6 The Plaza Agreement, imposed by the United States in September 1985, forced the appreciation of the Japanese yen and the German mark with the aim of lowering the dollar, thus enabling the United States to reduce its trade deficit, as well as recovering its international competitiveness in relation to Germany and Japan.

7 It is in this sense that Vicente de Paulo Barreto associates the term ‘globalization’ with the hegemonic power projection of the ‘*Pax Americana*’: the term ‘globalization’ was also associated with a socio-political project, *Pax Americana*, which after the fall of the Berlin Wall was considered as hegemonic. The project, both for theorists and in practical financial relations, came to be considered as qualitatively superior to other models of political, economic and social regimes found in different nations of the world. [...] Alongside this abrupt change in the global political scenario, for the first time in the history of humankind an economic system was intended to be universal, with the emergence of common production mechanisms to all peoples (Barreto 2010, 215-216).

the European bloc is the Transatlantic Market, and the Asian bloc is the Asia-Pacific Economic Cooperation. Finally, both *Pax Americana* and neoliberal globalization are reiterated here, as is neoliberal globalization by the world trade constellation (the most advanced stage of the triad).

It is in this context of neoliberal globalization that Francis Fukuyama's (1998) end of history thesis emerges, shifting to the epicenter of postmodern statecraft the triumph of financial capitalism, the victory of liberal democracy, the universalization of Western values, the end of civilizational conflicts and the supremacy of a single superpower⁸. Thus, under the generic label of *Pax Americana*, the 'ontogeny of geopolitical leviathan' is projected, in which the United States' superior power will guarantee the peace and security of the international system.

In fact, hegemonic America feels an obligation to guide and command the destinies of humanity, and, in this sense, it is worth highlighting Brzezinski's vision:

America has the monopoly on global military reach, an economy second to none, and peerless technological innovation, all of which give it unique worldwide political clout. Moreover, there is a widespread, if unspoken, practical recognition that the international system needs an effective stabilizer, and that the most likely short-term alternative to a constructive American world role is chaos (Brzezinski 2007, 192).

Consequently, the apothegm is simple: either the world accepts the hegemony of *Pax Americana* or it will live in a permanent state of global disorder (Góes 2018, 523-524)⁹. Finally, the complex dynamics of geopolitical domination of the planet necessarily rely on the leadership of neoliberal globalization. Everything that was pointed out so far has served to highlight neoliberal globalism under hegemonic America, which, however, begins its decline from September 11 onwards, the collapse of the Twin Towers and the Bush Doctrine.

8 As Luís Roberto Barroso points out: 'Planet Earth. Early 21st century. Still without contact with other inhabited worlds. Between light and shadow, post-modernity unfolds. The generic label houses the mixture of styles, the disbelief in the absolute power of reason, the discredit of the state. The age of speed. The image above the content. [...] We experience the anguish of what cannot not be and the perplexity of a time without reliable truths. An apparently post-everything era: post-Marxist, post-Kelsenian, post-Freudian' (Barroso 2003, 2).

9 It is in this context that the era of world disorder is being unfolded, as highlighted by Luiz Alberto Moniz Bandeira: 'Political Science needs to study the state's ontogenesis, in the process of the oppressive accumulation of capitalist power, which not only denies [...] but also cancels the denial, throughout the history and evolution of the world economy [...]. There is a reciprocal relationship, of action and reaction, between events – so we have to study them in all its ontological dimensions, under new and different angles, given that history evolves ad infinitum, not in a straight line, but in a spiral and, sometimes, in curves, folds and alternating lines' (Moniz Bandeira 2016, 24-25).

In this sense, Samuel Huntington was quick to contest Fukuyama's idea of a single world of liberal harmony, emphasizing that:

In the post-Cold War world, for the first time in history, global politics has become multipolar and multicivilizational. In the late 1980s the communist world collapsed, and the Cold War international system became history. In the post-Cold War world, the most important distinctions among peoples are not ideological, political, or economic. They are cultural. (...) The rivalry of the superpowers is replaced by the clash of civilizations. World politics is being reconfigured along cultural and civilizational lines (Huntington 1998, 19-21).

In a way, Huntington's vision continues to follow the scientific trail of multicivilizational multipolarity. Most notably, the September 11, 2001 terrorist attacks on the World Trade Center and the Pentagon, symbols of the American financial and military power, had as an outcome the implementation of the Bush Doctrine of the preemptive strike, explicitly rejecting the Order of Yalta. Indeed, it must be recognized that the attacks on the symbols of American financial power drastically altered the picture for neoliberal globalization.

In this sense, post-9/11 strategic configuration opted, without major concerns for the rest of the world or for public international law, for a preventive attack model, as opposed to Clinton's National Security Strategy (NSS). This means to say that, while the Clinton NSS sought to maintain the control of the United States on the world economy, the Bush NSS did the opposite, enhancing the military dimension and, with that, allowing a gradual Chinese projection in Africa, Latin America and parts of Asia, with an emphasis on anti-Americanism. In the words of Thomas Friedman:

So as the how-we-globalize forces drifted away, and as the number of Third World people benefiting from globalization began to grow, and as America under the Bush administration began to exercise more unilateral military power, the anti-American element in the antiglobalization movement began to assume a much louder voice and role. As a result, the movement itself became both more anti-American and more unable and unwilling to play any constructive role in shaping the global debate on how we globalize (Friedman 2007, 348).

Nevertheless, despite such relevant argumentation, the fact is that the decline of the American world effectively began with the neoliberal financial crisis of 2008, which was intensified by the 2019-2020 coronavirus crisis. In effect, the global health emergency projected, in a way, Kantian-inspired

principles¹⁰, which oppose the neoliberal archetype of globalization of the capitalist triad – already weakened since 2008.

That is the reason why it can be claimed that the financial crisis of 2008 was the driving force of a true Copernican revolution in the field of world geopolitics, insofar as it brought with it the real possibility of deconstructing the American world and its possible replacement by a multipolar world, or at least a world without a centric predominance of the United States and its traditional mechanisms of global hegemony (Góes 2018). Thus, after the period of descent (1989-2001)¹¹, the period of crises emerges¹², from 2008 (financial crisis of liberalism) to the present day (health crisis of Covid-19). If the period of descent (1989-2001) is of unquestionable American hegemony, the period of crises (2008-2019) must be interpreted as a cycle of global power change, characterized by the gradual transition to welfarist multipolarity to the detriment of the neoliberal *Pax Americana*.

All the questions that have been raised so far can and should be grouped under the generic label of a pre-pandemic world. Now it is necessary to project the future of a new post-pandemic world order, whose most significant heritage should be the recognition of the person's dignity as a new axiological axis of the democratic rule of law, regardless of the elevated geopolitical tension between the two major powers of the international system. Thus, everything indicates that post-pandemic global geopolitics will bring to the center of the international relations agenda the dispute between Chinese neoliberal globalism (globalization-neoliberalism) and American deglobalization (repatriation of the national industry).

Undoubtedly, the globalization of the Covid-19 epidemic already projects the formation of a new world order, which will stand out not only for the resignification of the role of the modern state in the sense of guaranteeing the social rights of the common citizen (guarantee of the essential cores of human dignity), but also for the erratic great power competition between the United States and China, now within a new disruptive post-coronavirus archetype, which will reissue the Mackinderian-Spymanian paradigm with a

¹⁰ In the words of the Italian philosopher Giorgio Agamben: 'This question is even more urgent, and it is not just a purely theoretical hypothesis, as it is beginning to be said that the current health emergency may be considered the laboratory in which new political and social arrangements are being made. Many will say that the most serious sacrifice was made in the name of moral principles. To those I would like to remind that Eichmann, apparently in good faith, stressed that he had done what he did according to his conscience, in obedience to the precepts of Kantian morals. A norm that states that good should be renounced in order to save good is as false and contradictory as one that, to protect freedom, imposes the renunciation of freedom (Agamben 2020).

¹¹ Fall of the Berlin Wall (1989) and collapse of the Twin Towers (2001).

¹² Neoliberal financial crisis (2008) and coronavirus crisis (2019).

postmodern statecraft bias¹³. Strictly speaking, such a context already existed in the pre-Covid-19 world, where the advantages and disadvantages between Barack Obama's neoliberal transoceanic alliance strategy and Donald Trump's neoisolationist America First strategy were already being questioned.

In this sense, when we look at Obama's America and Trump's America in a comparative fashion, we can assert that they followed diametrically opposed geopolitical paths (Obama's neoliberal globalism versus Trump's neoprotectionist deglobalization), even though they aimed at the same ultimate goal: to restore the American world (*Pax Americana*), directly threatened by the geopolitical rise of China, instrumentalized by the convergence of the Silk Road Economic Belt (by land) and the 21st Century Maritime Silk Road (by sea). According to Obama's Strategy, the United States should revitalize its global leadership based on the triad theory, which was forgotten by the Bush administration. Hence the vision of creating grand transoceanic alliances with its traditional capitalist partners, namely: the transatlantic alliance with Europe and the transpacific alliance with Japan.

On the other hand, the novelty that the Trump Doctrine brings to the table is not the placing of American interests first, but rather the attempt to contain Chinese geopower on a global scale by adopting an economic nationalism based on the repatriation of the national industry¹⁴. For Trump, it is urgent to prioritize the American domestic space previously reserved for the diffuse interests carved out in the large multilateral arrangements, allegedly controlled by Washington.

In Trump's America, there is no longer room for neoliberal globalization led by broad multilateral trade arrangements, which do nothing more than harm the American economy in favor of China, an antagonistic power and strategically coupled to the networks of globalization¹⁵. Here is the

13 It is in this sense that statesmen, legislators and jurists have the common task of reframing the national development paradigm, now considering new variables in their geopolitical equation, such as the phenomenon of deglobalization, the trade war between America and China, the consolidation of anti-hegemonic world power structures etc. (Góes and Visentini 2019, 35).

14 Now, let us not forget that, since the end of Eurocentric mundialization, the United States has always controlled the international scene by putting its vital interests in the first place. Therefore, without strategic naivety, it is necessary to understand that all the great strategies prior to the implantation of 'America First' have always put the United States first. In this sense, the systematic study conducted so far has already demonstrated the hegemonic dimension that guides American action in the international system – that is, since the end of World War II, the pragmatic genius of the American strategist has been using axioms that articulate great international alliances for their own benefit (Góes 2018, 528).

15 In this sense, it is worth questioning: what are the geopolitical reasons that guide the pragmatic genius of the American strategist to deconstruct his own creation, perhaps his masterpiece of the present time, which is the great transoceanic alliances (Atlantic and Pacific), conceived by Barack Obama with the purpose of containing Chinese expansion? It is clear that Trump's NSS is contradictory when it comes to the position of leader of the neoliberal world order, until now occupied by the United States. How to understand, in the midst of the 21st century, the deconstructing of current neo-Darwinian globalization by

great paradox of the post-crisis world order of 2019-2020: a turnaround in the American world and neoliberal globalization, which escapes or at least gradually moves away from its direct and immediate control. As a result, preventing Chinese global domination becomes the categorical imperative of American geopolitics, hence the idea of deglobalization based on the America First strategy¹⁶.

In other words, the post-Covid-19 world will be characterized by the United States' effort to avoid the multipolar world order, as if its long-lasting power could survive even in the face of a new period of world crisis. In short, the post-coronavirus world will be a time marked by the dispute between the rescue of neo-Darwinian neoliberal-Lockean globalization and the consolidation of a Welfarist multipolarity with a cosmopolitan-Kantian bias.

21st Century Brazilian Geopolitics and the 1988 Constitution

As previously stated, post-pandemic global geopolitics will experience the tension between the resumption of neoliberal globalization under Chinese leadership and the reestablishment or not of the United States' geopolitical status in order to retake the reins of global leadership in a context of deglobalization of the economy. Unfortunately, in the midst of this complex world scenario, disoriented countries of late modernity in the Global South will become objects of dispute in light of this geopolitical clash. Indeed, subjected to the narratives of great power competition between the United States and China, it is highly likely that these countries will be easily seduced by the geopolitical principle of alignment: 'join my side, for I offer greater benefits'.

Here it is important to highlight that such a principle brings to the table a new interpretation of the concept of *Lebensraum* (vital space) for postmodern states, that is, the ability to conquer markets and minds. Such a worldview allows us to interpret neoliberal globalization for what it truly is – its benefits and harms, circumscribed to a complex dynamic of planetary geopolitical domination materialized by global leadership, be it American or

American geopolitics, considering that it was carefully architected by the United States themselves since the fall of the Berlin Wall in 1989? (Góes 2018, 529).

¹⁶ With this, an era of setbacks for globalization begins, in which Trump's America, until then powerful and worldwide hegemonic, decides to face China directly, electing it as a rival, alongside Russia, as established by the National Security Strategy. Indeed, Trump's NSS deconstructs the neo-Darwinian globalization, which the United States has directly fostered since the fall of the Berlin Wall in 1989.

Chinese¹⁷.

Consequently, it is necessary to understand that the phenomenon of globalization of the economy is not a mere instrument for regulating international trade, nor an instrument for promoting international cooperation that is benign by nature, but rather an instrument for global power dispute (Góes 2018). In this phase of the post-crisis neoliberal globalization, it is imperative to study the Constitution of a peripheral state, uncritically receiving normative incentives that are unfavorable to its interests and stemming from the hegemonic geopolitics of the center, whose force of influence may even control the legislative process in the countries of late modernity in the Global South.

With the reflective mastery that is peculiar to him, Norberto Bobbio shows that the Legislative branch of poor countries on the periphery of the international system no longer acts as an autonomous power, but rather as a mere resonance chamber for foreign decisions, notably the nations in the lead of neoliberal globalization¹⁸.

That is why one may be left with the impression that the national legislator does not understand the complex matrix of cross-impacts that circumscribes the verticalized power relations between the center and the periphery of the world system. Our constitutions and laws are modified without any regard to a possible national development project – on the contrary, what prevails is the strategy of great powers, notably the United States and China, characterizing what we may call a ‘Constitutions market’¹⁹.

The greater the lack of strategic vision in this segment of society, the greater the intensity of the damage suffered by ordinary citizens. The result of a lack of understanding of world geopolitics – by judges and legislators – reverberates directly in national development and, in its wake, in guaranteeing the social rights of the under-served. Equally troublesome is the fact that, in

17 Parag Khanna indicates that “A half century later, a leatherbound first edition of Toynbee’s narrative was my most insightful guide as I set out around the world to explore the interplay of two world-historical forces he grasped intuitively without ever using the terms: geopolitics and globalization. Geopolitics is the relationship between power and space. Globalization refers to the widening and deepening inter-connections among the world’s peoples through all forms of exchange” (Khanna 2008, 9-10).

18 Parliament, in the advanced industrial society, is no longer the real center of power, but often a resonating chamber for decisions taken elsewhere (Bobbio 2004, 159).

19 The idea of a ‘Constitutions market’ derives directly from Natalino Irti’s (un)limiting forces notion (market of legal systems), meaning the power possessed by multinational companies – supported by their respective national states – to choose the Constitution that suits them best within a wide market of options offered by underdeveloped countries in the Global South (Irti 2007, 6). Far from being random, the realization of this wide set of options offered by the periphery of the international system to multinational companies is the result of a fundamental set of political decisions taken by the Legislative power, making it so that Bobbio’s vision of a ‘mere resonance chamber of decisions taken elsewhere’ more accurate than ever (Bobbio 2004, 159).

these countries, a handful people are becoming richer than entire national states. All of this reflects the phenomenon of neo-Darwinian globalization that does nothing but perpetuate this cycle for the periphery of the Global South. In this sense, it is necessary to fight against the reality that connects the 'hegemonic power of rich and industrialized countries' and the 'subservient constitutional changes of poor and underdeveloped countries'.

In this sense, the aforementioned Natalino Irti, Italian jurist and professor at the Università La Sapienza di Roma, demonstrates that, behind any legal system, there is always a victim of power, hence the conception of an era of deregulation and borderless economic transactions, in which:

Economic transactions ignore limits. While the tribes are at war, among other things, in the darkness of the night, the markets, which offer goods and trade, revolve with a feeling that they do not belong to any country. A no man's land is one that is between two margins, between the borders of two different countries, in two different spaces. The economy is (or aspires to be) an indefinite no-man's-land (Irti 2007, 1-4).

Such an intellection cannot escape the student of today's constitutional law, as it is recognized that his or her great scientific challenge in the 21st century is to incorporate, in the constitutional equation, new meta-legal variables (geopolitical, economic, cultural etc.), that inform and conform the elaboration of the legal order as a whole²⁰. In fact, in times of postmodern statecraft, geopolitics, globalization and law are so intertwined that they form an epistemological whole, which challenges jurists and strategists alike – thence the relevance of geolaw as a multidisciplinary branch of contemporary science.

In strictly legal terms, the Constitution of 1988 establishes, as the pillar of the democratic constitutional state, the achievement of the fundamental objectives enshrined in article three of the constitutional text²¹. However,

20 At the same time, the Judiciary – as a component of the state's political forces – finds itself increasingly involved in the complex constitutional problems that are brought before the courts. In this sense, it is worth highlighting, from the outset, geopolitical issues such as the demarcation of indigenous lands, environmental issues, the construction of hydroelectric dams in the Amazon, Petrobras' divestment plan and its process of unbundling by the privatization of subsidiaries (Refinarias, BR Distribuidora and others), the privatization of the Eletrobras system, the regulatory framework for the pre-salt, among others. These are issues that make up the so-called strategic constitutionalism, the branch of constitutional law whose epistemic lineage focuses on the inter, trans and multidisciplinary study involving world geopolitics and internal constitutional law (Góes 2019).

21 The fundamental objectives of the Brazilian state are, under the terms of art. 3, items I to IV, of the 1988 Constitution: to build a free, just and solidary society; to guarantee national development; to eradicate poverty and marginalization and reduce social and regional inequalities, promoting the good of all, without

carefully note that, among other fundamental objectives of the Brazilian state is the guarantee of national development, the achievement of which depends directly on national geopolitics. This means that national development is not merely left to the national strategist, but, rather, a norm of constitutional dignity which must be weighed against other principles of the Constitution.

In this sense, it is not enough to reconnect law and ethics, as the neo-constitutionalist paradigm of law does so brilliantly; it is necessary to cross dogmatic limits to achieve full harmony between geopolitics and law in order to create the theoretical bases of the hermeneutics of national development, in which the strategic question will be considered in the process of weighing constitutional values in collision. A country without a national development strategy is a country adrift in the international system.

Therefore, as mentioned before, the lack of understanding of the global strategic landscape on the part of legislators, judges and courts may represent the mitigation of social rights of the less favored classes, due to a possible deindustrialization of the country. It is in this sense that it is urgent to question whether it is possible build a free, fair and solidary society without a genuinely national industrialization strategy and focused on income distribution? Likewise, it is important to ask whether it is possible to guarantee national development without a grand strategic project for the state. And more: how to eradicate poverty and marginalization, as well as regional and social inequalities, adopting a strategy of subordination to the vital interests of the world centers of power?

Finally, the lack of a clear vision of this order of considerations can make it difficult to elaborate a genuinely Brazilian geopolitical project, free from external interference. Thus, it is urgent to build an autochthonous geopolitical archetype, capable of generating national development without violating the principles of the democratic constitutional states, thus guaranteeing a dignified life for all Brazilian citizens²². To this end, it is defended here the thesis that Brazilian international projection is inexorably reliant on the advance of national geopolitical knowledge, often distorted or poorly understood, either by the National Congress or by the Judiciary, which makes it difficult to achieve the categorical imperative of Brazilian geopolitics:

prejudice of origin, race, sex, color, age and any other forms of discrimination.

22 And so it is that geopolitics and power must be in line with the constitutional sentiment of social and economic development, no longer admitting that old positivist autopoeitic image, closed in on itself, without conceptual coupling of the different epistemological flows, notably geopolitics and law. On the contrary, it is the task of the Brazilian jurist and strategist to overcome the scientific backwardness that separates us from developed countries, especially the United States, whose National Security Strategy has the power to shape the international order: the strategy of a single country directing and commanding the entire world scenario (Góes and Visentini 2019, 31).

to lead Brazil to its proper place in the international system, that is, to be among the five great powers.

Hence, in Brazil, the gap regarding the epistemological encounter of geopolitics and law is undeniable, and it is worth highlighting here Gilberto Bercovici's vision, when he accurately captured the lack of concern regarding this development:

We can put whatever we want in the Constitution – if we do not have a strong state, in the republican sense, to implement this Constitution, to be able to guarantee rights, to be able to implement public policies, it is useless. [...] Another issue that we have ignored lately is the issue of development. Without a state that promotes an effective development policy, we can put whatever we want in the Constitution, and, unfortunately, we will still be condemned to continue denouncing the fact that the Constitution contemplates something that in reality does not exist (Bercovici 2003, 79).

Thus, the great challenge of the national academic thought of the present is to conceive a multidisciplinary epistemological archetype that harmonizes the relations between the 'National Grand Strategy' and the 'Civilian Constitution of 1988'²³. As Lassalle (1998, 49) points out, constitutional problems are not problems of law, but of power. In other words, the judicial decision cannot dispense with the understanding of world geopolitics and its reflexes in the constitutional field and vice versa, exactly as Philip Bobbitt (2003, 192) has argued. The constitution is not only the document that manifests the ways in which a certain society recognize civil rights; on the contrary, all societies are constituted in a specific way – and that is their constitution.

In times of postmodern statecraft, the scientific connection between the hermeneutics of national development and the full effectiveness of fundamental rights of the Brazilian citizen is intensified from the judicialization of geopolitics. For better or for worse, the Supreme Court needs to understand the impacts of global geopolitics not only on our constitutional text, but also on the legal system. Therefore, there is an urgent need to establish the bases of an autochthonous epistemic-geopolitical corpus, with a degree of order

23 On the one hand, as was pointed out, the concept of Constitution in a strategic sense presupposes the theoretical mapping of the phenomenon of the judicialization of geopolitics, in which the great strategic questions of the Brazilian state will be brought before the Judiciary. Thus, the idea of 'Strategic Constitution' projects the image of 'the act of constituting the strategic action of the state', which evidently means that the Constitution must be read with a strategic filter, capable of understanding the influence of real power factors not only on the internal aspect, such as the famous thesis of Ferdinand Lassalle, but, mainly, of the real factors of hegemonic power in the world geopolitical landscape (Lassalle 1988).

and rationality that allows the maximization of national development without violating the canons of the rule of law. Therefore, it is necessary to plan and act, which evidently highlights the strengths of an independent geopolitics (Góes and Visentini 2019, 30).

This is the reason why the national statesman and legislator must rethink a new paradigm of positively attenuated statecraft, which harmonizes on the one hand the binomial ‘free enterprise – global expansion of trade’ and, on the other, the trinomial ‘human dignity – national development – social justice’. Furthermore, the confluence of liberal values (formal equality and minimal status) with social values (material equality and positive status) must be made from the guarantee of the essential core of human dignity, which sets the minimum material conditions for the full exercise of citizenship and the rights of all three dimensions for all individuals.

With scientific accuracy, the reader will perceive that guaranteeing the essential **bases of dignity for all citizens** will only be achieved with the strengthening and expansion of the **Brazilian strategic core**. As already mentioned, the Brazilian strategic group is understood to be the group of Brazilian companies that are close to the traditional capitalist multinational companies, insofar as they remain as poles of world production and not as mere consumer markets (direct importation of products from abroad). In this category of companies, among other companies, are Petrobras, Embraer, the Defense Industrial Base, AmBev, Braskem, Bank of Brazil, Naval and Aeronautical Industry, Vale do Rio Doce, Eletrobras, National Contractors and the Agribusiness sector.

Please note carefully that only with this conceptual spectrum of geolaw (expansion of the strategic core of Brazilian companies in order to guarantee the essential core of dignified life for all Brazilian citizens) it is possible to project the country’s geopolitical future. Expanding the Brazilian strategic core does not mean to reduce the number of state and multinational companies of other nationalities. On the contrary, in various strategic sectors of the national economy, it is urgent to attract new foreign investments in order to foster national development²⁴.

Here, the reader must realize, with due strategic sensitivity, that it is not a question of being against privatizations – on the contrary, it is argued here

²⁴ What is not accepted is the reduction of the Brazilian strategic core, made by privatizations, which transfer the industrial activity abroad with supervening imports of that same product in the future. A logic that is not easy to understand, but, undoubtedly, imposed almost by means of a single thought by the first privatization cycle in Brazil, during the 1990s. A good model for the privatization of public companies is the process of going public on the stock exchange, with pulverization of shares, which would allow the strategic control of such companies by the Brazilian society and not by the Brazilian state, as well as the maintenance of technological development in Brazil.

that privatizations will always be welcomed, insofar as state-owned companies will always be less competitive than private companies. In fact, what must be avoided is denationalization, followed by the complete liquidation of Brazilian companies (state or private), some profitable and endowed with a reasonable technological domain, as, for example, was the Brazilian shipbuilding industry, until then situated in the top three in the world and whose outcome was melancholic: a strategic sector of the national economy was practically wiped out in the name of an international competitiveness that never arrived in the country.

Ultimately, overnight, this relevant Brazilian strategic core, with high added value and considerable technological content, was almost destroyed – leaving the country to spend billions of dollars in payment of freight for foreign flag vessels to carry out maritime trade, which corresponds to more than 90% of all foreign trade in Brazil. Here is the record of a fundamental example which reinforces the need for the development of geolaw as a branch of legal science that studies the immanent epistemological connections between geopolitics and law²⁵.

Therefore, one of the greatest challenges facing the 21st century Brazilian jurist and strategist is to carry out a theoretical review of geopolitical and legal instruments that project the formulation of public policies for the revaluation of national industry, without violating the democratic constitutional state and international free trade rules. Strictly speaking, it is multinational companies that shape the world order under the protection of their respective national states.

It is urgent, on this account, to build a new state paradigm, with enough scientific latitude capable of harmonizing the tension of the geopolitical great power game and the constitutional sentiment of justice, thereby enabling the strengthening of the strategic core of industrialization in the country and, in its wake, guaranteeing the essential core of dignified life for the Brazilian citizen. Therefore, there is an urgent need to articulate the elements of national power, transforming potential power into real power and projecting the country in the concert of nations, notably from its four great founding geopolitical archetypes: Brazil is an energy superpower, a food superpower, an

25 In this sense, it is important to assess whether it is still worth insisting on the reconstruction of some sectors of the Brazilian strategic core, which were deconstructed by the Washington Consensus, and rather strengthen the national industry and the internationalization of Brazilian private companies, endowing them with international competitiveness as so to keep them in the transnational capitalist production chain. In other words, is it convenient or not to insist on the strategic control of the state in the process of intensifying commercial and technological relations on a global scale? As an ideal type of this dilemma, one can mention the regulatory mark of the pre-salt that defines a minimum percentage of national content in these activities, that recently was significantly reduced.

aquifer superpower and an environmental superpower ('green superpower').

Much more than that: the study of classical and contemporary geopolitics clearly shows the peripheral line that characterizes South America in relation to the centers of power, which, of course, does not fit in with the political and strategic dimension of Brazil. Indeed, admitting a verticalized geopolitical relation is an impediment for Brazil to prosper at its own pace, thus realizing the great categorical imperative of Brazilian geopolitics. That is why, in an academic sense, the theory of Colonel Roberto Machado de Oliveira Mafra from the Superior War School (ESG) in Brazil gained importance when he engineered his Quaternary Theory. Its great merit rests on the strong idea that Brazil and other Latin American countries should not accept inferior treatment by other blocs or world leaders²⁶.

Even though the conception of the eminent ESG professor is the best path to be followed, under the terms of the article four of the 1988 Constitution, which establishes the search for the formation of a Latin American community of nations, such a geopolitical construct is believed to be difficult to execute in the medium or short term²⁷. Thus, it is conjectured as the best geopolitical solution the reduction of the vital space of Brazil for the South American subcontinent. This is not to say that South American integration should be necessarily the main objective of 21st century Brazilian geopolitics. On the contrary, the search for South American integration is only the starting point of a broader geopolitical strategy that is projected on the structures of the world macro-powers, notably the United States, the European Union and China.

Here is the founding core of 21st century Brazilian geopolitics: the construction of an archetype for strengthening South America in the face of the three major power poles – hence the importance of strategic rapprochement with the United States, the advance of the Mercosur-EU agreement and the engagement with the Chinese Belt and Road Initiative (Silk Road Economic Belt and 21st Century Maritime Silk Road).

²⁶ This means that, from the first quarter of the 21st century onwards, the world will be divided into four major geopolitical groups, namely: the North American bloc, the European bloc, the Asian bloc and the Latin American bloc. This last bloc would initially be integrated by South American countries, with the addition of other Latin American countries in Central and North America and, finally, those of the Caribbean region (Mafra 2006, 66).

²⁷ Indeed, the implementation of the Quaternary Theory is difficult to enforce. In this respect, it is enough to note that Mexico is already strongly tied to the United States and Canada, in the same way that the countries of the Caribbean and Central America are strategically closer to the US than to any other South American country. Therefore, it is correct to say that the integration of Latin America's geopolitical space in the globalized world is at the threshold of intangibility.

Final Remarks

This article tried to analyze, initially, the geopolitical control of law from the influence of neoliberal geopolitics on the constitutionalism of countries of late modernity, as is the case of Brazil. Thus, it was possible to demonstrate the influence of real factors of world power on the legislative process of the countries of the Global South from the perspective of neoliberal globalization, whose leadership is being disputed between the United States and China.

Through the systematization proposed, it was possible to verify that Trump's National Security Strategy, even before the 2019 coronavirus crisis, already had a cratological structure incompatible with the position of leader of neoliberal globalization, until then occupied by the United States. So, how to understand, in the midst of the 21st century, the deconstructing of current neo-Darwinian globalization by American geopolitics, considering that it was carefully architected by the United States themselves since the fall of the Berlin Wall in 1989? (Góes 2018, 529).

In this sense, it was demonstrated that Trump's strategy was not only the most updated version of the isolationist doctrine of the Eurocentric era, but, above all, a landmark of paradigmatic break with all other strategic archetypes that preceded it. In other words, Trump's America, denying the theory of the triad, moved away from the leadership of neoliberal globalism in order to approach the neoisolationist, truly protectionist rationality, which made possible the so-called 'geopolitical turn of deglobalization', provoked by the geopolitical rise of China through the convergence of the Silk Road Economic Belt (by land) and the 21st Century Maritime Silk Road (by sea).

It also became evident that the Covid-19 crisis further reinforced the Chinese success over the United States when it comes to the influence and control of the globalized economy. The health emergency proved the world dependence on health equipment manufactured in China, hence the American attempt to geopolitically neutralize Chinese expansion, not only in relation to the conquest of the 'world island', in Mackinderian terms (land masses of Europe, Asia and Africa), but also from the outer islands (the American continent itself, Australia and surrounding areas)²⁸.

²⁸ Likewise, the American accusation that the World Health Organization (WHO) operates under China's geopolitical control already projects in itself the image of a Chinese leadership of multilateral organizations in the world system. This means that the containment of the authoritarian model of state capitalism in China can no longer be done only by the United States. Therefore, it is essential to co-opt the other democratic industrialized countries, former co-leaders of neoliberal globalization (Europe and Japan). However, as we tried to demonstrate, Chinese expansion during the coronavirus crisis does not rule out the possibility of resumption of global leadership by the United States. In the view of the American strategist, what matters is to reestablish a new version of the American world, now no longer captained by neoliberal

Finally, it was asserted that the post-coronavirus world will experience the geopolitical tension between the rescue of neoliberal globalization led by China and the resumption of cratological show of strength from the United States to recover the reins of global leadership. In the midst of it all, there's the legitimate aspiration of late modernity countries for the pursuit of their national development.

In this sense, it was highlighted that the Brazilian statesman and legislator must rethink the state paradigm, taking into account new forms of international relations and new formulas for interpreting the Constitution. The envisaged solution will have to favor the expansion of the Brazilian strategic core as a set of autonomous economic-technological segments capable of effectively participating in international competition. In other words, a country with more than 200 million inhabitants cannot give up its strategic technological-industrial base, transforming itself into a mere service society and exporter of primary goods.

Indeed, within a scenario that is geopolitically post-American, post-Welfarist state-wise and legally post-positivist, it is urgent for the 21st century judge and jurist to devise a new constitutional archetype of attenuated state positivity status capable of harmonizing, on the one hand, the binomial 'free enterprise – global expansion of trade' and, on the other, the trinomial 'human dignity – national development – social justice'²⁹.

It must be understood that both the Constitution and the National Strategy are two sides of the same coin, which should be combined in the pursuit of the fundamental objectives of the Brazilian state. What good does it do to celebrate the normative strength of the Constitution under the auspices of a thriving democracy, when we see the country's inability to devise a genuinely Brazilian national development strategy that promotes, at the same time, the strategic base of Brazilian companies and the essential base of human dignity for all Brazilians?

At the turn of the century, the great categoric imperative of Brazilian geopolitics will be the guarantee of the essential core of human dignity to all Brazilians aligned with the expansion of the strategic core of large Brazilian multinational companies. That is the only way to overcome the periphery cycle, placing Brazil among the world's top five great powers.

globalization of large multilateral trade arrangements, but by the military and technological supremacy of the United States.

29 That is why judges and courts should read the Constitution considering the theoretical delineations of geolaw, examining with due strategic vision whether the edition of constitutional amendments and infraconstitutional laws related to the regulatory frameworks of the strategic sectors of the national economy (energy, transport, defense industrial base, telecommunications etc.) made by the democratic legislator promotes or not national development, conciliating, at the same time, democratic values with the geopolitical values of aggrandizement of the Brazilian state.

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ABSTRACT

This article is the result of research carried out in the postdoctoral stage of the Postgraduate Program in Aeronautical Sciences at the University of Aeronautics (PPGCA), whose theme was “Geopolitics, Culture and Law: Epistemological dialogues needed in times of postmodernity” Thus, it collimates to examine the scientific connections that unite geopolitics and law, disciplines that overlap in such a way that they end up guaranteeing fundamental rights for ordinary citizens, aiming to analyze the geopolitical control of law from the influence of neoliberal geopolitics on constitutionalism. of the countries of late modernity, as is the case of Brazil, thus it was possible to demonstrate the influence of real factors of world power in the legislative process of the countries of the Global South of neoliberal globalization, whose leadership is being disputed by the United States and China.

KEYWORDS

Geopolitics; International relations; State; Law.

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