Abstract
This paper intends to discuss the idea of legitimacy which is in the core of the understanding about the balancing principles method outlined in the wake of the judicial activism assumed by the German Federal Constitutional Court (Bundesverfassungsgericht - BVG) and, in Brazil, by the Supreme Court - STF. Initially, we studied Robert Alexy’s Theory of Legal Argumentation as it constitutes one of the most influential interpretations of the German constitutional culture which tries to devise a methodology to rationally justify the difficulties brought about by the transition of the jurisprudence of the Bundesverfassungsgericht to activism. Then we proceeded to critically review Alexy’s theory through two theories: a) the criticisms addressed by Jürgen Habermas with respect to the Law subordination to Moral, as well as to the relativization of principles; and b) the agonistic model of democracy proposed by Chantal Mouffe, so as to deconstruct the balancing method’s claim to legitimacy, in order to criticize the model of rationality that serves as a substrate to the idea of legitimacy based on the “argumentative representation.”

Keywords
Key words, Legitimacy, agonistic democracy, discourse theory, Theory of Legal Argumentation, judicial activism.