

# Critical analysis of Kramer's Proposal for Popular Constitutionalism and the Defense of Judicial Supremacy

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Popular Constitutionalism, Judicial Supremacy, Tyranny

## Summary

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Popular constitutionalism appears as an opposition to liberal constitutionalism, by rejecting the supremacy of the Judiciary and proposing the transfer of the interpretive, final and binding authority of the Supreme Court to the people. The theory, which had its most exponential manifestation in the work of Larry Kramer, is based on a popular dissatisfaction with the current constitutional model and on the perspective that the people are the best interpreters to preserve the real meaning of the constitutional text. However, the proposal, according to the view defended in this work, is based on mistaken assumptions, greatly affecting its subsistence and practical implementation. In this article, using the hypothetical-deductive method, the theory of popular constitutionalism is analyzed, followed by criticisms developed under the conceptual aspect and the fundamental bases of Larry Kramer's proposal. The analysis reveals that Kramer, seeking to prevent judicial tyranny, defends the proposal of popular constitutionalism, while criticism is directed towards the fact that the fragility of judicial supremacy makes room for a popular tyranny. Solutions to this dilemma are decided, however, in politics, not in law.


Keywords: Popular Constitutionalism; Judicial supremacy, Tyranny. in Politics, not in Law.  
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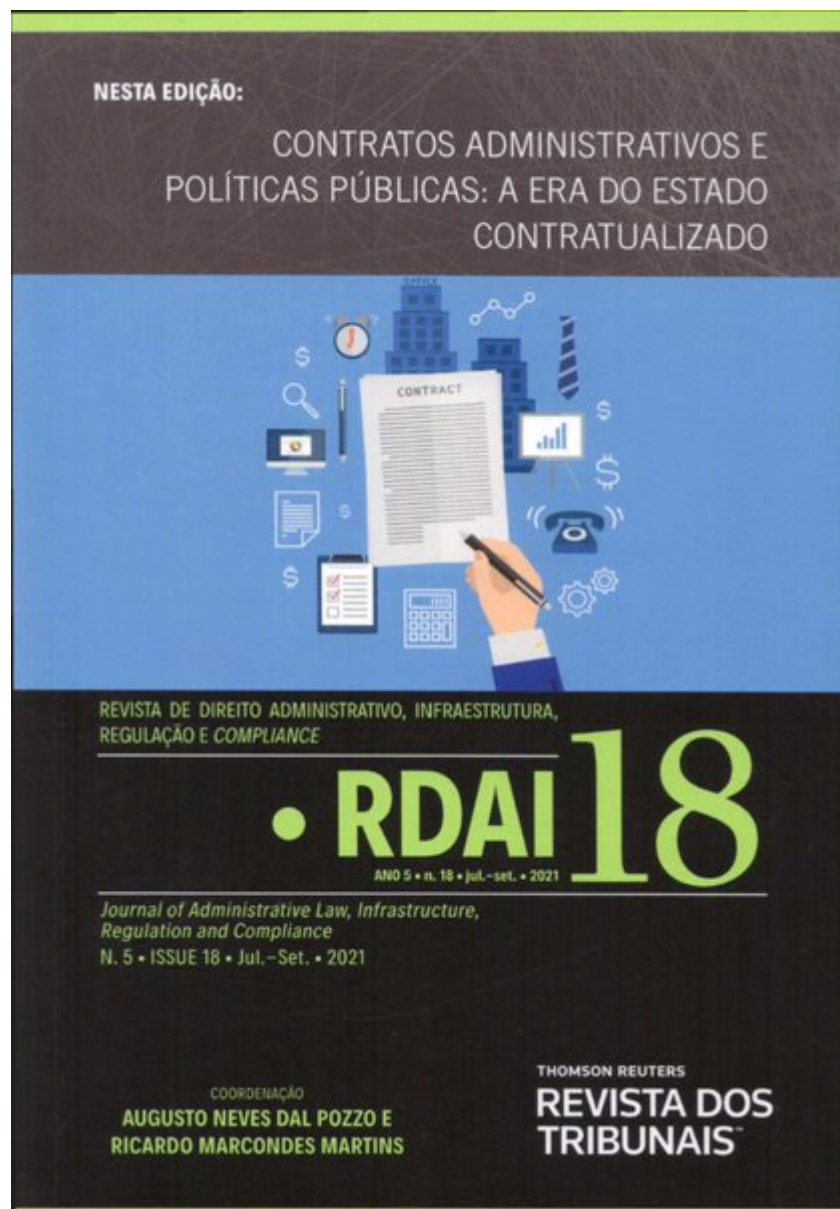
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