

IDYLIC CONSTITUTIONALISM - THE CONSTITUTION BETWEEN NORMATIVE REALITY AND INTERPRETIVE REVERIE

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1. Introduction

It is told that, in the eighteenth century, **Baron de Montesquieu** observed the mechanisms of French absolutism and formulated an ingenious institutional solution: to separate the powers so that liberty would not be crushed by arbitrariness. There was born the promise that each state organ would occupy a delimited space, so that no one - not even judges, whom he viewed as "*la bouche de la loi*" ("the mouth of the law") - would transform into the absolute master of the destinies of others. The history of constitutionalism, however, has shown that formally separating competencies is infinitely easier than actually restraining the human urge to reshape the world according to personal convictions. When the constitutional interpreter falls in love with the task of doing justice, a quiet and dangerous phenomenon emerges: the judge ceases to apply the Constitution that exists and begins to apply the one he wishes existed.

This subtle displacement between the **promulgated text** and the idealized version that dwells in the heart of the legal operator constitutes the object of the reflection that follows. The aim is to investigate a hermeneutic posture in which the affective bond between interpreter and Constitution dissimulately replaces obedience to the real document, thereby establishing what has come to be termed **idyllic constitutionalism**. More than an academic curiosity, this approach has concrete repercussions on the separation of powers, on the democratic legitimacy of judicial decisions, and on the very meaning of living under a Constitution (Cf. Fonteles, 2021).

The reflection draws together psychoanalysis, legal theory, and case law in order to describe how the interpreter, frustrated by imperfections in the constitutional text, resorts to a *morality control* disguised as systematic interpretation. To this end, doctrinal diagnoses are traversed, examples drawn from Brazilian forensic practice are examined, and constitutive episodes of the 1988 Constituent Assembly are revisited - all converging on a central thesis: accepting the Constitution as it is, with its flaws and contradictions, is an unavoidable requirement for anyone who takes the **Democratic Rule of Law** seriously (Cf. Fonteles, 2021).

2. Development

2.1 The contemporary ethos of intolerance to frustration and its reflex in Law

Imagine an everyday scene: a street vendor is removed from the vicinity of a school by public agents on the justification that children, upon seeing sweets and toys without being able to buy them, would become sad. The municipal norm existed and was valid; the controversy,

however, lay on another plane: contemporary society has come to treat frustration as an enemy to be eliminated from the human horizon, creating a kind of **protective bubble** against emotional adversities. The same spirit animates the proliferation of so-called *no judgements zones* in major metropolises - sanitized spaces free of any criticism, comparison, or performance demands (Cf. Fonteles, 2021). *Practical example*: New York gyms that promise psychologically safe environments function as small symbolic wombs, replicating the logic that suffering must never reach the subject.

Law, as a cultural product, was inevitably swept along by this current. **Constitutional Law**, in particular, became the privileged stage of this search for an emotionally comfortable world, in which the Constitution is read not as it is, but as the interpreter wishes it were. There emerges, then, the tendency to transform the normative document into an instrument of subjective pacification, in which each judge projects onto the text his own convictions about the just and the beautiful (Cf. Fonteles, 2021).

2.2 The Constitution as a narcissistic object: the Platonic encounter between heaven and earth

In **Plato** (2019), reality is divided into two planes: the **intelligible world**, perfect and inhabited by ideas, and the **sensible world**, imperfect and apprehensible by the senses. **Saint Augustine** (2002), in the Middle Ages, took up this structure when he distinguished the City of God from the City of Men. Transposed to the legal universe, an inevitable question arises: does the 1988 Constitution belong to heaven or to earth? The romantic doctrine represented by **Carlos Ayres Britto** (2012) responds enthusiastically: legal humanism promises humanity the possibility of living in the best of all worlds and *experiencing heaven itself on earth*, with Law as the means and humanism as the end. *Practical example*: this is a reading that sees in the Constitution not a technical document, but a manifesto of existential redemption.

The case law of the **Federal Supreme Court** (Supremo Tribunal Federal) has already flirted with this approach, when it stated that Law does not exist to embitter life, but to make it happy, as can be drawn from **RE 328.232/AM** (2005) and **ADPF 132/RJ** (2011), in which the idea of happiness reverberated as a hermeneutic vector. The so-called right to happiness, however, does not even appear in the Brazilian Constitution, having been extracted from a political phrase in the **Declaration of Independence** of the United States (1776), of jusnaturalist and creationist matrix. According to the theory of **attributive bilaterality** (Cf. Reale, 2004), every right generates a correlative duty; thus, if there were a subjective right to happiness, the - absurd - duty would fall upon the State to make everyone happy. What in fact exists is the right to **liberty** or, for some, to **human dignity** as autonomy (Cf. Fonteles, 2021).

The consolidation of these ideas allows for the definition of **idyllic constitutionalism** as a romanticized approach to the Constitution, marked by an affective relationship between interpreter and text, capable of replacing the morally imperfect document with a particular, supposedly ideal version. In psychoanalytic terms, **Freud** (2010) describes the *narcissistic object choice* as attraction to an object resembling the subject itself or the one it would like to

be; transposed to the legal scenario, the idyllic Constitution functions as a mirror in which the judge contemplates his own moral virtues. *Practical example*: **Luís Roberto Barroso** (2014) has already warned that human dignity, as a legal concept, frequently operates as a mirror in which each one projects his own values; and Justice **Marco Aurélio**, in a 2010 speech, described his hermeneutic by stating that he idealizes the most just solution for the concrete case and afterward seeks support in the normative framework - a clear act of will in the Kelsenian sense (Cf. Kelsen, 1998).

The interpreter's subjectivity, according to **Gadamer** (1999), functions as a distorting mirror: the greater the desire for an outcome that matches the personal utopia, the more intense the interpretive mirages in the text become - a phenomenon that may be termed *constitutional pareidolias* (Cf. Fonteles, 2021). For **Freud** (2011), illusion is the fictitious fulfillment of a desire. Thus, idyllic constitutionalism is born of a **failure in the acceptance process** of the real text, similar to a *cognitive dissonance*, and the escape valve consists in promoting **morality control** - whether diffuse or concentrated - over the work of the constituent power. **Louis Michael Seidman** (2012) illustrates this denial mechanism by asking why one would take a different course merely because of words written on a piece of paper more than two hundred years old.

2.3 Dissimulated morality control as a hidden technique of constitutional subversion

Texts are limits, and precisely for this reason they bother those who wish to decide freely. When the discomfort comes from ordinary law, unconstitutionality is alleged; when it comes from valid law, one speaks of *defeasibility*; but when the discomfort derives from the Constitution itself, the alibis must be more sophisticated. The doctrine of **Otto Bachof** (2008), who maintained the possibility of **unconstitutional constitutional norms** even of original character, was expressly rejected by the Federal Supreme Court in **ADI No. 815**, decided on 28.03.1996, with Justice **Moreira Alves** as rapporteur. *Practical example*: even so, the dogmatic impossibility of invalidating original norms represents a checkmate for those who have failed in the acceptance process of the Constitution.

Faced with this impasse, the idyllic interpreter feels compelled to morally correct the norms he deems unjust, executing a **morality control** that is never confessed in judgments and decisions. Very few magistrates would acknowledge applying the **Radbruch Formula** (Apud Alexy, 2009), according to which extremely unjust law must yield to justice. The reasons for the silence vary: activist judges deliberately disguise moral control through rhetorical subterfuges, while idyllic judges do not even perceive that they are repudiating the Constitution, acting driven by an **unconscious jusnaturalist impulse** (Cf. Fonteles, 2021). *Practical example*: the frequently invoked "constitutional mutation" may operate as a simulacrum designed to dissimulate moral scrutiny over original norms.

In idyllic constitutionalism there is **sincerity**: the interpreter firmly believes he is fulfilling the Constitution, although he distorts it. The preferred technique consists in the precarious use of an alleged **systematic interpretation**, in which a vague provision is invoked to morally

correct another, more specific one that seems unjust. As **Rocha** (2012) observes, those who live dreaming life believe what is illusory to be true; and **Scalia** (1997) and **Hart** (1977; 2010) warn of the *cryptolegislation* exercised under the cloak of substantive due process, by which non-existent rights are smuggled into the legal order. *Practical example*: in practice, the Constitution comes to be used against itself.

2.4 Article 3, I, of the CF/88 and the prominence of intuitive justice

The constitutional provision most frequently invoked by the adherents of idyllic constitutionalism is **Article 3, I**, of the Federal Constitution, according to which it is a fundamental objective of the Republic to build a just society. If the goal is justice, how could one issue unjust judicial decisions? This rhetorical question opens space for the **intuitive justice** of magistrates to assume prominence, supported by the constitutional text. *Practical example*: the judge who deems an original norm unjust invokes Article 3 to override its literal wording with his personal sentiment.

The technically correct reading of Article 3, I, however, contains a frequently ignored limiting clause: the just society is to be built *in the terms of this Constitution*. In other words, the provision does not grant a blank check for judges to exercise morality control - whether diffuse or concentrated - over the work of the constituent power. The constituent has the power to make exceptions to itself, and constitutional justice cannot be confused with intuitive justice (Cf. Fonteles, 2021).

2.5 The doctrine of Carlos Ayres Britto as a paradigmatic expression of constitutional idyll

The work of **Carlos Ayres Britto** (2012) presents Law as the fusion of two justices: the **abstract justice** of the Constitution (signifier), discovered through the intellect, and the **empirical justice** of the judicial decision (signified), intuited through feeling, soul, and heart. Interpretation would be biphasic: first, a "virginal revelation" of the text, and then a "recasting" of that revelation in light of the concrete case, in which the "sense of real justice" emerges - a personal virtue defined as social sensitivity *at skin level*. *Practical example*: the magistrate is invited to release his feelings without losing sight of the mental coordinates of legislated Law - a balance that presupposes elevated trust in the judge's temperance.

Such a doctrinal wager proves risky, for it disregards that the coordinates of legislated Law may already arrive distorted by the sentimentalist vision of the judges themselves. In opposite direction, **Eros Roberto Grau** (2017) confesses to being *afraid of judges* because of the manner in which they rule, deifying principles to the point of justifying near judicial discretion in the name of justice. The fascinating and enchanting approach of idyllic constitutionalism enchants because it appears "more just," but it frightens because it transfers to the judge a burden of political power incompatible with the separation of powers. *Practical example*: praising the magistrate's "sense of real justice" without normative anchorage is equivalent to delegating the destiny of the democratic pact to individual intuition.

2.6 Objections to intuitive justice and the recognition of the real Constitution

Three objections deconstruct the alleged foundation of idyllic constitutionalism in Article 3, I, of the CF/88. The first lies in the **absence of consensus** about the content of justice: from Aristotle to **John Rawls** (1993), passing through **Kelsen** (2011) and **Amartya Sen** (2010), countless theories dispute the academic primacy, and **Dworkin** (2006) records that pluralistic societies diverge fiercely on social justice. *Practical example*: depending on the academic preference of the judge, Article 3 lights candles for any side of the dispute, becoming a multi-purpose rhetorical weapon.

The second objection is that the magistrate's **sense of real justice** invites him to look at himself when seeking the just, configuring the aforementioned Freudian *narcissistic object choice* (Cf. Rocha, 2012). Magistrates who believe, for example, in a **natural right to bear firearms** derived from the right to life find no such provision in the CF/88; judges are not free to fill the vague idea of justice with their feelings, as if the constitutional norm were a wandering body in search of a soul (Cf. Fonteles, 2021).

The third objection holds that the **real Constitution of 1988 is not abstract justice**. There exists an operational category called **constitutional injustice**, which does not constitute a paradox, since not everything that is lawful is also honorable - *non omne quod licet honestum est*. Likewise, **unconstitutional justice** exists, since just solutions to many concrete problems were simply not embraced by the constituent. The plane of constitutionality demands a judgment of **validity**, while the predicate of justice involves a **moral** evaluation; one does not imply the other. *Practical example*: elevating the Constitution to the *status* of abstract justice creates an operating system whose interface does not communicate with the reality of constitutional injustices.

2.7 Structural constitutional injustices: the flawed genesis of the 1988 text

The 1988 Constitution suffers from structural problems regarding its **genesis**. Only **11 Black individuals** integrated the National Constituent Assembly in a country where the Caucasian phenotype is statistically a minority in the ethnic kaleidoscope, and only **26 women** participated in the drafting of the Charter - a number that lays bare female underrepresentation (Cf. Fonteles, 2021). **Mark Tushnet** (2014) describes that, for practical reasons, some groups end up not participating in *constitution-making* either because they are not numerous or because, despite being numerous, they lack organizational capacity, and observes that the idea of "constituent power," as rooted in the French Revolution, while useful for explaining the normative basis of authority, is not a category integrated into the "real world." *Practical example*: the argument of the **counter-majoritarian function** of constitutional courts weakens when the people were not adequately represented in the controlled text.

There are, moreover, provisions whose insertion derived from a **not entirely free will**. **Article 142**, by allowing endogenous action of the Armed Forces for the guarantee of law and order, is reported to have stemmed from an episode in which Minister **Leonidas Pires Gonçalves** invited **Bernardo Cabral** to his residence and detained him there until the desired

wording was printed - according to a version attributed to Sarney himself (Cf. Carvalho, 2017). *Practical example*: here lies a coercion akin to private confinement, a vice of consent that was never pronounced, regarding which Leonidas himself acknowledged, in an interview with *Folha de São Paulo* (1987), the existence of a military *lobby* in the Constituent Assembly.

Bernardo Cabral, the rapporteur, described the **clandestine introduction** of provisions on subjects such as navigation, business, and foreign capital, which were removed when discovered (Cf. Carvalho, 2017). As for romantic expectations of moral heroism, there are reports linked to **Antônio Carlos Magalhães** and to the biography written by **Luiz Gutemberg**, according to which **Ulysses Guimarães**, after the 1964 Coup, would have integrated a Commission of eight notables willing to revoke political mandates for fifteen years - an offer rejected by Costa e Silva, since he already had his own institutional act (Cf. Carvalho, 2017). *Practical example*: scrutinizing the constituents with a rigorous moral ruler is a sobering exercise; the consolation lies in the fact that one is governed by laws and not by men (Cf. Scalia, 1997).

2.8 Material constitutional injustices: the relativized "universal" suffrage

In a democracy, according to **Robert Dahl** (2016), the democratic process requires five requirements: effective participation, equality of vote, enlightened understanding, control of the planning agenda, and **full inclusion of adults**. **Bonavides** (2016) reminds that even in ancient Athens stricter authors identify a democratic aristocracy, since women and slaves were banned from political rights. In Brazil, women only began voting in 1932 - reason enough to deny the existence of a democratic Constitution prior to that of 1934; in France, the female right to vote arrived later still, in 1944. *Practical example*: all Brazilian constitutions prior to that of the Fourth Republic (1946-1958) lack full democratic credentials.

Although **Article 14, caput**, proclaims **universal suffrage**, reality contradicts the mantra. **Conscripts** (men in the year of compulsory military service) are non-enrollable and non-electable (Art. 14, §§ 2 and 4), which affects **physicians, dentists, pharmacists, and veterinarians** who, even after graduation, perform military service and are excluded from political citizenship during the electoral period. *Practical example*: adult and capable Brazilians governed by mandate-holders whom they could not elect - the constituent, strictly speaking, **distrusted the integrity and aptitude of these human beings** (Cf. Fonteles, 2021).

Illiterates lack *jus honorum*, ignoring that the Public Power itself failed in its educational duty. The **Superior Electoral Court** (TSE), in **Administrative Procedure PA No. 51371** (decided on 12.04.2018, Rapporteur Justice **Luiz Fux**), recognized the elitist character of the norm, warning that rigid criteria for evaluating illiteracy would perpetuate political dominance as a monopoly of the elites; even so, in **RO 060247518** (decided on 18.09.2018, Rapporteur Justice **Luís Roberto Barroso**), the controversial *literacy tests* were validated - a stigmatizing way of assessing the education of those who would be chosen by their peers to govern them. *Practical example*: it is a matter of protecting citizens "from themselves," subordinating the people to the terms defined by the constituent (Art. 1, sole paragraph).

The Constitution further deprives **criminally convicted individuals** with definitive sentences of political rights while their effects subsist (Art. 15, III). The State that demands resocialization paradoxically amputates citizenship and *foreignizes* the convicted Brazilian by treating him as a foreigner. *Practical example*: the idyllic constitutionalist would attempt, through systemic interpretation, to restore citizenship to conscripts, illiterates, and the convicted; the correct reading, however, is that the original constituent may make exceptions to itself (Cf. Fonteles, 2021).

2.9 Material constitutional injustices II: disproportionality as the constituent's choice

Article 243 provides that whoever cultivates illicit drugs in the backyard loses the backyard. Imagine a humble, unemployed young man who, faced with sick parents, decides to cultivate psychotropic plants for sale in his community: in addition to imprisonment, he will lose the family dwelling. The question arises whether expropriation reaches only the area effectively cultivated or the entire land described in the property registry. *Practical example*: the **Federal Regional Court of the 1st Region** (TRF 1) understood that the forfeiture of the entire property would violate the principle that no penalty shall pass beyond the person of the convicted, configuring an offense to the **principle of proportionality**.

In an extraordinary appeal, however, the **Federal Supreme Court** (Plenary), in **RE 543.974/MG**, decided on 26.03.2009, Rapporteur Justice **Eros Grau**, rejected the argument of disproportionality, holding that opposing the choices of the Constituent Power would amount to limiting it - an inadmissible hypothesis, since the constituent would be sovereign within the limits of proportionality, "something never seen before." *Practical example*: Constitutional Amendment 81/2014 replaced "*glebas*" (parcels) with "properties," and the Court bowed to the constituent's decision, recognizing that the original constituent may be disproportionate. Like it or not, the real Constitution authorizes punctual disproportionalities (Cf. Fonteles, 2021).

3. Final Considerations

The analytical trajectory allows for the consolidation of interconnected conclusions. **Idyllic constitutionalism** does not emotionally contradict the interpreter; on the contrary, it caters to his sentimental expectations, transforming the Constitution into a **narcissistic object**. It originates in a failure of acceptance similar to cognitive dissonance, whose escape valve is **morality control** - diffuse or concentrated - over the work of the constituent: a practice without provision in the Brazilian legal order, although encouraged by foreign doctrines such as those of **Radbruch** and **Bachof** (Cf. Fonteles, 2021).

This moral control is a **surreptitious** operation: in judicial activism, it is dissimulated by simulated rhetorical alibis; in idyllic constitutionalism, it manifests itself as an **unconscious jusnaturalist impulse**. Its theoretical landmark has already reached part of the case law of the Federal Supreme Court and of national doctrine, with **Britto** (2012) being its paradigmatic expression, sustained on the **intuitive** idea of justice on abstract (perfect Constitution) and empirical (ideal decision) levels. There is, however, no relationship of implication between

constitutional text and **justice**: elevating the Constitution to the *status* of abstract justice creates an operating system whose interface does not dialogue with the category of constitutional injustice.

The examples of constitutional injustice - **structural** (underrepresentation, coercion, clandestine introduction) and **material** (mitigated suffrage, disproportionality of Art. 243) - share the same argumentative path: they use a vague provision "x" to correct a specific provision "y" through the precarious use of an alleged systematic interpretation. In light of the unity of the Constitution, the technically correct reading is that provision "x" (more vague) is valid **in the terms of the Constitution**, the constituent in turn being able to make exceptions to itself. *Practical example*: the Constitution is a document, and documents are imperfect, flawed, and at times unjust; **Ulysses Guimarães**, in a speech of October 5, 1988, acknowledged that the Charter is not perfect by admitting its own reform. Imperfections are the object of **reform**, not of moralistic corrections.

The Law student must make a decisive choice: to accept the Constitution as it is or to live a romance, an illusion, an **idyllic constitutionalism**. To ask an idyllic jurist whether the Constitution upholds a right claimed by his intuitive sense of justice is as unsuspecting as inquiring of a mother about the aesthetic attributes of her child. **It is fitting to begin the acceptance process** (Cf. Fonteles, 2021).

• **Logic of the Theme (Idyllic Constitutionalism)**

The logic underlying the theme begins with a cultural finding: contemporaneity does not tolerate frustrations and creates psychological bubbles to avoid them. This *ethos* reaches Constitutional Law and leads the interpreter to project onto the Constitution an **idealized self** - a movement that psychoanalysis describes as narcissistic object choice. When the real text frustrates this desire - whether due to structurally vitiated norms, disproportionate provisions, or materially unjust clauses -, the interpreter develops a **cognitive dissonance** between the Constitution he loves and the Constitution that exists. The psychological - and legally improper - solution is to **replace** the real text with a morally enhanced version, by means of a dissimulated morality control, generally disguised as "systematic interpretation" that invokes a vague provision (such as Art. 3, I) to neutralize another, more specific one. The correction of this hermeneutic pathology passes through the recognition that (i) Constitution and justice are distinct planes - the former being a judgment of **validity** and the latter a **moral** judgment; (ii) the original constituent may make exceptions to itself; (iii) constitutional imperfections are the object of **legitimate reform** and not of judicial moral crusades; and (iv) accepting the Constitution as it is constitutes a presupposition of legal certainty and the separation of powers. The final logic is therefore therapeutic: the interpreter must conclude the **acceptance process**, freeing himself from the narcissistic relationship with the text and rediscovering, in this mature disenchantment, the democratic respect for the constituent pact.

• **Synoptic Chart (Quadro Sinótico)**

Theme / Institute	Explanation
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Idyllic Constitutionalism	Romanticized approach to the Constitution. Characterized by an affective bond between interpreter and text. Replaces the real document with a supposedly ideal version. Functions as a narcissistic object of personal projection.
Contemporary <i>Ethos</i> of Frustration Intolerance	Cultural tendency toward creating psychological bubbles. Replicates the logic of the maternal womb. Reflects in Law as a refusal to accept unpleasant norms. Originates spaces free of demands and criticism (<i>no judgements zones</i>).
Narcissistic Object Choice (Freud)	Attraction to an object similar to the subject itself. In the constitutional field, leads the judge to seek himself in the text. The idyllic Constitution is, psychoanalytically, a mirror of the interpreter's <i>ego</i> .
Constitutional Pareidolias	Interpretive mirages drawn from vague provisions. The greater the interpreter's utopia, the more intense the mirages. Confuse desire with norm. Distort the literal and systematic meaning of the text.
Right to Happiness (legal myth)	Category without provision in the CF/88. Imported from the U.S. <i>Declaration of Independence</i> (1776). Has jusnaturalist and creationist origins. Strictly speaking, designates the constitutional right to liberty or to dignity-autonomy.
Diffuse and Concentrated Morality Control	Dissimulated operation of moral correction of the constitutional text. Without provision in the Brazilian legal order. Encouraged by foreign doctrines (Radbruch, Bachof). Acts as the interpreter's emotional escape valve.
Radbruch Formula	Thesis according to which extremely unjust law must yield to justice. Rarely confessed in Brazilian judgments. Serves as a silent backdrop to idyllic constitutionalism.
Intuitive Justice	Magistrate's individual sense of justice. Grounded in sensitivity <i>at skin level</i> . Exposes the Constitution to the personal convictions of the judge. Dangerous when overridden upon the text.
Constitutional Injustice	Operational category. Designates morally questionable provisions of the original constituent. Not a paradox. Coexists with the expression <i>non omne quod licet honestum est</i> .
Unconstitutional Justice	Morally just solutions not embraced by the constituent. Exists outside the Political Charter. Reinforces the

	impossibility of the Constitution encompassing every imaginable justice.
Underrepresentation in the 1988 Constituent Assembly	Only 11 Black individuals and 26 women among the constituents. Compromises the democratic coefficient of the text. Weakens the counter-majoritarian argument of <i>judicial review</i> .
Coercion in the Drafting of the Constitution	Episode of Art. 142, involving Minister Leonidas and rapporteur Bernardo Cabral. Vice of consent never pronounced. Publicly admitted military <i>lobby</i> .
Clandestine Introduction of Provisions	Malicious insertions on subjects such as navigation, business, and foreign capital. Detected and removed by the rapporteur when noticed. Demonstrates the ethical fragility of the constitutional genesis.
Relativized "Universal" Suffrage	Conscripts are non-enrollable and non-electable. Illiterates cannot be elected. Convicted persons with definitive sentences have political rights suspended. Universality merely nominal.
Disproportionality of Art. 243 of the CF/88	Expropriates the entire property where illicit drug cultivation occurs. Affects the family of the convicted. The Federal Supreme Court recognizes that the original constituent may be disproportionate.
Principle of Acceptance of the Real Constitution	Recognizing the Constitution as an imperfect document. Accepting its flaws. Treating imperfections as the object of legitimate reform. Constitutes a democratic presupposition of mature hermeneutics.

- **Table of Precedents**

Precedent	Explanation
STF, RE 328.232/AM, judged on 04.04.2005	Court: Federal Supreme Court. Subject: invocation of the idea of happiness as a hermeneutic vector. <i>Ratio decidendi</i> : Law would not exist as a way to embitter the lives of its addressees, but to make them happy. Illustrates the jurisprudential infiltration of idyllic constitutionalism.
STF, ADPF 132/RJ, judged on 05.05.2011	Court: Federal Supreme Court. Subject: same-sex civil union and the idea of happiness. <i>Ratio decidendi</i> : reiterated happiness as rhetorical support for interpretive outcomes, repeating the formula of RE 328.232/AM. Reinforces the criticism that

	happiness is a non-authoritative source imported from a foreign political document.
STF, ADI No. 815, Rapporteur Justice Moreira Alves, judged on 28.03.1996	Court: Federal Supreme Court. Rapporteur: Justice Moreira Alves. Subject: unconstitutional constitutional norms (Otto Bachof). <i>Ratio decidendi</i> : expressly rejected the thesis that original constitutional norms could be declared invalid for contradicting fundamental principles. Forbids morality control over the work of the original constituent power.
STF, Plenary, RE 543.974/MG, Rapporteur Justice Eros Grau, judged on 26.03.2009	Court: Federal Supreme Court (Plenary). Rapporteur: Justice Eros Grau. Subject: expropriation for drug cultivation (Art. 243 of the CF/88). <i>Ratio decidendi</i> : the entirety of the property described in the registry is the object of expropriation; it is not for the Judiciary to invoke the principle of proportionality against the choice of the Constituent Power; the original constituent is not bound by proportionality.
TSE, PA No. 51371, Rapporteur Justice Luiz Fux, judged on 12.04.2018	Court: Superior Electoral Court. Rapporteur: Justice Luiz Fux. Subject: literacy and passive electoral capacity. <i>Ratio decidendi</i> : the multifaceted reality of Brazilian society advises against assessing illiteracy by rigid criteria, lest in strongholds where illiteracy is the rule, political dominance be perpetuated as a monopoly of the elites. Recognizes the elitist character of the norm.
TSE, RO 060247518, Rapporteur Justice Luís Roberto Barroso, judged on 18.09.2018	Court: Superior Electoral Court. Rapporteur: Justice Luís Roberto Barroso. Subject: validity of the <i>literacy tests</i> applied to candidates. <i>Ratio decidendi</i> : recognized, with caveats, the validity of the controversial tests - a stigmatizing and humiliating way of assessing the education of those who would be chosen by their peers to govern them. Coexists with the political underrepresentation of illiterates.

Glossary for Foreign Readers

Brazilian Term	Explanation in English
Constituição Federal de 1988 (CF/88)	Brazilian Federal Constitution of October 5, 1988. Marks the reconstruction of democracy after the military dictatorship (1964-1985). Also known as the "Citizen Charter" (<i>Carta Cidadã</i>).
Supremo Tribunal Federal (STF)	Federal Supreme Court of Brazil. Composed of 11 Justices appointed by the President of the Republic. Acts simultaneously as a Constitutional Court and the highest

	Court of appeal. Functionally comparable to the U.S. Supreme Court, though with broader jurisdiction.
Superior Tribunal de Justiça (STJ)	Superior Court of Justice. Composed of 33 Justices. Responsible for the uniform interpretation of non-constitutional federal law. Functionally comparable to a federal court of last resort in civil and criminal matters.
Tribunal Superior Eleitoral (TSE)	Superior Electoral Court. Highest court for electoral matters, with 7 Justices.
Tribunal Regional Federal (TRF)	Federal Regional Court. Second-instance federal courts. Brazil has six TRFs, each covering a geographic region.
ADI (Ação Direta de Inconstitucionalidade)	Direct Action of Unconstitutionality. Procedure of abstract judicial review before the STF.
ADPF (Arguição de Descumprimento de Preceito Fundamental)	Claim of Non-Compliance with a Fundamental Precept. Subsidiary procedure of constitutional review.
RE (Recurso Extraordinário)	Extraordinary Appeal. Remedy that challenges constitutional violations by lower courts before the STF.
Conscritos	Conscripts: men in the year of compulsory military service. During this period they are neither voters nor eligible (Art. 14, §§ 2 and 4 of the CF/88).
Jus honorum	Latin: passive electoral capacity (the right to be elected).
<i>Non omne quod licet honestum est</i>	Latin maxim: "Not everything that is lawful is also honorable."
Poder Constituinte Originário	Original Constituent Power. Sovereign and unlimited in the predominant Brazilian doctrine.
Mutação Constitucional	Constitutional Mutation. Silent shift in the meaning of the constitutional text without formal reform, through interpretive change.
Súmula	Consolidated case law of a higher court in summary form.
Súmula Vinculante	Binding Súmula of the STF, mandatory for the entire judiciary and public administration.
<i>Ratio decidendi</i>	Latin: the binding rationale of a precedent, drawn from the <i>common law</i> tradition.

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