

## Ponto 7: Interpretação da lei (parte II): interpretação constitucional

Texto: Sarmiento, Ubiquidade constitucional: os dois lados da moeda

### Questões:

1. Os métodos tradicionais também podem ser usados na interpretação constitucional?
2. O que tem o fenômeno da “constitucionalização do direito” a ver com o tema da interpretação das leis?

# INTERPRETAÇÃO CONSTITUCIONAL

Todo sistema jurídico estatal tem constituição em sentido amplo:

Normas que definem as atribuições dos principais órgãos do governo.

Mas nem todo sistema jurídico estatal tem necessariamente Constituição codificada e rígida.

# INTERPRETAÇÃO CONSTITUCIONAL

Há algum país sem normas constitucionais escritas?

Inglaterra?



11. By the late King James the second, by the  
 assistance of divers evil counsellors, seditious  
 Ministers, unprovoked, and unadvisedly to  
 convert, and usurpate the Protestant Religion,  
 and the just and ancient Liberties of this Kingdom.  
 12. By assuming and exercising a Power of dis-  
 pensing and suspending of Laws and the execution  
 of Lawes without consent of Parliament.  
 13. By committing and exercising diverse wrong  
 Petitions for remedy petitioning he is excused from  
 concerning to the right answer Power  
 14. By raising a Court called the <sup>High Commission</sup> Court of  
 Conscience, under the Great Seal  
 for exercising a Court called the <sup>High Commission</sup> Court for  
 Ecclesiastical Causes.  
 15. By levying money for and to the use of the Crown  
 by pretence of Prerogative for other time and in  
 other manner than the same was granted by Par-  
 liament.  
 16. By raising and keeping a standing Army within  
 this Kingdom in time of Peace without consent of  
 Parliament, and quartering soldiers contrary to Law.  
 17. By causing severall good Subjects being  
 Protestants to be detained in Prison.  
 18. By violating the Privileges of Parliament  
 Members to give in Petitions.  
 19. By causing divers <sup>of the</sup> Members of  
 Parliament to be imprisoned in the Tower of  
 London, and other places, without any  
 cause shewed, and without any  
 judgment of Law.  
 20. By imposing a Burden of Ship Money  
 of Tunnage and Poundage, and other  
 Levies, not authorized by Law, upon the  
 Subjects of this Kingdom, and other  
 their Liberties & illegal <sup>and</sup>



# Magna Carta of King John, AD 1215

H. A. L. M. C. O. L. L. E. C. T. I. O. N. E. S. I. N. T. H. E. H. I. S. T. O. R. Y. O. F. E. N. G. L. A. N. D.  
 The Magna Carta of King John, AD 1215, is a landmark document in English history. It was signed by King John at Runnymede on June 15, 1215, and established the principle that the king was not above the law. The document guaranteed the rights of the barons and the church, and laid the foundation for the development of constitutional monarchy in England.

**Articles of the Magna Carta**  
 1. The King shall not take the person or land of any free man without a lawful judgment of his peers.  
 2. The King shall not seize the land or goods of any free man without a lawful judgment of his peers.  
 3. The King shall not take the land or goods of any free man without a lawful judgment of his peers.  
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# INTERPRETAÇÃO CONSTITUCIONAL

Dois tipos de rigidez: formal e funcional

(1) R. formal: o processo de emenda da Constituição é mais exigente que o processo de alteração das demais leis.

(2) R. funcional: a rigidez da Constituição é protegida por um órgão independente do legislativo.

# INTERPRETAÇÃO CONSTITUCIONAL

“Constitucionalismo global”

1. Constituições codificadas e (funcionalmente) rígidas

2. Controle de constitucionalidade das leis pelo judiciário

# INTERPRETAÇÃO CONSTITUCIONAL

Outra característica de muitas Constituições é a presença de uma lista de direitos fundamentais...  
... com linguagem vaga e moralmente carregada.

**CF, Art 5º, X** - são invioláveis a intimidade, a vida privada, a honra e a imagem das pessoas, assegurado o direito a indenização pelo dano material ou moral decorrente de sua violação



# INTERPRETAÇÃO CONSTITUCIONAL

Rigidez + vagueza –

São características que não convidam o uso do método histórico e do método gramatical (respectivamente).

# INTERPRETAÇÃO CONSTITUCIONAL

Constitucionalização do direito brasileiro.

Dois aspectos:

I. A constituição regula um número amplo de assuntos.

(não só assuntos políticos, mas sociais, econômicos, civis, trabalhistas, tributários etc.)

Art. 183. Aquele que possuir como sua área urbana de até duzentos e cinquenta metros quadrados, por cinco anos, ininterruptamente e sem oposição, utilizando-a para sua moradia ou de sua família, adquirir-lhe-á o domínio, desde que não seja proprietário de outro imóvel urbano ou rural.

§ 1º - O título de domínio e a concessão de uso serão conferidos ao homem ou à mulher, ou a ambos, independentemente do estado civil.

Art. 242, Parágrafo 2º. O Colégio Pedro II, localizado na cidade do Rio de Janeiro, será mantido na órbita federal.

# INTERPRETAÇÃO CONSTITUCIONAL

Obs: Em teoria do direito, é melhor tomar Constituições abrangentes como exceção, não como regra.

Por exemplo: “revolução” na obra de Kelsen.

# INTERPRETAÇÃO CONSTITUCIONAL

2. As demais leis são interpretadas “conforme a constituição”.

Dois cenários possíveis:

1. Usa-se a CF para complementar uma lei obscura
2. Usa-se a CF para reinterpretar uma lei clara

Art. 20. Salvo se autorizadas, ou se necessárias à administração da justiça ou à manutenção da ordem pública, a divulgação de escritos, a transmissão da palavra, ou a publicação, a exposição ou a utilização da imagem de uma pessoa poderão ser proibidas, a seu requerimento e sem prejuízo da indenização que couber, se lhe atingirem a honra, a boa fama ou a respeitabilidade, ou se se destinarem a fins comerciais. ([Vide ADIN 4815](#))

IX - é livre a expressão da atividade intelectual, artística, científica e de comunicação, independentemente de censura ou licença;

X - são invioláveis a intimidade, a vida privada, a honra e a imagem das pessoas, assegurado o direito a indenização pelo dano material ou moral decorrente de sua violação;

# RECAPITULAÇÃO

Interpretação constitucional:

Não convida métodos institucionais (rigidez e vagueza)

Constitucionalização do direito brasileiro:

Constituição abrangente

Interpretação conforme a Constituição