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The ticking time bomb theory in the fight against terrorism: constitutional limits, moral dilemmas, and implications for Brazilian public security.

The ticking time bomb theory in counterterrorism: constitutional limits, moral dilemmas, and implications for Brazilian public security

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Summary

This article critically examines the Time Bomb Theory and demonstrates its incompatibility with the Brazilian constitutional order, especially in light of the absolute prohibition of torture and the inviolability of fundamental rights. After reconstructing the philosophical origin of this hypothesis and its evolution in the international debate, the study reveals that its practical application represents a serious institutional risk to the Democratic Rule of Law, favoring the normalization of exception, the expansion of discretionary powers, and the erosion of accountability mechanisms. The analysis shows that adopting this reasoning in the fight against terrorism, besides being unconstitutional, is empirically ineffective and operationally counterproductive. In contrast, constitutional prevention strategies are demonstrated, including data-driven intelligence, integrated governance, international cooperation, and institutional strengthening, all of which are more effective than extraordinary measures incompatible with the current normative framework. It concludes, therefore, that effectiveness in combating terrorism depends on structured preventive policies, and not on exceptional solutions that weaken guarantees and obscure state action.

Keywords: Time Bomb Theory; Terrorism; Fundamental Rights; Public Security.

Abstract

This article critically examines the Ticking Time Bomb Theory and demonstrates its complete incompatibility with the Brazilian constitutional framework, particularly given the absolute prohibition of torture and the non-derogable nature of fundamental rights. After reconstructing the philosophical origins of the theory and its development within international debates, the study shows that its practical application poses severe institutional risks to the Democratic Rule of Law, promoting the normalization of exceptional measures, the expansion of discretionary power, and the erosion of accountability mechanisms. The analysis further demonstrates that adopting this line of reasoning in counter effortsterrorism is not only unconstitutional but also empirically ineffective and operationally counterproductive. In contrast, the article presents constitutionally compatible preventive strategies—such as data-driven intelligence, integrated governance, international cooperation, institutional strengthening, and socio-territorial public policies—which are markedly more effective than exceptional measures that conflict with the legal order. The study concludes that effective counterterrorism policies rely on structured and democratic preventive approaches, rather than on extraordinary solutions that undermine fundamental rights and obscure state action.

Keywords: *Ticking Time Bomb Theory; Terrorism; Fundamental Rights; Public Security.*

1. Introduction

Currently, the issue of terrorism occupies a central position in public security concerns. contemporary, not only because of their capacity to cause massive damage and destabilize structures state-owned companies, but above all, because it generates an environment of exceptionality that puts pressure on institutions. democratic systems need to revisit their limits and foundations (Reis, 2017).

In this context, the ticking time bomb theory stands out, the logic of which is simple: in the face of imminent threat of a large-scale attack and the possession of a suspect who allegedly holds With crucial information to avoid tragedy, the adoption of exceptional measures is now being considered. including torture, as a means of saving lives. In this way, the aforementioned theory came to be used. as a rhetorical argument to defend the relaxation of fundamental guarantees in situations of extreme risk (Brazilian, 2023).

In Brazil, this discussion takes on specific characteristics. The enactment of Law No. Law 13.260/2016, known as the Anti-Terrorism Law, marked the country's formal entry into the system. international response to terrorism, broadening the legal and institutional debate on mechanisms for prevention, repression and risk management, highlighting the need to improve the Brazilian counterterrorism apparatus (Brazil, 2016).

Thus, some discourses seek to import foreign models of counterterrorism. and, with them, narratives that presuppose the admissibility of constitutional exceptions inspired by logic. of the ticking time bomb. Thus arises the central question of this work: would it be legally possible, in Within the scope of the Brazilian constitutional order, to admit any relativization of the absolute prohibition to Torture in the face of a hypothetical scenario of imminent terrorist threat?

The answer to this question requires a careful analysis of democratic constitutionalism. Brazilian, especially from its normative core of protection of the dignity of the human person (art. 1st, III, CF/88)), the absolute prohibition of torture (art. 5th, III, CF/88) and the shaping of this guarantee. as an entrenched clause (article 60, §4, IV, CF/88). Furthermore, it is necessary to consider Brazil's position in... international human rights system and the consolidated interpretation of the Inter-American Court of Human Rights Human Rights (IACHR).

The rationale for this study lies in the need to prevent the naturalization of discourses. exceptional measures that, while presenting themselves as pragmatic solutions, conceal profound risks to... Integrity of the rule of law. In a country marked by historical challenges related to practices. Abusive police behavior, structural inequalities, and narrative disputes about public safety, admitting the Using the "time bomb" logic as a legal basis would open the door to dangerous interpretations. incompatible with the 1988 Constitution.

The overall objective of this article is to analyze the compatibility of the time bomb theory under the From the perspective of Brazilian constitutionalism, it is evident that the absolute prohibition of torture does not allow...

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Relaxation, even under the pretext of preventing terrorist attacks. As objectives

Specifically, the aim is to: (a) identify points of convergence or divergence between the Pump Theory-Clock displaying the fundamental rights and guarantees provided for in the 1988 Federal Constitution; (b) To identify institutional risks arising from the adoption of this reasoning in security policies. public (c) Point out that effectiveness in combating terrorism depends on preventive strategies of intelligence, and not exceptional measures incompatible with the constitutional order.

Thus, to critically analyze this theory in three dimensions, namely, philosophical; in with regard to global appropriation; and its inadmissibility under Brazilian law is essential for to strengthen an efficient, legitimate, and constitutionally oriented public security policy, as well as it becomes necessary to investigate the practical implications that its adoption would produce on the The credibility of public security institutions and the balance of democracy itself.

2. Theoretical Framework / Results

2.1 Theoretical, Constitutional, and Normative Foundations of the Time Bomb Theory

The Time Bomb Theory has become one of the most influential conceptual constructs in Modern debate on counterterrorism and the ethical limits of state action. Although it is frequently Treated as a typical thought experiment in applied moral philosophy, its use has gone beyond... abstract field and began to guide real discussions about the legitimacy of coercive practices and legal-constitutional exceptions (Ferreira, 2025).

In the Brazilian context, understanding this theory requires returning to its historical roots and philosophical, examine the constitutional structure that enshrines the absolute prohibition of torture and to identify the regulatory framework governing the fight against terrorism after its enactment. legal framework (Brazil, 2016).

The historical origin of the Time Bomb Theory dates back to classical utilitarian thought. and to consequentialism, although its modern formulation is associated with the American debate. post-9/11. The central argument stems from the hypothesis that, faced with an imminent threat like an artifact about to explode, authorities could employ extreme methods of interrogation to extract information that would prevent mass deaths. (Ferreira, 2025).

Michael Walzer was one of the first theorists to develop the notion of moral dilemmas. tragic in the exercise of power, when dealing with situations in which public officials would be pressured to violating ethical norms to protect a significant number of innocent lives (Walzer, 1973). Decades later, authors like Alan Dershowitz revisited this logic and, already in a scenario of In the context of global counterterrorism, they even advocated for the creation of judicial warrants to authorize the practice. exceptional use of controlled torture, under the argument of transparency and institutional limitation. (Dershowitz, 2002).



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The evolution of the theory in the international debate was also influenced by the legal context. From wars on terror. Following the 2001 attacks, reports from the United States Senate and decisions of the Supreme Court began recording discussions on improved interrogation techniques and their compatibility with international humanitarian law (Martins; Silva, 2023).

Foreign case law, especially that of the European Court of Human Rights, consolidated an understanding against any form of torture or degrading treatment, reaffirming its absolute ban even in scenarios of serious public threat. Cases like *Ireland v. United Kingdom* (1978) and *Selmouni v. France* (1999) reaffirmed that torture does not allow circumstantial justification. This trend reinforces the criticism of authors such as David Luban (2005), who argues that the ticking time bomb logic acts as a seductive rhetoric used to normalize practices. It is illegitimate and to conceal the risk of the permanent expansion of states of exception.

In the Brazilian case, addressing this theory must begin with constitutional principles, which structure the protection of human dignity and the absolute prohibition of torture. The Constitution of 1988 explicitly states that no one shall be subjected to torture or to inhuman or degrading treatment, protecting this right already in article 5, item III. Furthermore, the constitutional text reinforces the prohibition by classifying torture as a crime that is not subject to bail and is not eligible for pardon or amnesty, as per article 5, item XLIII. It is worth quoting the aforementioned constitutional provisions:

Article 5. All are equal before the law, without distinction of any kind, guaranteeing to... Brazilians and foreigners residing in the country have the inviolability of the right to life, liberty, and... equality, security, and property, under the following terms:

III - No one shall be subjected to torture or to inhuman or degrading treatment;

XLIII - the law will consider the practice of [the following] as crimes that are not subject to bail and are not eligible for pardon or amnesty: torture, the illicit trafficking of narcotics and related drugs, terrorism, and those defined as crimes heinous crimes, for which the instigators, the perpetrators, and those who, being able to prevent them, did so, are held responsible. omit;

The Brazilian constitutional structure adopts a humanist model of protection, in which the physical and moral integrity is a non-negotiable and inalienable value that cannot be relativized by... argument of necessity (Mazzuoli, 2025). The jurisprudence of the Supreme Federal Court follows this line of reasoning, stating that the prohibition of torture is an entrenched clause and forms part of the Constitution, the core of human dignity, as can be seen in *Habeas Corpus* 95.677/SP and in *Habeas Corpus* 104.410/RS. In these rulings, the Court emphasized that physical integrity is an absolute limit to action, state-owned, even in high-risk operations.

This position is reinforced by the international commitments undertaken by Brazil. The country is a signatory to the United Nations Convention against Torture (1984), incorporated by Decree No. 40/1991, and the Inter-American Convention to Prevent and Punish Torture (1985),



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incorporated by Decree No. 98,386/1990. Both treaties state that torture is prohibited in any circumstance, including situations that threaten national security or emergencies. public.

The Inter-American Court of Human Rights, whose jurisdiction Brazil recognizes. mandatory, it also reaffirms this understanding. In decisions such as *Cantoral-Benavides v. Peru* (2000), the Court highlighted that the absolute nature of the prohibition of torture is an inalienable principle of international human rights law. Thus, any form of legitimizing the logic of A ticking time bomb conflicts with constitutional and international obligations assumed by the State. Brazilian.

Another key element for the analysis is the Brazilian regulatory framework for addressing this issue. to terrorism, namely, Law No. 13.260/2016, which regulated article 5, item XLIII, of The Constitution defines terrorism and outlines rules for its prevention, investigation, and punishment. The aforementioned law adopted technical language aligned with Brazil's international commitments. especially to the resolutions of the UN Security Council and the guidelines of the Action Group. International Finance.

Accordingly, the legal text defines terrorism as conduct motivated by reasons extremists or intolerant individuals who provoke social or widespread terror, exposing people or Assets at risk. The law provides for robust investigative tools, such as the infiltration of agents, environmental surveillance and intelligence operations, but maintains explicit safeguards regarding respect for fundamental rights (Brazil, 2016).

Law No. 13.260/2016 does not offer any room for exceptional treatment that relativize constitutional guarantees. The legislator chose to align the national framework with the principle of Strict proportionality and respect for procedural safeguards, while maintaining torture as a crime. absolutely incompatible with the fight against terrorism.

Thus, when analyzing the Time Bomb Theory in the Brazilian context, it is observed that The utilitarian logic that guides its international development encounters legal resistance and significant institutional impact (Ferreira, 2025). The 1988 Constitution, the treaties ratified by Brazil The legal framework for counterterrorism and other factors converge to reinforce the absolute nature of the prohibition against torture. and the impossibility of admitting its practice under any pretext.

3. Materials and Methods

This article adopts a legal-deductive approach, starting from the normative foundations. of the 1988 Federal Constitution and the infra-constitutional legislation applicable to terrorism, with Emphasis on Law No. 13.260/2016, to analyze if and how the Time Bomb Theory can influence Interpretations and practices within the scope of Brazilian public security.



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The methodology is essentially qualitative, with an emphasis on bibliographic research and documentary. The first stage consisted of a systematic survey of classic works and contemporary studies of specialized doctrine on the theory of the State, philosophy of law, Counterterrorism, public ethics, and the limits of state power. This theoretical framework included authors classic authors such as Michael Walzer and David Luban, as well as authors specializing in counterterrorism, whose reflections allow us to question the exceptionalist rationality that underpins the Theory of Time bomb.

Next, a documentary analysis of the relevant Brazilian legislation was carried out, with Emphasis is placed on constitutional provisions related to physical integrity, the prohibition of torture, and... proportionality and due process of law, Law No. 13.260/2016, which defines terrorism and It establishes mechanisms for prevention and repression, as well as international treaties ratified by Brazil, especially UN conventions on torture and combating terrorism.

Additionally, judicial decisions, notes, and opinions were examined.

Technical reports produced by bodies such as the Supreme Federal Court (STF), the Superior Court of Justice (STJ), the Ministry of Justice, the Federal Police, and the Armed Forces. Armed forces and international organizations.

Finally, critical-normative analysis was used, which allows for a confrontation of the investigated theory. within the Brazilian constitutional limits, highlighting incompatibilities, institutional risks and potential areas for interpretation. This methodology allows for a systematic reading of the problem. and ensures scientific consistency in the assessment of the constitutional and operational impacts of the Theory The ticking time bomb in the fight against terrorism in Brazil.

Regarding ethical aspects, this research does not involve direct participation. or indirect contact with human beings, nor the collection of personal, sensitive, or identifiable data, which is why it does not require submission to a Research Ethics Committee. Even so, the research observes the... ethical principles governing scientific production, notably academic integrity, reliability of sources and respect for fundamental rights, the guidelines of Resolution No. Resolution 510/2016 of the National Health Council, as well as the General Law on the Protection of Personal Data (Law No. 13.709/2018).

4. Results and Discussion

4.1 Institutional Risks of the Time Bomb Theory in Brazilian Public Security

Incorporating the reasoning behind the Time Bomb Theory into the field of policy. Brazilian public security forces are producing a silent movement of normalizing the exceptional. Shifting the structural boundaries that govern the exercise of state power. Constitutional literature. It warns that the survival of the democratic rule of law depends on the preservation of borders. regulations that separate legality from arbitrariness, so that emergency situations do not



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be transformed into permanent instruments of government (Silva, 2023)

When extrajudicial actions become justified by invoking an emergency.

Hypothetically, an institutional environment is established in which exceptionality becomes a technique.

ordinary management, producing what Lênio Streck (2014) calls a "police state",

characterized by the relaxation of controls and the unlimited expansion of state discretion.

In this context, the immediate consequence of this shift is the erosion of the balance between

Proportionality, necessity, and evidentiary rationality, directly affecting the culture.

institutionalizing the police and opening space for high-impact practices to become justifiable to

starting from the mere allegation of imminent risk.

This process almost inevitably leads to a loss of accountability and an increase in...

Institutional opacity. The urgency, in turn, is the central element of the Bomb Theory.

The clock acts as a suppressor of formal control mechanisms, hindering their operation.

internal affairs offices, ombudsman offices, the Public Prosecutor's Office, and the Judiciary—bodies that depend on documentation.

adequate, complete chain of custody and transparent records to perform their functions (Reis, 2017).

Fabio Tenenblat (2017) demonstrates that exceptional environments tend to reduce the

The level of formalization of decisions is increasing, creating gray areas and hindering accountability.

later. Fábio Konder Comparato (2019), in turn, warns of the risk of the formation of "islands of

"power" endowed with excessive autonomy and little permeability to democratic control. The urgency

Permanent policies create incentives for informal practices, operations without documentation, and decisions.

based on subjective perceptions, weakening the culture of transparency that should guide the

functioning of public security institutions.

The weakening of controls and the normalization of exceptional measures have repercussions.

directly undermining the foundations of the Democratic Rule of Law, producing a civilizational regression.

which affects rights considered inalienable by the constitutional text. Ingo Sarlet (2014) argues

that the dignity of the human person possesses an essential, non-negotiable core, functioning as a limit.

substantive opposition against any attempt to relativize fundamental guarantees, including in scenarios of

serious threat.

The absolute prohibition of torture, enshrined in Article 5, III, of the Constitution, reinforces that no

There is room for purposive justifications that instrumentalize the individual in the name of protection.

collective. The Inter-American Court of Human Rights includes in its jurisprudence cases such as Gomes

Lund vs. Brazil (2010) and Favela Nova Brasília vs. Brazil (2017), consolidating the understanding that

The seriousness of crime or terrorism does not justify the weakening of essential guarantees.

The Time Bomb Theory, by legitimizing the use of extreme coercive techniques in the name of...

The preservation of life directly challenges this normative framework, allowing a return to previous practices.

incompatible with the level of civilization achieved after 1988.

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This vulnerability is exacerbated when the ticking-bomb logic is adopted by Populist narratives on public safety. The discourse of absolute urgency, associated with the rhetoric of "War against the enemy" creates an environment in which fundamental rights begin to be perceived as obstacles to state action. Brazilian critical criminology demonstrates that punitive discourses Simplifying interpretations gain traction in contexts of social fear and insecurity, shifting the debate. The public is shifting from technical rationality to immediate emotion (Batista, 2017).

Oscar Vilhena Vieira (2018) points out that this process usually generates legislative reforms. Hasty actions, expansion of police competencies, and retraction of control mechanisms. The Theory of In this sense, the time bomb becomes a powerful discursive instrument, functioning as... prior justification for practices that violate rights but are politically profitable, especially during election periods or times of increased violence.

Technical documents, such as the National Security Secretariat's Use of Force Manual Pública (2015) reinforces that police action must adhere to strict legality, with control. rigorous decision-making and adequate justification for the use of force. On the operational level, the impacts The underlying logic regarding Brazilian police forces is profound. Constitutional and legal guidelines... that structure the use of force, anchored in legality, proportionality, and rationality. tactics, they are now being pressured by narratives that validate the adoption of more aggressive measures under the argument of extreme necessity.

The jurisprudence of the Supreme Federal Court and the Superior Court of Justice, in Precedents such as Extraordinary Appeal 603.616/RO and *Habeas Corpus* 104.410/SP establish that invasive measures cannot be based on generic assumptions of danger. The incorporation The informal logic of the ticking time bomb, however, creates incentives for coercive interrogations. warrantless home violations, informal preventive arrests, and high-risk operations with Weak justifications, exposing the agents themselves to disciplinary, civil, and criminal liability.

This set of factors produces the most dangerous effect of the Time Bomb Theory: the ticking time bomb effect. contagion. Giorgio Agamben (2004) describes this phenomenon as the fusion between rule and exception, creating a permanent state of emergency where constitutional limits cease to function as Effective borders. In Brazil, marked by recurring crises, structural inequality, and fragmentation. Institutionally, the risk of exceptional circumstances expanding into routine is particularly high.

Brazilian criminology documents cases in which operations initially conceived as Extraordinary actions have become regular practices, leading to an increase in violence. Institutional weakening and undermining of democratic culture. In this scenario, the Time Bomb Theory It functions as a vector for institutional expansion, promoting a process of gradual erosion of... fundamental guarantees and altering the very constitutional identity of the Brazilian State (Carvalho, 2013).

4.2 Institutional Risks of the Time Bomb Theory in Brazilian Public Security

International experience and the most recent national data reveal that effectiveness in the fight against terrorism does not lie in adopting exceptional or coercive measures that harm fundamental guarantees, but rather the implementation of a set of integrated preventive policies, based on evidence and compatible with the constitutional system. The simple expansion of powers State-run businesses do not produce lasting security; on the contrary, they tend to erode institutional legitimacy, and to exacerbate crises of structural violence (Schmid, 2011).

Effective strategies require the combination of several factors: professional intelligence, and legal, data-driven policing, inclusive social policies, international cooperation, Technological regulation, institutional capacity building, and democratic control. Security intelligence. Public administration, when operated legally and with proper oversight, allows for the anticipation of risks, identifying criminal networks and preventing attacks before they occur (Conway, 2017).

However, intelligence is not an isolated solution. It needs to be integrated into a broader framework. Prevention based on international cooperation and information exchange. Terrorism operates often within transnational networks, with illicit financing, arms trafficking and flow of People, the effectiveness of the fight therefore depends on joint action between States (Martins; (Silva, 2023). In the Brazilian context, this cooperation must respect human rights and incorporate procedural safeguards, promoting not exceptions, but regulated regimes of prevention.

In the field of technology and cybersecurity, the State must develop capabilities to Legal oversight, regulating the use of digital platforms, expanding mechanisms for detection. radicalization and financing of terrorist activities, and investing in information security. These Measures should be based on clear legislation, institutional transparency, and ongoing oversight. in order to avoid abuses and ensure compatibility with fundamental rights (Zuboff, 2019).

Furthermore, public security forces must be strengthened institutionally, via continuous training, standardization of protocols, integration between intelligence, investigation and visible policing, training for the investigation of complex crimes and combating crime. Organized, and with the judicious and controlled use of force. Police effectiveness does not depend on permissiveness. normative, but also professional, technical, with clear rules and institutional responsibility (Mello; Neto; Sales; Sena, 2025).

Therefore, insisting on exceptional measures, such as those inspired by the logic of the ticking time bomb, It is not only legally unacceptable, but also empirically counterproductive. Security Reality requires institutional patience, constant investment, and democratic public policies, not only authoritarian shortcuts



Final Considerations

The analysis developed throughout this article has demonstrated that the Time Bomb Theory, while seductive as a philosophical hypothesis and useful as a rhetorical provocation, is absolutely incompatible with the Brazilian constitutional order and with the democratic model for confronting terrorism. Its use, even if only as a theoretical justification, strains the fundamental pillars of the rule of law, weakens inalienable guarantees, and opens the door to exceptional state practices that have the power to generate serious human rights violations.

The 1988 Constitution, the international treaties ratified by Brazil, and the consolidated jurisprudence of the Inter-American Court form a robust normative framework that categorically prohibits any relaxation of the ban on torture, including in situations of serious public threat. Therefore, there is no legal provision that authorizes or legitimizes the practice of conduct covered by the theory in question.

The institutional risks identified reveal that the normalization of exceptional circumstances tends to erode control mechanisms, expand gray areas in decision-making, and encourage informal practices that weaken state accountability. As demonstrated, the adoption of reasoning based on urgency fosters the emergence of pockets of arbitrariness, shifting the focus from legality to discretion and harming the functioning of the very institutions responsible for preventing and suppressing terrorism.

This process fuels the so-called "contagion effect," in which measures that were originally exceptional become administrative routine, producing a continuous cycle of coercive expansion and democratic erosion, permeating the entire public security system.

The study showed that exceptionalist logic, besides being ethically and legally inadmissible, generates concrete losses in operational efficiency, as it compromises the quality of intelligence, weakens the chain of custody, reduces evidentiary reliability, and delegitimizes security forces, hindering social cooperation.

In contrast, it has been shown that effectiveness in combating terrorism stems from a multidimensional arrangement of integrated, constitutionally oriented preventive strategies, based on the qualified use of intelligence, interagency coordination, institutional strengthening, international cooperation, technological regulation, and police professionalization.

Regarding the limitations of the research, it is important to highlight that the study adopts a predominantly theoretical and legal-dogmatic approach, centered on normative, doctrinal, and jurisprudential analysis, concentrating on the Brazilian constitutional context, without delving into systematic comparisons with specific foreign models. These methodological limitations, however, do not compromise the results achieved, but rather indicate avenues for future studies that could integrate empirical analyses and broader comparative studies.

From the research findings, it can be concluded that the main academic contribution of this study lies in demonstrating that the Time Bomb Theory, although frequently evoked in the debate on terrorism, does not hold up under the Brazilian constitutional framework, proving incompatible with a democratic model of public security.

As a possible avenue for future research, comparative studies on preventive counterterrorism models in constitutional democracies are envisioned, particularly those involving the theme of intelligence, in order to broaden the understanding of effective and legally legitimate strategies for confronting terrorism.

Thus, it is concluded that the fight against terrorism in Brazil must be carried out with strict observance of fundamental rights, through intelligence and prevention strategies that respect legality and strengthen public trust in institutions. The "Time Bomb Theory," by proposing the suspension of guarantees in the name of a supposed extreme necessity, violates the Constitution, compromises state legitimacy, and threatens the very integrity of the Democratic Rule of Law, mortally wounding the republican and humanitarian principles that underpin the Brazilian legal system.



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